

HOUSE FINANCE COMMITTEE
April 27, 2004
1:46 P.M.

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CALL TO ORDER

Co-Chair Williams called the House Finance Committee meeting to order at 1:46 P.M.

MEMBERS PRESENT

Representative John Harris, Co-Chair
Representative Bill Williams, Co-Chair
Representative Kevin Meyer, Vice-Chair
Representative Mike Chenault
Representative Eric Croft
Representative Hugh Fate
Representative Richard Foster
Representative Mike Hawker
Representative Reggie Joule
Representative Carl Moses
Representative Bill Stoltze

MEMBERS ABSENT

None

ALSO PRESENT

Representative Norman Rokeberg; Representative Carl Gatto; Representative Beverly Masak; Senator Bert Stedman; Pete Ecklund, Staff, House Finance Committee, Representative Bill Williams; Amanda Wilson, Staff, Representative Norman Rokeberg; Greg O'Claray, Commissioner, Department of Labor; Jerry Fuller, Project Director, Office of the Commissioner, Department of Health & Social Services; Cody Rice, Staff, Representative Carl Gatto; Eleanor Wolfe, Staff, Representative Beverly Masak; Cindy Cashen, Executive Director, Mothers Against Drunk Driving (MADD), Juneau; Jack Chenoweth, Attorney, Alaska Legal Services; Barbara Huff-Tuckness, Director of Legislative and Governmental Affairs, Teamsters Local 959, Anchorage

PRESENT VIA TELECONFERENCE

Rick Vanderkolk, Staff, Representative John Harris, Anchorage; Mark Meyers, Director, Division of Oil and Gas,

Department of Natural Resources, Anchorage; John Seder, Attorney, Alaska Fishermen, Anchorage; Bill Evans, Attorney, Anchorage

SUMMARY

HB 255 An Act amending the Alaska Wage and Hour Act as it relates to flexible work hour plans, the provision of training wages, and the definitions of certain terms; and repealing the exemption in the Act from the payment of minimum wages for learners.

HB 255 was HEARD and HELD in Committee for further consideration.

HB 275 An Act relating to veterinarians and animals.

CS HB 275 (FIN) was reported out of Committee with "no recommendation" and zero note #1 by the Department of Law, zero note #3 by the Department of Environmental Conservation, zero note #4 by the Department of Public Safety and indeterminate note #5 by the Department of Administration.

HB 342 An Act relating to driving while intoxicated; and providing for an effective date.

CS HB 342 (FIN) was reported out of Committee with an "amend" recommendation and with zero note #1 by the Alaska Court System, zero note #2 by the Department of Law, zero note #3 by the Department of Public Safety, indeterminate note #5 by the Department of Corrections and a new indeterminate note by the Department of Administration.

HB 395 An Act relating to shallow natural gas leasing and the regulation of shallow natural gas operations.

CS HB 395 (FIN) was reported out of Committee with a "do pass" recommendation and with fiscal note #2 by the Department of Natural Resources.

HB 531 An Act relating to natural gas exploration and development and to nonconventional gas, and amending the section under which shallow natural gas leases may be issued; and providing for an effective date.

CS HB 531 (FIN) was reported out of Committee with a "no recommendation" and with zero note #1 by the Department of Natural Resources.

SB 285 An Act relating to medical assistance coverage for targeted case management services and for rehabilitative services furnished or paid for by a school district on behalf of certain children; and providing for an effective date.

SB 285 was reported out of Committee with a "do pass" recommendation and with zero notes #1 & #2 by the Department of Health & Social Services.

CS SB 300(FIN)

An Act relating to an attorney's lien, to court actions, and to other proceedings where attorneys are employed; and providing for an effective date.

HCS CS SB 300 (JUD) was reported out of Committee with a "do pass" recommendation and with zero note #1 by the Department of Natural Resources, zero note #2 by the Alaska Court System, and zero note #3 by the Department of Law.

HOUSE BILL NO. 342

An Act relating to driving while intoxicated; and providing for an effective date.

Co-Chair Williams MOVED to ADOPT Amendment #1, #23-LS1292\V.2, Luckhaupt, 4/26/04. (Copy on File). Representative Croft and Co-Chair Harris OBJECTED.

PETE ECKLUND, STAFF, HOUSE FINANCE COMMITTEE STAFF, REPRESENTATIVE BILL WILLIAMS, explained Amendment #1, noting the chart indicating how to get a limited license in current law. (Copy on File). Amendment #1 would modify the conditions under which a person could apply for a limited license. Page 3, Line 1, changes the law back to current statute. Language on Page 3, Lines 2-9, clarifies that under the first offense, the license would be revoked or suspended for 90-days and the person would not be eligible for a limited license in the first 30-days of the revocation. Page 3, Line 16, addresses situations if there were more than one offense, they could be eligible, however, during the first 90 days of the revocation, the offender would not be eligible for the limited license. Additional sections reinsert language regarding "severely impaired", raising the bar slightly on who would be eligible to get a license.

Representative Croft questioned the reason for the change indicated in Amendment #1. Mr. Ecklund responded that it was a policy call, currently in statute. Present law indicates that if a person has more than one misdemeanor

offense, they do not qualify for a limited license. The manner in which the bill currently is drafted, the person would be eligible for a limited license from day one of the revocation. Amendment #1 clarifies that person could not get a license in the first 90-days of the revocation. Representative Croft asked why. Mr. Ecklund replied that if a person has multiple driving charges while Under the Influence (DUI), they "should be without a license" for a period of time.

