

MINUTES
SENATE FINANCE COMMITTEE
April 08, 2003
9:02 AM

TAPES

SFC-03 # 42, Side A
SFC 03 # 42, Side B

CALL TO ORDER

Co-Chair Gary Wilken convened the meeting at approximately 9:02 AM.

PRESENT

Senator Gary Wilken, Co-Chair
Senator Lyda Green, Co-Chair
Senator Ben Stevens
Senator Donny Olson
Senator Con Bunde

Also Attending: REPRESENTATIVE NORM ROKEBERG; DOUG LETCH, Staff to Senator Gary Stevens; CHUCK HARLAMERT, Juneau Section Chief, Tax Division, Department of Revenue; LANDA BAILY, Special Assistant and Legislative Liaison, Department of Revenue

Attending via Teleconference: From Mat-Su: DAVID OWENS, Owens Home Inspections; BERNIE SCHUYLER, Arctic Sky Enterprises, International Conference of Building Officials (ICBO) Certified Home Inspector, and Certified Commercial ICBO Inspector; BOB MILBY, Milby Construction, registered general contractor and ICBO Certified Inspector; From Kenai: ROCKY SMITH, Mechanical Contractor; STEVE WISDOM, Owner, Wisdom and Associates, Inc.; From an off-net site: DAVE MENAKER, Great Land Wines; ROBYNN WILSON, Department of Revenue; From Kodiak: STEVE THOMSEN, Alaskan Wilderness Wines;

SUMMARY INFORMATION

HB 9-HOME INSPECTORS/CONTRACTORS

The Committee heard from the sponsor and home inspectors. Two amendments were adopted and the bill was held in Committee.

SB 82-ALCOHOLIC BEVERAGE TAX FOR WINE & OTHERS

The Committee heard from the sponsor, the Department of Revenue, and wine makers. The bill was held in Committee.

SB 106-FEE FOR STUDED TIRES

The Committee heard from the Department of Revenue. A committee substitute was adopted, three amendments were considered and one was adopted. The bill was held in Committee.

SB 120-CLAIMS BY STATE-EMPLOYED SEAMEN

This bill was scheduled but not heard.

#HB9

SENATE CS FOR CS FOR HOUSE BILL NO. 9(L&C)

"An Act relating to the registration of individuals who perform home inspections; relating to regulation of contractors; relating to registration fees for specialty contractors, home inspectors, and associate home inspectors; relating to home inspection requirements for residential loans purchased or approved by the Alaska Housing Finance Corporation; relating to civil actions by and against home inspectors and to civil actions arising from residential unit inspections; repealing a law that limits liability for damages based on a duty to inspect a residential unit to damages caused by gross negligence or intentional misconduct; and providing for an effective date."

This was the first hearing for this bill in the Senate Finance Committee.

Co-Chair Wilken explained this bill "creates a mandatory registration of home inspectors. Under this legislation the Division of Occupational Licensing administers the program without a board and incorporates the registration within the construction contractor registration program."

REPRESENTATIVE NORM ROKEBERG, sponsor, noted this could be the 28th public hearing on this issue in the past five years. He informed that this bill provides that home inspectors and associate home inspectors would be regulated by the Division and creates the framework for a regulatory process for a group of professionals that currently do operate under any regulation. He reported that the real estate industry encompasses approximately 25 percent of the State domestic product, commenting, "It's an absolutely huge industry." He remarked that every aspect of a real estate

transaction is currently regulated with the exception of home inspections.

Representative Rokeberg stated that the home inspection industry is the result of lending institution requirements imposed approximately ten to twenty years ago to ensure that the "housing stock product in this country was properly constructed and built." He noted this applies to political subdivisions not governed by building inspections, which encompasses most of Alaska.

Representative Rokeberg told the Committee this legislation provides a "regulatory scheme" and removes some exemptions and immunities from State statutes relating to home inspections conducted for the Alaska Housing Finance Corporation (AHFC). He commented this issue has been the "number one controversial sticking point."

Representative Rokeberg added that the bill imposes statutory limitations relating to the time in which a lawsuit could be brought and "limits the length of report to 180 days".

