

**ALASKA STATE LEGISLATURE
HOUSE STATE AFFAIRS STANDING COMMITTEE**

April 3, 2003

8:03 a.m.

MEMBERS PRESENT

Representative Bruce Weyhrauch, Chair
Representative Jim Holm, Vice Chair
Representative Nancy Dahlstrom
Representative Bob Lynn
Representative Paul Seaton
Representative Ethan Berkowitz
Representative Max Gruenberg

MEMBERS ABSENT

All members present

COMMITTEE CALENDAR

HOUSE BILL NO. 205

"An Act relating to service in the peace corps as an allowable absence from the state for purposes of eligibility for permanent fund dividends and to the period for filing an application for a permanent fund dividend; authorizing the Department of Revenue to issue administrative orders imposing sanctions for certain misrepresentations or other actions concerning eligibility for a permanent fund dividend and providing for administrative appeal of those orders; and providing for an effective date."

- MOVED HB 205 OUT OF COMMITTEE

HOUSE BILL NO. 161

"An Act allowing expenses of the correctional industries program that may be financed from the correctional industries fund to include the salaries and benefits of state employees."

- HEARD AND HELD

HOUSE BILL NO. 183

"An Act relating to retirement contributions and benefits under the public employees' retirement system of certain juvenile detention employees and juvenile correctional institution employees."

- MOVED HB 183 OUT OF COMMITTEE

HOUSE BILL NO. 93

"An Act relating to boating safety; repealing secs. 3, 5, 7, 9, 11, 14, 16, 18, 20, 23, 26, 27, and 30, ch. 28, SLA 2000; and providing for an effective date."

- HEARD AND HELD

HOUSE BILL NO. 215

"An Act repealing statutes that relate to art works in public buildings and facilities and that require a set percentage of construction costs to be spent on art."

- HEARD AND HELD

HOUSE BILL NO. 202

"An Act relating to false information or report."

- SCHEDULED BUT NOT HEARD

HOUSE BILL NO. 50

"An Act relating to the size of national flag to be displayed at polling places."

- BILL HEARING POSTPONED

HOUSE BILL NO. 60

"An Act relating to construction of a legislative hall."

- BILL HEARING POSTPONED

PREVIOUS ACTION

BILL: HB 205

SHORT TITLE: PFD: PEACE CORPS VOLUNTEERS & MISC

SPONSOR(S): REPRESENTATIVE(S) MCGUIRE

Jrn-Date	Jrn-Page		Action
03/19/03	0586	(H)	READ THE FIRST TIME - REFERRALS
03/19/03	0586	(H)	STA
04/03/03		(H)	STA AT 8:00 AM CAPITOL 102

BILL: HB 161

SHORT TITLE: CORRECTIONAL INDUSTRIES PROGRAM EXPENSES

SPONSOR(S): RLS BY REQUEST OF THE GOVERNOR

Jrn-Date	Jrn-Page		Action
03/05/03	0431	(H)	READ THE FIRST TIME - REFERRALS
03/05/03	0431	(H)	STA, FIN
03/05/03	0432	(H)	FN1: (COR)
03/05/03	0432	(H)	GOVERNOR'S TRANSMITTAL LETTER
03/05/03	0432	(H)	REFERRED TO STATE AFFAIRS
03/11/03		(H)	STA AT 8:00 AM CAPITOL 102
03/11/03		(H)	Scheduled But Not Heard
04/01/03		(H)	STA AT 8:00 AM CAPITOL 102
04/01/03		(H)	Heard & Held MINUTE(STA)
04/03/03		(H)	STA AT 8:00 AM CAPITOL 102

BILL: HB 183

SHORT TITLE:PERS BENEFITS FOR JUV INSTIT EMPLOYEES
SPONSOR(S): REPRESENTATIVE(S)WEYHRAUCH

Jrn-Date	Jrn-Page		Action
03/10/03	0491	(H)	READ THE FIRST TIME - REFERRALS
03/10/03	0491	(H)	STA, FIN
04/01/03		(H)	STA AT 8:00 AM CAPITOL 102
04/01/03		(H)	Heard & Held MINUTE(STA)
04/03/03		(H)	STA AT 8:00 AM CAPITOL 102

BILL: HB 93

SHORT TITLE:REPEAL BOATING SAFETY SUNSET
SPONSOR(S): REPRESENTATIVE(S)WEYHRAUCH

Jrn-Date	Jrn-Page		Action
02/12/03	0186	(H)	READ THE FIRST TIME - REFERRALS
02/12/03	0186	(H)	TRA, STA
02/18/03		(H)	TRA AT 1:30 PM CAPITOL 17
02/18/03		(H)	<Bill Hearing Postponed to 2/25/03> -- Meeting Canceled
02/25/03		(H)	TRA AT 1:30 PM CAPITOL 17
02/25/03		(H)	Heard & Held MINUTE(TRA)
03/27/03		(H)	TRA AT 1:30 PM CAPITOL 17
03/27/03		(H)	Scheduled But Not Heard
04/01/03		(H)	TRA AT 1:30 PM CAPITOL 17
04/01/03		(H)	Moved CSHB 93(TRA) Out of Committee MINUTE(TRA)

04/02/03	0730	(H)	TRA RPT CS(TRA) NT 1DP 2DNP 2NR
04/02/03	0730	(H)	DP: HOLM; DNP: KOHRING, MASEK;
04/02/03	0730	(H)	NR: OGG, FATE
04/02/03	0730	(H)	FN1: ZERO(DNR)
04/02/03	0730	(H)	REFERRED TO STATE AFFAIRS
04/02/03	0750	(H)	COSPONSOR(S): OGG
04/03/03		(H)	STA AT 8:00 AM CAPITOL 102

BILL: HB 215

SHORT TITLE: REPEAL ONE PERCENT FOR ART
SPONSOR(S): REPRESENTATIVE(S) STOLTZE

Jrn-Date	Jrn-Page		Action
03/26/03	0640	(H)	READ THE FIRST TIME - REFERRALS
03/26/03	0640	(H)	STA, FIN
03/26/03	0640	(H)	REFERRED TO STATE AFFAIRS
04/03/03		(H)	STA AT 8:00 AM CAPITOL 102

WITNESS REGISTER

REPRESENTATIVE LESIL McGUIRE
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Testified as sponsor of HB 205.

LARRY PERSILY, Deputy Commissioner
Office of the Commissioner
Department of Revenue
Juneau, Alaska

POSITION STATEMENT: Answered questions from the committee during the hearing on HB 205.

JERRY BURNETT, Director
Administrative Services
Department of Corrections (DOC)
Juneau, Alaska

POSITION STATEMENT: Commented on the proposed committee substitute, Version D, during the hearing on HB 161.

LINDA SYLVESTER, Staff
to Representative Bruce Weyhrauch
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Presented HB 93 on behalf of Representative Weyhrauch, sponsor.

MIKE FOLKERTS, Recreational Boating Safety Specialist
District 17
United States Coast Guard
Juneau, Alaska

POSITION STATEMENT: Testified in support of HB 93.

CAPTAIN JOHN SCHOTT, Chief of Operations
District 17
United States Coast Guard
Juneau, Alaska

POSITION STATEMENT: Testified on behalf of the United States Coast Guard in support of the State of Alaska's Safe Boating program, during the hearing on HB 93.

MARTHA MOORE, Injury Surveillance and Prevention Program Manager
Community Health & Emergency Medical Services
Division of Public Health
Department of Health & Social Services (DHSS)
Juneau, Alaska

POSITION STATEMENT: Testified on behalf of DHSS in support of HB 93.

CHARLES R. HOSACK, Deputy Director
Director's Office
Division of Motor Vehicles
Department of Administration (DOA)

POSITION STATEMENT: Testified on behalf of DOA in support of continuing the boating registration program, during the hearing on HB 93.

REPRESENTATIVE BILL STOLTZE
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Testified as sponsor of HB 215.

BARBARA BITNEY, Staff
to Representative Bill Stoltze
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Answered questions regarding HB 215.

CHARLOTTE FOX, Executive Director
Alaska State Council on the Arts (ASCA)
Anchorage, Alaska

POSITION STATEMENT: Testified regarding 1 percent for art and art in public places programs during the hearing on HB 215.

SYBIL DAVIS, Executive Director
Juneau Arts & Humanities Council (JAHC)
Juneau, Alaska

POSITION STATEMENT: Testified regarding the effects that HB 215 would have on an [art-related] program in schools and to emphasize the importance of an esthetic environment.

JUNE ROGERS, Director
Fairbanks Art Association (FAA)
Fairbanks, Alaska

POSITION STATEMENT: Testified regarding the importance of [art-related] programs that address youth and the health of communities, during the hearing on HB 215.

KENNETH DeROUX
Juneau, Alaska

POSITION STATEMENT: Testified on behalf of himself, regarding the issues of the cost of 1 percent for art and quality of life, during the hearing on HB 215.

JOCELYN YOUNG, Curator
1 percent for art program
Anchorage, Alaska

POSITION STATEMENT: Testified on behalf of herself, regarding some of the history of 1 percent for art and its benefit to artists, and explaining "1 percent" as it relates to construction costs, during the hearing on HB 215.

