

HOUSE FINANCE COMMITTEE
May 06, 2004
9:00 A.M.

TAPE HFC 04 - 108, Side A
TAPE HFC 04 - 108, Side B

CALL TO ORDER

Co-Chair Williams called the House Finance Committee meeting to order at 9:00 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

Representative Fred Dyson; Robert D. Storer, Executive Director, Alaska Permanent Fund Corporation, Department of Revenue; Grey Mitchell, Director, Labor Standards and Safety, Department of Community & Economic Development; Rachel Lewis, Unclaimed Property Manager, Department of Revenue; Tom Boutin, Deputy Commissioner, Department of Revenue; Stacy Kraly, Assistant Attorney General, Department of Law; Myra Push, Staff, Senator Bettye Davis; Greg O'Claray, Commissioner, Department of Labor; Jason Hooley, Staff, Senator Fred Dyson

PRESENT VIA TELECONFERENCE

Shelby Larsen, Division of Health Care Services, Department of Health & Social Services, Anchorage

SUMMARY

HB 466 An Act relating to investments of Alaska permanent fund assets; and providing for an effective date.

CS HB 466 (FIN) was reported out of Committee with a "do pass" recommendation and with zero note #1 by the Department of Revenue.

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.

HCS CS SB 30(FIN) was reported out of Committee with "no recommendation" and with fiscal notes #3 and #4 by the Department of Health & Social Services.

#SB65

CS SB 65(FIN) am

An Act relating to the qualifications of correctional officers, parole officers, and probation officers; authorizing the Department of Corrections to enter into lease-purchase agreements with municipalities for new or expanded public correctional facilities in the Fairbanks North Star Borough, the Matanuska-Susitna Borough, Bethel, the Municipality of Anchorage, and the City of Seward; relating to the development and financing of privately operated correctional facility space and services; authorizing the Department of Corrections to enter into a lease-purchase agreement with the City of Whittier for the confinement and care of prisoners in privately operated correctional facility space if the state cannot provide the same level of services required in state law or regulation for the same or less cost; giving notice of and approving, and authorizing the entry into and issuance of certificates of participation for, the upgrade, expansion, and replacement of certain jails in Dillingham and Kodiak; and providing for an effective date.

SB 65 was SCHEDULED but not HEARD.

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CS SB 231(FIN)

An Act relating to unclaimed property; and providing for an effective date.

CS SB 231 (FIN) was reported out of Committee with "no recommendation" and with fiscal note #2 by the Department of Revenue.

#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.

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CS SB 278(FIN)

An Act relating to fees for the inspection of recreational devices, including instructional devices, for certificates of fitness for electrical wiring and plumbing, and for licenses for boiler operators; relating to the building safety account; and providing for an effective date.

CS SB 278 (FIN) was reported out of Committee with "no recommendation" and with zero note #3 by the Department of Labor & Workforce Development and fiscal note #4 by the Department of Labor & Workforce Development.

#SB288

CS SB 288(JUD)

An Act relating to temporary custody hearings, and to certain determinations concerning placement of a child in child-in-need-of-aid proceedings; and providing for an effective date.

CS SB 288 (JUD) was SCHEDULED but not HEARD.

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SB 349

An Act requiring licensure of midwifery birth centers; and providing for an effective date.

SB 349 was reported out of Committee with a "do pass" recommendation and with fiscal note #1 by the Department of Health & Social Services.

#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.

#HB466

HOUSE BILL NO. 466

An Act relating to investments of Alaska permanent fund assets; and providing for an effective date.

Representative Foster MOVED to ADOPT work draft #23-LS1699\H, Cook, Craver, 5/5/04, as the version of the bill before the Committee. There being NO OBJECTION, it was adopted.

