

HOUSE FINANCE COMMITTEE
May 4, 2004
9:21 A.M.

TAPE HFC 04 - 104, Side A

CALL TO ORDER

Co-Chair Williams called the House Finance Committee meeting to order at 9:21 A.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

Peter Ecklund, House Finance Committee Staff, Representative Bill Williams; James Armstrong, Staff, Representative Bill Williams; Dick Coose, Staff, Senator Bert Stedman; Susan Parks, Assistant Attorney General, Criminal Division, Department of Law

PRESENT VIA TELECONFERENCE

Becky Gay, Program Manager, Alaska Industrial Development and Export Authority (AIDEA), Alaska Energy Authority (AEA), Anchorage; Linda Wilson, Executive Director, Alaska Public Defender Agency, Department of Administration, Anchorage

SUMMARY

HB 561 An Act providing for and relating to the issuance of general obligation bonds in a principal amount of not more than \$1,000,000 for the purpose of

paying the cost of state transportation projects;
and providing for an effective date.

CS HB 561 (FIN) was reported out of Committee with a "do pass" recommendation and with a new fiscal note by the Department of Revenue.

#SB30

CS SB 30(JUD) am

An Act relating to information and services available to pregnant women and other persons; and ensuring informed consent before an abortion may be performed, except in cases of medical emergency.

CS SB 30(JUD)am was SCHEDULED by not HEARD.

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CS SB 170(JUD)

An Act relating to murder in the second degree, the justification of defense of self or others, immunity from prosecution, sentencing, probation, discretionary parole, and the right to representation in certain criminal proceedings; relating to violation of a custodian's duty; relating to sexual abuse of a minor; relating to release of information concerning certain cases involving a minor; relating to local options regarding alcoholic beverages, the offense of furnishing or delivery of alcoholic beverages to a person under 21 years of age, and forfeiture of property used in, and money or other items of value used in financial transactions derived from, violation of certain laws relating to alcoholic beverages; relating to assault by means of a dangerous instrument; relating to operating or driving a motor vehicle, aircraft, or watercraft while under the influence of an alcoholic beverage, inhalant, or controlled substance, to the refusal to submit to a chemical test, and to the presumptions concerning the chemical analysis of breath or blood; and providing for an effective date.

CS SB 170(JUD) was HEARD and HELD in Committee.

#SB272

CS SB 272(FIN)

An Act relating to certain monetary advances in which the deposit or other negotiation of checks to pay the advances is delayed until a later date; and providing for an effective date.

CS SB 272 (FIN) was SCHEDULED but not HEARD.

#SB276

CS SB 276(FIN)

An Act relating to the Alaska Insurance Guaranty Association; relating to the powers of the Alaska Industrial Development and Export Authority concerning the association; and providing for an effective date.

CS SB 276(FIN) was SCHEDULED but not HEARD.

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CS SS SB 328(FIN)

An Act relating to the national forest income program in the Department of Community and Economic Development and to the authority of the department to adopt regulations; making conforming amendments; and providing for an effective date.

HC CS SS SB 328 (CRA) was reported out of Committee with a "do pass" recommendation and with zero note #1 by the Department of Community & Economic Development.

CS SB 337(L&C)

An Act relating to the powers of the Alaska Energy Authority to make grants and loans, to enter into contracts, and to improve, equip, operate, and maintain bulk fuel, waste energy, energy conservation, energy efficiency, and alternative energy facilities and equipment; relating to the bulk fuel revolving loan fund; relating to the Alaska Energy Authority's liability for the provision of technical assistance to rural utilities; relating to the Alaska Energy Authority's investment of the power development fund; repealing the electrical service extension fund; and providing for an effective date.

HCS CS SB 337(FIN) was reported out of Committee with "no recommendation" and with zero note #1 by the Department of Revenue and zero note #2 by Department of Community & Economic Development.

#SB357

CS SB 357(FIN)

An Act relating to the regulation of insurance, insurance licenses, qualifications of insurance producers, surplus lines, fraud investigations, electronic transactions, and compliance with federal law and national standards; and providing for an effective date.

CS SB 357(FIN) was SCHEDULED but not HEARD.

#SB328

CS FOR SPONSOR SUBSTITUTE FOR SENATE BILL NO. 328(FIN)

An Act relating to the national forest income program in the Department of Community and Economic Development and to the authority of the department to adopt regulations; making conforming amendments; and providing for an effective date.