Representative Rokeberg expressed satisfaction that this legislation "avoids setting up a board or commission," explaining that with approximately 100 practitioners in the State, biannual license fees would need to be \$1,500. Instead, he stated that the inspectors would be included with specialty contractors, at the recommendation of the Alaska Homebuilder's Association, which would lower the biannual license fees to approximately \$246. He emphasized the higher license fees could impact the price of home inspections and have an impact "on the commerce of the State of Alaska." He stressed the intent to encourage homebuyers to obtain home inspections for both existing and new homes.

Representative Rokeberg spoke to a proposed amendment, which he explains makes a technical correction to reflect the name change of the International Code Council, formally the International Conference of Building Officials [This matter is addressed as Amendment #2 later in the hearing.]

Senator Bunde clarified the cost of the business license would pay the expenses to operate the program; therefore this would be a revenue neutral program.

Representative Rokeberg affirmed and noted the statutes relating to occupational licensing require that all occupational licensing programs to be self-supporting.

Senator Olson asked how this would impact areas with a shortage of

home inspectors.

Representative Rokeberg responded that use of a home inspector is discretionary for the homebuyer, unless the lending institution requires an inspection. He concluded this legislation would therefore have minimal impact. He told of a mechanical inspector in Kotzebue who has testified in other legislative committees that because he only conducts approximately ten inspections annually, the licensing costs could be prohibitive. Representative Rokeberg disagreed that the proposed \$125 annual license expense would cause undue hardship, as inspections typically cost \$350 in Anchorage and are likely higher in rural locations. He qualified that the Alaska Housing Finance Corporation (AHFC) requires housing inspections for new construction and that the Corporation supports this legislation.

Senator Olson noted the majority of homes located in rural areas are included in a regional housing authority. He asked how this legislation would affect the inspections of those houses.

Representative Rokeberg replied that a licensed inspector would be required to conduct any inspections, unless exempted under this legislation. He pointed out that entities advertising as home inspectors would be required to be licensed. He admitted that some "unique circumstances" exist in rural Alaska, and did not oppose flexibility for these communities, provided that those conducting inspections undertake proper training.

Senator Olson agreed and noted the bill does not currently exempt regional housing authorities.

Amendment #1: This amendment adds regional housing authorities, as defined under AS 18.55.996(b), to the list of exemptions related to home inspectors in AS 08.18.156(a)(1), on page 16 of the committee substitute.

Senator Olson moved for adoption.

Co-Chair Wilken objected for an explanation.

Representative Rokeberg explained this amendment would "raise the regional housing authorities to the same level as a political subdivision that had their own inspections." He gave an example of the Municipality of Anchorage, which employs building inspectors and is exempt from the provisions of this legislation. He noted the Municipality has undertaken the "obligation to undertake whatever inspections they so desire," as would regional housing authorities, if this amendment is adopted. He clarified that a privately

operating home inspector would not be exempt from the provisions of this legislation. He did not object to the adoption of this amendment.

Co-Chair Wilken removed his objection and the amendment was ADOPTED without objection.

Amendment #2: This amendment deletes "Conference of Building Officials" and inserts "Code Council" in the six places this language appears in the committee substitute.

Senator B. Stevens moved for adoption.

Co-Chair Wilken objected for an explanation.

Senator B. Stevens deferred to the bill sponsor.

Representative Rokeberg reiterated this is a "conforming" amendment to reflect the name change of the International Code Council.

Co-Chair Wilken removed his objection and the amendment was ADOPTED without objection.

DAVID OWENS, Owens Inspection Services, testified via teleconference from Mat-Su that he primarily conducts "code inspections" on new homes and commercial facilities. He noted he occasionally conducts inspections on existing homes and he spoke to the "vast" differences between a new code home inspector and a home inspector as described in this legislation. He pointed out that errors and omission insurance is only available to home inspectors of existing or already built homes. He stressed this insurance is not available for new construction home inspectors.

Mr. Owens referenced a letter to the Legislature, dated March 7, 2003 that he submitted [copy on file], which proposes three amendments to the version of the bill passed by the House of Representatives, as follows.