Co-Chair Harris inquired if Mothers Against Drunk Driving (MADD) supported the changes to that language. Mr. Ecklund did not know. Co-Chair Williams interjected that Amendment #1 would make the requirements more stringent.

*CINDY CASHEN, EXECUTIVE DIRECTOR, MOTHERS AGAINST DRUNK DRIVING (MADD), JUNEAU, stressed that Amendment #1 would make the bill more "high-risk drunk driver friendly". The original intent of the legislation was to have increased penalties for high-risk drunk drivers, which would be removed from the bill. The amendments make it easier for high-risk drivers who still qualify for therapeutic or wellness court to get out sooner.

Ms. Cashen stated that MADD opposes the proposed changes. Those change are not the original intent. The goal was to get ignition interlock for high risk drivers based on their blood-alcohol levels and that language has been removed. The ignition interlock program is up and ready to go throughout Alaska. The State is more than ready. The majority of other states already have the ignition interlock system in place. Ms. Cashen questioned why that language was removed as it has been proven to work for high-risk drivers nationwide. The original bill is very important to all MADD victims. Ms. Cashen urged that the House Finance Committee reconsider the Amendment that removes increased penalties for high-risk drivers. She emphasized that at this time, MADD does not support the bill.

Co-Chair Harris asked if MADD does not support the V version of the bill or the amendments. Ms. Cashen responded that MADD does not support the V version of the bill because it removes ignition interlock increased penalties for high-risk drivers. Co-Chair Williams pointed out that Amendment #2 would replace the interlock concern.

Vice Chair Meyer was confused regarding which version MADD would support. Ms. Cashen responded that MADD supports the version that has ignition interlocks and fines for BAC levels of .16 to .24. She stated that language is simple, clean and works in other states. Vice Chair Meyer requested that the sponsor come before the Committee to explain the various versions of the bill.

REPRESENTATIVE CARL GATTO, SPONSOR, requested that his staff, Mr. Rice explain the bill's history.

CODY RICE, STAFF, REPRESENTATIVE CARL GATTO, advised that version I had been passed out of the House Judiciary Committee and was originally before the House Finance Committee. Version Q was a combined version and originally discussed, combining HB 175 and HB 342. Mr. Ecklund added that version S had been slightly modified from version Q. The Committee has not adopted versions Q or S; they are only work drafts.

Vice Chair Meyer asked which version MADD supports. Mr. Cody responded that MADD supports version Q and I. Vice Chair Meyer questioned if the sponsor supports versions Q, S, or I.

Representative Gatto acknowledged that he would prefer the original version, which essentially used more penalties. That language was the "meat and potatoes" of the intent, in which, the more drunk a person is, the more the penalty would be increased and require longer interlock devices. He understood that the bill had evolved and then, Representative Rokeberg requested to combine the two bills. Representative Gatto acknowledged that the current version of the bill was acceptable, however, he did prefer it to be "tougher". He knew that if the bill did not move, there would be no value at all. He hoped to pass the most stringent version possible.

Vice Chair Meyer understood that the original version Q and Representative Rokeberg's version S and then the V version removed the language supported by MADD. Mr. Rice explained that the progression moved from version Q to S, and now version V. Vice Chair Meyer reiterated that MADD has voiced concern with version V. Mr. Rice acknowledged that was true.

Representative Croft commented by removing Section 6 from version S would accommodate the concerns of MADD. Mr. Rice responded that Section 6 was a stand-alone section that addresses the sentencing requirements for people with double or more the legal level of blood alcohol. Representative Croft inquired if there had been fiscal concerns around Section 6. Representative Gatto said yes, noting the indeterminacy of the note. Mr. Ecklund interjected that there is a conceptual amendment pending to address that issue.

Representative Croft thought that Amendment #1 would move the V version in the right direction by making it harsher. Representative Croft and Co-Chair Harris WITHDREW their OBJECTIONS. There being NO further OBJECTION, Amendment #1 was adopted.

Co-Chair Williams MOVED to ADOPT Amendment 2, #23-LS1292\V.3, Luckhaupt, 4/26/04. (Copy on File). Co-Chair Harris OBJECTED for an explanation.

Mr. Ecklund spoke to Amendment 2 providing some background. He said it would partially provide ignition devices for those people applying for a limited license. The ignition interlock devices are allowable under State statute. There are only a limited number of companies that manufacture the devices and they need a certain amount of volume to come to Alaska to do business. He understood that Anchorage would be the only point that the company would be willing to come at this time. The first section of Amendment 2 applies to those who have more than one offense, but no felony. For drivers in communities off the Anchorage road system, they could get a limited license without an interlock device.

Mr. Ecklund continued, the second portion of Amendment 2 allows for people currently having a suspended or revoked license for a DUI offense already committed, and allowing them by meeting the conditions of the court, to apply for a limited license at that time.

Representative Stoltze asked if it was fair that a "lesser standard" would be created for the person not living in Anchorage or on that road system. Mr. Ecklund explained that this issue exists because the requirement for the device is not available because of geographic isolation and would ban that person from getting a limited license.

