

ALASKA STATE LEGISLATURE
HOUSE HEALTH, EDUCATION AND SOCIAL SERVICES
STANDING COMMITTEE

February 19, 2004
3:06 p.m.

MEMBERS PRESENT

Representative Peggy Wilson, Chair
Representative Carl Gatto, Vice Chair
Representative John Coghill
Representative Paul Seaton
Representative Kelly Wolf
Representative Sharon Cissna

MEMBERS ABSENT

Representative Mary Kapsner

COMMITTEE CALENDAR

HOUSE BILL NO. 380

"An Act relating to aggravating factors at sentencing."

- MOVED HB 380 OUT OF COMMITTEE

HOUSE BILL NO. 404

"An Act relating to the Alaska ACPE on Postsecondary Education; relating to the Alaska Student Loan Corporation; relating to bonds of the corporation; relating to loan and grant programs of the ACPE; relating to an exemption from the State Procurement Code regarding certain contracts of the ACPE or corporation; making conforming changes; and providing for an effective date."

- MOVED CSHB 404(HES) OUT OF COMMITTEE

PREVIOUS COMMITTEE ACTION

BILL: HB 380

SHORT TITLE: AGGRAVATING FACTOR FOR DRUG OVERDOSE SALE

SPONSOR(S): REPRESENTATIVE(S) MEYER

01/20/04	(H)	READ THE FIRST TIME - REFERRALS
01/20/04	(H)	HES, JUD
02/12/04	(H)	HES AT 3:00 PM CAPITOL 106
02/12/04	(H)	-- Meeting Canceled --
02/19/04	(H)	HES AT 3:00 PM CAPITOL 106

BILL: HB 404

SHORT TITLE: STUDENT LOAN PROGRAMS

SPONSOR(S): RULES BY REQUEST OF THE GOVERNOR

01/28/04 (H) READ THE FIRST TIME - REFERRALS
01/28/04 (H) EDU, HES, FIN
02/19/04 (H) HES AT 3:00 PM CAPITOL 106

WITNESS REGISTER

REPRESENTATIVE KEVIN MEYER

Alaska State Legislature

Juneau, Alaska

POSITION STATEMENT: As sponsor testified on HB 380.

SUZANNE CUNNINGHAM, staff

to Representative Meyer

Alaska State Legislature

Juneau, Alaska

POSITION STATEMENT: Testified on HB 380 and answered questions from the members.

DIANE BARRANS, Executive Director

Postsecondary Education ACPE

Department of Education and Early Development;

Executive Officer, Alaska Student Loan Corporation

Juneau, Alaska

POSITION STATEMENT: Testified on HB 404 and answered questions from the members.

MARY ELLEN BEARDSLEY, Assistant Attorney General

Commercial/Fair Business Section

Department of Law

Anchorage, Alaska

POSITION STATEMENT: Offered to answer questions from the members on HB 404.

BRUCE JOHNSON, Director QS2

Association of Alaska School Boards

Juneau, Alaska

POSITION STATEMENT: Testified in support of HB 404.

ACTION NARRATIVE

TAPE 04-12, SIDE A

Number 0001

CHAIR PEGGY WILSON called the House Health, Education and Social Services Standing Committee meeting to order at 3:06 p.m. Representatives Wilson, Gatto, Coghill, and Seaton were present at the call to order. Representatives Cissna and Wolf arrived as the meeting was in progress.

HB 380-AGGRAVATING FACTOR FOR DRUG OVERDOSE SALE

Number 0050

CHAIR WILSON announced that the first order of business will be HOUSE BILL NO. 380, "An Act relating to aggravating factors at sentencing."

Number 0070

REPRESENTATIVE KEVIN MEYER, Alaska State Legislature, testified as sponsor of HB 380. He explained that while it is important that this bill be reviewed by the House Health Education and Social Services Standing Committee, the subject is heavily tilted toward the judiciary and will be closely reviewed by the House Judiciary Standing Committee. The bill pertains to illegal drug sales and adds a new aggravator [in sentencing]. He commented that if this bill passes it will be 31st aggravator.

Number 0127

CHAIR WILSON told the members that the committee will look at the portion of the bill that is pertinent to this committee, and the House Judiciary Standing Committee will address the legal aspects of the bill.