DICK COOSE, STAFF, SENATOR BERT STEDMAN, explained that the legislation would make statutory changes required for the Department of Community and Economic Development to disburse federal funds commonly referred to as the "timber receipts".

The "Secure Rural Schools and Community Self-Determination Act of 2000" made substantive changes to the federal program commonly known as National Forest Receipts. The Federal Act is subject to reauthorization in 2006. National Forest Receipts are distributed to the State for schools and roads within the boundary of the national forest in which they are collected. Mr. Coose noted that the Senate Finance Committee amended the bill to define the student "average daily membership" (ADM) for the purpose of distributing forest receipts within unorganized boroughs.

Mr. Coose continued, in order to address federal changes, the Department of Community and Economic Development must amend program regulations so the payments to communities located within the Tongass and Chugach National Forests conform to the new federal requirements. Subsequent to the adoption of the program regulation changes, the Department of Law advised the Department of Community and Economic Development that it lacks the statutory authority to implement the federal changes through its regulations. SB 328 provides the Department with the authority to adopt regulations necessary to implement the revised federal program in a manner consistent with federal law.

Mr. Coose pointed out that the legislation provides general regulation adoption authority for the Department to carry out its statutory functions. The change corrects a statutory problem created by the merger of the Department of Commerce and Economic Development and the Department of Community and Regional Affairs. Mr. Coose identified the changes made in previous committees.

Representative Foster MOVED to report HCS CS SB 328 (CRA) out of Committee with individual recommendations and with the accompanying fiscal note. There being NO OBJECTION, it was so ordered.

HC CS SS SB 328 (CRA) was reported out of Committee with a "do pass" recommendation and with zero note #1 by the Department of Community & Economic Development.

SB337

CS FOR SENATE BILL NO. 337(L&C)

An Act relating to the powers of the Alaska Energy Authority to make grants and loans, to enter into contracts, and to improve, equip, operate, and maintain bulk fuel, waste energy, energy conservation, energy efficiency, and alternative energy facilities and equipment; relating to the bulk fuel revolving loan fund; relating to the Alaska Energy Authority's liability for the provision of technical assistance to rural utilities; relating to the Alaska Energy Authority's investment of the power development fund; repealing the electrical service extension fund; and providing for an effective date.

BECKY GAY, (TESTIFIED VIA TELECONFERENCE), PROJECT MANAGER, ALASKA INDUSTRIAL DEVELOPMENT AND EXPORT AUTHORITY, (AIDEA), ALASKA ENERGY AUTHORITY (AEA), ANCHORAGE, commented that SB 337 relates to the:

- Powers of the Alaska Energy Authority (AEA) to make grants and loans and enter into contracts;
- The bulk fuel revolving loan fund;
- AEA's potential liability for the provision of technical assistance to rural utilities;
- AEA's investment of the power development fund, and
- Repeals the electrical service extension fund.

Section 1 amends AS 42.45.0 10, establishing the power project fund, to add authorization for AEA to make loans from the fund for waste energy, energy conservation, energy efficiency, and alternative energy facilities and equipment. Similarly, Section 9 of the bill would amend the general powers of AEA to authorize it to improve, equip, operate, maintain, and enter into contracts for the construction, financing, operation, and maintenance of:

- Bulk fuel,
- Waste energy,
- Energy conservation,
- Energy efficiency, and
- Alternative energy facilities and equipment.

The Denali Commission and other federal agencies have provided substantial funding for such projects, and the

Legislature has authorized AEA's receipt and expenditure of the federal money.

Ms. Gay pointed out that Section 11 repeals AS 42.45.060, which establishes a loan committee to review and approve loans from the power project fund and the rural electrification revolving loan fund. Upon repeal of the loan committee statute, the credit department of the Alaska Industrial Development and Export Authority (AIDEA), which manages the AEA's loan programs, would continue to review applications for loans from those funds in accordance with the applicable regulations. Section 2 of the bill would continue the requirement present in AS 42.4 5.060(g) for legislative approval of loans for projects in which the cumulative State monetary involvement, through loans, grants, and bonds, is at least \$5,000,000 and loans for more than \$5,000,000. Sections 1, 3, 4, and 6, contain conforming amendments to reflect the repeal of AS 42.45.060.