ROBERT D. STORER, EXECUTIVE DIRECTOR, ALASKA PERMANENT FUND CORPORATION, DEPARTMENT OF REVENUE, commented that the request would increase investment flexibility. He noted that most funds must follow the prudent investor expert rule, however, that the Permanent Fund contains an extra obligation, a statutory list outlining what can be invested in. Four years ago, the Legislature gave the Permanent Fund Corporation the ability to invest up to 5% in types of investments not mentioned in the statutory list, referred to as the "basket clause". It provides a 5% limitation. After studying it for four years, regarding the various ways to use it, a strategy was implemented providing a modest amount in private equities and a conservative amount in a pilot program with an absolute return. Presently, there is a problem. If the strategy works and grows, the Permanent Fund will be forced to liquidate assets because of the statutory limitations. The proposed legislation requests two items:

- On Line 14 provides "housecleaning items" from the existing intent of the basket clause; and
- On Page 2, Line 3, instead of 5%, increasing it to 10%.

Mr. Storer pointed out that the second change resulted from an amendment passed on the Senate side. The 10% would provide a few years of latitude and then "down the road", the Permanent Fund could come back and ask for increased flexibility. He indicated that Version H would be acceptable to the Permanent Fund.

Representative Joule inquired if the 15% request had been based on projections. Mr. Storer advised that over the interim, there would be no change in the projection. It will take a number of years to implement the strategy. The 15% was intended to essentially give future administrators, greater flexibility in a dynamic industry while addressing a changing market as it occurs. The State would continue to target a 5% real rate of return. He hoped that by increasing the latitude, it would allow investors a better chance of achieving the 5%, while allowing latitude to reduce the volatility of the expected returns.

Vice Chair Meyer asked why the Senate choose 10% over the requested 15%. Mr. Storer understood that the Senate was concerned about taking on too much risk. The Permanent Fund Corporation does not agree that would be the case. The history of the Permanent Fund has been very conservative in applications. During the technology bubble, the Fund did not own any of those types of stocks. He added that it took four years to implement the basket clause. The Fund Board is cautious and deliberative when making investment decisions.

Vice Chair Meyer asked the current breakdown of asset allocations in the Fund. Mr. Storer noted that the asset allocation target was:

- 56% equities and of that 18% is in non-dollar international equities
- The U.S. bond portfolio is 28%
- A 10% target in real estate
- The non-dollar bond portfolio is at about 4%
- A 2% private equity currently being implemented
- A 1% target for absolute strategy or hedge fund

Vice Chair Meyer asked clarification if the hedge funds included futures or commodities. Mr. Storer replied that they do not include commodities but have used futures from time to time. There must be a modest leverage.

Representative Fate asked the return for the last five years. Mr. Storer pointed out that the investment board recommends a rolling 10-year average, which never has gone below a 5% rate of return average. One year, there was a 3% real and another with a 2% real; currently, the returns are up over the 5%. In a down turned market, there were two years with a less than a 5% return.

Representative Fate inquired if protections would be made if the 10% number was given by the Legislature. Mr. Storer explained that would provide the latitude needed to increase flexibility in an amount of perhaps one quarter to one half percent. He noted that is a lot of money when dealing with a \$28 billion dollar fund. The key in achieving the goal is allowing current investments to rise, taking advantage of the full market cycle.

Representative Croft noted with a 5% internal target, it is appropriate to have a 10% ceiling, so that successful investments will not have to be sold. Mr. Storer agreed.

Representative Croft inquired the target. Mr. Storer replied that with a 5% limitation, the fund is using 3% as a cushion, no matter what.

Representative Foster MOVED to report CS HB 466 (FIN) out of Committee with individual recommendations and with the accompanying fiscal note. There being NO OBJECTION, it was so ordered.

CS HB 466 (FIN) was reported out of Committee with a "do pass" recommendation and with zero note #1 by the Department of Revenue.

#SB349

SENATE BILL NO. 349

An Act requiring licensure of midwifery birth centers; and providing for an effective date.

MYRA PUSH, STAFF, SENATOR BETTYE DAVIS, explained that there are six birth centers in Alaska, five registered and one licensed. The owners of the birth centers admit the need to have one licensed standard for all birthing centers. The licensed birth centers will have one set of regulations to follow, comply with annual inspections and put safeguards in place to guarantee the birth center is a safe environment for families.