REPRESENTATIVE MEYER explained that HB 380 adds an aggravator for illegal sales of drugs that result in a death. He said currently if a person is convicted of selling illegal drugs the judge may apply a sentence of a presumptive term which is five years, and a maximum of 20 years. Representative Meyer told the members that in the sentencing stage years can be added to the presumptive term with aggravators, or deducted with mitigators.

REPRESENTATIVE MEYER pointed to an example in the bill packet of a case that occurred in Ketchikan where a person was convicted of selling heroin. During the trial process it was discovered that that sale of heroin led to another person's death due to an overdose. He told the members that during the sentencing

proceedings it was argued that if physical harm occurs because of sale of drugs, then additional time can be added to the sentence. Representative Meyer said that the argument was not upheld because it was said that no physical harm or injury occurred. He told the members that there were arguments back and forth that death is [or is not] physical injury.

REPRESENTATIVE MEYER summarized that this bill would add an aggravator for death so that there is no question when cases similar to this come to the courts. He said he believes that a fatal overdose should be considered when sentencing someone of illegal sale of drugs because there are other ramifications involved besides the selling of drugs.

Number 0367

REPRESENTATIVE GATTO asked if this aggravator would apply if the drugs were received as a gift. For instance, he said, an individual could be coerced or given drugs without paying for them. Another situation might be where an individual gives someone medicine, which could be the wrong dose, with the understanding that the individual receiving the medicine pay the person back at a later time.

Number 0424

SUZANNE CUNNINGHAM, staff to Representative Meyer, Alaska State Legislature, testified on HB 380 and answered questions from the members. In response to Representative Gatto's question she explained that under the aggravator it says that if the defendant is convicted of an offense under AS 11.71, which is the controlled substances criminal statutes, misconduct involving controlled substances includes delivering any amount of a certain drug, selling a drug, or having an enterprise where drugs are sold. In the two examples which Representative Gatto posed, the individuals would have to be convicted under this statute for the aggravator to apply.

CHAIR WILSON asked for clarification on illegal drugs.

MS. CUNNINGHAM pointed to a list in the members' packets with a schedule of all the IA through VIA drugs. There are prescription drugs that are listed, she noted. If a person gives someone a prescription drug, and is convicted [under AS 11.71], then this aggravator could apply, Ms. Cunningham summarized.

Number 0506

CHAIR WILSON announced for the record that Representative Wolf has joined the meeting.

REPRESENTATIVE MEYER commented that this is something that the two attorneys would discuss during the sentencing portion of the trial. He said it is important to note that this aggravator does not become a factor until a person has been found guilty of a crime. Representative Meyer explained that if someone gave Representative Gatto an aspirin and he died of an overdose, he does not believe this would have any [relevance].

Number 0541

REPRESENTATIVE COGHILL emphasized that this bill will allow a judge discretion in sentencing someone who has been convicted [of a crime] and is not something that must be used. He stated that because of some narrowly crafted laws, mitigators and aggravators have become necessary tools in sentencing.

Number 0585

REPRESENTATIVE GATTO told of a person he knows in the community who has been involved with kids, sports, and does many good things. However, one day this person did something stupid. Someone needed medication which this person happened to have, and he sold it to the other person. Representative Gatto pointed out that no one died, but he's facing 20 years [in prison]. Representative Gatto asked for clarification that a death would have to occur for this bill to have any effect.

REPRESENTATIVE MEYER replied that is correct; someone would have to die for this bill to have any effect.

REPRESENTATIVE GATTO commented that in the example he used this person was just saying that he paid \$14 per pill, and if the other person would pay him the \$14 he could have it.

REPRESENTATIVE MEYER responded that if this were a situation where a person did this once and it was a stupid mistake, then that would be an issue to discuss during the sentencing phase.

CHAIR WILSON announced for the record that Representative Cissna has joined the meeting.

Number 0670

REPRESENTATIVE SEATON commented that there is one other significant change in the statute. He pointed to the sponsor statement where it says currently law allows that if "a person, other than an accomplice, sustained physical injury", and what has been taken out [of current law] is "other than accomplice". Representative Seaton said [with that language removed] the situation is such that two people can conspire to commit a crime, and one person will receive an aggravated sentence; whereas the current statute says the person injured cannot be an accomplice. Representative Seaton asked for Representative Meyer to comment on that point.