DUKE RUSSELL
Anchorage, Alaska

POSITION STATEMENT: Testified regarding the benefits of 1 percent for art during the hearing on HB 215.

ACTION NARRATIVE

TAPE 03-36, SIDE A
Number 0001

CHAIR BRUCE WEYHRAUCH called the House State Affairs Standing Committee meeting to order at 8:03 a.m. Representatives Holm, Seaton, Lynn, and Weyhrauch were present at the call to order. Representatives Dahlstrom, Berkowitz, and Gruenberg arrived as the meeting was in progress.

[Due to technical difficulty, the first few minutes of the meeting were not taped; during that time, the chair discussed the calendar.]

HB 205-PFD: PEACE CORPS VOLUNTEERS & MISC

CHAIR WEYHRAUCH announced that the first order of business was HOUSE BILL NO. 205, "An Act relating to service in the peace corps as an allowable absence from the state for purposes of eligibility for permanent fund dividends and to the period for filing an application for a permanent fund dividend; authorizing the Department of Revenue to issue administrative orders imposing sanctions for certain misrepresentations or other actions concerning eligibility for a permanent fund dividend and providing for administrative appeal of those orders; and providing for an effective date."

Number 0038

REPRESENTATIVE LESIL McGUIRE, Alaska State Legislature, sponsor of HB 205, told the committee that "the exact form" of the bill was heard [in 2002] and passed the House unanimously, but did not pass the Senate. She stated that in 1982, when the first permanent fund dividend (PFD) was given out, the legislature "took up a list of exemptions that they would allow for permanent fund dividend applications" or allowable absences. The Peace Corp was one of those allowable absences, she noted.

REPRESENTATIVE McGUIRE clarified that the bill was passed in 1983, but was retroactive to 1982. For 16 years, she said, Peace Corp volunteers enjoyed an allowable absence to go work overseas to help stabilize nations. She noted that, in 1998, in "a mysterious eleventh-hour political shuffle over in the Senate," Peace Corp volunteers were removed [from the list of exemptions]. Representative McGuire said that HB 205 would put Peace Corp volunteers back on the exemption list. She emphasized that it would not be a new exemption, but a restoration of "a very good, allowable absence."

REPRESENTATIVE McGUIRE noted that there currently are approximately 26 Peace Corp volunteers in Alaska who would qualify [for the PFD]. [If those 26 volunteers are paid a dividend], the difference to each dividend [issued to every Alaskan who receives one] would be 4-8 cents.

REPRESENTATIVE McGUIRE stated that she thinks the Peace Corp volunteer program is one that works hand in hand with the

military service. She noted the current situation in Iraq and said, "We all have an incredibly high regard for our military and what they do for us." She posited that the Peace Corp is a different way to serve the country; it's a way to proactively help countries build water and sewer systems, and provide food sources, for example. She added that it is a way to help stabilize nations so that groups like the Taliban [don't use food and water, for example, as a means of controlling people]. Representative McGuire referred to Maslow's [hierarchy of needs] and said that people can't get to "higher degrees of thinking" until they have the basics of shelter, food, and water, for example.

Number 0387

REPRESENTATIVE MCGUIRE told the committee that the men and women who volunteer for the Peace Corp do so for a small stipend of approximately \$300 a month and for a period of two years. She said that one of her constituents who was a Peace Corp volunteer said that she would have been able to come home for Christmas to see her family [if she had received a PFD]. She said that the application process to join the Peace Corp is involved. People don't enter into [the Peace Corp] lightly. She noted that the only outstanding debt allowed a Peace Corp volunteer is a student loan. She stated that people who enter into the program are making a huge commitment to the nation and to Alaska.

Number 0496

REPRESENTATIVE MCGUIRE, referring to another aspect of the bill, said that Larry Persily, from the Department of Revenue, informed her that there is a great amount of fraud [in applications] occurring in the PFD program. She explained that, in almost every circumstance where fraud is suspected and a sanction is brought about, a trial is required. When the question is asked whether it is worth the cost of a trial to pursue [a fraudulent application], the answer is no in every case, she stated. The PFD, at its highest [is still much lower than] the minimum cost of \$10,000 for a jury trial.

REPRESENTATIVE MCGUIRE referred to page 3, Section 4, of the bill, which read as follows:

* **Sec.4.** AS 43.23.035(c) is amended to read:

(c) In addition to any criminal penalties imposed by state law, if the department finds that an

[AN] individual [WHO], in claiming a permanent fund dividend, or an individual [WHO], in certifying another person's eligibility, willfully misrepresents, exercises gross negligence with respect to, or recklessly disregards a material fact pertaining to eligibility, the department may issue an order against the individual for the

(1) forfeiture of [FORFEITS] the dividend;
(2) imposition of [, IS SUBJECT TO] a civil fine of up to \$3,000; [\$5,000,] and
(3) loss of [LOSES] eligibility to receive the next five dividends following the forfeited dividend [DIVIDENDS. THE COMMISSIONER MAY COMMENCE PROCEEDINGS IN COURT TO ENFORCE THIS SUBSECTION].

REPRESENTATIVE MCGUIRE explained that the section allows for forfeiture of the dividend and an imposition of a civil fine, which would be lowered to \$3,000. She said that the reason the amount is being lowered is "so we don't have to allow for a jury trial." She explained that "once you start getting up above that \$5,000 threshold, plus your dividend, ... you're now getting into an area where a person would be entitled to a jury trial." She mentioned [lines 25-26], regarding the loss of eligibility to receive the next five dividends.

REPRESENTATIVE MCGUIRE, referring again to Section 4, said that "willfully misrepresents, exercises gross negligence with respect to, or recklessly disregards a material fact pertaining to, eligibility" means serious misrepresentation; it does not mean someone who forgets that one trip taken, for example.

Number 0715

REPRESENTATIVE MCGUIRE mentioned estimated recovery figures. She noted, "Last year, it was around \$100,000 to \$200,000, but it may even be higher." She said that it is unfortunate, but when there is "free money out there," there will be people who abuse [the dividend program].

REPRESENTATIVE MCGUIRE, in conclusion, said she thinks [HB 205] is a good statement for the Twenty Third Legislature to make to all the young men and women who would commit two years of their lives to live overseas, especially in a time when to do so is dangerous and when the future is uncertain. She said she conducted a survey last year to find out where former [Alaskan] Peace Corp volunteers are and what they are doing. She said that some are coming back to Alaska's school districts and

[teaching about] life overseas, for example. Often the skills learned overseas are brought back to the state and "transferred" to the young people of Alaska.

REPRESENTATIVE McGUIRE noted that President Bush continues to support the Peace Corp and deemed it important enough to mention in his inaugural address.

Number 0882

REPRESENTATIVE DAHLSTROM asked Representative McGuire for her thoughts regarding those people who leave the state to volunteer on religious missions.

REPRESENTATIVE McGUIRE responded that if Representative Dahlstrom were to introduce a bill "of that nature," she would be happy to co-sponsor it; however, she wants to focus HB 205 on the one original exemption that was already allowed, to avoid "the Christmas tree effect." She stated that the Peace Corp program is a federally recognized program with definitive boundaries and applications, whereas missionary work is harder to define and its organization varies from group to group. The challenge would be "trying to put a definition on that program, so that you don't have everybody claiming it."

Number 1031

REPRESENTATIVE SEATON asked if the bill is identical in all aspects to the form it was in the previous year.

REPRESENTATIVE McGUIRE answered yes.

Number 1065

REPRESENTATIVE GRUENBERG referred to page 3, lines 23-24. He said that those lines actually take the bill a step backwards. He suggested that what the sponsor intended to do was to allow the [Department of Revenue] either to administratively issue an order up to the maximum of \$3,000, or to allow the department to go into court to seek a higher amount. Under the current language of the bill, only the former choice would be possible. He noted that, in some cases, people have perpetrated frauds on the PFDs that are really large, and only allowing a \$3,000 fine won't be as meaningful a punishment as if the department was allowed to seek the higher amount in court. He gave an example of a family who has perpetrated fraud and has gotten thousands of dollars from the state. He said that if [the department]

does "go the court route," [the sponsor] may want to consider letting [the department] seek a higher civil fine.

Number 1216

REPRESENTATIVE McGUIRE told Representative Gruenberg that Mr. Persily drafted the language of the bill. She stated her understanding that it doesn't take away [the department's] ability "to do that," but is "in addition to any criminal penalties imposed by state law." She recommended deferring any additional comments regarding that issue to Mr. Persily.

REPRESENTATIVE GRUENBERG added, "And clearly they could still go criminally. I'm not -- that's totally aside."

Number 1278

CHAIR WEYHRAUCH said he had heard about a problem where people are receiving the PFD year after year without even being [in the state]. He said he thinks that there has to be "some sort of a signal where if you're going to get a PFD, you have to be in the state." He said that [the state] does not want to be exporting [the PFD]. He noted that the University [of Alaska] wants to attract local people, but students are given a dividend "for going out of state." He asked Representative McGuire for her philosophical views regarding continually granting numerous exceptions to so many people for all different reasons.

