

HOUSE FINANCE COMMITTEE
February 09, 2004
1:50 P.M.

TAPE HFC 04 - 22, Side A
TAPE HFC 04 - 22, Side B

CALL TO ORDER

Co-Chair Williams called the House Finance Committee meeting to order at 1:50 P.M.

MEMBERS PRESENT

Representative John Harris, Co-Chair
Representative Bill Williams, Co-Chair
Representative Eric Croft
Representative Mike Hawker
Representative Reggie Joule
Representative Carl Moses
Representative Bill Stoltze

MEMBERS ABSENT

Representative Mike Chenault
Representative Hugh Fate
Representative Richard Foster
Representative Kevin Meyer

ALSO PRESENT

Representative Les Gara; Peter Ecklund, House Finance Committee Staff, Representative Bill Williams; John MacKinnon, Deputy Director, Department of Transportation and Public Facilities; Kevin Ritchie, Executive Director, Alaska Municipal League, Juneau

PRESENT VIA TELECONFERENCE

Clyde (Ed) Sniffen, Jr., Assistant Attorney General, Department of Law, Anchorage; Robynn Wilson, Tax Auditor, Department of Revenue, Anchorage; Dan Dickinson, Director, Division of Oil and Gas Audit, Department of Revenue; William Hupprich, Associate General Legal Council, Alaska Railroad Corporation (ARRC), Anchorage; Bill O'Leary, Vice President, Finance, Alaska Railroad Corporation (ARRC), Anchorage; Bill Rolfzen, Municipal Assistance, Department of Community & Economic Development, Anchorage; Wendy Lindskoog, External Affairs Director, Alaska Railroad Corporation (ARRC), Anchorage; Steve Cleary, Director, Alaska Public Interest Research Group (AKPIRG), Anchorage

SUMMARY

HB 56 An Act relating to the attorney fees and costs awarded in certain court actions relating to unfair trade practices; and, if considered court rule changes, amending Rules 54(d), 79, and 82, Alaska Rules of Civil Procedure.

HB 56 was HEARD and HELD in Committee for further consideration.

HB 156 An Act increasing the motor fuel tax and repealing the special tax rates on blended fuels; and providing for an effective date.

HB 156 was HEARD and HELD in Committee for further consideration.

#HB56

HOUSE BILL NO. 56

An Act relating to the attorney fees and costs awarded in certain court actions relating to unfair trade practices; and, if considered court rule changes, amending Rules 54(d), 79, and 82, Alaska Rules of Civil Procedure.

REPRESENTATIVE LES GARA explained that the bill would provide the State with a needed tool to fight consumer fraud more effectively and efficiently without any cost to the State. The bill strengthens the State's ability to represent Alaskans who have been victimized by fraudulent business practices whether by used car dealers or others who prey on Alaska's consumers. He added that the legislation would save money for the State of Alaska.

HB 56 would change law allowing the State to recover its full enforcement, investigation and court costs if it prevails against a party that has violated Alaska's consumer protection laws. The bill is modeled after legislation in other areas that allow state and federal investigators and enforcement authorities to recover their enforcement costs.

Representative Gara continued, highlighting public policy behind the bill:

- Those who engage in unfair business practices should not force the State to bear the cost of their misconduct; and that
- By allowing the State to recover not only the existing penalties that are available under the State law, but enforcement costs, the law would help fund a more cost-effective consumer protection presence in Alaska.

Co-Chair Harris questioned what "reasonable fees" would consist of. Representative Gara explained that historically, the Courts have had laws that allow the case winner to also receive the attorney fees. The attorney fees assessed in the prevailing market rate would have to be indicated. The legislation stipulates what would be required to be reasonable in community and not excessive.

Co-Chair Harris ascertained that "reasonable" in Valdez could be different than in Anchorage. He asked if there was an "across the board reasonable cost for an attorney". Representative Gara thought that the Court's would determine that the prevailing rate in Alaska should range between \$100-\$180/per hour.

Co-Chair Harris acknowledged that the Courts would be making the decision. Representative Gara interjected that such a hearing would be a short, most likely not needing a jury trial.