- 1) Remove the language from title page 1, line 6 through 8, that states "repealing a law that limits liability for damages based on a duty to inspect a residential unit to damages caused by gross negligence or intentional misconduct."
- 2) Remove the word "two" on page 10, line 6 and replace it with the word "one".
- 3) Remove the language from Section 41, page 22 line 21 that states "AS 18.56.300(C) is repealed."

Mr. Owens supported this legislation with the exception of the three areas: repeals law pertaining to limit of liability

Mr. Owens indicated results of a survey of home inspectors.

Co-Chair Green interjected she had a summary of the report titled, "HB 9, New Home Inspector Survey" [copy on file] and would distribute it for Member's consideration.

AT EASE 9:20 AM / 9:22 AM

Co-Chair Wilken noted the information was distributed.

Co-Chair Green explained the summary was compiled from the 25 responses from home inspectors obtained by her staff.

Mr. Owens spoke to the information, surmising that this legislation would regulate 79 of the 182 operating home inspectors in the State. He characterized most of these inspectors as certified, hold a business license, and carry liability insurance. He relayed that none of the inspectors he contacted had been notified of the proposed changes by AHFC or other government agency.

Mr. Owens asserted the primary question included in the survey is whether inspectors could remain in business and survey found that 13 respondents indicated they could, seven indicated they could not and six others were unsure. He stressed that if unable to purchase errors and omission insurance, inspectors could no longer stay in business.

Mr. Owens listed another survey question relating to the fairness of holding private inspectors to a higher liability limit than government inspectors. He reported that every respondent judged this to be unfair. He furthered that the 79 inspectors who would be impacted by this legislation were asked whether they felt discriminated against under the provisions of this legislation and that the 26 respondents answered in the affirmative.

BERNIE SCHUYLER, Arctic Sky Enterprises, International Conference of Building Officials (ICBO) Certified Home Inspector, and Certified Commercial ICBO Inspector, testified via teleconference from Mat-Su about the inability to obtain errors and omissions insurance for inspectors. He warned that he would be out of business if this legislation were passed, since he would be unable to risk losing his assets, which could occur if he was without liability insurance. He added that the exemption of government inspectors is unfair.

Senator Olson asked if the witness had another occupation.

Mr. Schuyler responded that inspections is his sole means of support

Senator Olson asked the number of inspections the witness conducts annually.

Mr. Schuyler estimated he performs approximately 200 inspections each year.

BOB MILBY, Milby Construction, testified via teleconference from Mat-Su that he is a registered general contractor and ICBO Certified Inspector, and only performs inspections on new construction. He expressed that inspections on new construction is significantly different than on existing dwellings. He was concerned about the liability issue this legislation would present and predicted that AHFC could be required to employ home inspectors and provide the necessary liability insurance itself. He understood the need for consumer protection, but argued that the ICBO systems are in place for new construction and provide adequate protection.

Mr. Owens spoke to Amendment #2, which clarifies the name of the professional organization.

ROCKWELL SMITH, Mechanical Contractor, testified via teleconference from Kenai about his concerns with the language relating to liability, on page 10, line 6 of the committee substitute. He shared that as a mechanical contractor, inspectors continually inspect his work and that he is held liable for his mistakes without any exemptions. He next addressed the proposed certificate of registration for home inspectors that would be issued upon passage of "the appropriate home inspection" examination, and informed that the open book examination in question requires no prerequisite education or experience. He questioned how an inspector should be held to a lesser standard than a mechanical contractor.

STEVE WISDOM, Owner, Wisdom and Associates, Inc., testified via teleconference from Kenai to reference his written testimony [copy on file]. He supported the regulation of home inspectors although was concerned about the repeal of the "gross negligence" clause for new inspections and the insurance requirements proposed in this bill. He stated that for years his firm was only one in Alaska that carried errors and omissions insurance for new code compliance; however if this bill passes and all inspectors are required to carry the insurance, his provider has informed him the company

would no longer offer the coverage. Instead, he learned that insurance coverage similar to that carried by municipalities would only be available, at a premium cost of \$10,000.

Mr. Wisdom furthered that the language providing the inspector would be liable for two years should be reduced to a one-year period, arguing that contractors are only liable for one year. He cautioned that in the event of failure, such as a leak caused by a missing "nail plate" the inspector would be the only liable party.