REPRESENTATIVE McGUIRE said she had anticipated the argument that Chair Weyhrauch made. She said that she thinks it is appropriate to constantly analyze what is being done with [the PFD] program, and whether or not [the legislature] is providing enough incentive for people to live, work, and attend school in Alaska. That is why, she explained, she felt compelled to put the penalties for misrepresentation in HB 205, to give the department more tools [to use]. She referred again to the original policy in 1983, which allowed the PFD exemption to Peace Corp volunteers. She said, "If you really are an Alaskan, [who] chooses to live and work in the state, but wants to take advantage of an opportunity that will benefit your country and your state - I think those are the kinds of exemptions that we really ought to be allowing."

REPRESENTATIVE McGUIRE noted that an estimated 83 percent of [Peace Corp volunteers] have come back to live and work in Alaska. She said that there may be a broader philosophical

question to analyze later, but she doesn't think it is appropriate to single out Peace Corp as "the place to start."

Number 1500

CHAIR WEYHRAUCH agreed and hinted that he may be introducing a bill to address [that broader philosophical] issue.

Number 1544

REPRESENTATIVE BERKOWITZ asked if [the Department of Revenue] tracks the number of people who are receiving out-of-state PFDs, and for how many years each of those people have been receiving a PFD.

LARRY PERSILY, Deputy Commissioner, Office of the Commissioner, Department of Revenue, answered the previously stated questions of the committee as follows: First, he said that HB 205 does not change state criminal statutes. He indicated that [the department] could still prosecute someone for fraud, under criminal statutes. He explained that [the bill] would just change the dividend statute to allow [the department] the option, within dividend laws, to penalize someone for fraud, administratively.

REPRESENTATIVE GRUENBERG referred to the current language on page 3, lines 16-24, that read "[\$5,000]". He said that the way he interprets that, legally, is that the department can file a civil case against the person. He said he thinks that is an extremely important option, whether or not it is exercised. He continued as follows:

In a criminal case, you have to prove the case beyond a reasonable doubt, and all sorts of criminal rights attach. In this case, you could simply go into small claims court and go after the person, with a preponderance of the evidence, and get up to \$5,000. [A] simple procedure, relatively. And legally, under the current language, you have that option.

REPRESENTATIVE GRUENBERG stated that he would hesitate to take away [the department's] right to pursue the other option. He suggested one way to retain that option would be to keep the original language with the new language, and to add a subjunctive "or".

MR. PERSILY responded that [the department] worked on [the bill] with the attorney general's office and the collective wisdom was to keep the value of the fine, plus the dividend, under \$5,000, so [the department] could deal with it administratively. If it was a serious case involving a lot of money, he said, [the department] would still have the option [of a criminal trial].

REPRESENTATIVE GRUENBERG asked, "So, you don't want the option of being able to go civilly for a higher amount in to court."

MR. PERSILY answered as follows:

We don't use it now. I guess the feeling is, looking at a more efficient government, ... we can keep the fines a little smaller, do it administratively, and when we get a really bad case, we can go criminal with it.

Number 1785

CHAIR WEYHRAUCH asked if it wouldn't make sense, in Section 4, [line 22], to have a "death penalty for dividends" if there is fraud or criminal intent to deceive.

REPRESENTATIVE MCGUIRE referred to [page 3], line 25, regarding the loss of eligibility to receive the next five dividends. She said that there was discussion regarding whether to make it five or ten years. She said, "Again, it came back to the attorney general's opinion that we had to keep the overall punitive impact low enough that you could do it administratively.

CHAIR WEYHRAUCH asked, "What's the threshold on this?"

MR. PERSILY explained that [the department] was trying to balance what's reasonable, versus what could be considered excessively punitive, and it thought that five years would be best. He added that the legislature could make it a lifetime ban, if it wanted to.

Number 1900

CHAIR WEYHRAUCH asked what the legal reason would be for not including the forfeiture of the dividend or all future dividends - to have the discretion of having the dividend death penalty.

Number 1920

REPRESENTATIVE McGUIRE mentioned a case from "our" supreme court that seemed to indicate that when sanctions are imposed that are serious enough to rise to the level of a criminal sanction, when they do so, [the person involved] is entitled to a jury trial. She added, "And that's the problem." She said that weeks were spent trying for the right language in the bill and someone could still challenge it; however, she said that she thinks, "We're sticking within a reasonable realm here, for an administrative action."

CHAIR WEYHRAUCH noted that "the statute says in the amendment" that, in addition to any criminal penalties enforced by state law, the legislature could impose a dividend death penalty. It could allow that discretion, he added. He opined, "If somebody wants to steal the people's dividend, then maybe they shouldn't receive it again."

REPRESENTATIVE McGUIRE noted that [Section 4, subsection (c)] only deals with those actions that are taken administratively, within the dividend program. She added, "Criminally, I don't know that that couldn't be imposed."

MR. PERSILY offered to speak with the attorney general's office and report back to the committee.

Number 1954

REPRESENTATIVE BERKOWITZ suggested making the penalty a loss of five dividends, rather than a loss of five [consecutive] years of dividends, because he said there might be a year when there is no dividend. In response to Representative Weyhrauch, he clarified that five dividends could extend for a period far in excess of five years.

Number 2025

REPRESENTATIVE GRUENBERG noted that the aforementioned case to which Representative McGuire referred is Baker v. Fairbanks, 471 P.2d 386 (Alaska 1970). He continued as follows:

It says, "If you're faced with imprisonment, a substantial fine, or loss of a valuable license, you're entitled to a jury trial." That was the seminal case and there have been some cases since that.

REPRESENTATIVE GRUENBERG said he thought there could be a civil penalty, with only a preponderance of the evidence and, perhaps, without a jury trial, although a jury trial would be warranted for a penalty forfeiture of the dividend forever. He said he thought that would be possible, because he doesn't believe that the dividend is a right; it's an entitlement. In a civil context, he added, the constitutional protections required are different. Regarding a civil penalty, he stated that it would be much easier, with the preponderance of the evidence, to make the case.

Number 2107

MR. PERSILY told the committee that he has been around for six years and it was before that that anyone was prosecuted criminally. He suggested that the committee consider that it might make more sense to err on the side of caution, adopt the bill, give the dividend division a few years to see how the administrative penalties work and how the district attorney responds to any criminal cases which might be found, and reconsider the legislation in a few years. He added, "Because we have no experience to report to you on fraud."

Number 2152

CHAIR WEYHRAUCH referred to Section 2, on page 3. He said that that section "amends to incorporate the Peace Corp provision." He added that it also states that [the Peace Corp volunteers] have to have been a resident of the state for at least six consecutive months. He asked what the policy problem would be if that were increased to 12 consecutive months.

REPRESENTATIVE McGUIRE responded that she doesn't have [a problem with that].

MR. PERSILY offered the following example:

If you moved here and established residency on December 31, 2001, then 2002 is going to be your eligibility year for the 2003 dividend. So, if you established residency in ... December 2001, you have to then have remained in Alaska for at least six months in 2002, before you leave for military, or for school, to retain your eligibility. You have to be here for at least six months before you leave on an allowable absence. If you're here, you've got to be here the whole year, but you can't leave on an

allowable absence, before you've been here six months in that year.

MR. PERSILY, in response to follow-up questions by Representative Weyhrauch, stated the following:

The "six-month" only applies to the dividend and only applies to that first year of eligibility. For example, if a new family moves here in the fall of 2001, ... buys a home, registers to vote, [and] does everything to establish residency, ... then 2002 is their eligibility year, [and] they'll get their first check in 2003.

They have a son who transferred here as a senior, graduated high school in May of 2002, and went to college. That six months allows that high school senior to start qualifying for the dividend, because he or she left on an allowable absence. If you didn't have that six-month ... rule, ... that college student would never get a dividend, because he or she would be gone all the time, until he or she returned.

So, it applies only to people who then leave on an allowable absence, where they're still considered a resident, they're just not physically residing here.

Number 2291

REPRESENTATIVE GRUENBERG mentioned that there is a case regarding divorce that states that a person can become a resident if he/she touches down with the intent to remain. He asked if the term resident, "in this body of law," means "physically present as a resident," or can people come into the state, touch down, claim residency, and then "go off" and continue to claim residency?

MR. PERSILY answered no. He explained that people have to physically be [in the State of Alaska], not only to establish residency the day they touch down, but also for at least half the next calendar year if they leave on an allowable absence and retain ties to the state - for example, their families still live in the state, or they have belongings in storage.

MR. PERSILY, in regard to a previously stated question by Representative Berkowitz, said that the department includes in its annual report how many of those people who apply for the PFD

are claiming an allowable absence. He listed the following people claiming exemptions on the 2002 dividend applications: 50 members of congressional delegation or staff, 200 who left to settle the estate of a deceased direct relative, 300 who were out caring for a direct relative with a life-threatening illness, 500 caring for a terminally ill relative, 700 who received continuous medical treatment, 6,000 military service personnel, almost 9,000 full-time college university students, and approximately 10,000 who were accompanying a resident who was eligible, such as the spouse or children of military personnel. In response to Representative Berkowitz, Mr. Persily estimated that the total was approximately 26,000, or 4 percent of the state's population.

