

HOUSE FINANCE COMMITTEE  
May 14, 2003  
1:41 PM

TAPE HFC 03 - 92, Side A  
TAPE HFC 03 - 92, Side A (was not used.)  
TAPE HFC 03 - 93, Side A  
TAPE HFC 03 - 93, Side B  
TAPE HFC 03 - 94, Side A

CALL TO ORDER

Co-Chair Williams called the House Finance Committee meeting to order at 1:41 PM.

MEMBERS PRESENT

Representative John Harris, Co-Chair  
Representative Bill Williams, Co-Chair  
Representative Kevin Meyer, Vice-Chair  
Representative Ethan Berkowitz  
Representative Mike Chenault  
Representative Richard Foster  
Representative Mike Hawker  
Representative Beth Kerttula  
Representative Carl Moses  
Representative Bill Stoltze  
Representative Jim Whitaker

MEMBERS ABSENT

Representative Croft  
Representative Joule

ALSO PRESENT

Representative Vic Kohring; Larry Persily, Deputy Commissioner, Department of Revenue; Kevin Ritchie, Executive Director, Alaska Municipal League; John MacKinnon, Deputy Commissioner, Department of Transportation and Public Facilities; Robynn Wilson, Department of Revenue; Joanne Roomsberg, Juneau Sales Tax Administrator; Rod Peck, President, Alaska Travel Industry Association; Paul Fuhs, Yukon Pacific; Randy Ruaro, Staff, Co-Chair Williams; Susan Burke, Attorney, Williams Petroleum; Richard Schmitz, Staff, Senator Cowdery; Anne Carpeneti, Assistant Attorney General, Legal Services Section, Criminal Division, Department of Law.

PRESENT VIA TELECONFERENCE

Bruce Johnson, Utah State Tax Commissioner, Utah; Bill O'Leary, Vice President, Finance, Alaska Railroad Corporation.

SUMMARY

HB 216 "An Act relating to municipal taxation of refined fuel products."

CS HB216 (FIN) was REPORTED out of Committee with a "do pass" recommendation and three, zero fiscal notes: two new fiscal notes from Department of Community and Economic Development (Community Assistance & Rural Energy Programs) and #2 from Department of Revenue.

HB 244 "An Act relating to the Code of Criminal Procedure; relating to defenses, affirmative defenses, and justifications to certain criminal acts; relating to rights of prisoners after arrest; relating to discovery, immunity from prosecution, notice of defenses, admissibility of certain evidence, and right to representation in criminal proceedings; relating to sentencing, probation, and discretionary parole; amending Rule 16, Alaska Rules of Criminal Procedure, and Rules 404, 412, 609, and 803, Alaska Rules of Evidence; and providing for an effective date."

HB 244 was heard and HELD in Committee for further consideration.

HB 267 "An Act relating to the Alaska Railroad; authorizing the Alaska Railroad Corporation to provide financing for the acquisition, construction, improvement, maintenance, equipping, or operation of facilities for the transportation of natural gas resources within and outside the state by others; authorizing the Alaska Railroad Corporation to issue bonds to finance those facilities; and providing for an effective date."

CS HB 267 was REPORTED out of Committee with a "do pass" recommendation and one fiscal impact note: #1 from Department of Community and Economic Development.

HB 293 An Act levying and collecting a state sales and use tax; and providing for an effective date.

HB 293 was heard and HELD in Committee for further consideration.

CSSB 128(FIN) am

"An Act relating to licensing common carriers to dispense alcoholic beverages; and providing for an effective date."

CSSB 128(FIN) am was REPORTED out of Committee with a "do pass recommendation" and fiscal impact note #2 from Department of Revenue.

#hb293

HOUSE BILL NO. 293

An Act levying and collecting a state sales and use tax; and providing for an effective date.

BRUCE JOHNSON, UTAH STATE TAX COMMISSIONER, observed that he is the Co-Chair of the Implementing Group of the Streamlined State Sales Tax group and provided information on the issue. He stated that whether a sales tax was adopted was an individual state policy, but encouraged the streamlined sales tax system. He discussed his experience advising businesses on local sales tax provisions. He gave the example of a sales tax provision in New York State that made a single item either taxed or exempt at the discretion of a retailer. He explained that the streamlined sales tax system unified state definitions, making regulations consistent throughout the country. He expressed his belief that the streamlined system was beneficial. He speculated that the number of returns filed would be reduced, and that software services would be available to help states. He also maintained that the system was beneficial to local retailers, since they were otherwise at a disadvantage to retailers outside the state selling electronically. He maintained that this system created a level playing field for local merchants. He also stated that the system would ensure that the tax would remain a viable revenue source in the future. He concluded that the streamlined sales tax was the best system to choose.