Mr. Wisdom requested the Committee review the requirements to become a "joint" inspector, noting the requirements to become a code inspector are more stringent.

Representative Rokeberg commented on the public testimony. He understood Mr. Smith's testimony to indicate the requirements for inspectors should be higher.

Representative Rokeberg shared that he has been in contact with Mr. Wisdom and heard the concerns regarding the limited immunity provided for in Section 21 of the committee substitute. However, Representative Rokeberg disagreed that the two categories of home inspectors is troublesome, as both should "be under this umbrella of consumer protection." He surmised that Mr. Wisdom misunderstood the issue of the length of liability.

Representative Rokeberg qualified the argument regarding the separate examination requirements for new home inspectors and existing home inspectors "might have some merit", but suggested regulatory authority could address the matter.

Representative Rokeberg informed that the AHFC "wants to enjoy their limited immunity now; that's the issue here before us really."

Representative Rokeberg was sensitive to the cost and availability of errors and omission insurance issue given the increased premiums imposed as a result of the events of September 11, 2001.

Co-Chair Wilken asked if this bill was heard in either the House of Representatives, or Senate Judiciary committees.

Representative Rokeberg listed the House of Representatives Judiciary Committee and the Senate Labor and Commerce Committee as holding hearings on this bill.

Co-Chair Green commented the insurance issue troubled her. She also asked for clarification of the different types of inspectors.

Representative Rokeberg responded that 79 of the 182 inspectors are not employees of a government agency, such as the Municipality of Anchorage. He stated that those who are employed by a government are exempt from the provisions of this bill, although the others "have no immunity under the theory of sovereign immunity." He added that private inspectors have "some limited immunity for Alaska Housing Finance loans only. That's a distinction that's not being made in the testimony." He explained that new home inspections on construction financed through a conventional lender in an area, such as the Mat-Su, that is not under the jurisdiction of local building codes have no limited immunity. He stated that inspections performed on facilities financed by the AHFC "currently enjoy limited immunity on gross negligence and intentional misconduct. That's a very high standard. So it's almost de facto immunity."

Representative Rokeberg agreed that at issue is the difficulty in obtaining errors and omissions insurance and the feasibility of inspectors passing the expense to their customers. He suggested that many inspectors could operate without the insurance because "they're good practitioners and they're doing their job." He challenged that inspectors hired by a contractor to verify that subcontractors have completed their jobs should not enjoy "some artificial immunity" if the construction is financed by AHFC rather than Wells Fargo, Countrywide Mortgage, or other conventional lender.

Representative Rokeberg disputed that AHFC finance projects should be afforded "some special legal privilege" and informed that AHFC supports this legislation.

Representative Rokeberg emphasized, "this bill grants super numerary exclusions for bringing a cause of action by limiting the time in which a cause of action can be filed. So it's even greater protection to an existing home." He furthered that cause of action on the findings of the inspection would be limited to one year for new construction and two years for existing homes. He also indicated a limitation related to a report saying, "The report here in it's validity and how it can be picked up and used by somebody is limited to 180 days."

Representative Rokeberg opined that this legislation extends "some pretty extraordinary legal protection here" to inspectors, explaining the balance in "removing this limited immunity with the additional grants of a statutory immunity from additional lawsuits". He stated the testifiers were speaking to "a limited immunity to the standards of gross negligence and intentional

misconduct."

Co-Chair Green remarked, "I hope the sponsor did not intend to impugn the reputation of builders and inspectors in the Mat-Su Valley the way he did." She requested additional time to review this legislation.

Senator Bunde asked if municipal building inspectors inspect new home construction located in a municipality.

Representative Rokeberg affirmed.

Senator Bunde then asked if inspections are optional for new home construction located in an area not governed by municipal building codes if AFHC is not the lender.

Representative Rokeberg again affirmed.

Senator Bunde asked if inspection of existing homes is optional at the time of resale.

Representative Rokeberg answered yes.

Representative Rokeberg expressed it was not his intent, "to make any disparaging comments at all in the Mat Valley. I was just using it as an example." He apologized if he did so and added, "not that they couldn't use a little help out there."