CHAIR WEYHRAUCH commented that he thinks this is a "huge symbolic problem."

MR. PERSILY stated that [the department's] concern is that the policy is clearly defined and easily administered. For example, he noted that according to statute, it is an allowable absence for a person to attend [an out-of-state] college/university full-time. Fifteen years ago, the legislature defined "full-time" as attending a college or university that is accredited. He noted that there are several religious universities in the country that are not accredited, by choice. He said [the department] looked for a means to change that by regulation, which he added, "I just signed today, in fact." He noted that the change would include a college or university that is eligible for certain federal student loan programs.

MR. PERSILY, in response to [Representative Dahlstrom's] previously stated question regarding people on religious missions, recommended that, if the legislature wants to include those people, it does so in such a way that [the department] knows "what it means" and can administer it. The Peace Corp is clearly definable, he added.

Number 2475

REPRESENTATIVE BERKOWITZ stated that there is no "catch-all" exception that allows the division to use discretion as to whether people [qualify for the dividend under an allowable absence]. He emphasized that that is problematic. Regarding the 26,000 people who are Outside, he said that he would be curious to know what the average period of absence is, within each of the [aforementioned] categories.

MR. PERSILY clarified that the people [he previously listed] are those who claim an allowable absence during the year; it doesn't mean that they resided Outside the entire year. The number of payments actually mailed out of state "last year," he said, was approximately 16,000, or 2 percent.

REPRESENTATIVE BERKOWITZ asked if [the department] has a way of tracking how long those 16,000 people have been gone.

MR. PERSILY replied that he does not know, but can ask the people in Data Processing. He indicated limiting factors in the law. For example, no matter what reason someone is out of the state, he/she must return for at least 72 consecutive hours every other year. Before that law, he said that people would book a flight into the state, stay long enough to wash their hands in the Anchorage International Airport, and get back on another plane.

REPRESENTATIVE MCGUIRE indicated her willingness to work on the issue in another bill.

REPRESENTATIVE GRUENBERG stated that he dealt with the issue in past legislative sessions, and it is called the "touch and go" provision.

Number 2580

MR. PERSILY noted that the 72-hour rule is under AS 43.23.005(a)(4). He said that [the department] is allowed to waive that statute in one exception found in (f) in that statute, which is in a time of national military emergency. [That exception] was invoked within the last month, for the 2002, 2003, and 2004 dividends, he revealed, because some military personnel and their families will not be able to get back on the 72-hour rule.

MR. PERSILY noted that other than the 72-hour requirement every two years, there's a presumption in statute whereby if people are gone more than 5 years, have not maintained sufficient ties, and have not returned for at least 30 days during that 5-year period, they're out. He added, "And then there's a hard-and-fast 10 years; no matter why you're out, no matter how long you come back for - how frequently - you're out after ten."

Number 2637

REPRESENTATIVE BERKOWITZ opined that if people are "just sort of disappearing off the end of a five-year or ten-year period," and they've been collecting dividends all that time, they are in violation of the "intent to remain component," and [the legislature] ought to be able to "recover something from them."

MR. PERSILY, prefacing that what he was about to say would be more of a political issue for the legislature, stated that the vast majority of the people that [the department] observes "running into problems on the five-year rule" are in the military. He said that [the department] receives reams of letters from [military personnel] explaining why they cannot return or why "there is a problem." He continued as follows:

I'll be honest, some of the letters I find bordering a little bit on offensive, because they accuse the dividend division of discriminating against the military, not understanding the situation, and being un-American, and that's not the fact. We're trying to enforce the laws and the rules, and we don't pick on anyone in particular.

But, the presumption is, if you're not back 30 days in 5 years, you obviously must not have an intent to return, unless you can show why: serious medical problems, or, if you were stationed somewhere that you were not allowed leave time. But that 5-year rule is very controversial within the ranks of military applicants, so I guess I'm just warning you.

Number 2700

REPRESENTATIVE SEATON asked if there is a requirement that military personnel [claiming Alaska residency] select Alaska "on their transfer," as their number one priority for their next assignment.

MR. PERSILY answered that they must have Alaska as their official residence on their leave and earnings statement and list Alaska as their first choice [for transfer]; however, in many cases, the career options are not [available in Alaska]. He said, "So then what they say is they plan to retire here, and they search for property in Talkeetna." He stated, "Those become statements where we're trying to judge someone's intent, which is difficult."

Number 2739

REPRESENTATIVE HOLM moved to report HB 205 out of committee with individual recommendations and the accompanying fiscal note. There being no objection, HB 205 was reported out of the House State Affairs Standing Committee.

HB 161-CORRECTIONAL INDUSTRIES PROGRAM EXPENSES

Number 2751

CHAIR WEYHRAUCH announced that the next order of business was HOUSE BILL NO. 161, "An Act allowing expenses of the correctional industries program that may be financed from the correctional industries fund to include the salaries and benefits of state employees."

[In committee packets was a new proposed committee substitute (CS), Version D, labeled 23-GH1104\D, Luckhaupt, 4/2/03.]

Number 2775

JERRY BURNETT, Director, Administrative Services, Department of Corrections, stated his understanding that the proposed Version D would make it easier for the correctional industries to make sales to private entities. He also noted that Version D would change the words "have minimal negative impact on" to "be of benefit to", as it pertains to judging whether a program works with private sector companies in the work force. He noted that Version D has an effective date of [July 1] 2004.

MR. BURNETT stated that the department views the [proposed] changes as positive. He told the committee that the department does have some concerns regarding the effective date, because it doesn't allow the funding to pay state employee salaries in the next fiscal year; however, he said that the department is willing to work with the legislature on that issue.

MR. BURNETT, in response to a question asked by Representative Berkowitz at a previous hearing on HB 161 regarding how much furniture the state buys, noted that in fiscal year 2002 (FY 02) the state bought \$828,000-worth of furniture from the correctional industry, which equaled 96 percent of the revenue. To date in FY 03, the state has spent just over \$300,000 on furniture, which is right on track with the amount [spent by] the same time last year. He commented that the majority of furniture purchases are made in May and June.

Number 2869

REPRESENTATIVE BERKOWITZ asked what the comparable cost would have been if that furniture had been commercially purchased.

MR. BURNETT replied that [finding the answer to that question] is one of the assignments that the department's internal auditor is working on presently. In response to a follow-up question, he said he believes that prison industry furniture is less expensive than commercially available furniture. He indicated that there are opportunities for change regarding pricing and marketing.

REPRESENTATIVE BERKOWITZ said, "But that's not reflected in the fiscal note."

MR. BURNETT said, "Right."

Number 2900

CHAIR WEYHRAUCH noted that there is some concern from the private sector that it has to compete with the prison industry. He commented that there is a wage differential between the private sector and prison industries.

MR. BURNETT responded as follows:

Well, there is a correctional industries board which is required to make the finding. Currently, the correctional industries have minimal impact on the private sector. And, with the passage of this bill, you would have to make the finding that it would be of benefit to the private sector or to a labor force.

For ... free venture cooperative arrangements with the Department of Corrections and prison industries, the requirement is that the ... private sector company who benefits from prison labor pays minimum wage to the department. And the difference between what the department receives and the actual payments to the inmates is used to offset program expenses.

Number 2966

REPRESENTATIVE HOLM asked, "Did you not just say \$828,000-worth of furniture was purchased locally, through this program?"

MR. BURNETT indicated that [that was the amount] in FY 02.

TAPE 03-36, SIDE B

MR. BURNETT [listed some of the] system's plants. He mentioned wood furniture.

REPRESENTATIVE HOLM said, "It seems like an awful lot of money to me. I don't know about you, but it's a lot more than I get on a yearly basis as a salary. So I just think that that's a significant number, so we need to be very cautious." He asked about the laundry business.

MR. BURNETT said he does not have the figures for [the laundry business]; however, he noted that it generates a significant amount of income.

Number 2944

REPRESENTATIVE BERKOWITZ said that Mr. Burnett had indicated at the last hearing on HB 161 that the commissioner is working on a plan to "manage this transition." He asked Mr. Burnett if he has that plan.

MR. BURNETT answered no. He explained that it is in progress. He reminded the committee that he had mentioned at the last hearing that the current program manager is due to retire this month. He indicated that the department is determining "where to do the recruitment and how to do that."

Number 2915

REPRESENTATIVE SEATON moved to adopt the proposed committee substitute (CS), Version 23-GH1104\D, Luckhaupt, 4/2/03, as a work draft. There being no objection, Version D was before the committee.

Number 2900

REPRESENTATIVE BERKOWITZ noted that there are 2 employees for "each site," which totals 14 employees for 7 locations.

MR. BURNETT said, "Right - approximately."

REPRESENTATIVE BERKOWITZ stated that he would like to know what those individuals are doing, and what would happen to the

revenue that the state is generating if those individuals were not employed.