Co-Chair Williams further explained that there is only one company that can do the work and they are located in Florida. They require a certain number of Driving While Under the Influence (DWI) changes in an area to make it feasible. The company is attempting to make the concept work in Alaska but has indicated that the area is too vast.

Representative Chenault asked what would happen with those who currently have a DWI. Mr. Ecklund explained that the manner in which the bill is currently drafted, if a person has already been convicted and their license is under suspension, they would not be eligible to apply for a limited license. The second portion of Amendment 2 clarifies that if that person meets the conditions of the court, they can apply, following the passage of the bill.

Co-Chair Harris questioned if there has been a U.S. Congress attempt to mandate that breathalyzer units be placed into cars, used to determine if the person driving had been drinking, keeping the car from starting. Representative Gatto responded that one state tried such legislation and it did not pass. It has not been considered nationally.

Representative Gatto stated that the concept of the bill is to "get the drunks separated from the cars that they are driving". He acknowledged that the Anchorage road system does have the greatest number of cars and that of course, any decision would be subject to a judge's discretion. Representative Gatto did not envision a serious compromise by a judge to let someone off. Incarceration does not always work or pay off in the long run and that it is important that there is a motivation in receiving a limited license. The intent of the legislation is to install that device. He noted that the State will have had to work with an international supplier and the willingness of that company requires a certain volume.

Representative Chenault inquired if the bill applied to four wheelers, snow machines and boats. Representative Gatto replied it would not.

Representative Chenault asked if the intent was to get offenders off the road, why did it not apply to other moving vehicles. Representative Gatto commented on conditions that affect the off road vehicles and that the proposed legislation was designed only for legally driven, on-road vehicles.

A roll call vote was taken on the motion to adopt Amendment 2.

IN FAVOR: Hawker, Joule, Moses, Chenalut, Fate, Foster,
Harris, Williams
OPPOSED: Stoltze, Croft

Vice Chair Meyer was not present for the vote.

The MOTION PASSED (8-2).

Representative Croft MOVED to ADOPT conceptual Amendment 3, reinstating language that Section #6 of the S version, include the stair steps of the blood alcohol level (BAC) and increase the penalties and requirements for interlock devices. Co-Chair Williams OBJECTED.

Co-Chair Williams stated that the HB 342 would be HELD in Committee for further consideration.

HOUSE BILL NO. 275

An Act relating to veterinarians and animals.

Co-Chair Harris MOVED that work draft #23-LS0940\B, Luckhaupt, 4/27/04, be the version of the legislation before the Committee. There being NO OBJECTION, it was adopted.

PETE ECKLUND, STAFF, HOUSE FINANCE COMMITTEE STAFF, REPRESENTATIVE BILL WILLIAMS, explained the changes made to the work draft.

- Page 2, Lines 16, clarifies that the Department of Environmental Conservation is the Department to establish the regulations.
- Page 2, Line 28, adds language "if warranted" to clarify if cruelty is happening to animals.
- Page 4, Line 24, provides a technical change for cruelty to animals in the 1st degree and would reenact the proposed language in the same section.
- Page 4, Line 31, adds new language, "intentionally kills or injures a pet or livestock by the use of poison".
- Page 5, indicates that in existing State statute, offenses are listed for prosecution. Language was also added in Subparagraph 1 & 5, and Line 15, Subparagraph 2, removed language "for just cause".
- Page 5, Line 24, added language: "This section does not apply to generally accepted dog musher practices or contests."
- Page 6, Line 4, the Department of Law has recommended that a probation can last no longer than ten years.
- Page 6, Lines 8 & 12, deletes "domestic animal" and inserts "pet or livestock".
- Page 6, Line 25, addresses concerns with subsistence hunting or trapping activities.
- Page 6, Line 27, adds language "to control vermin".
- Page 7, Line 3, adds a technical amendment "in the second degree" as a Class B misdemeanor.
- Page 7, Line 12, adds language "after 10 years" as recommended by the Department of Law.
- Page 7, Line 23, defines pet to mean, "Domesticated animal kept for companionship or amusement."

Co-Chair Harris MOVED to report CS HB 275 (FIN) out of Committee with individual recommendations and with the accompanying fiscal notes. There being NO OBJECTION, it was so ordered.

CS HB 275 (FIN) was reported out of Committee with "no recommendation" and zero note #1 by the Department of Law, zero note #3 by the Department of Environmental Conservation, zero note #4 by the Department of Public

Safety and indeterminate note #5 by the Department of Administration.

HOUSE BILL NO. 255

An Act amending the Alaska Wage and Hour Act as it relates to flexible work hour plans, the provision of training wages, and the definitions of certain terms; and repealing the exemption in the Act from the payment of minimum wages for learners.

Co-Chair Harris MOVED to ADOPT work draft #23-LS082\B, Craver, 4/26/04, as the version of the legislation before the Committee. There being NO OBJECTION, the draft was adopted.

REPRESENTATIVE NORMAN ROKEBERG, SPONSOR, explained the change made removes any reference to the flexitime provisions. Also, categories have been redefined under the wage and hour act by removing the test and changing the regulatory multiplier from 2.5% to 2.0% above minimum wage. The change removes uncertainty for the employers in accounting for their employee's activities.