MS. CUNNINGHAM responded that this bill will add an aggravator to the current list of aggravators. In the case of Whitesides v. State of Alaska [where] a person other than an accomplice sustained a physical injury as a direct result [of the crime]. She told the members that there would be no change to current law. The way this bill is drafted it does not specify "accomplice", it says "a person" dies or suffers serious physical injury from that controlled substance. Ms. Cunningham said the way it is written implies that the person was selling or giving drugs to someone. The assumption is that the person is committing an illegal act and because of that act, someone dies of it.

REPRESENTATIVE SEATON replied that he understands what Ms. Cunningham is saying, but said he believes this would provide a dual standard. If someone experiences physical harm, and the person is an accomplice, an aggravator does not apply, but if someone [who is an accomplice] dies, an aggravator does apply, he pointed out. Representative Seaton commented that perhaps the House Judiciary Standing Committee should take a look at this point. He noted that there is the same situation as far as the seller goes; however, it does not apply to the person if they are injured, but the aggravator does apply if the person dies. He stated he does not like the duality of this standard.

CHAIR WILSON agreed that the Representative Seaton's point should be addressed in the House Judiciary Standing Committee.

Number 0861

REPRESENTATIVE CISSNA asked for clarification of the term "physical injury."

CHAIR WILSON explained that earlier in the meeting there was discussion concerning that point. She directed Representative Cissna to a case in the bill packet [Whitesides v. State of Alaska] which demonstrates the needs to clarify the law because a person avoided aggravating factors in the sentencing portion of the case because death was not considered physical injury. This bill would add death as an aggravating factor to clarify statute and provide the courts with an additional tool in sentencing.

REPRESENTATIVE MEYER commented that currently law provides that if someone is convicted of selling drugs and a person is physically injured, then the courts could add [time] to the sentence. He commented that there isn't any [aggravating factor] that deals with death. Common sense would say that if a person dies, the person is physically injured, but in the court of law [the language] has to be black and white. He summarized that all this bill does is allow for the sentencing judge to use this aggravating factor. He emphasized that the judge does not have to use this in sentencing.

Number 0946

REPRESENTATIVE SEATON referred to AS 11.71 and asked if there is any potential for a pharmacist who misprescribes to be found guilty of a crime in this case.

MS. CUNNINGHAM responded that it would have to be proven that there was intentional misconduct on the part of the pharmacists to even warrant a criminal charge. She said she is not even sure that would fall under a misconduct involving a controlled substance. She said she would look into it and get back to Representative Seaton.

REPRESENTATIVE SEATON replied that he would appreciate that because if this bill implements a new liability on pharmacists then this committee would be concerned. He said that he would like to draw attention to this issue [to ensure that the bill does not criminalize a pharmacist's misprescribing drugs].

REPRESENTATIVE GATTO asked if a pharmacist gives a double dose of pills by accident, is that an offense.

MS. CUNNINGHAM replied that she is unsure if that would be an offense under AS 11.71, which is the statute this bill deals with. The statute pertains to misconduct involving a controlled substance, where a person deals and distributes drugs. She

reiterated that she does not know how the situation he mentioned would be interpreted under current statutes.

Number 1087

REPRESENTATIVE MEYER told the members that he would get back to the committee on both questions. He said he believes that pharmacy issues would fall somewhere else in statutes.

REPRESENTATIVE GATTO shared a story of getting a prescription that said, put three drops in each ear, three times a day. The treatment was for his eyes, and it was obvious the problem was the doctor's writing. So what do you do, he asked, complain to the doctor, complain to the pharmacist, or just stick [the drops in his] eyes as it was intended. Errors are made. He said he believes that no one wants to criminalize a mistake or create a situation where an [ill-worded statute] generates a lot of litigation.

Number 1154

REPRESENTATIVE MEYER assured the members that he would check on the two questions Representatives Gatto and Seaton posed to him. He told the members that he does not believe either case would fall under the criminal code, but will verify it.

Number 1170

REPRESENTATIVE SEATON moved to report HB 380 out of committee with individual recommendations and the accompanying fiscal notes.

REPRESENTATIVE GATTO objected for discussion purposes. He asked if there is a zero fiscal note. In response to Representative Meyer's affirmative response he asked, if there are not additional court expenses related to the bill as this may be another [law] to be challenged.

REPRESENTATIVE MEYER commented that he had the same concern, but found that there are not that many cases where this aggravator could apply.