She continued, Sections 5 and 7, amend AS 42.45.2 50, which governs loans from the bulk fuel revolving loan fund, to authorize loans from the fund to "persons," defined with reference to AS 01.10.060 to include corporations, cooperatives, joint ventures, and governmental entities, that generate power or supply the public with fuel used in communities with populations of less than 2,000 people, as well as loans to the communities themselves. Presently, the statute authorizes loans to "private individuals" and to the communities. The Department of Law recently interpreted the term "private individuals" to include only natural persons. Section 12 of the bill makes the amendments retroactive to June 1, 1984, to encompass active loans from the fund to such entities.

Ms. Gay noted that Section 8 amends AS 42.45.400, which requires the AEA to provide technical assistance to rural utilities, to specify that the statutory mandate may not be used as an independent basis for tort liability against AEA. The AEA would continue to be liable for negligence if it fails to use reasonable care in providing the technical assistance.

Section 10 of the bill would amends AS 44.83.386, relating to investment of the power development fund, to provide that AEA, rather than the Department of Revenue, invest the fund. She pointed out that AEA, with the concurrence of the Department of Revenue, has been investing the fund since 1993. AEA would continue to remit all fund earnings to the general fund.

Section 11, in addition to repealing AS 42.45.060 as discussed above, repeals AS 42.45.200, (the electrical service extension fund, which is inactive), and repeals AS 42.45.250(I)(1) to remove an unnecessary definition of a

term that is not used in the statute. Ms. Gay concluded her testimony.

Co-Chair Williams MOVED to ADOPT Amendment #1, #23-GS2076, Craver, 5/3/04. Co-Chair Harris OBJECTED for the purpose of discussion.

PETER ECKLUND, HOUSE FINANCE COMMITTEE STAFF, REPRESENTATIVE BILL WILLIAMS, explained that several years ago, a tax incentive was passed for ethanol produced from wood waste for seafood waste. The incentive will expire June 30, 2004 and Amendment 1 extends the date to June 30, 2009.

Ms. Gay noted that AIDEA was neutral on Amendment 1.

Mr. Ecklund pointed out the amendment would require a title change. Co-Chair Harris WITHDREW his OBJECTION to Amendment 1. He added that the title concern could be addressed on the House Floor.

Representative Foster MOVED to report HCS CS SB 337(FIN) out of Committee with individual recommendations and with the accompanying fiscal notes. There being NO OBJECTION, it was so ordered.

HCS CS SB 337(FIN) was reported out of Committee with "no recommendation" and with zero note #1 by the Department of Revenue and zero note #2 by Department of Community & Economic Development.

#SB170

CS FOR SENATE BILL NO. 170(JUD)

An Act relating to murder in the second degree, the justification of defense of self or others, immunity from prosecution, sentencing, probation, discretionary parole, and the right to representation in certain criminal proceedings; relating to violation of a custodian's duty; relating to sexual abuse of a minor; relating to release of information concerning certain cases involving a minor; relating to local options regarding alcoholic beverages, the offense of furnishing or delivery of alcoholic beverages to a person under 21 years of age, and forfeiture of property used in, and money or other items of value used in financial transactions derived from, violation of certain laws relating to alcoholic beverages; relating to assault by means of a dangerous instrument; relating to operating or driving a motor vehicle, aircraft, or watercraft while under the influence of an alcoholic beverage, inhalant, or controlled substance, to the refusal to submit to a chemical test, and to the presumptions concerning the chemical analysis of breath or blood; and providing for an effective date.

SUSAN PARKS, DEPUTY ATTORNEY GENERAL, CRIMINAL DIVISION, DEPARTMENT OF LAW, spoke on SB 170, the companion bill for HB 244, previously heard and held in the House Finance Committee. Both bills were introduced last year and were worked on extensively over the interim. The Department of Law recommends that the Committee consider amending SB 170 to reflect some of the refinements that the House Judiciary Committee made in the provisions.

Ms. Parks pointed out that there are two provisions in SB 170, not contained in HB 244 that address bootlegging. The first area not covered in HB 244 is Sections 5 & 6 of SB 170. Currently, that provision covers a 5-mile radius around the villages, however, in areas where the villages are close together, the 5-mile radius overlaps. When villages have conflicting local options, the courts interpret that to say that no local option could apply in that area. There would then be corridors created outside the areas where bootleggers could act. Provisions in Sections 5 & 6 clarify that the local option of a municipality takes precedence and if it were two villages, it would be the one least restrictive, providing protection around the perimeters of the villages.