Co-Chair Wilken ordered the bill HELD on Committee.

#SB82

CS FOR SENATE BILL NO. 82(L&C)

"An Act relating to the state alcoholic beverage tax for certain wine and other beverages."

This was the first hearing for this bill in the Senate Finance Committee.

Co-Chair Wilken explained this bill "exempts from the State tax on alcoholic beverages, wine in the amounts sold in, or consigned for shipment into the State that does not exceed 100 gallons a month."

DOUG LETCH, Staff to Senator Gary Stevens, testified this bill would replace the federal yearly sales eligibility excise tax limit of 100,000 gallons with a tax exemption of 100 gallons per month. He informed that currently wineries are taxed at a rate of \$2.50 a

gallon. He stated that this reduction would decrease the impact on State revenues by approximately \$18,600 annually, however "at the same time stimulating and supporting small Alaska wineries."

Mr. Letch reported that two of the wineries impacted are located on Kodiak Island, another is located in Haines and a fourth operates from Anchorage. He expressed, "this burgeoning Alaska industry does need the support of our Legislature to prosper while continuing to contribute to the State's changing economy." He surmised that this legislation would provide one form of assistance. He predicted that although revenue would be lost to the State under the provisions of this bill, all revenue from this source could be lost without the tax exemption.

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Mr. Letch indicated winery operators would present testimony to the bill.

Co-Chair Wilken commented that the sponsor statement does not address the issue and asked the motivation of this legislation.

Mr. Letch shared that the winery operators located on Kodiak Island approached Senator Gary Stevens and requested assistance in mitigating the impacts of the increased alcohol tax passed the previous legislative session.

Mr. Letch told of the efforts, in conjunction with the Department of Revenue, to draft this legislation to accommodate the needs of the growing winery industry in Senator Gary Steven's election district. He stated this legislation attempts to exempt local wineries in a similar manner as Alaska breweries are exempted from the increased taxation.

Co-Chair Wilken referenced the sponsor statement indicates an exemption of 100,000 gallons of wine per year, although the witness testified the exemption would be 100 gallons per month.

Mr. Letch responded the sponsor statement was in error.

Co-Chair Wilken asked about the federal eligibility excise tax mentioned in the sponsor statement.

Mr. Letch explained the federal exemption is limited to 100,000 gallons per year.

Co-Chair Wilken clarified that the alcohol tax would not be required for the first 100 gallons of wine produced each month.

Mr. Letch affirmed this is the intent of the legislation.

Co-Chair Wilken asked if this would "set aside the liability for the excise tax under the federal government."

CHUCK HARLAMERT, Juneau Section Chief, Tax Division, Department of Revenue, testified the exemption proposed in the bill is "completely unrelated" to the federal tax credit.

Senator Olson understood the struggles of new businesses and asked the annual production of the wineries in question.

Mr. Letch could only speak to two wineries and listed the average monthly production of one winery as 120 gallons, during the busier months, noting the business is seasonal dependant. The other winery, he stated produced approximately 350 gallons total the previous year.

Senator Olson questioned the mathematics, noting the wineries produce more than 100 gallons per month and would not be completely exempt from the alcohol tax.

Mr. Letch replied that this bill attempts to promote wineries as a growth industry "and give them room to grow". He told of hearings on this bill in the Senate Labor and Commerce Committee in which an annual production total of 1,000 gallons per year was considered. However, he stated the monthly calculations would be more conducive for the Department of Revenue administration of the alcohol tax. He qualified he has not had input on the current proposed exemption structure from the wineries.

Senator Olson asked if the wineries are in "danger" of going out of business if an exemption is not provided.

Mr. Letch stated that such "inference" has been received.

Mr. Harlamert stated that the current calculation structure was "designed to maximize the impact on Alaska producers and minimize the unintended tax benefits flowing to other wineries." He explained that several methods exist to calculate an exemption, however, exemptions could not be limited to in-state producers. Therefore, he stated the "trick" is to structure the tax exemption to benefit local producers, without extending the exemption to wineries located outside Alaska. He assured the proposed method would best accomplish this.