REPRESENTATIVE GATTO withdrew his objection.

There being no objection, HB 380 was reported out of the House Health, Education and Social Services Standing Committee.

REPRESENTATIVE MEYER told the members that he would research and e-mail answers to the committee's questions.

HB 404-STUDENT LOAN PROGRAMS

Number 1261

CHAIR WILSON announced that the next order of business would be HOUSE BILL NO. 404, "An Act relating to the Alaska ACPE on Postsecondary Education; relating to the Alaska Student Loan Corporation; relating to bonds of the corporation; relating to loan and grant programs of the ACPE; relating to an exemption from the State Procurement Code regarding certain contracts of the ACPE or corporation; making conforming changes; and providing for an effective date."

Number 1299

DIANE BARRANS, Executive Director, Postsecondary Education Commission (ACPE), Department of Education and Early Development; Executive Officer, Alaska Student Loan Corporation, testified on HB 404 and answered questions from the members. The ACPE's corporation has successfully implemented the AlaskAdvantage Programs and services for Alaskans, and now seeks the legislature's approval for the next step in the organizational growth, she said.

MS. BARRANS explained that the objectives of HB 404 are fivefold. First, the bill would broaden the scope of the corporation's bonding authority to include the ability to bond for general benefit of the state. In an effort to use the state's assets as efficiently as possible the corporation has developed a plan to return a substantial portion of the original contributed capital that the state provided the corporation to begin its operations, she added. The change in statute is requested to ensure that the student loan corporation has the capacity to return the contributed capital back to the state in a variety of methods.

MS. BARRANS told the members that the second objective is to reconstitute the state student grant program to better focus on Alaska's workforce needs and to enhance the ACPE's outreach and early awareness initiatives. The proposal redesigns the grant program to clearly have an Alaska centered focus, she added.

MS. BARRANS said that the third objective is to provide the ACPE with greater flexibility in offering loan consolidation options

to borrowers. The current statutes limit the way in which the ACPE can offer consolidation [loans]. For example, she told the members, some borrowers who have borrowed under the old Alaska Student Loans Program and the new AlaskAdvantage Programs are unable to consolidate across programs. The changes in the statute would permit the corporation and ACPE to do so.

MS. BARRANS explained that the fourth objective put forth is at the request of the Department of Law. The changes would clarify the ACPE's ability to administratively issue liens. That is a statutory authority that the commission currently has; however, there is concern that there is not currently a clear due process for borrowers choosing to contest this process, she said. The bill would remedy that deficiency in the statutes, Ms. Barrans added.

Number 1437

MS. BARRANS told the members that the last change in statute is to provide an exemption from the state procurement code for certain services related to guaranteeing and dispersing the education loans that the ACPE originates and services. She said that under the current business structure for education loans, as a lender, the ACPE must be prepared to do business with the entities that the schools have relationships with. If a school uses a disbursing agent that is not available to the ACPE, it is necessary to engage the services of that disbursing agent in order to electronically deliver loan funds to that school. Ms. Barrans explained that it is more efficient for the ACPE, schools, and a much more expedited process than using paper warrants. She said she understands that a committee substitute has been circulated and she offered to speak to the changes.

Number 1458

REPRESENTATIVE SEATON moved to adopt CSHB 404, 23-GH2003\D, Cook, 2/12/04, as the working document. There being no objection, CSHB 404, version D was adopted as the working document.

MS. BARRANS explained that there are two changes in the committee substitute. It adds a new section, Section 5, and subsequently renumbers the sections following that. She told the members that there was a concern expressed in the Senate Health, Education and Social Services Standing Committee meeting that there would be some limitation put on the amount the corporation would be able bond for general state projects of the

state. Ms. Barrans said that the corporation has identified what it believes is its capacity over the next three years. There was concern that the corporation not be put in a position to bond beyond that anticipated capacity, she added. The aggregate amount of \$280 million was placed in Section 5. Ms. Barrans said that this change would not impair the corporation from issuing bonds for regular program operating capital, but it would [provide limitations] for specific general capital projects of the state.