Representative Kerttula asked whether he had experienced other states, which had never had a sales tax, but rather a number of non-uniform taxes across the state. Mr. Johnson noted that Colorado, Alabama and Arizona have local administration of sales tax, where local governments collect their own tax and in some cases the tax base is not the same as for the state. He has also practiced in Colorado, which had different exemptions at a state and municipal level. He stressed that while the local governments maintained local rule, since they believed it was superior, that it was a difficult situation for businesses. He felt that this led to the Supreme Court's ruling, which required physical presences in a state before a sales tax could be collected. He stated that there was no state with situations exactly like Alaska, but noted other states were working with the problem. He reiterated the benefits of the system.

Representative Kerttula asked whether the exemptions or their definitions must be uniform among the states. Mr. Johnson clarified that a state may choose their own

exemptions, but that the definitions of exemptions would be uniform.

Mr. Persily asked whether, under the streamlined program, there would be prohibition in a municipality against an excise tax, such as bed tax, car rental tax. Mr. Johnson stated that there would not be. He noted that in Utah, the state retained the right for excise taxes.

Co-Chair Williams asked what was required to pass the system into law. Mr. Johnson noted that the system would come into effect when ten states were participating, but would still be voluntary for merchandisers that did not have a physical presence in the state. For it to be mandatory, Congress would have to take action.

Co-Chair Williams asked how exemptions were decided. Mr. Johnson responded that Utah made the minimum conforming decisions, keeping in place their previous exemptions, but fine-tuning the system to be in conformation with the unified definitions. He pointed out that Alaska faced a more daunting task. He concluded that the intent was not for a uniform task, but to make the tax uniformly convenient.

Representative Hawker asked for clarification that the statewide sales tax system did not have dominion over local decisions. Mr. Persily confirmed that the system did not prohibit existing or new excise taxes in municipalities. He pointed out that if a municipality desired to tax an item that was exempt statewide, they would simply adopt an excise tax.

Vice-Chair Meyer asked whether a bed or car rental tax would be left up to municipalities. Mr. Persily pointed out that those cities with current excise taxes, but that under the bill, the State would also implement its use tax in addition to those taxes. Vice-Chair Meyer clarified if the State could implement a statewide excise tax. Mr. Persily confirmed that this was true.

Co-Chair Williams called a Committee Recess at 2:01 PM.

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Co-Chair Williams reconvened the meeting at 9:30 PM.

JOHN MACKINNON, DEPUTY COMMISSIONER, DEPARTMENT OF TRANSPORTATION AND PUBLIC FACILITIES provided information on the motor fuel tax provision of HB 293. The current .08-cent a gallon would be raised to .20 cents per gallon. The current .08-cent per gallon tax raises approximately \$29 million dollars a year. The increase would generate an additional \$41 million dollars. He noted that the total raised by the highway user fee would be approximately \$70

million. The Department of Transportation and Public Facilities currently spends \$60 million in highway maintenance and an additional \$50 million in federal match for highway construction, which all comes from the General Fund. He noted that 38 states would still have a higher fuel tax than Alaska. The national average is about .20 cents per gallon.

KEVIN RITCHIE, ALASKA MUNICIPAL LEAGUE provided information. He noted that a group of municipal officials had met with the Governor and offered suggestions, which were subsequently acted upon to lesson the impact on municipalities. He stated that the rewritten bill was then reviewed, and a few concerns were raised. The first objection was to the exemption of sales tax on marine and motor fuel. He pointed out that currently municipalities tax marine and motor fuel, equaling millions of dollars for municipalities. He stated that the exemption was problematic. The second issue is the concern raised by the cap. He explained that a number of municipalities had a variety of caps, put in place to encourage local business in that particular community. He noted that there was talk of considering a lower cap, which was then broadened. He noted that in car sales, the amount of sales tax might effect where cars are purchased.

JOANNE ROOMSBERG, JUNEAU SALES TAX ADMINISTRATOR, JUNEAU, spoke in response to a question by Representative Hawker. She explained that presently Juneau has a fuel flowage fee that is charged at the municipal airport. Aviation fuel is exempt from the city's general sales tax. She stated her understanding that the bill would allow Juneau to continue to implement a fuel excise tax.