Representative Rokeberg requested that the Committee consider an amendment to the work draft, deleting Section 3. He commented that the B version is "lightweight" compared to the original bill. The bill would enable employers throughout the State to recruit and retain management type personnel without stepping on the rights of the employees to receive overtime. He added, changing the multiplier equates to an amount equal to former wage and hour pay when there was a lower minimum wage. Under current regulations and law, given the increase of the minimum wage, the 2.5% multiplier equals \$37 thousand dollars per year. Prior to the increase in minimum wage, that amount was \$29 thousand dollars per year. HB 255 proposes a two times multiplier, thus providing a minimal increase.

Representative Rokeberg noted that there are attorneys on line representing the employers.

Co-Chair Harris MOVED to AMEND HB 255, deleting language on Page 3, Line 23, which would clean up the intent. There being NO OBJECTION, the amendment was adopted.

Representative Croft mentioned the overtime restriction, Page 2, Lines 24 and 25. He pointed out that there were three different definitions:

- An individual engaged in an administrative capacity;
- An individual engaged in an executive capacity; and

- An individual engaged in the professional capacity.

Representative Croft asked the use of the wage and hour laws, if the three groups are listed. Representative Rokeberg pointed out that language currently exists in current State Statute and is somewhat reflective of federal guidelines.

Representative Croft asked where the section was located that deleted the old definitions. Representative Rokeberg replied it is in regulation.

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AMANDA WILSON, STAFF, REPRESENTATIVE NORMAN ROKEBERG, stated that the definitions are currently in regulation and fit under the statutes that provide for anything that needs to be clarified. Representative Croft asked if the intent was to place the regulations into statute. Ms. Wilson pointed out there have been changes made and that the current regulations were developed in 1976 and have not been updated.

Representative Croft pointed out one change added the language "holding position of responsibility"; that was customarily exercised as discretionary authority. He asked if the language would be a substitution. Representative Rokeberg responded that it would be added in addition. He reminded members of the online testimony available to provide a legal analysis.

Representative Croft emphasized the language had been deleted from federal regulation for important reasons. He worried that the proposed language would be too vague for the federal government. Representative Rokeberg responded that there had been discussion on adopting new federal regulations but the Alaska regulations were modified to them based upon caseloads.

Co-Chair Harris inquired if Representative Rokeberg had worked with organized labor on the legislation. Representative Rokeberg responded that they had but did not come to a final conclusion. He admitted that he did not have an indication that labor endorses the legislation.

Co-Chair Harris asked what some of the Union "blocks" were. Representative Rokeberg responded that perhaps would be the removal of the 80/20, 60/40 passes.

BARBARA HUFF-TUCKNESS, DIRECTOR OF LEGISLATIVE AND GOVERNMENTAL AFFAIRS, TEAMSTERS LOCAL 959, ANCHORAGE,

explained that there had been a meeting in which Representative Rokeberg invited the industry representatives and several members of organized labor. The two issues discussed at that meeting was industry concern with respect to the minimum wage issue and the 80/20, 60/40. Organized labor has not participated in any of the drafts. There have been conversations regarding some of the concerns. She asked to discuss those for the record.

Ms. Huff-Tuckness referenced Page 1, Section 1, Lines 10-11, deleting language specifying that it would not apply to those persons acting in a supervisor capacity. By removing that language, if a person was a "supervisor", they could receive overtime. Nor does the bill define anywhere, the definition of "supervisor". The regulations do define a supervisor and maintains the 20% rule. Ms. Huff-Tuckness noted concern that it is easier to change regulations within the departments than it is to change laws through the legislative process. She questioned if not including that definition was the intent to modify what is currently in regulation. The supervisory issue has created some concern. She referred to Page 2, Line 17(b), which raises the question of who is entitled to overtime. She pointed out Page 2, Line 5, language is much too broad and exempt from other provisions under that change. Ms. Huff-Tuckness read from a report, which covers the proposed labor standard changes. After careful consideration of submitted public comments, the Department agrees that the standard brings clarity and certainty to the administrative exemption. She offered to provide a copy of the document, which describes the fair labor standards.

Ms. Huff-Tuckness objected to language on Page 2, Line 5. On Lines 11 & 12, the language has been changed. She indicated that language was deleted from current statute: "As and does not devote more than 20% on the case of an employee in a retail or service establishment who earns time and a half". That language removes the sideboards from regulation and out of statute. Theoretically, there could be an individual that has worked in any area. The primary duty must be defined as it is in State statute and regulation negating the 60/40 or 80/20.

Ms. Huff-Tuckness referred to Page 2, Lines 18&19, stating that current regulation reads, "Who customarily and regularly directs the work of two or more other employees". Redundant language was added and she questioned the purpose of that change. Line 23 contains the position of responsibility issue as raised in Line 5. On Line 24, language was added that has changed how an administrator or administrative employee would be compensated. Under the regulations, the employee is compensated based on a salary. Under the proposed statute change, the employee would be

compensated at least double the minimum wage. The Union has not agreed to that change.

Ms. Huff-Tuckness noted that Page 3, Line 16, marks the position of responsibility concern raised earlier. Line 23, and the repeal of the training, is language supported by the Union.