Number 1546

MS. BARRANS told the members that the other change reflects concerns of the Senate Health, Education and Social Services Standing Committee, and conforms the house bill to the senate bill. She pointed to Section 23, on page 11, which deals with the ACPE's ability to prioritize grant awards to individuals who are enrolled in programs of study in the state that lead to employment in worker shortage area. She explained that the concerns of the other committee were that by narrowing down to specific occupational areas, if an emerging occupational need [were to arise] in Alaska that fell outside of those categories that the ACPE would not be able to respond without a change in statute. That limitation was removed, she added. However, in order to compensate for that change, on page 11, line 24, the severe shortage definition was changed to require a vacancy rate in that occupation of 15 percent, rather than 10 percent. Ms. Barrans explained that as the field of possibilities broaden, the threshold that qualifies an occupation for a shortage area was raised. She summarized that those are the differences between version D before the committee now, and the original version.

Number 1587

CHAIR WILSON asked Ms. Barrans what happens when there is no severe shortage.

MS. BARRANS responded that when there are no severe shortages then grants become equally available to otherwise eligible applicants, or an open competitive needs-based program.

REPRESENTATIVE GATTO commented that shortages vary. He asked for Ms. Barrans to clarify that if a shortage is at 15 percent then [grant preferences are no longer] in effect.

MS. BARRANS responded that through regulations, the ACPE would annually revisit [the subject of occupations that would qualify]. The occupational forecast which is provided by the Department of Labor and Workforce Development is an annual forecast, she added. Ms. Barrans explained that the ACPE would make adjustments in the prioritizations based on the forecast.

CHAIR WILSON commented that the Department of Labor and Workforce Development sends an information sheet with a list of the top ten areas of occupational shortages. She asked Ms. Barrans if the ACPE would look at this list and prioritize the grants based on the highest percentage of shortages [over 15 percent].

Number 1684

MS. BARRANS agreed that would be the kind of tiered approach she believes the ACPE would take so that the money would be focused on the areas of greatest need. For example, if there were ten careers that had shortages greater than 15 percent, there would be different vacancy rates, and the prioritization [of grants] would correspond to those [vacancy rates].

MS. BARRANS told the members that there are other factors to consider such as the issue of fastest growing occupations and other socioeconomic issues related to existing workforce needs. For instance, even though a field may not be expanding through a process of rapid retirement or aging of a particular set of professionals, there may be a high vacancy rate, she said. Those factors would also need to be weighed.

Number 1723

REPRESENTATIVE CISSNA asked Ms. Barrans where the definition of "resident" is in this bill.

MS. BARRANS responded that there is an existing definition of resident that is incorporated by reference. The ACPE would use the same definition of resident that is used for all other financial aide programs, she said. She explained that the definition is not set out [in this bill] because it is already defined in another statute and is not being changed. Ms. Barrans explained that the residency requirement is 12 months of physical presence in the state, and no claim to residency in another state.

REPRESENTATIVE SEATON asked when determining the number of vacancies for nurses, are the positions that are filled by traveling nurses considered vacant.

MS. BARRANS said that she is not an expert on the methods used by the Department of Labor and Workforce Development in projecting workforce needs. She said that she would check with the department and get back to him on this. Ms. Barrans offered that she believes the department would consider the fact that these positions are not permanent employees and that would be reflected in the workforce forecast as an empty position, rather than a filled position.

Number 1809

REPRESENTATIVE SEATON responded that he would like confirmation on that point because if the current wording does not provide for [traveling nurses positions to be considered vacant], then he wants to change the language to accommodate that point.

MS. BARRANS assured Representative Seaton that the ACPE does have latitude through regulation to address these kinds of issues. She said if there is some factor that understates a shortage, that can be addressed by the ACPE. Ms. Barrans commented that she is aware of the concerns related to traveling nurses and the high costs associated with them.

MARY ELLEN BEARDSLEY, Assistant Attorney General, Commercial/Fair Business Section, Department of Law, offered to answer questions from the members on HB 404.

BRUCE JOHNSON, Director QS2, Association of Alaska School Boards, testified in support of HB 404. He told the members that when he was traveling in the Northwest Arctic at the end of January a speech therapist was traveling with him who originated that week from Wyoming. He explained that her job was to meet the letter of the law. Most villages do not have speech and language specialists available. The specialist was being contracted through SERRC in Juneau, to deliver services on approximately a six-week basis in the villages to train teachers and aides, Mr. Johnson commented. There is a real issue in some specialty areas, he said.

Number 1920

REPRESENTATIVE SEATON referred to the letter from Governor Murkowski [dated January 28, paragraph 2] in which it states:

ASLC predicts it can return \$260 million to the state over a three-year period...