Ms. Parks continued. The other provisions not contained in HB 244 address forfeiture in bootlegging cases listed in Sections 9, 10 & 11 of SB 170. Those provisions refine the admission procedure. When property has been seized in a bootlegging case, when an innocent third party comes in and makes a showing that the seized property should not be seized, those provisions lay out a refinement of what needs to be shown in order to get the property back. The provisions also comply for a mandatory forfeiture in situations of a prior conviction for bootlegging or felony probation. She reiterated that Sections 9-11 would add forfeiture provisions not included in HB 244.

Ms. Parks noted the proposed amendments included in member's packets that would take language from HB 244 and move it to SB 170. She stated that Representative Samuels had recommended a provision that is not supported by the Department, as it would create concerns for attorneys interrupting interviews of the individual in custody. She offered to answer questions of the Committee.

LINDA WILSON, (TESTIFIED VIA TELECONFERENCE), DEPUTY DIRECTOR, PUBLIC DEFENDER, DEPARTMENT OF ADMINISTRATION, ANCHORAGE, testified on SB 170, the companion bill to HB 244. She addressed some amendments proposed by the Department of Law for the Senate bill. She acknowledged that the Public Defender does support most of the proposed amendments except the witness immunity section, Page 12, Section 21. That section brings concerns with the Alaska

constitutional rights regarding self-incrimination. The bill intends to provide a procedure for when claims are raised of self-incrimination. When the judge determines that a witness has a valid claim, they then let the prosecutor know that information. The prosecutor then has to determine if they want to grant the witness immunity or not. Under the Alaska Constitution, that immunity is called 'transactional immunity' and the person could never be prosecuted for the crimes exposing themselves to that. She reiterated that the Alaska Constitution requires transactional immunity.

Ms. Wilson pointed out that the Senate version identifies compliance and stops at the findings by the judge regarding a valid claim. Subsection I, Section 21, shall advise the prosecution of that finding. That area was debated in the Senate Judiciary Committee and that the provisions in the House version would make it unconstitutional. In the House version, Section 21, Page 11, the judge would share some information with the special District Attorney (DA) assigned to make the decision regarding whether to grant witness immunity. The judge would reveal to the prosecutor the level of the felony. Unfortunately, sharing information with any prosecutor defeats the right of self-incrimination and would make the bill unconstitutional. She urged that the Committee leave the Senate version in its current state.

Ms. Wilson identified Section 13 in SB 170. She believed that HB 244 was more refined in that section. She spoke to Section 9 in HB 244, regarding the felony murder offense. If a person is charged with a felony, then that person could be charged with 2nd degree murder. In current law, if a participant in the crime is killed, the other person cannot be fined or charged with their death. That portion of the bill seeks to include a participant's death. There is an exception in the house bill that removes that exposure except when the killing is of a participant and is a direct result of a felony criminal crime by a non-participant. The non-participant would have to do something very significant for it to be an exception in the bill. She suggested that language could be a refinement and that HB 244 offered a better version to that section.

Ms. Wilson addressed felonies and the Driving While Intoxicated (DWI) provisions. The language of the house bill is preferred, as it is narrower regarding the challenging evidence. Section 27 of both bills, would allow evidence of alcohol consumption before and after driving. Taking a breath test hours after the driving does not always reflect what the blood alcohol level is during the time of operating the vehicle. HB 244 allows the person to raise a valid defense for a breath test.

Ms. Wilson pointed out that Ms. Parks had touched on elements of SB 170 regarding overlapping and local option areas, which is an improvement. Ms. Wilson reiterated that the Public Defender does agree with some proposed amendments:

- The assault of the third degree;
- Requiring a court to make findings for release on bail;
- In a felony DWI, refusal situation, limiting a look back to 20-years for a subsequent felony;
- Regarding the local option provision, an "opting out" by local option, and
- Does not make it a felony to furnish alcohol to a minor. Ms. Wilson concluded her testimony.

Co-Chair Williams stated that SB 170 would be HELD in Committee for further consideration.

#HB561

HOUSE BILL NO. 561

An Act providing for and relating to the issuance of general obligation bonds in a principal amount of not more than \$1,000,000 for the purpose of paying the cost of state transportation projects; and providing for an effective date.