Ms. Huff-Tuckness summarized there are many concerns with the proposed bill, and urged that the members of the House Finance Committee consider the federal labor standards. The application of the proposed statute would have a dramatic effect on thousands of employees in the State of Alaska who currently receive overtime, and would no longer be eligible for it.

Representative Croft thought that the old 80-20 rule put sideboards up defining what the real work is and if it merits time and a half. He asked what the 60-40 portion represented. Ms. Huff-Tuckness understood that would apply a more stringent task, allowing for an employer to not pay overtime.

JOHN SEDER, (TESTIFIED VIA TELECONFERENCE), ATTORNEY ON BEHALF OF ALASKA FISHERMEN, ANCHORAGE, noted that the federal regulations were filed on April 23rd, 2004. They will be effective August 23rd, and by that change, the federal system will no longer have an 80-20 test. Without that in place in the federal system, the result will make Alaska law antiquated. Mr. Seder reviewed the exemption language of all states, 31 of which currently follow the Fair Labor Standard Act (FLSA) automatically, making the federal change in August 2004. Seven states, which includes Alaska, track the long test under the federal system, so that employers will have to comply under both federal and state standards. HB 255 moves the State to more primary duties and would become the cornerstone for federal regulations.

Representative Rokeberg asked about the sole branch or single operator system. Mr. Seder stated that the sole charge exemption has been under federal guidelines for the last fifty years. In the sole charge of business, assumes that if you would qualify under language listed on Page 2, Lines 17-19, there would be a qualification of tests. The title does not dictate the result, but focuses on the position, duties and responsibilities.

AT EASE: 2:59 P.M.
RECONVENE: 3:03 P.M.

BILL EVANS, (TESTIFIED VIA TELECONFERENCE), ATTORNEY, ANCHORAGE, referenced the argument of why the 80/20 provision was essentially "unworkable and unfair".

GREG O'CLARAY, COMMISSIONER, DEPARTMENT OF LABOR, noted that the Department took no position on the bill.

Co-Chair Harris pointed out that HB 255 contained a major disagreement between the sponsor and organized labor. He asked how long since both parties had come together to discuss these changes. Representative Rokeberg replied it had been six weeks.

Co-Chair Harris advised that there are two other major issues, the unemployment insurance and worker's compensation bills. He noted concern that these are serious issues for labor and business and recommended that everyone come together and gets the bill to a place of acceptance for all concerned parties. Representative Rokeberg indicated that he was willing. He added that the Legislature has not been "friendly to business", pointing out that HB 255 provides recognition that the wage and hour laws should have certain uniformity. He believed that the legislation would bring Alaska into the 21st Century. Testimony has shown that the tests are dated and that the bill before the Committee provides a compromise to a 30-year old standard. The legislation would modify the current regulations.

Representative Rokeberg reiterated that he was willing to meet with labor as these issues are past due. He added that there is a need to have joint effort between the leadership and the Legislature to resolve these concerns.

Co-Chair Harris requested to work with Representative Rokeberg regarding the issues and asked to include unionized labor to help better understand them more thoroughly. Co-Chair Harris hoped that the bills could all move forward at the same time.

HB 255 was HELD in Committee for further consideration.

CS FOR SENATE BILL NO. 300(FIN)

An Act relating to an attorney's lien, to court actions, and to other proceedings where attorneys are employed; and providing for an effective date.

SENATOR BERT STEDMAN, SPONSOR, commented that SB 300 would eliminate an unfair and potentially disastrous federal income tax issue affecting Alaskan taxpayers and would prevent the Internal Revenue Service (IRS) from taxing two Alaskans on the same income. SB 300 would correct the

unjust treatment of Alaskans under the current 9th Circuit rulings.

Senator Stedman continued, that because of a peculiarity in State law, Alaskans who win in court might pay federal income tax on income. When Alaskans file their federal tax return, they must report any litigation recovery allocated to attorney fees as gross income, even if they receive no economic benefit from the fees. The federal government taxes the portion of the prevailing award twice, once as income to the client and again as income to the client's attorney. There is no federal tax deduction to offset the inequity.

Under the current Alaska lien law, AS 34.35.430, attorneys have a "subordinate lien" or ownership interest in the "cause of action". Other states, including Oregon, use different language to specify that as long as an attorney has filed an appropriate lien and is owed money by the winning client, all fee awards or payments made to the client belong exclusively to the attorney. In so vesting the attorney with the property interests of the award, those states avoid the unfair tax burden currently imposed on Alaskans. Instead, any portion of an award retained to pay attorney costs, is not income to the client.

Senator Steadman summarized that SB 300 would change Alaskan law to prevent the Internal Revenue Service (IRS) from taxing Alaskans on income they do not receive. The bill recognizes that court awarded fees, which pass through to the attorney would be income to that attorney. And as such, the attorney would be responsible for paying federal income tax on that portion of their income.

Representative Hawker inquired if Senator Steadman was comfortable with the language change made in the House Judiciary version. He believed that those changes made the intent more clear. Senator Steadman replied he was comfortable with changes made in preceding committees.

Representative Hawker MOVED to report HCS CS SB 300 (JUD) out of Committee with individual recommendations and with the accompanying fiscal notes. There being NO OBJECTION, it was so ordered.