MR. BURNETT responded that [those are] good questions that will be included in the department's [considerations].

REPRESENTATIVE BERKOWITZ said, "It seems to me that that's something that we're looking at right now, and that if this legislation is before us, the appropriate time for us to look at it is right now."

MR. BURNETT said, "Right." In response to a follow-up comment by Representative Berkowitz, he reminded the committee that he had stated at the previous hearing on HB 161 that it is not the intent of the department to eliminate "these programs or these positions."

REPRESENTATIVE BERKOWITZ stated, "That seems the consequence of moving forward with this legislation when there's no plan in place." He said that perhaps the legislation might be good; however, it seems premature to bring it before the committee without being able to provide the answers to the legitimate policy questions that are being raised by the committee.

Number 2837

REPRESENTATIVE SEATON said that he still does not see what he had hoped for in the proposed legislation. He noted that his concern relates to the budget. He remarked that the way that [Version D] reads, if the program does not increase its revenue sufficiently to be able to pay the salaries, there is no other source identified for those salaries. The result, he noted, would be that prison industries would disappear because there would be no managers. Therefore, he said, if it is not the intent of the administration to only fund salaries and benefits to state employees out of this program, with no fallback position for maintaining that funding, then he would like to see the committee offer a letter of intent that it is passing the legislation along, only with the intention that the administration will maintain the program. Furthermore, the administration may use any revenues for salaries and benefits, but it will not, for lack of those revenues from this program, terminate the program.

Number 2759

CHAIR WEYHRAUCH asked Representative Seaton to draft a letter of intent for the committee to include with the bill and fiscal note before moving the proposed legislation out of committee at the next hearing on HB 161.

REPRESENTATIVE BERKOWITZ stated that [regardless of the letter of intent] he will object [to moving the legislation out of committee] if there is not a plan in place by [DOC]. He opined:

It seems precipitous of us to be making policy decisions when the administration hasn't brought forward to us adequate information to make good decisions. I realize this is a transitional period - there's a new administration [and a] steep learning curve - but when ideas are presented, they ought to be presented in such a way that the legislature has the information necessary to make quality decisions on them, whether we agree or disagree.

Number 2734

CHAIR WEYHRAUCH told Mr. Burnett that it would be beneficial to the committee if he would include in the letter of intent any of his statements regarding the administration's planning process.

CHAIR WEYHRAUCH announced that HB 161 would be held over.

HB 183-PERS BENEFITS FOR JUV INSTIT EMPLOYEES

Number 2700

CHAIR WEYHRAUCH announced that the next order of business was HOUSE BILL NO. 183, "An Act relating to retirement contributions and benefits under the public employees' retirement system of certain juvenile detention employees and juvenile correctional institution employees."

CHAIR WEYHRAUCH reviewed the highlights of the bill and said he wants to move the bill out of committee.

Number 2645

REPRESENTATIVE HOLM observed that he doesn't know how appropriate it is to go from a 30-year [retirement for juvenile institution employees] to a 20-year retirement, in one fell swoop. He indicated the committee should perhaps suggest a 25-year retirement.

CHAIR WEYHRAUCH announced that he would consider that a motion by Representative Holm to adopt Amendment [1], which would change the 20-year retirement to a 25-year retirement.

Number 2620

REPRESENTATIVE BERKOWITZ objected. He said all the testimony that the committee has heard [supports] the 20-year [retirement]. He suggested that if Amendment 1 is an effort to reconcile some of the financial impact, then perhaps that issue should be taken up in the [House Finance Committee]. He noted that the committee is hearing that juvenile justice officers are subject to the same conditions that peace officers in harm's way are, for example.

Number 2580

REPRESENTATIVE LYNN concurred with Representative Berkowitz. He stated, "This is a dangerous occupation and a 20-year retirement for dangerous occupations is not that uncommon." He noted that the military has a 20-year retirement, "going up to 30." He said he would [support] the 20-year retirement. He commented that people need to be younger [in those dangerous occupations].

Number 2525

REPRESENTATIVE HOLM said he just wanted to bring the subject forward and put it on the record, because "we can't afford to have people double- and triple-dipping like we have so much of."

Number 2509

REPRESENTATIVE HOLM withdrew [his motion to adopt Amendment 1].

Number 2494

REPRESENTATIVE SEATON moved to report HB 183 out of committee with individual recommendations and the accompanying fiscal note. [No objection was stated, and HB 183 was reported out of the House State Affairs Standing Committee.]

HB 93-REPEAL BOATING SAFETY SUNSET

[Contains discussion of HB 49]

Number 2428

CHAIR WEYHRAUCH announced that the next order of business was HOUSE BILL NO. 93, "An Act relating to boating safety; repealing secs. 3, 5, 7, 9, 11, 14, 16, 18, 20, 23, 26, 27, and 30, ch. 28, SLA 2000; and providing for an effective date."

[Before the committee was CSHB 93(TRA), Version 23-LS0230\Q.]

Number 2400

LINDA SYLVESTER, Staff to Representative Bruce Weyhrauch, Alaska State Legislature, told the committee that the proposed legislation is a continuation of work done in 2001 by then-Representative Bill Hudson, at the request of the United States Coast Guard. She said [that previous work] brought a fine boating safety program to the State of Alaska. The funding for [the program] is provided in large part by Wallop-Breaux trust fund monies, which she explained is federal fund money. By having a boating safety program in Alaska "on the books," the state was able to access a marine motor fuel tax, she said. Ms. Sylvester noted that [the state] has a program that provides boater education, as well as programs like "Kids Don't Float."

MS. SYLVESTER noted that one of the legislature's concerns in the year 2000 was that the funding would "dry up" on the federal level, and the state would have an unfunded program. She said that the bill was crafted "with repealers all through it." The proposed legislation would eliminate the repealers, she said, with the exception of an amendment made in the House Transportation Standing Committee. She explained that one of the most problematic portions of the [boating] safety law was that it required non-motor boats 10 feet and over - for example, paddle boats and kayaks - to be registered. That requirement has been eliminated from HB 93, she said. Now, she added, the proposed legislation applies only to the registration of motorboats. In conclusion, she noted that the Coast Guard has been relentless in this issue.

Number 2189

MIKE FOLKERTS, Recreational Boating Safety Specialist, District 17, United States Coast Guard, read his testimony as follows:

The Coast Guard, through the Secretary of Transportation, is directed to carry out a national Recreational Boating Safety program under Chapter 31 of Title 46, United States Code. The goal of the

program is to encourage the states to assume the major role in carrying out the boating safety mission.

Federal financial assistance to the states is provided through the boating safety account of the Aquatic Resources Trust Fund, also known as the Wallop-Breaux Trust Fund. Part of that eligibility requirement to receive the funding was achieved when Alaska passed House Bill 108, an Act Relating to Boating Safety, in the year 2000.

House Bill 108 was passed with a sunset clause that would allow the legislature to revisit the law, primarily to ensure that consistent and adequate funding was in place. House Bill 93 repeals that sunset, allowing the law to become permanent and helping build a long-term program that will continue to reduce recreational boating fatalities.

The United States Coast Guard supports House Bill 93 and will maintain the relationship with the State of Alaska as outlined in a Memorandum of Understanding between the state and the Coast Guard.

Number 2157

CAPTAIN JOHN SCHOTT, Chief of Operations, District 17, United States Coast Guard, read his testimony as follows:

The Coast Guard enthusiastically supports the State of Alaska's Safe Boating program. This program provides vital boating safety education for Alaskans, reducing the number of accidents, saving lives, and reducing the need for costly search and rescue.

The accurate vessel registration information available to us from the state is also essential to our search and rescue efforts.

Currently, with the homeland security concerns we all share, it's more important than ever that we educate boaters so they operate safely. This helps the Coast Guard and other public safety agencies maintain an appropriate homeland security posture with our limited surface and air assets.

Number 2121

MARTHA MOORE, Injury Surveillance and Prevention Program Manager, Community Health & Emergency Medical Services, Division of Public Health, Department of Health & Social Services (DHSS), told the committee the department enthusiastically supports HB 93. She stated that drowning has been a huge problem in Alaska for many decades. She said that she has been in the state for 24 years and knows approximately half a dozen people who were victims of drowning. Furthermore, she said she is sure that everyone in the room at present knows "a number of people who have drowned in this state." She said that it reaches the point where people start to think, "Well, this is just Alaska, this is the way it has to be." Conversely, Ms. Moore stated that, with her experience in injury prevention, she knows that it doesn't have to be this way. She noted that drowning is one of the most predictable and preventable causes of accidental death.

MS. MOORE told the committee that she collaborates with [Mr. Folkerts] and the Boating Safety Office regarding the Kids Don't Float program. She stated that she and [Mr. Folkerts] are also on the board of the Alaska Marine Safety Education Association (AMSEA) organization. Ms. Moore said that the boating safety programs that the federal money supports have been evaluated and proven to be effective. In conclusion, she said that last year there were 16 boating fatalities, the lowest number of fatalities in one year [for the past] decade. She added, "And I think that with these programs in place, it will just continue to go down."