Co-Chair Harris asked if the Court's decision could be appealed. Representative Gara responded it could. The process would move no further forward than the State Supreme Court.

Representative Gara pointed out support from the Attorney General's office in the Department of Law.

Co-Chair Harris referenced the fiscal note. Representative Gara noted that it was a zero note as there is no need for the Department to hire new people. Co-Chair Harris pointed out that the major change to the fiscal note would be a change in revenues. Representative Gara reiterated that it will bring in additional revenues.

CLYDE (ED) SNIFFEN, JR., (TESTIFIED VIA TELECONFERENCE), ASSISTANT ATTORNEY GENERAL, DEPARTMENT OF LAW, ANCHORAGE, commented that the Department does support the bill as it provides a potential source of revenue in protection efforts. He offered to answer questions of the Committee.

Representative Stoltze commented on legislation resulting from last year regarding consumer protection, which allowed the Legislature to look into motor fuel price gouging. Mr. Sniffen did not know the scenario referenced by Representative Stoltze and noted that HB 56 would require that there be an investigation conducted with legal action taken. If found fraudulent that action would allow the Department to recover the fees. The only anti-trust legislation that passed last session was a bill, which eliminated the source of funds for a prevailing party in a class action lawsuit.

STEVE CLEARY, (TESTIFIED VIA TELECONFERENCE), DIRECTOR, ALASKA PUBLIC INTEREST RESEARCH GROUP (AKPIRG), ANCHORAGE, testified in support of the legislation and urged the Committee's support. He reiterated that it would provide more protection for consumers while not costing the State anything.

Co-Chair Williams advised that HB 56 would be HELD in Committee for further consideration.

#HB156

HOUSE BILL NO. 156

An Act increasing the motor fuel tax and repealing the special tax rates on blended fuels; and providing for an effective date.

Co-Chair Harris MOVED to ADOPT committee substitute #23-GH1118\V, Kurtz, 2/9/04, as the version of the bill before the Committee. There being NO OBJECTION, it was adopted.

PETER ECKLUND, HOUSE FINANCE COMMITTEE STAFF, REPRESENTATIVE BILL WILLIAMS, explained that version "V" resembles the gasoline motor fuel tax portion of [House Bill 293], which passed out of the House Finance Committee late last session. Version V would increase the current motor fuel tax from eight cents to twenty cents per gallon and would split the increase of twelve cents between the municipality and the State of Alaska. It would continue a current incentive in state law for processing ethanol out of wood and fish waste and would extend the incentive to June 30th, 2009.

Mr. Ecklund noted a couple differences between the version that passed out. In the sales tax bill, there was a two-cent home fuel tax, whereas the bill before the Committee does not continue that provision. HB 156 removes the exemption for the Alaska Railroad Corporation (ARRC) to pay the motor fuel tax. The bulk of the fuel purchased by the Railroad is for rail use and taxed at a rate of two cents per gallon. Any fuel use for off-the-road purposes would be taxed at two cents per gallon.

Co-Chair Harris asked how raising the tax from eight cents per gallon to twenty cents per gallon would affect the state's economy. Mr. Ecklund advised that if the state tax rate was twenty-cents per gallon, there would only be ten states paying less and Alaska would continue to be in the bottom fifth.

Co-Chair Harris asked if it was the legislation's intent to place the funds back into highway maintenance or to defer current costs coming out of the General fund. Mr. Ecklund noted the chart in member's packet indicating that \$60 million per year is spent on highway maintenance and \$50

million dollars per year from the Capital Budget to match the federal highway dollars. The collection of a gas tax could be used to offset those costs.

Co-Chair Harris pointed out that aviation tax on gasoline was not increasing four to seven cents per gallon. Mr. Ecklund acknowledged that it was not under the proposed version of the legislation. Co-Chair Harris indicated a "conflict of interest" regarding the aviation gasoline tax.

Co-Chair Harris asked if those driving longer distances would be paying an "unfair" amount of money on tax. Mr. Ecklund could not answer that question. Co-Chair Harris reiterated expense concerns for those driving distances such as the one between Mat-Su and Anchorage. Mr. Ecklund commented that the Department might be able to supply numbers regarding the number of people that travel those distances.