HCS CS SB 300 (JUD) was reported out of Committee with a "do pass" recommendation and with zero note #1 by the Department of Natural Resources, zero note #2 by the Alaska Court System, and zero note #3 by the Department of Law.

SENATE BILL NO. 285

An Act relating to medical assistance coverage for targeted case management services and for rehabilitative services furnished or paid for by a school district on behalf of certain children; and providing for an effective date.

JERRY FULLER, PROJECT DIRECTOR, OFFICE OF THE COMMISSIONER, DEPARTMENT OF HEALTH & SOCIAL SERVICES, noted that the Department had requested SB 285 to address technical changes on missing language from when school based service legislation was added to statute. The bill makes a modification to define school-based services as rehabilitation services for the federal Medicaid funding dollars.

The bill also allows the Department to take a more liberal view of the requirements for prescriptions so to provide better services. The language change allows the schools more flexibility in administrating the program while billing for Medicaid services in the schools.

Mr. Fuller continued, the second portion of the bill targets case management as an additional "optional" Medicaid service so the Department can begin coverage. The intent was to find areas where the State is currently paying general fund dollars for case-management and define it in Medicaid language, providing about 60% federal funds for those services. He pointed out that it is part of the Department's efforts to leverage federal funds to support Medicaid programs.

Representative Hawker referenced a March 3, 2004 letter from the Alaska Mental Health Board, requesting a reply to certain concerns. (Copy on File). Mr. Fuller responded that the major concern indicated by the Board is the fragmentation of the mental health system. An issue based on the assumption that the Department is ready to add behavioral health services as an optional service, which schools could provide as a rehabilitation option. The reality is that the Department has not yet made that leap. The only services that the Department is moving forward with are the therapies such as:

- Physical
- Speech
- Occupation

Mr. Fuller continued, before anything can occur around behavioral health services in a school setting, there must be a thorough discussion with mental health providers to guarantee that if those services are included, they will not result in the previously mentioned fragmentation. The

discussion has not occurred and there are no pending regulations to add behavioral health services at this time.

Representative Foster MOVED to report SB 285 out of Committee with individual recommendations and with the accompanying fiscal notes. There being NO OBJECTION, it was so ordered.

SB 285 was reported out of Committee with a "do pass" recommendation and with zero notes #1 & #2 by the Department of Health & Social Services.

HOUSE BILL NO. 342

An Act relating to driving while intoxicated; and providing for an effective date.

PETE ECKLUND, HOUSE FINANCE COMMITTEE STAFF, REPRESENTATIVE BILL WILLIAMS, noted there was a conceptual amendment on the table offered by Representative Croft.

Representative Croft WITHDREW his MOTION to adopt conceptual Amendment 3. (Copy on File).

Co-Chair Williams MOVED to ADOPT conceptual Amendment 4. (Copy on File). The amendment reads:

"If a person violates the conditions of a limited license or is convicted of Driving Under the Influence (DUI) while operating a vehicle with a limited license, they will be ineligible for a limited license in the future."

Mr. Ecklund explained that the amendment would clarify that if a person has a limited license and they violate the conditions or receive another DUI while having the limited license, the language would ban them from getting a future limited license. There being NO OBJECTION, conceptual Amendment 4 was adopted.

Representative Foster MOVED to report CS HB 342 (FIN) out of Committee with individual recommendations and with the accompanying fiscal notes. There being NO OBJECTION, it was so ordered.

CS HB 342 (FIN) was reported out of Committee with an "amend" recommendation and with zero note #1 by the Alaska Court System, zero note #2 by the Department of Law, zero note #3 by the Department of Public Safety, indeterminate note #5 by the Department of Corrections and a new indeterminate note by the Department of Administration.

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HOUSE BILL NO. 531

An Act relating to natural gas exploration and development and to nonconventional gas, and amending the section under which shallow natural gas leases may be issued; and providing for an effective date.

Representative Fate WITHDREW Amendment 1, #23-LS1818\V.1, Chenoweth, 4/21/04. (Copy on File).

Representative Croft MOVED to ADOPT Amendment 2. Co-Chair Williams OBJECTED.

Representative Croft explained that Amendment 2, Page 1, Lines 5-8, addresses "the owner and the State and its lessees, successors, or assigns reach a prior written agreement". The amendment allows the surface owner, the right to have control of what is done on their property. It requires that an agreement be reached with the surface owner before the rigs and drilling operations begin. He acknowledged the inherent difficulty in Alaska's ownership of the subsurface rights, which is often referred to as the split estate issue, a difference in ownership between the subsurface and the surface rights. It creates tension because they are often not in agreement about what should happen below. In the area of coal bed methane as the language is limited to that, there needs to be deference to the surface owner, receiving their permission before using the land.

ELEANOR WOLFE, STAFF, REPRESENTATIVE BEVERLY MASAK, stated that the issue of "permission" was addressed in the House Resource Subcommittee and the legal drafter advised that the language was contrary to the intent of the State Constitution. She stated it could set the State up for a lawsuit, adding that the sponsor objects to inclusion of Amendment 2.

Co-Chair Harris understood that HB 531 contained a "best interest finding" section so that property concerns would be addressed between the Department of Natural Resources and the leaseholder. Ms. Wolfe said that was correct.