Mr. Ritchie pointed out that Tom Boedeker was the Committee Chair in the working group that had raised concern about the effect on fuel taxes.

In response to a question by Representative Berkowitz, Ms. Roomsberg stated that a non-resident exemption card could be purchased for a cost of \$20 dollars. The card is good for a year. This allows the purchase of items that would be used and consumed outside of the city and borough of Juneau. It would not qualify for items that would be used or consumed in Juneau, such as a car rental or hotel room. Tangible personal property can be brought into the city for work or service, such as service on a car.

Co-Chair Harris asked about the position of communities in support of a statewide sales tax. He asked what kind of relief was necessary to garner acceptance from municipalities. Mr. Ritchie referred to testimony in Senate Finance, revolving around conflicts foreseen by municipalities. He pointed out that at this time not all of

the conflicts were apparent. He noted that even in cases when communities were not in favor, they had suggestions for making it workable.

Co-Chair Harris asked whether the Alaska Municipal League foresaw a "roadblock" to working with the sales tax. Mr. Ritchie maintained that they did not have a history of blocking legislation. Co-Chair Harris observed that it would be helpful for the Municipal League to help gather support for the tax.

Mr. Ritchie pointed out that the organization was committed to helping meet the budget gap. He stated that the Board had directed him to work with the Legislature to resolve issues surrounding the tax.

Representative Berkowitz asked if the Administration had reviewed other states with overlapping taxes. Mr. Ritchie observed that Alaska was unique in its taxation, as the only state with a municipal power to tax sales without a state sales tax.

Representative Kerttula asked about the level of drop in revenue sharing. Mr. Ritchie responded that in the past three years it had remained level, and now it had gone down by 25%. Municipalities received \$40 million in 1986 as compared to the current \$20 million. Representative Kerttula asked how many municipalities had raised their sales tax in the last couple of years. Mr. Ritchie thought that three or four municipalities had raised their sales tax including Dillingham, and Seward.

Representative Kerttula asked how many communities were at the cap for property tax, with a fairly high sales tax as well. Mr. Ritchie observed that there is a statutory cap of 30 mils. Different communities have revenue caps. Petersburg has a 10-mil property cap, which they are at. Juneau has a cap of 12 mils, and is currently at 11 mils. In response to a question by Representative Kerttula, Mr. Ritchie noted that the state assessor could provide a list of property tax caps.

Representative Kerttula asked about the range of exemptions. The city and borough of Juneau has 37 exemptions. Mr. Ritchie referred to a list of exemptions provided in 1999, which lays out most of the exemptions. Representative Kerttula asked if there had been a study on the impacts on Juneau of a tax such as that contained in the Committee Substitute. Ms. Roomsberg stated that Juneau has the difference in the exemptions and the tax base, which would make it difficult to evaluate the tax impact. She noted that several aspects of the tax must be more clearly defined before a more comprehensive study could occur: the exemptions, incidents and tax base.

Vice-Chair Meyer asked how to rate the three major sources of revenue, which are before the Legislature: sales tax, [capping the] permanent fund dividend, and income tax. He observed that a sales tax and a state income tax would take disposable income out of the economy, but pointed out that capping permanent fund dividend would also keep money out of the economy. He questioned Anchorage's position. Mr. Ritchie referred to a poll by the Southeast Alaska Municipal and Business Conference and noted that, as of 2:30 on 5/14/03, eight municipalities were in favor and 48 were opposed to the proposed sales tax. Members were asked to list the least objectionable revenue stream: 30 permanent fund earnings, 25 income tax, and 2 sales.

Representative Hawker asked if municipal revenue sharing would be increased or decreased as a result of the bill. Mr. Ritchie noted that the bill allows the state to appropriate 6 cents of the gas tax increase to road revenue sharing, which would raise revenue sharing by approximately \$18 million. He observed that this year's reduction to revenue sharing was \$7 - \$8 million. Representative Hawker concluded that the legislation would increase revenue sharing by a multiple of the current reduction. He asked the level of property tax caps in communities relying solely on property tax. Mr. Ritchie thought that those communities relying solely on property tax had rates of 18 to 20 percent. Juneau is at 11.5 - 12 mils.