Co-Chair Harris pointed out that under HB 156, the House Finance Committee version, the Alaska Railroad would be paying two cents per gallon for fuel. Mr. Ecklund advised that currently, the Railroad is tax exempt. He understood that they use approximately 5.5 - 6 million gallons fuel per year. The two-cent per gallon rate would generate approximately \$120,000 dollars per year.

Representative Stoltze inquired if the exemption affected ARRC's entire fleet of vehicles. Mr. Ecklund noted that in the last version, any vehicle that the Railroad has would be exempt, while under the proposed version, they would not be. If there were vehicles on the road, they would be subject to the full twenty-cent tax. He did not know the amount of fuel used on the road.

In response to Representative Stoltze, Co-Chair Williams pointed out that the national motor fuel tax average is twenty-three cents per gallon.

Co-Chair Harris noted that Alaska currently pays per twenty-six cents federal and State tax on gasoline with Hawaii being the highest amount paid at fifty-three cents per gallon. He reiterated that Alaska is the lowest and that HB 156 proposes a price of thirty-eight cents per gallon.

KEVIN RITCHIE, EXECUTIVE DIRECTOR, ALASKA MUNICIPAL LEAGUE, JUNEAU, voiced support for the proposed legislation. He stressed that it would create a "user pays" for maintaining roads. What is proposed would be between the municipalities and State government, making sense as some of the gas is consumed on municipal roads. Sharing those costs would help to guarantee that the roads are well maintained. Mr. Ritchie maintained that it is a fair tax in that it is an

overall cent per gallon cost and cost and people in all areas of the State would pay the same per gallon of gas.

Representative Stoltze asked if local governments had the ability to tax. Mr. Ritchie replied that they do.

WENDY LINDSKOOG, (TESTIFIED VIA TELECONFERENCE), DIRECTOR, EXTERNAL AFFAIRS, ALASKA RAILROAD CORPORATION (ARRC), ANCHORAGE, introduced Bill O'Leary, Vice President, Alaska Railroad, & Bill Hupprich, Associate General Legal Council, Alaska Railroad, Inc. She responded to comments made by Mr. Ecklund regarding the gasoline consumed for highway use. The total per year amount is approximately 150,000 gallons gasoline and 75,000 gallons diesel fuel. The Railroad purchases gas and diesel fuel for the following uses:

- Highway use is approximately 1%
- Equipment use is approximately 1%
- Heating use is approximately 1%
- Locomotive use is approximately 98%

Ms. Lindskoog noted that for highway use, the Railroad should be tax exempt, however, they have not received any reimbursement for that fuel tax over the years. She noted that there is no objection to paying for it. With regard to legal issues regarding the locomotive fuel tax, Ms. Lindskoog requested that Mr. Hupprich testify.

WILLIAM HUPPRICH, (TESTIFIED VIA TELECONFERENCE), ASSOCIATE GENERAL LEGAL COUNCIL, ALASKA RAILROAD CORPORATION (ARRC), ANCHORAGE, noted that the Railroad has the same objections that they voiced last year on SB 112. A tax will most likely violate the federal Alaska Railroad Transport Act provision, which mandated that revenues generated by the railroad shall be maintained and managed by the State for railroad purposes only. He claimed that it would constitute the federally mandated dedication of revenues that are binding on the State and subject to the railroad transfer and comparable to the quasi trust laws opposed to University lands. The intent of Congress in requiring the dedication of railroad revenues was to prevent any State or local intent to erode the Court and transportation assets, a continued assistance, which seems vital to federal interests as well as to the State. The Transfer Act prevents the Legislature from appropriating the Railroad's funds and using them for non-railroad purposes. The 2% tax on the locomotive fuel would primarily be used on highways, airports and ports, which would be a violation of the federal Transport Act.