REPRESENTATIVE SEATON pointed out that the bill refers to \$280 million, and asked for clarification on the addition \$20 million.

MS. BARRANS replied that the goal is to return \$260 million in net bond proceeds. The gross bonding amount will be somewhat higher than that because of the cost of issuing the bonds and a required fund reserve for the indenture out of the bond proceeds, she explained. In this way it is not a direct expense for the corporation to issue the bonds, she added. These [funds] allow for those additional expenses, Ms. Barrans reiterated.

REPRESENTATIVE SEATON commented that the corporation feels that the \$280 million incorporates the amount that the corporation originally identified that could be taken out for bonding.

MS. BARRANS said yes, that is correct.

REPRESENTATIVE SEATON said that loans are structured so the interest on the loans pays off the debt. He asked Ms. Barrans to explain how this will work and how much of an interest rate increase will be placed on students if there are \$280 million or \$260 million worth of loans and no one repaying, other than students who are paying on debts that have been acquired for student loans.

MS. BARRANS responded that there will not be an increase in student loan [interest] related to these bonds. She explained that the assets that will be returned from the state will come from an indenture that is no longer being used to finance education loans. The original indenture that was created in 1988 had very conservative debt service coverages in it. As those loans are paid off there is excess earnings on those loans. She commented that those are loans that were made anywhere from 2 years to 14 years ago at rates associated with the cost of those bonds. Ms. Barrans explained that because of the additional coverage that was in that indenture, as [those loans retire] those additional assets become available to return to the state. In structuring the return of capital, the ACPE has ensured that the interest of the primary customers, student borrowers, or family borrowers are protected. So the loans are at a very low rate. Ms. Barrans said that the ACPE has a three-

year process. The first stage happened this month when the ACPE issued bonds. In June the ACPE will revisit the situation and ensure that the cash flows that have been reserved are still appropriate, and then determine how much could be made available in FY 06. Then a year from June the same process will be revisited, she explained.

Number 2093

CHAIR WILSON asked how this plan works compared to past [practices].

MS. BARRANS explained that in 1988 when the Alaska Student Loan Corporation was established, the state transferred \$307 million in startup capital. She commented that ACPE also has the authority to issue tax-exempt bonds, which it has done each year. In 2001, a dividend was created and placed in statute. The corporation continues to pay that dividend. Ms. Barrans explained that this initiative is separate from that dividend. She added that the dividend will be somewhat diminished annually as a certain amount of assets are returned to the state, but ACPE will continue to pay a dividend.

CHAIR WILSON asked what the dividend [amount] was this year.

MS. BARRANS told the members that this year the dividend was \$5.6 million for FY 05.

CHAIR WILSON surmised that as the ACPE gets more money without the state's help, the amount returned as a dividend will be diminished because the state will have received the funds [that were originally given to it]. She asked if she understands that correctly.

MS. BARRANS replied that is correct. The ACPE expects that dividend to level out somewhere between \$4 million to \$4.5 million per year, but it will not grow. In response to Chair Wilson question, Ms. Barrans stated that the dividend will not go away.

MS. BARRANS explained that in order to implement the AlaskAdvantage Programs the ACPE began offering federal loans. In doing so, two new forms of cash flow were brought into the corporation. One is a special allowance payment that the federal government pays the ACPE to make and service federal loans. The ACPE converts those funds into reduced rates for borrowers, rather than collecting it as extra income, she added.

Number 2190

CHAIR WILSON asked if [the special allowance payment] is [used as] a Pell Grant.

MS. BARRANS replied that it is not used as a Pell Grant. She said she could have the finance people talk specifically about how it works. Generally, she explained, the way it works is if the corporation makes \$10 million in federally guaranteed loans, there is an income stream associated with that. It is called the special allowance payment, she added.

MS. BARRANS said that in addition to the special allowance payments there are quite a bit of bond proceeds received. She explained that because of the timeframe in which the bonds were issued, which was prior to October of 1993, if the ACPE originates federal loans with those proceeds from those bondings, in addition to the special allowance payment, the federal government will pay an interest of 9.5 percent yield. Ms. Barrans said these [loans] are being offered to Alaskan borrowers at below market prices. She summarized that [the interest yield on those federal loans] is a key factor in the ACPE's ability to come forward with this plan.