ROD PECK, PRESIDENT ALASKA TRAVEL INDUSTRY ASSOCIATION testified in support of the bill. He stated that his organization represented small businesses in Alaska. He stated that tourists spent 1.8 billion on visitor related activities. His industry recognizes the fiscal gap challenges that the legislature faces, but faces its own challenges. He observed that there was a reduction of visitors to the state. He anticipated a further drop of 10 to 20 percent drop in visitors. He suggested that a revitalized marketing program would turn around the trend. He stated support of the bill, if amended to include a tourism tax revenues to bolster the existing state marketing program. He presented the committee with amendment language, which would identify tourism tax revenue by tracking industries contributing to a marketing program.

Vice-Chair Meyer asked how much revenue was estimated as a result of the amendment. Mr. Peck observed that their research indicates that, of the \$1.8 billion, they can identify \$920 million in activities over an annualized period. Vice-Chair Meyer observed that the car rental tax bill contained a clause to reappropriate funds to the tourism industry. Mr. Peck stated that his industry was opposed to targeted taxes, and believed that this was the fairest tax since it was industry wide.

Representative Kerttula asked about the nature of the contract with Alaska Travel Industry Association (ATIA). Mr. Peck observed that ATIA is in the third year of a three-year plan that would continue into perpetuity. They have a \$10 million budget, of which \$4 million was in contribution from the state and \$6 million is from matching private funds. The budget in year one and two was \$8.5 and \$7 million, with a greater percentage coming from the state.

Representative Hawker observed that the proposed amendment would deprive the State of the tax from an entire sector of the economy. Mr. Peck stated that this was not true, since the industry generates \$1.8 billion. He stated that the amendment targets segments of activities in the area of \$900 million.

Representative Hawker summarized that the proposal by ATIA would deprive the state of revenue from a sub sector of the economy, which would benefit solely from revenues collected from within it. Mr. Peck pointed out that not all gift shops would contribute due to a definition of seasonality, but acknowledged the conclusion. Representative Hawker asked if the amendment was acceptable to the industry, and questioned why they had not formed a trade association and self-assessed for the same efforts.

Representative Berkowitz speculated that problems attendant to tourism marketing also impeded work in this area. Mr. Peck confirmed that it was difficult to reach industry consensus.

In response to a question by Representative Kerttula, Mr. Peck confirmed that there were a variety of excise taxes in the industry.

Co-Chair Williams stated that a committee substitute would be available at the next Committee meeting.

HB 293 was heard and HELD in Committee for further consideration.

#hb267

HOUSE BILL NO. 267

"An Act relating to the Alaska Railroad; authorizing the Alaska Railroad Corporation to provide financing for the acquisition, construction, improvement, maintenance, equipping, or operation of facilities for the transportation of natural gas resources within and outside the state by others; authorizing the Alaska Railroad Corporation to issue bonds to finance those facilities; and providing for an effective date."

REPRESENTATIVE VIC KOHRING, SPONSOR, provided information about the bill. He observed that the legislation would allow revenues to be raised in order to build a natural gas pipeline. He explained that the bill authorizes the Alaska Railroad Board to generate tax-exempt bonds to raise low interest rate funds. Bonds would be issued and proceeds would be lent to potential constructors of the gas line. There would be no net effect to the State. Bonding authorization would be available to assist the building of the pipeline. The debt is non-recourse, which means that the debt would be the responsibility of the project sponsor. The builders would be responsible for their debt. The debtor could not lien any assets of the Railroad, state of Alaska, or the Permanent Fund. Financing would be issued for acquisition, construction, improvement, maintenance, equipping, and operation of facilities associated with transportation of natural gas. Up to \$17 billion would be authorized, which would provide the majority of proceeds needed for building a \$20 - \$25 billion pipeline. The Alaska Railroad would issue the bonds, but neither the Railroad nor the state of Alaska would be liable for the debt. The bill requires that prior to issuing bonds, proof of ability to repay must be demonstrated. Representative Kohring noted that there was a history in other states of railroads helping to finance pipeline projects. He also pointed out the mission of the Railroad to facilitate economic development.

Representative Kohring referred to a letter by George K Baum & Company, which indicated the feasibility of issuing bonds. He stressed that the current low interest rates would allow the capital to be raised. He noted that the bonds were tax exempt. The Railroad's ability to issue tax-exempt bonds was initiated when purchased by the federal government. He concluded that the bill presented an important facet toward completion of the pipeline.