Mr. Hupprich added that the 2% tax would most likely violate the Federal Railroad Act from 1976. The bill before the Committee proposes to take the Railroad's money and use it

for construction of airports, highways and port facilities used by competitors, which would be unlawful discrimination against the Railroad under that Act. He noted that those are the two basic legal arguments that the Railroad currently has on the tax.

Co-Chair Williams noted a letter in member's files from the Department of Law dated May 2003. (Copy on File). He referenced Page 4, regarding the Railroad being subject to a motor fuel tax. Mr. Hupprich pointed out that specific reference was to one case in the 9th Circuit and did not address the discrimination issue. If the tax passes, ARRC expects to act on the discrimination issue. Under decisions from other jurisdictions, the Court would find that discriminatory against the Railroad.

Co-Chair Williams requested that the Railroad submit a letter addressing those concerns. Mr. Hupprich pointed out that on Page 2, there is a reference to the discrimination in the Burlington Northern Railroad versus the Triplett case.

Representative Croft advised that in that case, the Court found discrimination on two grounds. He asked if the Atchison case had been overruled by the Supreme Court. Mr. Hupprich understood that it had not been overruled.

Representative Croft thought that it was applicable as we are in the 9th Circuit governing law. Mr. Hupprich advised that it was applicable but that it does not address discrimination based on the abuse of the funds that were discussed in the Burlington Northern versus Triplett case.

Representative Croft asked if that had been dedicated to repair and maintenance of roadbeds. Mr. Hupprich understood that case only looked at the rate issue and if it was discriminatory.

Representative Croft noted that he did not have the case at hand but did have the summary from the Department of Law. He referenced Page 2 & Page 3. In the Burlington case there were two grounds for discrimination:

- Dedication of the funds to road maintenance, and
- Higher than other rates

Representative Croft thought that Alaska would be governed by the 9th Circuit decision. The Legislature cannot dedicate constitutionally and has been set at the lowest rate available. He did not know if the Burlington Northern Railroad decision would apply. Mr. Hupprich agreed that the Legislature could not constitutionally dedicate those funds,

however, the Railroad understood that on a defacto basis, all those funds are used to fund highway, airport and port projects.

Representative Croft commented that the 1st issue discussed was separate from the 4-R issues because under the Transfer Act, the Railroad assets cannot be taken. He asked if it was interpreted that a tax could never be applied to the Railroad. Mr. Hupprich said not entirely. The Transfer Act indicates that revenue generated "shall" be retained and managed by the Railroad for railroad related work. The State could possibly tax the Railroad and use the money for a railroad related purpose. That is the reason that they do not have objection to paying a fuel tax for the on-road vehicle fleet because the money ends up going into roads that the Railroad receives "benefit" from. The tax on the on-road vehicles is "okay" under the Transfer Act, as the Railroad needs roads on occasion to drive its own vehicles. He reiterated that the Railroad would not receive any benefit from the locomotive tax and would be used to fund the infrastructure for their competitors.

Mr. Hupprich explained that revenues generated by the Railroad shall be retained and managed by the Railroad for railroad related purposes. Representative Croft asked if there was any case in law on that. Mr. Hupprich replied that there is not and that it only applies to the Alaska Railroad from the federal government transfer. He admitted that it is a unique legal provision.

Representative Stoltze understood that no matter how successful the Railroad is or becomes, the State could never expect any return to the general fund. Mr. Hupprich advised that the Railroad is not opposed to paying taxes for which they receive some benefit. The federal Act attempts to prevent taking money from the Railroad and use it for non-Railroad purposes. The intent of the provision was to preserve the important transportation asset for the State and not have it subject to being dismantled periodically when the State is running low on funds. He pointed out that there is not unfair competition between the Alaska Truckers and the Railroad.

Representative Croft asked if the Railroad would have any objection to using some of the \$120,000 dollars for maintenance and operations of the Whittier Tunnel. Mr. Hupprich responded that they would look at that specific proposal as it is definitely a Railroad connection.

TAPE HFC 04 - 22, SIDE B

Co-Chair Williams stated that HB 156 would be HELD in
Committee for further consideration.
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ADJOURNMENT

The meeting was adjourned at 2:38 P.M.