She noted that in March 2004, the birth center owners collaborated, rewriting regulations for licensed birth centers, which had not been changed since 1983. The recommendations have been submitted. Through SB 349, the registered birth centers will be considered licensed six months after the effective date of the new adopted regulations. The Midwives Association of Alaska has agreed there should be one uniform standard for birth centers and recommends passage of the legislation.

Representative Foster MOVED to report SB 349 out of Committee with individual recommendations and with the accompanying fiscal note. There being NO OBJECTION, it was so ordered.

SB 349 was reported out of Committee with a "do pass" recommendation and with fiscal note #1 by the Department of Health & Social Services.

#SB30

CS FOR SENATE BILL NO. 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.

STACEY KRALY, ASSISTANT ATTORNEY GENERAL, DEPARTMENT OF LAW, explained the differences between the House Judiciary

version of the bill and work draft #23-LS0193\Y, Mischel, 4/29/04 version.

She noted that when the bill arrived in the House Judiciary Committee, an opinion was requested from the Attorney General's office regarding the constitutionality of the provisions. As a result, recommendations were made to that Committee and some amendments were submitted based on that review, which were all adopted.

REPRESENTATIVE FRED DYSON, SPONSOR, did not know if the Y version would meet with the Department of Law's approval. He noted the conditions contained within the committee substitute. The Department of Health & Social Services does not want the State Medical Board to have obstetricians determine the information placed on the website. The Department believes that they can handle that from within.

Ms. Kraly commented that the recommendation during the House Judiciary proceedings was that the provisions in the website would be information developed in a medically accurate manner. She stressed that it is important that the information is not politically motivated but rather medically accurate. The State Medical Board is not interested in performing that duty. She reiterated that the information should be medically accurate.

Representative Stoltze asked if the Attorney General was interested in being involved in this matter. Ms. Kraly advised that the Attorney General is familiar with the concern.

Senator Dyson addressed issue #2: Language inserted in the House Judiciary Committee appears to establish the criteria transmitted to the woman, which is based on a physician's standard. In the Y version, the language is better fit for the patient standard and information. Ms. Kraly responded that the Judiciary version creates two provisions by which informed consent may be imparted. One provides information through the State maintained web site. The second mechanism in the G version would be to create a mechanism by which a physician could choose not to use the website information, but rather impart information, which the doctor "reasonably" believes is necessary for the patient to make an informed choice. That language is on Page 6, Lines 24-27, in the G version.

Representative Croft asked if that reference was made in the Y version. Ms. Kraly did not know, as she had just received that copy. She thought that the committee substitute removed the language.

Ms. Kraly noted that the State of Alaska has an informed consent provision under Title 9, in which the standard

creates a "reasonable patient standard". General case law dealing with informed consent issues in Alaska has been a reasonable patient standard not a reasonable physician standard. That being said, the changes recommended by Senator Dyson, make sense that the body of law is consistent in the sense of not having conflicting provisions in the law. She thought that the Y version section should be amended to make it more clear that the standard is for a reasonable patient standard. Constitutionally, it might not be a problem, but that the language should be consistent.

Senator Dyson voiced concern when dealing with a doctor doing the procedure. There is a pattern, where a caring doctor, could have pressure to minimize the issues regarding termination. He thought that more complete information would allow women to make better decisions. He understood that the Y version would leave the doctors the alternatives; however, the intention of the legislation is to use the Department's information, which would be immune from legal action.

Senator Dyson added that the real issue was whether or not the 24-hour waiting period would be problematic under the Alaska Constitution. Ms. Kraly responded that the issue of the 24-hour waiting period with respect to the informed consent provision would be a difficult question. The Alaska Constitution provides greater protections under the right to privacy and equal protection than the federal constitution. The Alaska Supreme Court has interpreted provisions relating to the restrictions of reproductive rights and consistently upheld that it is a fundamental right and in order to restrict it, there must be a fundamental constricting State interest. It is the opinion of the Department of Law that the 24-hour waiting period would be viewed as an undue burden under the right to choose. It makes the bill less constitutionally sound than if the provision was not in it. She reiterated that in the opinion of the Department of Law, the 24-hour provision would be problematic.