Co-Chair Harris asked for an update of discussions with North Slope producers.

PAUL FUHS, YUKON PACIFIC, stated that the Administration might have more information on specific negotiations. In response to a question by Co-Chair Harris, Mr. Fuhs stated that the intent is to get tax-exempt bonding through the Railroad. He observed that the Alaska Railroad Corporation does not have the authority in its organic act. The state of Alaska must give it the authority.

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In response to a question by Representative Hawker, Mr. Fuhs noted that a similar bill was in the last legislative session: HB 423, which was rolled into HB 519.

Representative Whitaker referred to the difference between tax exempt and taxable bonds. Mr. Fuhs encouraged the Committee to read the letter from George K. Baum and Company, which has sold \$2 billion in bonds in the state.

Representative Whitaker asked who was the holder of the bonds in Valdez. Mr. Fuhs observed that they are municipal bonds.

Mr. Fuhs pointed out that George K Baum and Company was asked to verify Yukon Pacific's numbers look at the difference in tax-exempt bonds and estimate if the bonds could be sold. The letter concludes that the project could be financed in the bond market if the railroad vehicle is available. He pointed out that this pertains to either project: Trans Canada or all Alaskan. He referred to the spreadsheet attached to the letter, indicating that the rate difference between non-taxable and taxable was two full points (copy on file.) He added that they indicated that there were sufficient revenues under the Alaska Natural Gas Development Act. He observed that estimated revenues for a private project would be \$350 - \$400 million to the state of Alaska and \$50 - \$100 for municipalities. A public model shows up to a billion dollar return to the state of Alaska.

Mr. Fuhs observed that the George K Baum and Company has as much experience in selling bonds as anyone in Alaska. Representative Kohring referred to his experience with the company while on the Alaska Railroad Board. Representative Whitaker expressed hid support of the bill.

Mr. Fuhs discussed changes proposed in an amendment by Co-Chair Harris (Amendment 1), which would confirm the authority of the Railroad to what is actually stated in the authorization.

Representative Hawker observed that there was no information in the packet from the Department of Revenue, and pointed out that the Department had bond experience. Mr. Fuhs stated that the Department of Revenue had responded in other committee meetings.

Representative Whitaker pointed out that he had testimony by former Department of Revenue Commission Wilson Condon.

BILL O'LEARY, VICE PRESIDENT, FINANCE, ALASKA RAILROAD CORPORATION testified via teleconference in support of the bill. Representative Hawker observed that the investment community's view of Alaskan bonds might not be the same as it was a year ago. He asked if Committee should obtain a more current view of the bond rating before proceeding.

Mr. O'Leary stated that he had viewed the information from the state financial advisor, and pointed out that the model

being used would not affect the State's bond ratings; only the project would be affected.

Representative Whitaker stressed that there is no inherent liability for the state of Alaska or the Alaska Railroad Corporation. The liability lies with the feasibility of the project.

Representative Hawker expressed concern about the extent of the bonds (\$17 billion), and asked if the Department of Revenue had reviewed the project.

LARRY PERSILY, DEPUTY COMMISSIONER, DEPARTMENT OF REVENUE noted that the idea had been discussed the previous year, in regards to how the state could help bring about a natural gas project to commercialize stranded gas in the North Slope. He noted that it was discovered that under federal legislation the Alaska Railroad Corporation has the ability to issue tax-exempt bonds. There is no explicit provision requiring the bonds to be used to support railroad function. Discussions with bond counselors indicated that if there is enabling legislation the Alaska Railroad Corporation would be in a position to issue financing bonds. The payment of the bonds would not be the responsibility of the state of Alaska or the Corporation. Investors would have to demonstrate sufficient revenue from the project to repay the bonds. A determination was made that [the investors] could realize a savings of \$1 billion by issuing tax-exempt bonds. He noted the argument that the federal regulations were unclear, and might dissuade investors. This would be resolved by an IRS opinion or further legal research prior to the bond purchases.

Representative Hawker concurred that the funding seemed viable, but observed that the bill had not been a high priority previously. Mr. Persily clarified that a change in [state] statute is needed to give the Railroad the authority to issue the bonds. He concluded that tax-exempt bonding could be a viable funding source.

Mr. Fuhs stressed that this bonding authority was specifically intended for the gas pipeline, and speculated that this was the reason for the delay.

Representative Hawker noted the correlation with Proposition 3 in the last election. Mr. Fuhs speculated that the legislation does not discriminate against potential sponsors.