REPRESENTATIVE SEATON surmised that what Ms. Barrans is saying is that the Alaska Student Loan Corporation will be issuing a loan to the state and the state will not have to repay that loan. Is that correct, he asked. He said that he is still not clear on the interest from the bonds and where all the payments are coming from.

MS. BARRANS responded that she will use the bonds that were issued yesterday as an example of how all of this works [together]. The corporation issued \$78 million in bonds yesterday to produce a \$75 million return to the state, she said. The assets that were pledged to those bonds were consolidation loans which were made in 2003. She told the members that there was actually \$80 million in cash that came out of the old indenture that the ACPE was able to use to refinance loans that were set at a higher rate. She said that the reason the ACPE decided to do that, rather than propose a cash return to the state, was that the borrowers were paying on fixed rates that were considerably higher than rates that are being offered on loans today. The ACPE offered a 5.8 percent consolidation loan, and as a result the ACPE had these consolidation loan assets. The ACPE then pledged that money for

this indenture [of \$78 million]. So the money has been used once to reduce rates to borrowers. Now it is using that set of assets by creating a closed indenture which are the assets used to issue the bonds, she said. Ms. Barrans explained that as those consolidation loans payoff, it will pay down the bonds. She told the members that the proceeds will already have been expended by the state because [the proceeds are] earmarked to payoff capital projects. She summarized that is how phase one works. In phase two and three the corporation may need to look at different structures, as it is unlikely that will be the same structure used for phases two and three, she said.

Number 2317

CHAIR WILSON clarified that the state is really using the corporation as leverage to finance capital projects.

MS. BARRANS responded that is one way to frame it. The state gave the corporation this capital to start the Alaska Student Loan Program and now the capital is no longer needed, so it is being returned to the state by the state spending the funds on capital projects that are of a general state benefit. This is not part of the Alaska Student Loan Corporation's prime mission; it is promoting postsecondary participation, Ms. Barrans explained.

CHAIR WILSON asked if this practice puts the corporation in jeopardy in any way.

MS. BARRANS said no. The structure that has been put in place with the aggregate cap, and the process the corporation plans to follow would preclude any jeopardy to the corporation.

REPRESENTATIVE SEATON surmised that the asset consolidation loans are collateral for the bonding of the \$78 million.

MS. BARRANS replied that is correct.

REPRESENTATIVE SEATON said as the assets are paid off, not only the loans are being paid off, but also the bonds.

TAPE 04-12, SIDE B

REPRESENTATIVE SEATON commented that the funds are really being used to payoff the bonds that were given to the state. So when these bonds are paid off there will be nothing for the ACPE to

loan on. He summarized that any future student loans will require a bond.

Number 2345

MS. BARRANS agreed with Representative Seaton's statement. She told the members that the corporation already bonds out of a separate indenture. In 2002, the corporation created a new indenture for a number of reasons, she said. One of the reasons is that a separate indenture synched with the beginning of the new program which has very different features to the loan assets that are being made. She told the members that it also did not make sense because the structure of indentures in this century are different from those that were created in 1988. She explained that in 1988 the debt service coverage in that original indenture was 150 percent, so the ACPE had to have 50 percent more in assets than related to the debt in that indenture. Those excess [assets] that have been tied up in that indenture have not been used as working capital for current programs, it is being returned to the state.

REPRESENTATIVE SEATON suggested that Chair Wilson require that a flow chart accompany the legislation as it moves forward. He said he believes it would be much simpler for legislators to understand how the money moves than talking in general terms.

Number 2292

REPRESENTATIVE COGHILL commented that the entire portfolio has been wrapped up in this bond indenture.

MS. BARRANS responded that some pictures could be created; however, she said she is not sure how much clarity that would lend. There are three indentures in place, she explained. The first is the original 1988 master trust, which was used from 1988 to 2001. The second is 2002 master indenture that the corporation plans to use going forward and that has been used for the last three years, and will be used again this year. The [third] closed indenture is the mechanism used for returning the proceeds from those bonds to the state. She agreed that it is a very complex structure and would be willing to provide a diagram to the committee if that would be helpful. The indentures are independent of each other, she added. The corporation is working out of the 2002 [master trust] indenture, Ms. Barrans said.