Co-Chair Harris asked if there could possibly be a legal problem associated with the legislation and with the amendment. Representative Croft responded that someone could sue if the State maintains the right to decide whether to develop or to choose the conditions under which to develop the resources. The federal government does not want the State to give the resources away. He claimed that the amendment would allow the State to choose when and under

what conditions to develop. He believed that someone will challenge the issue.

Co-Chair Harris asked if Representative Croft thought that the Alaska Constitution would allow a private property owner, under the split estate issue, to legally withhold access onto their property to someone who held a lease from the State subsurface rights. Representative Croft responded that bonding only requires that the party put a bond up for the damage they do. Government bureaucrats determining if it is in everyone's best interest and not just the property owner determine the best interest finding. He thought that the legislation could take the State too far. In the area of non-conventional gas, the State should require an agreement first.

Co-Chair Harris commented that could address State ownership of land. He asked what will happen with private ownership. He understood that Amendment 2 could provide the private property owner the responsibility and right to demand, from the subsurface leaseholder, certain criteria before they allow access on the property for drilling. Representative Croft acknowledged that they could have veto authority if they do not come to an agreement and reminded members that the nature of coal bed methane is often in small parcels in developed areas and would be part of the lease when released.

Co-Chair Harris inquired if Amendment 2 applies only to new leases. He mentioned the current shallow gas-leasing program, asking if the amendment would be retroactive. Representative Croft did not know.

JACK CHENOWETH, ATTORNEY, ALASKA LEGAL SERVICES, responded to concerns voiced by Co-Chair Harris. He noted that Amendment 2 would not cover existing leases as drafted. Representative Croft interjected that had been his intent. He recommended using a buy back for the looking back portion, setting the correct rules for the looking forward.

Co-Chair Harris observed that if HB 531 were passed, the current Shallow Gas Act would be repealed. Representative Croft stated that would be good. He noted that there are references to non-conventional gas in the bill. The proposed amendment provides one additional requirement for the conventional gas.

REPRESENTATIVE BEVERLY MASEK, SPONSOR, spoke in opposition to Amendment 2, commenting that the amendment was not relevant to the issue.

A roll call vote was taken on the motion.

IN FAVOR: Joule, Stoltze, Croft, Harris

OPPOSED: Meyer, Chenault, Fate, Williams

Representatives Moses, Foster, and Hawker were not present for the vote.

The MOTION FAILED (4-4).

Vice Chair Meyer MOVED to ADOPT Amendment 3, 23-LS1818\V.3, Chenoweth, 4/27/04, on behalf of Representative Masek. (Copy on File). Co-Chair Williams OBJECTED for the purpose of discussion.

Ms. Wolfe stated that one of the concerns that the Alaska Oil and Gas Association (AOGA) had with the proposed legislation was a provision listed on Page 40, Lines 9-11, Section (B); Amendment 3 would remove that language.

Representative Joule pointed out that Amendment 3 would also delete Section (A). Ms. Wolfe advised that section was no longer needed once Section (B) was deleted.

Co-Chair Williams WITHDREW his OBJECTION. Representative Croft OBJECTED, questioning why the section should be removed. Ms. Wolfe replied that portion of the bill takes the State into Title 38 and was far more stringent than anything currently under conventional gas leasing. Representative Croft WITHDREW his OBJECTION to Amendment 3. There being NO further OBJECTION, Amendment 3 was adopted.

Co-Chair Harris MOVED to ADOPT Amendment 4, 23-LS1818\V.2, Chenoweth, 4/27/04. (Copy on File). Co-Chair Williams OBJECTED for the purpose of discussion.

Ms. Wolfe explained that Amendment 4 had been a recommendation received from the Division of Oil and Gas in an effort to solve the miner's difficulty. The amendment language takes the existing held applications and allows them to convert to an exploration license. It would be a "one-time good deal" only at the same rate of \$1 dollar per acre, the same as the shallow gas lease, allowing them to continue to pursue their gas interest, while eliminating some speculators.

Co-Chair Harris pointed out that there are applications for leases near shallow gas mining. He questioned if they would be required to have a best finding.

Mr. Chenoweth explained that the best interest findings would be required, found in the amendment on Page 1, Line 20 & 21, (b): "The provisions of AS 38.05.035(e) apply to an application made under (a) of this section." That language is the best interest finding requirement for the applicant. Co-Chair Harris noted that the applicant would not have to go through the competitive bid process.

Representative Chenault asked if the language would allow conventional drilling. Mr. Chenoweth responded that coal bed methane leases would only be allowed conversion to a conventional gas lease.

Co-Chair Williams WITHDREW his OBJECTION to Amendment 4. There being NO further OBJECTIONS, it was adopted.

Co-Chair Harris MOVED to report CS HB 531 (FIN) out of Committee with individual recommendations and with the accompanying fiscal note. There being NO OBJECTION, it was so ordered.

CS HB 531 (FIN) was reported out of Committee with a "no recommendation" and with zero note #1 by the Department of Natural Resources.

HOUSE BILL NO. 395

An Act relating to shallow natural gas leasing and the regulation of shallow natural gas operations.