Senator Olson asked if the Department of Revenue supports this legislation.

Mr. Harlamert remarked that the Department of Revenue has not taken a position on the tax exemption matter.

Co-Chair Wilken asked if the language "on amounts sold in or consigned for shipment into the state that exceed 100 gallons a month" inserted by this legislation into AS 43.60.010(a)(3), on page 2, lines 2 and 3 of the committee substitute speaks to the federal tax exemption.

Mr. Harlamert answered that this language is unrelated to the federal constitutional restriction prohibiting states from discriminating against interstate commerce. He explained that the language clarifies that any entity that brings alcohol into the State for sale or produces alcohol in the State is a "taxpayer".

Senator Bunde understood during hearings on this bill in the Senate Labor and Commerce Committee that this legislation is an "attempt at fairness" because microbreweries had received some tax exemption for which the wineries did not qualify. He commented that although he did not generally support tax exemptions, he would support this legislation based on the issue of fairness in comparison to the breweries operating in the State, as well as the unlikelihood that the winery industry would expand to the extent that it could significantly contribute to the State's general fund.

DAVE MENAKER, Great Land Wines, testified via teleconference from an off-net location that the annual taxes and permit fees for his operation is approximately \$2,200 not including taxes imposed on any wine produced, and sold. He expressed this is a significant amount for small business. He appreciated any assistance in securing some tax relief.

Senator Bunde asked number of gallons the Great Lands winery produced per year.

Mr. Menaker informed that the facility has approximately 450-500 gallons currently on site in various stages of fermentation or packaging. He commented that with the "economic spiral down" in Haines, business was "not good", although he expected the situation to improve. He estimated the winery produces between 200 and 250 gallons during the season, which occurs in late summer and early fall, at the time blueberries and other wild fruit ripen.

Senator Bunde clarified the annual production is 300 to 500 gallons

of wine.

Mr. Menaker affirmed, "If I'm lucky, that would be the maximum."

Co-Chair Wilken asked for clarification of the imposition of the tax, specifically whether the production limits are calculated monthly or commemoratively.

Mr. Menaker stated the tax would be levied upon the sale of the product. He explained that the wine he produces today would not be ready for sale for one year.

Co-Chair Wilken gave a scenario of 100 gallons sold one month and 150 gallons sold the next month and asked if all but 50 gallons would be exempt from the tax under the proposed legislation.

Mr. Menaker understood this to be correct.

STEVE THOMSEN, Alaskan Wilderness Wines, testified via teleconference from Kodiak that the matter arose with the increased alcohol tax passed under HB 25 the previous legislative session, which raised the tax from 85 cents per gallon to \$2.50 per gallon. He noted that breweries were exempted for the first 60,000 barrels produced per year, based on the federal "reduction amount". He stated that this exemption is inequitable for wineries. Because wineries are a similar trade, he opined they should receive a similar tax discount. He expressed the need to assist wineries in Alaska without significantly impacting State revenue.

Mr. Thomsen informed that occasionally monthly sales from a winery would exceed the exemption limit, although predicted this would be infrequent. He listed his total annual sales of 300 gallons the previous year, with approximately one-third of the sales occurring over the Christmas holiday season.

Co-Chair Wilken noted the negative fiscal note indicating it would be discussed further.

Co-Chair Wilken ordered the bill HELD in Committee.

#SB106

CS FOR SENATE BILL NO. 106(TRA)

"An Act relating to studded tires; and providing for an effective date."

This was the second hearing for this bill in the Senate Finance

Committee.

AT EASE 10:11 AM / 10:13 AM

Senator Bunde moved to adopt CS SB 106, 23-GS1127\U as a working draft.

Co-Chair Wilken objected to give an explanation.

Co-Chair Wilken stated the proposed committee substitute includes all changes discussed at the previous hearing. He noted language in Section 2, amending AS 43.98.025(a). Tire fees., would impose a fee of \$2.50 on the retail sale of every tire for motor vehicles designed for use on a highway. He commented this would apply to tires for cars and all weights of trucks. Referencing earlier testimony regarding heavy studs and lightweight studs and the subsequent damage they cause to roads, he noted the committee substitute language amending AS 43.98.025(b), would also impose an additional \$5 fee per tire for those tires fitted with heavy studs. He noted this provision would take effect July 1, 2004, one year after the effective date of the bill, which he stated would allow retailers to update inventory to include tires fitted with lightweight studs.