JAMES ARMSTRONG, STAFF, REPRESENTATIVE BILL WILLIAMS, addressed Amendment 1. (Copy on File). The amendment would authorize \$90.18 million dollars of State general obligation bond (G.O.) dollars for transportation projects statewide. He provided project details:

Federal Earmark Match	\$15,000,000
Anchorage - Abbott Loop Road Upgrade	\$15,000,000
Anchorage - Lake Otis & Tudor Intersection	\$ 8,500,000
Chugiak Birchwood Eagle River Road Service	\$ 700,000
Glenn Highway Lighting	\$ 330,000
Mat-Su - Bogard Road Extension East	\$ 6,600,000
Mat-Su - Trunk Road Hospital Access	\$ 1,000,000
Kenai - Sterling Hwy Kasilof River Area	\$ 4,000,000
Kenai - Kenai Borough Road Improvements	\$ 2,000,000
Kenai - City of Kenai Road Improvements	\$ 1,000,000
Fairbanks - Steese Corridor Safety	\$ 7,500,000
Fairbanks - Cowles Road Upgrade	\$ 1,200,000
Sitka - Old Thomsen Harbor renovation	\$ 2,500,000
Juneau - Areawide Transportation Improvements	\$ 2,300,000
Ketchikan - Thomas Basin Harbor, Ryus Float, Bar Harbor North, Hole-in-the-Wall Harbor, Kundson Cove Harbor renovations	\$ 2,650,000
Ketchikan Gateway Borough	\$ 500,000

City of Ketchikan - Road Improvements	\$ 500,000
Kodiak - Airport Terminal Renovation	\$ 1,000,000
Port Lions - Public Dock Replacement	\$ 500,000
Nome - City Streets Improvements	\$ 1,650,000
Kotzebue Area wide Road Maintenance	\$ 1,400,000
Petersburg - Middle Harbor Renovation	\$ 1,200,000
Wrangell - Heritage Harbor Renovation	\$ 1,400,000
Valdez - Harbor Deferred Maintenance	\$ 1,000,000
Homer - Deep Water Dock Corrison	\$ 450,000
Chignik - Public Dock Project	\$ 1,000,000
Adak - Small Boat Harbor Expansion	\$ 3,000,000
Skagway - Harbor Deferred Maintenance	\$ 1,300,000
Whittier - Harbor Renovation	\$ 1,500,000
Statewide Harbor Deferred Maintenance	\$ 3,500,000

Co-Chair Williams MOVED to ADOPT Amendment 1.

Representative Stoltze noted a spelling and syntax error in a project listed in his area.

Vice Chair Meyer OBJECTED to the amendment. He mentioned the earlier list indicating the road bonds Anchorage needs. He voiced his concern for the lost federal match in the amount of \$15 million dollars. He asked which projects those funds were earmarked for. Mr. Armstrong recommended consulting with the Commissioner of Department of Transportation & Public Facilities regarding those concerns. Vice Chair Meyer WITHDREW his OBJECTION.

Co-Chair Williams interjected that the information would be distributed to Committee members. There being NO further OBJECTION, Amendment 1 was adopted.

Representative Foster MOVED to report CS HB 561 (FIN) out of Committee with individual recommendations and with the accompanying fiscal note. There being NO OBJECTION, it was so ordered.

CS HB 561 (FIN) was reported out of Committee with a "do pass" recommendation and with a new fiscal note by the Department of Revenue.

#SB170

CS FOR SENATE BILL NO. 170(JUD)

An Act relating to murder in the second degree, the justification of defense of self or others, immunity from prosecution, sentencing, probation, discretionary parole, and the right to representation in certain criminal proceedings; relating to violation of a custodian's duty; relating to sexual abuse of a minor; relating to release of information concerning certain cases involving a minor; relating to local options regarding alcoholic beverages, the offense of

furnishing or delivery of alcoholic beverages to a person under 21 years of age, and forfeiture of property used in, and money or other items of value used in financial transactions derived from, violation of certain laws relating to alcoholic beverages; relating to assault by means of a dangerous instrument; relating to operating or driving a motor vehicle, aircraft, or watercraft while under the influence of an alcoholic beverage, inhalant, or controlled substance, to the refusal to submit to a chemical test, and to the presumptions concerning the chemical analysis of breath or blood; and providing for an effective date.

Co-Chair Williams stated that Representative Samuels asked to be included in further discussions on SB 170.

Co-Chair Williams noted that SB 170 would be HELD in Committee for further consideration.

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ADJOURNMENT

The meeting was adjourned at 10:04 A.M.