Representative Berkowitz pointed out that this authority could be used for other purposes such as a portion of the capital budget.

Co-Chair Harris noted that the bill is project and site neutral. He referred to Amendment 1, which conforms the powers granted to ARRC in Sec. 2 of the bill with the specific provisions in the legislative authorization and approval section. It clarifies that the act is intended to facilitate a natural gas pipeline from the North Slope of Alaska.

Mr. Persily agreed that the amendment made it explicit that [the bonds are intended] for a natural gas pipeline in the North Slope, replacing a more broad authority, which could have been used for other projects. He noted that this applied to commercializing and transporting gas from the North Slope.

In response to a question by Co-Chair Harris, Mr. Persily acknowledged that if amendment would assist North Slope gas development. He observed that using the authority for other purposes might risk its ability to be used for [the natural gas pipeline] if problems were encountered before it was needed for the project. He pointed out that a potential sponsor could be anyone who can show sufficient revenue to cover the bonds.

Representative Whitaker expressed his support of the bill.

Vice-Chair Meyer also expressed his support of the bill, and asked if the State was ultimately responsible. Mr. Persily noted that the bonds were revenue bonds, based on the belief in sufficient repayment revenue. The state of Alaska would not be responsible.

Mr. Fuhs referred to the letter by George K. Baum and observed that the bonds would be non-recourse conduit bonds. The minimum debt service ratios are calculated at fifty percent higher revenues than needed to make the payments, in order for the market to have confidence in purchasing the bonds.

Representative Hawker referred to a letter from Conoco Phillips, stating: "while it is too early to select financing vehicles, HB 267 will add a potentially valuable option". He asked why the bill was proposed in the current year. He suggested that there were still hurdles to overcome to truly view the viability of the funding. He asked why a specific amount (\$17 billion) was selected and why the legislation should be passed now.

Mr. Persily noted the specific financing vehicle depends on who builds the project. The specific amount was necessary to attract pipeline sponsors, and if the statute was not on the books, it might delay negotiations. He maintained that there was no harm in having the statute. Mr. Fuhs maintained that

federal factors in the negotiations would become clear this year.

Representative Hawker asked the Department of Revenue's position. Mr. Persily stated that he believed the Department of Revenue was supportive of the bill, since they had worked on various aspects of the legislation over the years.

Representative Kerttula referred to the importance of the legislation to potential buyers. Mr. Persily confirmed that it was also important to show good faith to the federal government and demonstrate that [the state of Alaska] is moving forward.

In response to a question by Representative Whitaker, Mr. Persily responded that the most current estimates of funding needs were reflected in the \$17 billion figure.

Co-Chair Harris MOVED Amendment #1. There being NO OBJECTION, it was so ordered.

Representative Berkowitz MOVED to ADOPT Amendment #2 a title amendment: delete "relating to the Alaska Railroad". There being NO OBJECTION, it was so ordered.

Representative Foster MOVED to report CSHB 267 (FIN) out of Committee with individual recommendation and the accompanying fiscal note. There being NO OBJECTIONS, it was so ordered.

CS HB 267 was REPORTED out of Committee with a "do pass" recommendation and one fiscal impact note: #1 from Department of Community and Economic Development.

#hb216

HOUSE BILL NO. 216

"An Act relating to municipal taxation of refined fuel products."

Co-Chair Harris MOVED to ADOPT Work Draft 23-LS0822\V (5/8/03). There being NO OBJECTION, it was so ordered.

RANDY RUARO, STAFF, CO-CHAIR WILLIAMS provided information on the bill. He explained that the committee substitute is an attempt to address concerns expressed by Representatives Croft and Whitaker regarding prohibition of taxation of fuels transiting through a borough or municipality on its way to another destination. The Sponsor had expressed his support of the bill. The bill also prohibits taxation of wholesale sales of fuels refined in a borough and the transit of fuel through a borough unless that activity currently exists, in which case it would be grand fathered in. Mr. Rauro observed that the Alaska Municipal League

indicated that it would neither oppose nor advocate for the legislation.

Representative Chenault MOVED to ADOPT Amendment #2. Co-Chair Williams OBJECTED. Representative Chenault noted the technical nature of the amendment: insert "or transfers" on page 2, line 7.

SUSAN BURKE, ATTORNEY, WILLIAMS PETROLEUM provided information on the Committee Substitute. She noted that Amendment #2 would correct an oversight making sections congruent in language.