Senator Dyson pointed out that many states have fought this battle. He understood that the Department of Law might get challenged.

Co-Chair Williams asked the anticipated cost of such a challenge. Ms. Kraly agreed that there would be a challenge and that the bill would be more defensible without the 24-hour waiting period. She warned that litigation is expensive and time consuming and that it could cost hundreds of thousands of dollars to litigate these issues. The appeal process could take a few years to get through. It will be a timely and costly venture if it should pass.

Co-Chair Williams asked clarification that if the 24-hour rule were left in, the legislation would most likely be

challenged. Ms. Kraly predicted that no matter what version passes, it will be challenged on some level. If the 24-hour provision was removed, there would be one less issue to litigate.

Senator Dyson pointed out that presently, in law, there exists a "severability concept", which does not negate the entire idea.

Representative Croft pointed out how verbally careful the attorney general's office was being. If the bill passes, the Department of Law will be defending it and if they truly believe that it is not constitutional, it would be used in that case. He pointed out that Ms. Kraly was very careful not to mention things during the Committee meeting that could be used in defending the lawsuit later. He added that the testimony sounded conditional because of the public nature of the situation.

Senator Dyson maintained that the Y version does not raise constitutional issues except for the 24-hour rule.

Vice Chair Meyer MOVED to ADOPT version #23-LS0193\Y, Mischel, 4/29/04. There being NO OBJECTION, it was adopted.

Representative Croft MOVED a conceptual amendment removing "at least 24 hours" on Page 5, Line 16 and on Page 6, Lines 11 & 12. Vice Chair Meyer OBJECTED for the purpose of discussion. He invited the sponsor's opinion.

Senator Dyson stated that the bill is of great value even without the 24-hour rule. He stated that he would prefer to keep the language in the bill but would hold no grudges, as he wanted to see the bill pass from Committee. He added that he thought that it could survive a court challenge.

A roll call vote was taken on the motion.

IN FAVOR: Croft, Moses
OPPOSED: Stoltze, Chenault, Fate, Foster, Hawker,
Meyer, Williams

Representative Joule and Co-Chair Harris were not present for the vote.

The MOTION FAILED (2-7).

Representative Foster MOVED to report HCS CS SB 30 (FIN) out of Committee with individual recommendations and with the accompanying fiscal notes. There being NO OBJECTION, it was so ordered.

HCS CS SB 30(FIN) was reported out of Committee with "no recommendation" and with fiscal notes #3 and #4 by the Department of Health & Social Services.

TAPE HFC 04 - 108, Side B

#SB278

CS FOR SENATE BILL NO. 278(FIN)

An Act relating to fees for the inspection of recreational devices, including instructional devices, for certificates of fitness for electrical wiring and plumbing, and for licenses for boiler operators; relating to the building safety account; and providing for an effective date.

GREG O'CLARAY, COMMISSIONER, DEPARTMENT OF LABOR, commented that the Department supports the bill.

GREY MITCHELL, DIRECTOR, LABOR STANDARDS AND SAFETY, DEPARTMENT OF COMMUNITY & ECONOMIC DEVELOPMENT, explained that SB 278 would establish fees for inspection and licensing services, based on the concept that users should bare the costs of services. He offered to provide a sectional analysis.

Representative Chenault questioned if the intent was to raise boiler operator fees from \$160 dollars to \$200 dollars. Mr. Mitchel acknowledged that was correct.

Representative Chenault pointed out that boilers in apartment complexes are subject to yearly inspection. He commented that there is a big difference between a small boiler and a large boiler. Mr. Mitchel explained that the bill would not have an affect on the boiler inspection fees. He pointed out that Section 2 indicates that the operator license would be used for a person who obtains a license to work on a boiler. It is not associated with the fee charged on the inspection. Representative Chenault clarified that the bill affects the work license for boiler installers.