Number 2246

REPRESENTATIVE COGHILL told the members that he has had the privilege of sitting in front of Ms. Barrans for the last six years. He said that he is impressed with the good the ACPE is doing and the returns to the state that have been accomplished. A number of years ago, the ACPE got behind the curve and Ms. Barrans has managed not only to get it stable and out of the red, but has been resourceful in earning more and still doing good things for Alaska.

CHAIR WILSON agreed that in her first year in the legislature the ACPE was in the "red." She asked Ms. Barrans if this is similar to programs in other states.

MS. BARRANS replied that the program is not similar because of the way the corporation came into existence. No other state has appropriated out of its general fund \$60 million to \$80 million to establish a [student] loan program in unsecured debt. She said that other state agency higher education authorities are given small amounts of working capital to begin with. Those programs are done primarily under a federal education loan structure that ensures the loans are guaranteed, so the risk on those loans was very minimal. What was different in Alaska is that these were unguaranteed loans that were offered to someone regardless of their credit. For the first wonderful few years the funds were given away if the students completed their degree and came back to the state to work, so the mentality of the borrowers were that it is not really a loan. The difficulty came in when transitioning from what was viewed as a state give away program to an entity that had to financially support itself. There have been no state funds received since 1992. That was the last year the corporation received any direct support from the state. It has been a period of recovery. Ms. Barrans said that FY98 was the last year that the corporation operated in the red, FY99 was a slight increase in income, and that has leveled off in recent years.

Number 2129

MS. BARRANS thanked Representative Coghill for his kind words. She said [the public] understands that this is a good loan program now. She said the ACPE has used the authority that the legislature has given it to garnish permanent fund dividends, leverage occupational and professional licenses, and garnish people's wages. She said that the current default rate is under 4 percent, so it is obvious that the borrowers understand that the funds must be paid back. She said that the improved

financial condition of the corporation has allowed the ACPE a wider variety of payment options for people when borrowers are struggling financially. For a number of years the ACPE was very hard-core.

Number 2088

MS. BARRANS told the members that rating agencies have looked at ACPE balance sheet over the past few years and smiled because the corporation has over collateralization. She said that the corporation was not comfortable recommending this plan earlier because there needs to be a few years of a demonstrated trend.

REPRESENTATIVE WOLF asked how collections of [default loans] from borrowers who move out of state are handled.

MS. BARRANS commented that there is a slightly lower default rate for those who are not in Alaska, so it is less of an issue for the ACPE. When ACPE is unable to collect, then the account will be transferred to a third party collection agency. The way the agency is compensated is related to their collections.

REPRESENTATIVE WOLF asked if this policy leads to a compromise in settlement at a smaller amount. He commented that bankruptcy [may be used as a tool to avoid payment].

Number 2021

MS. BARRANS responded that one benefit of being an education loan lender is that these debts are not dischargeable in bankruptcy proceedings. She added that after a bankruptcy proceeding it is more likely that the loan will be paid because many of the borrowers other debts have been discharged. Ms. Barrans told the members that the ACPE will pursue a debt for 10 years to 15 years. If after that period of time it has been unsuccessful [in collecting] then there may be a compromise on the debt if that makes sense, or ACPE may write it off if it is costing more money to continue to pursue repayment than is likely to be collected. Ms. Barrans said that the ACPE has loans [that have been unpaid] for 25 years and these folks are really surprised when tracked down.

Number 1981

REPRESENTATIVE COGHILL commented that Section 9 of this bill will also give the corporation more latitude in lien capabilities. He said he is always uncomfortable when

designating administrative authority to catch people. However, in this case it is a contractual obligation that is being addressed.

Number 1951

MS. BARRANS commented that the Department of Law had suggested that change because if there were a contest in court of the corporation's process it would not pass muster. She said that Mary Ellen Beardsley could comment on this point. Ms. Barrans said that it is important to delineate the corporation's due process so that it could withstand scrutiny in court.

REPRESENTATIVE COGHILL told the members that there is a very extensive hearing process, so he does feel comfortable with this.

Number 1930

REPRESENTATIVE SEATON moved to report CS HB 404, 23-GH2003\D, Cook, 2/12/04, out of committee with individual recommendations and the accompanying fiscal notes. There being no objection, CS HB 404(HES) was reported out of the House Health, Education and Social Services Standing Committee.

ADJOURNMENT

There being no further business before the committee, the House Health, Education and Social Services Standing Committee meeting was adjourned at 4:10 p.m.