Co-Chair Williams WITHDREW his OBJECTION. There being no other objections, Amendment #2 was ADOPTED.

Representative Hawker pointed out that the legislation would restrict a municipality's ability to collect local excise tax. Ms. Burke noted that they were attempting to prevent the type of municipal taxation that initiative sponsors in Fairbanks tried to get enacted: the physical transfer of refined fuel from one container to another.

Representative Hawker questioned if Alaska Municipal League would support the legislation.

Representative Foster noted that in 1993 he sponsored a bill to respond to a community that was charging a transfer tax for goods traveling through a variety of municipalities.

Representative Foster MOVED to report CSHB 216 (FIN) out of Committee with individual recommendations and the accompanying fiscal notes. There being NO OBJECTIONS it was so ordered.

CSHB 216 (FIN) was REPORTED out of Committee with a "do pass" recommendation and three, zero fiscal notes: two new fiscal notes from Department of Community and Economic Development (Community Assistance & Rural Energy Programs) and #2 from Department of Revenue.

#sb128

CS FOR SENATE BILL NO. 128(FIN) am

"An Act relating to licensing common carriers to dispense alcoholic beverages; and providing for an effective date."

RICHARD SCHMITZ, STAFF, SENATOR COWDERY, provided information on the bill. He noted that the legislation deals with the fact that common carriers can dispense alcohol and are licensed by the Alcoholic Beverage Control Board. He observed that concern was expressed that airlines would have to license all of their planes because it would be impossible to guarantee which plane would make a run. The

legislation was amended to enact a biannual fee of \$2,000 dollars per location that Alaska Airlines serves. Pan Air Aviation would be allowed to pay a \$1,000 dollar fee for the first aircraft and \$100 fee for each additional plane. A bar car on a train would be individually licensed. The Alcoholic Beverage Control Board supports the bill as it cuts back on paperwork and makes it easier to license aircraft.

Representative Berkowitz asked if on board alcohol was taxed. After discussion, it was speculated that it was not taxed.

Representative Foster asked if the fee pertains to each carrier. Mr. Schultz explained that carriers can chose by location served or by the first 10 aircraft.

Representative Foster asked why the choice was necessary. Mr. Schultz observed that the option would affect carriers with less than ten 10 aircraft.

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Representative Kerttula referred to the fiscal note. She pointed out that the choice would cost the State \$39 thousand. Mr. Schultz stated that the goal, in talking with the Alcoholic Beverage Control Board, was to lower the paperwork cost and prevent a situation where a carrier would have to register each of its aircraft as it expanded.

Representative Kerttula asked how much the planes made from liquor sales each year. Representative Berkowitz asked if a rate level had been examined to make the bill fiscally neutral. Mr. Schultz noted that it had been discussed. He did not think that there was opposition to making the program revenue neutral.

LARRY PERSILY, DEPUTY COMMISSIONER, DEPARTMENT OF REVENUE provided information. He observed that alcohol tax in Alaska is an excise tax, not a sales tax. It is assessed at the wholesale level. He assumed that airlines would buy from an out-of-state distributor. The question is whether there would be tax liability for importing the alcohol into the state of Alaska. He did not think an excise tax had been collected.

In response to a question by Representative Berkowitz, Mr. Persily responded that the sale would occur in the air and may be subject to federal law.

Representative Foster observed that airlines do not make their profit from alcohol sales.

Mr. Schmitz noted that ERA sells alcohol on their flights.

Representative Berkowitz proposed an amendment to make the legislation revenue neutral by increasing fees by 10 percent; insert 1,100 on page 2 line 4.

Mr. Schmitz responded that ERA Aviation would be the only airline affected serving intrastate routes.

Vice-Chair Meyer OBJECTED for discussion. He asked if the amount would be in line with charges by other states. Mr. Schmitz indicated that the fee would cover the cost to implement.

Mr. Persily recalled that many other states have lower fees but that they have a higher volume of planes licensed. He did not think the fee was grossly out of line with other states.

Vice-Chair Meyer questioned if the amendment would be within the range. Mr. Persily noted that Alaska would not be at the highest end. He added that Alaska Airlines has considered the issue and has been looking for a solution.

Representative Berkowitz MOVED to AMEND Amendment 1: Page 2, line 8, delete "2,000" and insert "\$3,000". Mr. Schmitz questioned if page 2, line 4 should be amended to be in line with the amended amendment. He did not support the amendment.