Number 2003

CHARLES R. HOSACK, Deputy Director, Director's Office, Division of Motor Vehicles, Department of Administration (DOA), told the committee that he was available to answer questions. In response to a question by Chair Weyhrauch, he stated that the department supports the continuation of the boating registration program. He stated that the department thinks that - as the witnesses from the United States Coast Guard have previously stated - "it is an important safety aspect." He said, "The committee substitute before you does eliminate the need to register the non-powered boats, so there will be a slight decrease in revenue." He said that the non-powered boats require a \$10 fee for a three-year registration, as opposed to the \$24 fee for the powered boats. [The department] will be submitting a fiscal note that will show that decrease in revenues.

[Chair Weyhrauch passed around the complete registration record for his 16-foot Boston Whaler.]

Number 1891

REPRESENTATIVE GRUENBERG asked if the Department of Natural Resources (DNR) would administer this.

Number 1886

JEFF JOHNSON, Boating Law Administrator, Office of Boating Safety, Division of Parks & Outdoor Recreation, Department of Natural Resources (DNR), answered that yes, the Alaska Boating Safety program is currently administered by DNR through the Division of Parks & Outdoor Recreation.

MR. HOSACK, in response to a question from Representative Gruenberg, said there is a fiscal note missing from the committee packet. He stated that because [of] "the amendment to eliminate the requirement to register non-powered boats," there would be a decrease in revenue, estimated to drop from the \$39,000 currently collected to approximately \$35,000 a year.

MR. FOLKERTS, in response to a question by Representative Gruenberg, reiterated that the program is federally funded. He added that it is almost exclusively [supported by] federal funding and registration receipts; "there's no money out-of-pocket for the state on this." In response to a follow-up question from Representative Gruenberg, he said that the amount of federal funding varies. He explained that it [involves] a three-part program, which is based on the number of registrations "last year." He stated that he thinks "the federal funding portion of it was slightly in excess of \$400,000."

REPRESENTATIVE GRUENBERG said, "I gather ... that there was some concern about ... taking this over, because what happens when the federal funding goes away?"

MR. FOLKERTS answered yes, there was concern that there would be an unfunded mandate to the state; however, in this case, when there's no state money being applied to the program, "if the law were to go away, so would the program and so would the money."

Number 1705

REPRESENTATIVE GRUENBERG noted that the House Judiciary Standing Committee was faced with a similar question over a bill regarding federal money for DNA identification for criminal justice [HB 49]. He noted that he offered an amendment adopted by [the House Judiciary Standing Committee] that stated, in that case, that "the Commissioner of Public Safety shall notify the president of the Senate and the speaker of the House of Representatives if, at any time after the effective date of the bill, the federal government fails to pay the cost of the DNA identification registration system." He suggested that that amendment could be tailored to fit [HB 93] and may be a way for the legislature to know if the government stops funding [the boating safety program].

Number 1639

CHAIR WEYHRAUCH stated that the bill would have to be held, pending the missing fiscal note.

REPRESENTATIVE GRUENBERG said, "That was Section 14 of the bill."

Number 1621

REPRESENTATIVE BERKOWITZ referred to part of Section 2, which read as follows [on page 2, lines 13-20, of the House Transportation Standing Committee CS, original punctuation provided]:

- (4) a boat that is not equipped with mechanical propulsion [, THAT IS EXCLUSIVELY PADDLED, POLED, ROWED, OR POWERED BY WIND, AND THAT IS
 - (A) UNDER 10 FEET IN LENGTH; OR
 - (B) OPERATED IN THIS STATE FOR A PERIOD NOT EXCEEDING 30 DAYS IN A CALENDAR YEAR BY A PERSON WHO HAS NOT ESTABLISHED RESIDENCY AS DESCRIBED UNDER AS 01.10.055];

REPRESENTATIVE BERKOWITZ, regarding "a boat that is not equipped with mechanical propulsion", said, "It seems to me that you could read that in such a way that you're excluding boats - that might be equipped with outboards, but currently don't actually have the outboards mounted - from registration, which would have an impact on the fiscal note."

MR. FOLKERTS replied that if a vessel, such as a rowboat, does not have an outboard motor attached to it, and it is exclusively

rowed or pulled, then it would be exempt under "this committee substitute" from the registration process.

Number 1555

REPRESENTATIVE BERKOWITZ stated his understanding that the CS from the House Transportation Standing Committee amended the section regarding "THAT IS EXCLUSIVELY PADDLED, POLED, ROWED, OR POWERED BY WIND", which he said leaves the following boats that are exempt: "a boat that is not equipped with mechanical propulsion". He explained that a Lund, or a Whaler, for example, without the outboard mounted, is "not equipped with mechanical propulsion"; therefore it would not be subject to registration requirements.

MR. FOLKERTS responded that, if [Representative Berkowitz] had a 22- or 24-foot Boston Whaler, without any type of mechanical propulsion, it would be exempt from registration. He added, "And I would love to watch you dock in a wind, sir."

CHAIR WEYHRAUCH ask Mr. Folkerts if there will or will not be a fiscal note.

Number 1507

MR. FOLKERTS, referring to the previous comments of Mr. Hosack, stated his belief that the original HB 93 would not require a fiscal note because there would be no fiscal impact; however, the CS would reduce the amount of registration monies available to the state by removing the registration requirement for non-powered boats.

Number 1480

REPRESENTATIVE SEATON asked what percentage of the registration applies to non-powered boats.

Number 1452

MR. HOSACK answered that, currently, there are 56,900 registered boats. Of those, 7,100 are non-powered boats. He said, "Last year, we had about 17,900 transactions from motorized boats and [3,500] transactions from non-powered boats." In response to a request for clarification from Representative Seaton, Mr. Hosack explained that the registrations are valid for a three-year period. He added, "So, of those total boats, we'll see them once every three years, unless they change ownership."

Number 1384

REPRESENTATIVE HOLM asked Mr. Hosack, "If you don't have the \$35,000, you have no access to the general fund to get that money back any place. Is that correct?"

MR. HOSACK answered that is correct.

REPRESENTATIVE HOLM stated, "If that were true ... sir, then there is no negative impact to your operating budget, or to the revenue stream of the State of Alaska. There's only a negative impact to how much money that you have to spend." He asked if that is correct.

MR. HOSACK answered, "I don't believe so." He stated that "last year," the total collected was \$456,600 in boat registrations, which included both motorized and non-motorized boats. He reiterated that \$35,000 of that was from the non-motorized boats and [that money would not be collected if the proposed CS is passed], which decrease the revenue going into the state's general fund. That's what a fiscal note would reflect, he explained.

Number 1302

REPRESENTATIVE HOLM asked Mr. Hosack if it was his assessment that, by decreasing the workload, there would be no effect on the cost of the operation.

MR. HOSACK answered that there will be associated costs for the tabs and mailing, for example, as well as "about ... half a position," based on the previously stated transaction numbers.

REPRESENTATIVE HOLM asked how that would then translate to a positive impact on the cash flow of the department.

MR. HOSACK responded that he does not believe that it will be a positive cash flow. He said, "My fiscal note will reflect a reduction in the revenue due to not registering the non-motorized boats; it will reflect a decrease in costs for those 3,500 transactions, which we'll no longer have to do."

REPRESENTATIVE HOLM asked if Mr. Hosack was stating to the committee that the cost of those transactions is less than \$10 a piece. In response to a comment by Mr. Hosack, Representative

Holm clarified that he was asking if the cost to the department of providing those registrations is less than \$10 per unit.

MR. HOSACK answered yes. He continued as follows:

Our total fiscal note for the boating bill, as it was originally passed - in the current fiscal year - is, I believe, \$378,000. We took in \$456,600 in revenue in fiscal year 2002.

Number 1165

CHAIR WEYHRAUCH requested that Mr. Hosack produce the fiscal note by tomorrow.

MR. HOSACK agreed to do so.

REPRESENTATIVE SEATON asked that the fiscal note reflect an estimate of the "half position" previously mentioned.

REPRESENTATIVE GRUENBERG asked, "If there's federal money coming in, and there's revenue from the sale of these registrations, isn't there a considerable profit to the state?"

Number 1090

MR. FOLKERTS explained that there is a benefit to the state, in that, by law, 75 percent of the monies coming in is designated for education, which he said is "what the state's boating program does." He suggested that Mr. Johnson may have more to add to the answer. In response to a follow-up question by Representative Gruenberg, he said that he believes that the other 25 percent is used administratively, perhaps to help the Department of Public Safety "do the enforcement portion of it," for example.

Number 1040

MR. JOHNSON noted that there are several qualifiers that all 56 states and territories must satisfy in order to qualify for federal [funding]. Boat registration is one of those, he said. If [Alaska] fulfills those requirements, the registration receipts that used to be paid to the federal government, and therefore went into the U.S. Treasury, now remain in the State of Alaska. Furthermore, the state qualifies for the federal grant money, which it didn't qualify for before. The net benefit to the state, estimated in FY 03, totals \$490,000.