In response to a query made by Representative Stoltze, Commissioner O'Clary stated that the owner of the mentioned facility, had testified in the House Labor and Commerce Committee and as a result, the bill was amended to waive the Department's fee as long as the out-of-state inspector had the required certifications. He added that both the National Electrical Contractors Association and the IBW-Local #50 & #47, testified in favor of the proposed legislation.

Representative Foster MOVED to report CS SB (FIN) out of Committee with individual recommendations and with the

accompanying fiscal notes. There being NO OBJECTION, it was so ordered.

CS SB 278 (FIN) was reported out of Committee with "no recommendation" and with zero note #3 by the Department of Labor & Workforce Development and fiscal note #4 by the Department of Labor & Workforce Development.

#SB231

CS FOR SENATE BILL NO. 231(FIN)

An Act relating to unclaimed property; and providing for an effective date.

TOM BOUTIN, DEPUTY COMMISSIONER, DEPARTMENT OF REVENUE, stated that SB 231 would bring Alaska in concert with the unclaimed property uniform codes across the nation.

RACHEL LEWIS, UNCLAIMED PROPERTY MANAGER, DEPARTMENT OF REVENUE, added that the entire bill except for four sections had been directly taken from the 1995 Uniform Law Commissioners Act on Unclaimed Property. Alaska adopted the 1981 Act in 1986. Alaska is a little outdated and adoption of SB 231 would bring Alaska up to date. She addressed the issues that are different from the 1995 Act.

- Page 3, Section 5, speaks to "demutualization" of insurance companies. Demutualization was a new type of property, not existing in 1995 and was not addressed in that Act. There are fourteen states that have already adopted that language.
- Page 5, Section 10, would be unique language for Alaska, for unclaimed property under the value of \$750 dollars, the State of Alaska does not want the hassle of the \$2.50 payment. It would be a convenience and a courtesy. That language currently exists in statute and is ambiguous.
- Page 7, Section 13, requires advertising the names of people with unclaimed property of \$100 dollar or more. Last year, the Department spent \$30 thousand dollars to advertise 3,000 names. The State received only 340 claims for that work. The Department should evaluate the best way to promote it, encouraging owners to come forward and claim their property.
- Page 9, Section 17, amends "Gift Certificates" by adding new language.

Representative Stoltze commented that some utility cooperatives use their own claims and redistribute them for scholarships. He asked if that would be affected. Ms. Lewis replied that utility coops have an unique exemption and the legislation would not touch that concern. They

would be responsible for locating their members and the money would continue to be pooled through the coop.

Representative Croft asked if the definition of mineral and mineral proceeds had been made in the legislation. Ms. Lewis responded that it has not been defined before and that it would be taken directly from the 1995 Act.

Representative Fate asked the procedure after the initial notification. Ms. Lewis advised that there are over 80,000 names listed for unclaimed properties ranging in value from \$25 to \$250,000 dollars. Everyone is listed on the Internet. The information is "out there" but the Department does not actively attempt locating them. The property is held into perpetuity.

Representative Fate questioned the number of people not located. Ms. Lewis replied that since 1986, \$18 million dollars had been returned to people living in Alaska. There is always a 25%-30% percentage that cannot be found, but with technology, those numbers are decreasing.

Representative Chenault commented on the fiscal analysis, noting the increase. Mr. Boutin interjected that it was intended to speed up the collection process. Ms. Lewis added that the intent was to compress seven years into five.

Representative Foster MOVED to report CS SB 231 (FIN) out of Committee with individual recommendations and with the accompanying fiscal note. There being NO OBJECTION, it was so ordered.

CS SB 231 (FIN) was reported out of Committee with "no recommendation" and with fiscal note #2 by the Department of Revenue.

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ADJOURNMENT

The meeting was adjourned at 10:11 A.M.