Representative Chenault suggested that \$3,000 would be \$500 more than the bi-annual bar fee.

Representative Stoltze questioned if the increase was justified.

A roll call vote was taken on the motion.

IN FAVOR: Kerttula; Meyer; Whitaker; Berkowitz, Hawker  
OPPOSED: Stoltze; Chenault; Foster; Williams; Harris

The MOTION FAILED (5-5).

Representative Foster MOVED to report CSSB 128(FIN)am out of Committee with individual recommendations and the accompanying fiscal note. There being NO OBJECTION, it was so ordered.

CSSB 128(FIN)am was REPORTED out of Committee with a "do pass recommendation" and fiscal impact note #2 from Department of Revenue.

#hb244

HOUSE BILL NO. 244

"An Act relating to the Code of Criminal Procedure; relating to defenses, affirmative defenses, and

justifications to certain criminal acts; relating to rights of prisoners after arrest; relating to discovery, immunity from prosecution, notice of defenses, admissibility of certain evidence, and right to representation in criminal proceedings; relating to sentencing, probation, and discretionary parole; amending Rule 16, Alaska Rules of Criminal Procedure, and Rules 404, 412, 609, and 803, Alaska Rules of Evidence; and providing for an effective date."

Vice-Chair Meyer MOVED Amendment #1: work draft 23 GH1024|D.1, dated 5/14/03. Representative Berkowitz OBJECTED.

ANNE CARPENETI, ASSISTANT ATTORNEY GENERAL, LEGAL SERVICES SECTION, CRIMINAL DIVISION, DEPARTMENT OF LAW discussed changes proposed by the amendment. She noted that Amendment 1 would change defense for "heat of passion" charges from a defense that the state is obliged to disprove beyond a reasonable doubt to an affirmable defense, which the person claiming the defense is obliged to prove by a preponderance of evidence. "Heat of passion" only applies to murder in the first degree and murder in the second degree, and only works to reduce the charge to manslaughter. Under "heat of passion" a person claims that they acted in such excitement aroused by the intended victim that they were unable to prevent the crime. The claim is that a homicide occurred during a situation beyond one's control. It is similar to temporary insanity. The person committing the crime is unable to control him or herself, and thus feels that they should be charged with manslaughter rather than murder. She noted that in Alaska, insanity is an affirmative defense, which the defendant has to prove through a preponderance of the evidence. She spoke in support of the shift.

Representative Berkowitz pointed out that the presumption of innocence and burden of proof are the two essential precepts in any trial. He maintained that the amendment would turn these precepts on their head. He maintained that the amendment overturns this premise and spoke against it.

Vice-Chair Meyer asked if the "heat of passion" placed these cases in the same vein as an insanity case. Representative Berkowitz explained that there are two parts of doing something illegal; there needs to be a guilty mind and a guilty act. When there is an insanity defense the guilty act is conceded. An insanity situation is distinct from a "heat of passion" defense. He noted that the State would have prior knowledge of a "heat of passion" defense and should be able to prove its case. Vice-Chair Meyer maintained that a defendant should be required to prove that they were irrational in the heat of passion.

In response to a question by Representative Kerttula, Ms. Carpentini confirmed that "heat of passion" is not equivalent to insanity. Representative Kerttula asked if the burden of proof remained the same. Ms. Carpentini noted that the change would be to an affirmative defense. She noted that other things, such as duress, support an affirmative defense, since the defendant is in a better position to provide information about the situation.

Representative Kerttula pointed out that if the defense had not been raised, then it would not have been the same burden on the defendant. Ms. Carpentini noted the State is currently obliged to disprove it beyond a reasonable doubt. The amendment would require the defendant to prove it by preponderance of evidence and the charge would be reduced to manslaughter.

In response to a question by Representative Whitaker, Ms. Carpentini noted that a defense places the burden on the State to prove the guilt of a defendant, whereas an affirmative defense places the burden of proof on the defendant. Representative Whitaker observed that it amounted to a case of life and death and stated that he was uncomfortable with an amendment of this magnitude being heard in these conditions.

Representative Foster observed that he had experienced the weight of the government under indictment. He asserted that most citizens couldn't afford to defend themselves.

HB 244 was heard and HELD in Committee for further consideration.

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ADJOURNMENT

The meeting was adjourned at 11:32 PM