CHAIR WEYHRAUCH asked Mr. Johnson and Mr. Hosack to work together to prepare the fiscal note previously requested, so that they are "both on the same page."

[HB 93 was held over.]

HB 215-REPEAL ONE PERCENT FOR ART

[Contains brief mention of HB 134]

CHAIR WEYHRAUCH announced that the next order of business was HOUSE BILL NO. 215, "An Act repealing statutes that relate to art works in public buildings and facilities and that require a set percentage of construction costs to be spent on art."

Number 0991

REPRESENTATIVE BILL STOLTZE, Alaska State Legislature, sponsor of HB 215, told the committee the bill was not new, noting that his "colleague from District 20" probably had a previous opportunity to vote on some permutation of this bill in the past. He indicated that he was the beneficiary of a considerable amount of research on this issue that had been done by [former] Representative [Mark] Hanley. Representative Stoltze said that he would be approaching the merits of the 1 percent for art from the fiscal rather than the aesthetic perspective.

Number 0833

REPRESENTATIVE STOLTZE said that with more school construction and more new projects, each dollar would need to be spent more intelligently by weighing all of the costs involved. He referred to his presentation a few days ago of [HB 134], "a prison bill," during which he had asked the Department of Corrections [how much] 1 percent [for] art would amount to on the "Sutton proportion" [a proposed prison facility under HB 134]. He was given the estimated amount of \$1.3 million, which he said he found to be staggering. He said that Representative Holm was concerned about the cost of public facilities. He added, "That really brought that to home, that's why I asked him that question." Regarding prisons, he said, given the choice, he'd rather allocate towards officer safety or more beds. He said he expected that there would be quite a bit of testimony on HB 215, adding that he respects a divergence of opinion and also that he comes from a family involved in the

arts, with his grandmother [Margaret G. Mielke] being the first poet laureate [of Alaska].

Number 0656

REPRESENTATIVE SEATON asked Representative Stoltz to explain the zero fiscal note.

REPRESENTATIVE STOLTZE responded that it was probably because the Department of Transportation & Public Facilities (DOT&PF) didn't have any major facilities being constructed this year. He said that obviously there was a cost involved, but this was difficult to quantify. He told the committee that getting information from state agencies can be difficult and that "this probably hasn't been the best-run program that the state's ever put out." He noted that there have been innumerable audits.

REPRESENTATIVE SEATON mentioned that the fiscal note goes through [2009], shows a zero amount, and does not include any analysis.

Number 0509

BARBARA BITNEY, Staff to Representative Bill Stoltze, Alaska State Legislature, said it was very difficult to obtain the funding analysis. She explained this was because in 1975 all construction projects were under [DOT&PF] and were gradually released so that eventually, for example, responsibilities for school construction projects were transferred from DOT&PF to [the Department of Education and Early Development]. She said there are other instances such as the Alaska Court System, wherein policies and procedures have been developed similar to DOT&PF's. With this being split out among agencies, one source doesn't have the information as to cost savings. She said that DOT&PF can authorize the purchase of art during the construction phase. She said that the costs aren't being tracked, so it is not easy to obtain information in a simple format.

Number 0423

MS. BITNEY referred to an audit of January 4, 1999, by the Legislative Audit Division explaining that there are 13 Department of Law memorandums detailing the discussion on what is and what is not applicable.

Number 0400

CHAIR WEYHRAUCH asked if DOT&PF could develop a fiscal note that would reflect the fiscal impact, if it were given more time to do so.

Number 0352

MS. BITNEY replied that she didn't know the answer to that question. She added that after attempting to gather information for several weeks, all she ended up with was the art in public places fund, and instead of people depositing money into the fund and then purchasing art, it was done "directly at construction"; therefore, the fund doesn't accurately reflect the percentage of money being spent.

Number 0330

REPRESENTATIVE HOLM referred to an earlier conversation with Representative Stoltze in which it was intimated that the percentage was 1 percent for state projects but less than that for other projects within the state.

REPRESENTATIVE STOLTZE said he believed it was in the late 1970s that there was a statutory change for schools in rural Alaska in which the percentage was reduced to 0.5 percent. He said this isn't new - value judgments have been made in the past, depending upon such things as intrinsic value or construction costs.

REPRESENTATIVE HOLM asked why the number used was 1 percent.

REPRESENTATIVE STOLTZE surmised that it mirrored a federal program and said he suspected it was modeled after federal law.

Number 0170

REPRESENTATIVE HOLM asked if it made sense to have a requirement without having a way to audit, track, or to ensure accountability.

REPRESENTATIVE STOLTZE replied that this was a multi-committee, bicameral process and that this may evolve to a lesser percentage.

REPRESENTATIVE HOLM suggested that whether the institution involved was a jail or a school would indicate a different necessity for art.

REPRESENTATIVE STOLTZE agreed that these were valid points to consider.

Number 0079

REPRESENTATIVE BERKOWITZ interjected that this only relates to art in public places, so regarding prison facilities, it would not be art within the entire institution, it would just be within the public sections of that facility. It would not go to areas like bridges or sewer facilities but just to public facilities.

REPRESENTATIVE STOLTZE indicated that the prisons are included, noting that the commissioner is struggling to incorporate the art costs into construction.

REPRESENTATIVE BERKOWITZ asked if the audit could be made available.

The committee took an at-ease from 9:38 a.m. to 9:41 a.m.

TAPE 03-37, SIDE A

Number 0001

CHAIR WEYHRAUCH referred to page 2, Section 3 of the bill, which allows the construction of memorials to Alaska veterans. He said, "I'm just wondering, if we're doing away [with] 1 percent [for] art, should we do away with the construction of memorials [to Alaska veterans]?" He told Representative Stoltz that the question is more or less rhetorical.

Number 0076

REPRESENTATIVE STOLTZ responded that there certainly isn't a mandate "by percentage for those." He said he thinks that "this actually refers to the 1 percent [for] art not applying to that." He opined that the way the 1 percent [for] art has been structured through a committee process; the committee wouldn't want to create that clash between the arts community and the veterans community. He said that Representative Gruenberg probably remembers the visual arts center in Anchorage, Alaska. He added, "It's probably very intelligent that those that proceeded us didn't apply the 1 percent [for] art to the veterans' memorial and probably prevented a lot of political animosity."

Number 0151

REPRESENTATIVE GRUENBERG stated his understanding that there are so many legal opinions because the art projects are spread out among "the departments," and when "they did this audit," legal opinions [were necessary for each project].

Number 0266

CHARLOTTE FOX, Executive Director, Alaska State Council on the Arts (ASCA), stated that she thinks that when the legislation was written in 1975, it was pretty clear that the state took its responsibility seriously to ensure that all Alaskans have access to the arts. She said that she likes to think of art in public places as "art in surprising places," because it is outside of the normal galleries and museums.

MS. FOX said that Representative Stoltz had previously stated a good point - an issue that the people who work at "the agency" struggle with - that there's really no clear method of how the art in public places fund works. The two statutes that deal with "percent for art" and "art in public places" were well-intentioned, but didn't give anyone real authority to "oversee the program or have any enforcements."

MS. FOX stated that [ASCA] is concerned and interested that the program be a success, but has not been given any authority to make sure that 1 percent for art is always set aside, for example. She said that a lot of times [ASCA] doesn't even know that a project is going on. She said that she agrees and that the audit shows that something needs to be done, but she doesn't want [the program] abolished, because it's very important. She told committee members that she thinks they will hear [through] other testimony that the program is vital, provides jobs to Alaskans, and, basically, doesn't cost the State of Alaska any money out of its operating budget. She added, "So, it's a win-win program," and it needs to be operated efficiently.

REPRESENTATIVE STOLTZ thanked Ms. Fox for the help she has given to him and his staff.

Number 0583

SYBIL DAVIS, Executive Director, Juneau Arts & Humanities Council (JAHC), told the committee that she has been a resident of Alaska since statehood and is a concerned citizen. She continued as follows:

What struck me first and foremost is that ... because they have to meet Alaska standards in art, [the state requires] our Alaskan students to develop an understanding and appreciation of art, and yet House Bill 215 would eliminate a program that feeds right into that.

MS. DAVIS opined that Alaska is a "magnificently beautiful" state. Furthermore, she stated that it is critical that the imprint and physical mark that is made in the state should be esthetic. She said, "Our environment is extremely critical." She told the committee that the first thing she noticed when she walked into the committee room was its "colorful backdrop" [referring to a textile "northern lights" piece, created by the Auke Bay Elementary students].

MS. DAVIS told the committee that Lieutenant Governor Loren Leman's staff came into the Juneau Arts & Humanities Council office in need of art for their walls and was able to borrow art from the council. She said, "It just reinforces how critically important our environment is. What we live with, what we see every day, and what we nourish our students with is critical."

Number 0737

REPRESENTATIVE BERKOWITZ shared a comment he had received from an artist. He said, "Apparently, someone had asked [Winston] Churchill why they were continuing funding for the arts during the war, and [Mr. Churchill] said, 'That's what we're fighting for'."