RICK VANDERKOLK, (TESTIFIED VIA TELECONFERENCE), STAFF, REPRESENTATIVE JOHN HARRIS, reviewed the legislation and provided a sectional analysis. He stated that the bill was designed to resolve concerns of many Alaskans who have coal bed methane development in the area of their property rights, water quality assurance, and local involvement of residents. Recently, many concerns have been raised by residents of the Mat-Su and Homer areas through a series of public forums. All sponsors have worked diligently, listening to public input from numerous community hearings and comments received during the committee process.

Mr. Vanderkolk pointed out that the committee substitute from the House Resources Committee requires that:

- Public comment and other routes of access are considered prior to executing a lease.
- The integrity of the affected water supply is protected.
- Public notice is given prior to the award of a lease via newspaper and direct mail.
- The owner's surface property is restored in the event of damage.
- Noise from field operation is mitigated.
- Shallow natural gas exploration is defined and capped at 3,000 feet.

Mr. Vanderkolk highlighted changes made to that version of the bill.

Section 2: Terminology change: Shallow natural gas was redesignated as "nonconventional gas".

Section 7: Adds a new chapter on nonconventional gas operations for land not governed by 38.05.

Section 9: Stipulates the manner (distance) in which water wells are tested for purity, as suggested by Alaska Oil and Gas Conservation Commission (AOGCC) as best engineering practice.

Section 16: Mandates that water discharge from coal bed methane drilling be regulated by the Department of Environmental Conservation (repeating the current exemption).

Sections 23 & 24: These sections are the contingency repealers. They enumerate that Sections [2, 4, 6, 12, 15, 17, 19, & 22] will take effect if, and only if, HB 531 passes.

Co-Chair Harris MOVED to ADOPT Amendment 1, #23-LS1314\M.1, Chenoweth, 4/27/04. (Copy on File). Representative Chenault OBJECTED for the purpose of discussion.

JACK CHENOWETH, ATTORNEY, ALASKA LEGAL SERVICES, explained that the focus was the public forum process, located in Sections 3 & 4. The intent is to move the shallow natural gas provision and delete it and the remaining changes provide the conforming language. Co-Chair Harris pointed out that Sections 3 and 4 would be deleted because with the enactment of HB 531, the public notice falls under the general best interest findings.

Representative Croft noted concern that the timelines under the best interest findings would not be well defined. Co-Chair Harris stressed that there would be a transition between the two different systems. The previous bill would eliminate the existing system. There would not be any other leases under the existing shallow natural gas provision.

Representative Croft maintained that the previous system failed the public and that he would prefer specifics. Co-Chair Harris thought it would be "cleaner" if it were removed, however, it was not critical.

MARK MEYERS, (TESTIFIED VIA TELECONFERENCE), DIRECTOR, DIVISION OF OIL AND GAS, DEPARTMENT OF NATURAL RESOURCES, ANCHORAGE, noted that there are differences between Sections 3 and 4, regarding the best interest finding process. In

Section 3, Line 19, the authority that the process works through and the regulations for that should pass through the Alaska Oil and Gas Conservation Commission (AOGCC) process. He believed that the best interest findings could look at issues in a more general sense with some overlap.

Representative Croft referred to Sections 3 and 4, noting that Section 3 establishes AS 31.05.098 and Section 4 repeals and reenacts AS 31.05.098(a). The reason those two sections had been included was because they address the conditional effects of what happens if HB 531 passes. He stressed that those sections are important and offered to work with the sponsor to address his concerns.

Co-Chair Harris WITHDREW Amendment 1.

Co-Chair Harris MOVED to ADOPT Amendment 2, #23-LS1314\M.2, Chenoweth, 4/27/04. (Copy on File).

Mr. Chenoweth commented that Amendment 2 had been introduced in response to an initiative submitted by Representative Seaton, who wanted to see a clear statement that the provisions added would apply to leases issued under 177(c, f, k issues omitted) and (p & q were added). The language defines when the lease shall be in effect. Those are leases already issued and in effect on the effective date.

There being NO OBJECTION to Amendment 2, it was adopted.

Co-Chair Harris MOVED to ADOPT Amendment 3, #23-LS1314\M.3, Chenoweth, 4/27/04. (Copy on File).

Mr. Chenoweth explained that the amendment addresses if a lessee should surrender or releases a lease, the lease could not be re-leased without going through the new requirements under HB 395 and if HB 531 takes effect, without complying under the appropriate sections in that bill.

Co-Chair Harris noted that under the current shallow natural gas provisions, the State would be required to issue leases if a second party was interested in a returned lease. Mr. Chenoweth agreed that there would be no specific protection to require them to be released under the amended law.

There being NO OBJECTION, Amendment 3 was adopted.

Representative Croft WITHDREW Amendment 4.

Mr. Chenoweth noted the sponsor had requested an additional amendment, presently being drafted, to address coal mining and mineral leasing. Mr. Chenoweth requested the latitude to conform HB 531 and HB 395, including all technical changes.

Co-Chair Harris MOVED to allow all conforming amendments and technical changes to be drafted by Mr. Chenoweth. There being NO OBJECTION, it was so ordered.

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Representative Foster MOVED to report CS HB 395 (FIN) out of Committee with individual recommendations and with the accompanying fiscal note. There being NO OBJECTION, it was so ordered.

CS HB 395 (FIN) was reported out of Committee with a "do pass" recommendation and with fiscal note #2 by the Department of Natural Resources.

ADJOURNMENT

The meeting was adjourned at 4:16 P.M.