Number 0815

JUNE ROGERS, Director, Fairbanks Art Association (FAA), told the committee that she agrees with the previously stated points made by both Ms. Davis and Ms. Fox. She indicated the bill's fiscal intent language stating that other needs more important than the 1 percent for art expenditure are being considered. She stated that she takes exception to that.

MS. ROGERS said that she finds that the best value is gained from working with programs that address youth and the health of communities, to make certain that jails are less filled, rather than more filled. She said she hopes that youth who are in [juvenile detention] facilities have access to art materials, "so that we can continue to try to reach them, to address their

relationship to the community in a way that's most positive for all of us."

MS. ROGERS said that FAA works with the school district, the state arts council, and [other] organizations in the state. She mentioned a recent arts conference attended by representatives from major arts organizations. She told the committee that she spoke at length with a woman from Seldovia, [Alaska], who is working desperately to address problems of "a variety of community ills through the arts," such as alcoholism. She stated that art in public places is "the one way that can address this across the board for all (indisc.)." She indicated working in a positive way to address the issues.

Number 1002

REPRESENTATIVE HOLM thanked Ms. Rogers for all the work that she's done for the arts community in Fairbanks, Alaska.

Number 1000

MS. ROGERS mentioned libraries. She stated that she thinks public art is a public museum. Every community in the state does not have the funds for a museum, and the 1 percent for art projects provide public access to art. She referred to a previously stated point made by Ms. Fox that this doesn't save money, but just reallocates money. She said, "I don't think that there is a possibility of finding a better value for those dollars."

Number 1120

KENNETH DeROUX told the committee that he is an artist and a resident of Juneau, Alaska. He noted that he created one piece of public art for the state in the 1980s, as well as participated on "a number of panels, back in the 1980s, when the program had more life to it." He said that he is a curator at the Alaska State Museum, [Juneau]; however, he is on leave and testifying on behalf of himself.

MR. DeROUX said that [the issues surrounding] the bill have been discussed repeatedly, back in the 1980s. He stated his belief that the 1 percent for art program is a model of the federal 1 percent for art program. Art in public places is a feature of civilized countries all over the world. Mr. DeRoux said that probably one of the more notable federal programs was the WPA program [part of the U.S. Work Progress Administration Federal

Writers' Project and Historical Records Survey] back in the 1930s, which [not only] made work for artists, but also created beautiful works of art throughout the country, which are still appreciated today.

Number 1218

MR. DeROUX noted two issues: the cost of the program, and the quality of life issue. Regarding the cost of the program, he said that he thinks the public frequently perceives the 1 percent as [an additional cost] to construction programs. He stated that it is 1 percent of the construction cost, which is "arrived at independently." He explained that the 1 percent for art is built into the project as a feature of it, but doesn't really detract from the specifications of that project. The cost of a [construction] project can change significantly, he said, depending on who is doing the specs. Mr. DeRoux said that a small project is currently underway at the [Alaska State] Museum. He said, "If somebody is not watch-dogging every step of the way, there's a lot of money in any given project that can go into one thing or another thing."

Number 1337

MR. DeROUX said he knows that (DOT&PF) does not like to administer the program, [because] it is not a familiar area and is, perhaps, extra work that can create administrative costs within personnel budgets. He said that the arts council would like to see the program administered better, but frequently does not have the money to "watch-dog it."

Number 1390

MR. DeROUX stated his belief that the money goes into a fund that can be used to purchase artwork for the state art bank, which then can be used in public buildings. He noted that the art bank is another related program. He told the committee members that if they saw what is in the art bank and where it is [displayed], they would be impressed at how well Alaska does at "getting its art around and really dressing up its buildings."

Number 1411

MR. DeROUX returned to the quality of life issue. He told the committee that he had attended a conference in Anchorage, Alaska. The keynote speaker was a school administrator from an inner city district in a big East Coast city who testified to

the importance of the environment of schools. Mr. DeRoux said that the speaker talked about a school in an industrial zone that was designed by a good architect and cost more money than normal, in order to be a facility that the students could be proud of. The students were proud of the school and vandalism dropped dramatically. Furthermore, the school became a magnet for events and, as more people used the school, the neighborhood blossomed as well. Mr. DeRoux posited that the end result was because of the concern for the quality of the environment.

Number 1509

REPRESENTATIVE LYNN asked Mr. DeRoux to explain how 1 percent of the construction cost is not an additional cost to the project.

MR. DeROUX stated that it is his understanding that [the 1 percent] does not actually increase the cost of the project.

REPRESENTATIVE LYNN indicated the 1 percent is built in; however, if there was no 1 percent, wouldn't that make the cost of the project 1 percent less?

MR. DeROUX said that he does not "cost out" projects and therefore does not understand the process completely. In response to a follow-up question by Representative Lynn, he suggested that [DOT&PF] could perhaps explain the issue.

Number 1610

JOCELYN YOUNG, Curator, 1 percent for art program in Anchorage, Alaska, testifying as a private citizen, stated that the municipality [of Anchorage] passed its own ordinance in 1978, after the state law was passed in 1975, because major construction projects were beginning and Anchorage wanted to have control over the funds and make decisions on a very local level. The people who work in the buildings are the ones who are making the decisions about the artwork, she said; therefore, the artwork chosen will be different from place to place.

MS. YOUNG noted that Alaska was the tenth state in the country to pass a 1 percent for art statute, and now there are hundreds of programs throughout the country, supporting the addition of artwork for private and public buildings. The program in Alaska is seen as one of the best in the country, she said. Artists within the state, and those who have lived in Alaska previously, are proud to claim that they have work in the collection, she said.

MS. YOUNG said that, in Anchorage, 1 percent is the cost set aside for the artwork in its buildings. When projects are bid upon, she said, 15-20 percent of the budget is usually for contingency alone. The 1 percent funds would not translate into better building material if the program was no longer in existence; it wouldn't be used for stronger structural support or better flooring, for example, because there are codes in place that "already address these things." Ms. Young said that those funds would be lost to the artists and to the structures, and would be reabsorbed into the construction of the project.

MS. YOUNG said that the artists benefit from the challenge of creating designs and projects "at this scale." She said, "This is a way to treat our artists in our state and community like professionals, on a par with architects and designers and other project personnel." She stated that 1 percent may look like a large amount of money, but a lot of artists are not making very much money on these projects. She explained that there are a lot of expenses that go into building public art. Many artists, she said, "do this" because they love to see their artwork out there for the general public to enjoy, and they want to enhance the buildings.

MS. YOUNG noted that she is very familiar with the state program, because the program in Anchorage, Alaska was modeled after it. She told the committee that she hopes it finds lots of reasons to support public art and "few reasons to support HB 215."

Number 1842

REPRESENTATIVE GRUENBERG asked if Ms. Young is aware of any other states that have chosen to balance their budgets by repealing "this kind of a program."

MS. YOUNG answered no. She said she has been hearing that more codes are being passed in municipalities [within other] states that require private development to also include public art.

Number 1888

REPRESENTATIVE SEATON referred to an article from the Homer Daily News that speaks to [the issue of public art] and addresses the Alaska Center for the Performing Arts (ACPA), in Anchorage, Alaska, regarding ACPA's use of 1 percent [for] art money towards design elements of the carpets, railings, and

lighting. He asked if elements [that are incorporated into the building, such as carpets] count as those that don't necessarily increase the cost of the project by 1 percent.

MS. YOUNG explained that, for example, an artist is selected out of proposals submitted to develop a design for the upholstery in one of the theatres, and is paid a nominal design fee of, perhaps, \$5,000 to oversee "the running of the mill of ... their design and installation." The upholstery was going to be milled anyway, she said, "so this is a way to stretch the 1 percent for art dollars."

Number 1990

DUKE RUSSELL testified that he is a veteran artist and a "super voter" who has lived in [Anchorage] for over 30 years. He said, "I can't help but think this is kind of a 'Nimbus' thing, that it's more not liking some of the products of this project." He opined that the benefits of the 1 percent for art go far beyond the obvious. He said its "soul food"; it's "contagious creativity." He explained that people spur ideas off of ideas. He said, "The art and the artists are not just subcontractors laying pipe." He stated that the presence of public art is a unique component of the city that delineates it from any other place. He mentioned imagining Chicago having problems with its Picassos, or its large public art. He said that [Chicago] is certainly "a model for us all."

MR. RUSSELL said [Anchorage] is suffering from homogenization of the Outside - the franchises and the "super stores." He said, "Don't further impact this blight by rescinding the 1 percent for the arts." He said that he has lived "here" for his entire adult life and has never "experienced the level of so much spastic legislation." Mr. Russell expressed his dissatisfaction with the current administration. In response to a remark by Chair Weyhrauch, he said that [the legislature] is [also] trying to save money and "all it takes is income tax." He said the ideas [of the legislature] don't make sense or reflect the values of Alaskans and that he expects more from [the legislature].

Number 2120

CHAIR WEYHRAUCH responded, "Well, we expect a lot from ourselves, Mr. Russell."

[HB 215 was held over.]

ADJOURNMENT

Number 2126

There being no further business before the committee, the House State Affairs Standing Committee meeting was adjourned at 10:10 a.m.