Co-Chair Wilken continued that the committee substitute language amending AS 43.98.025(d) and (e), provide for quarterly reporting and remittance of the tax receipts by retailers to the Department of Revenue.

Co-Chair Wilken next noted language in the committee substitute, amending AS 43.98.025(h) defines "highway" and "motor vehicle" according to AS 28.40.100.

Co-Chair Green asked if motor vehicle, in this context would include off-road vehicles.

Co-Chair Wilken cited AS 28.40.100(a)(14) as follows: "'motor vehicle' means a vehicle which is self-propelled except a vehicle moved by human or animal power." However, he stated that tires for a 4-wheeler would not be subject to the tax as such a vehicle is not designed for highway travel.

Senator Bunde opined it would be simpler to outlaw heavy studs, as it would achieve the goal of reducing the use of the heavy studs, however he anticipated this tax would decrease their use. Although funds could not be dedicated, he predicted the increased fee for heavy studded tires would allow generate additional income to offset the cost of the damage caused by the tires.

Co-Chair Wilken removed his objection to the adoption of the committee substitute and it was ADOPTED without objection.

Co-Chair Wilken announced the committee substitute would require a new fiscal note for this bill.

LANDA BAILY, Special Assistant and Legislative Liaison, Department of Revenue testified on behalf of Governor Murkowski and Commissioner Corbus in support of this legislation. However, she requested amending the language in Section 2 to provide that the tax receipts be remitted by sellers in a timely manner. She stated this would be consistent with statutes governing the remittance of motor fuel tax receipts.

Ms. Baily also requested amending the language in Section 2, relating to AS 43.98.025(g), to clarify the tax would be exempted on the sale of tires sold for resale. She stated this would prevent the tax from being imposed twice.

Amendment #4: This amendment inserts "timely" into Sec. 43.98.025(e) of the committee substitute. The amended language reads as follows.

(e) A seller timely remitting the fees collected under this section to the department within 30 days after the last day of the preceding calendar quarter may retain five percent of the amount collected, not to exceed \$900 a quarter, to cover expenses associated with collecting and remitting the fees.

Co-Chair Green moved for adoption.

ROBYNN WILSON, Department of Revenue, testified via teleconference from an off-net location that the definition of timely in relation to the submission of motor fuel tax receipts is contained in regulation rather than in statute. She stated the intent is to receive the revenues in a timely manner.

Senator B. Stevens understood the language requiring remittance within 30 days of the last day of a quarter, is equivalent to "timely". He asked if similar language is contained in the regulations governing motor fuel tax collection.

Ms. Wilson replied that the motor fuel tax regulation in question pertains to the submission of a report of the amount collected. She determined the existing language in the committee substitute would be adequate.

Co-Chair Wilken asked whether the insertion of "timely" would be redundant.

Senator B. Stevens surmised it would be and noted Ms. Wilson affirmed this in pointing out that the motor fuel tax regulations pertain to reporting, while the committee substitute language pertains to the collection of fees. He asked if the reporting would be submitted annually with remittance occurring quarterly.

Ms. Wilson responded the reporting would be submitted quarterly.

Co-Chair Wilken and Ms. Wilson established the amendment was not necessary.

Co-Chair Green WITHDREW her motion to adopt the amendment without objection.

Amendment #5: This amendment inserts "sold for resale" on page 2, line 14 of the committee substitute. The amended language of AS 43.98.025(g) reads as follows.

(g) The fees imposed in this section do not apply to tires sold for resale or services sold to federal, state, or local government agencies for official use.

Co-Chair Green moved for adoption.

Co-Chair Wilken objected for the purpose of discussion.

Senator Bunde asked if the intent of this amendment is to establish that the tax would be collected at the point of sale to the consumer.

Ms. Baily affirmed.

Co-Chair Green asked whether this language could be construed to apply to a used or second-hand tire.

Ms. Baily replied the intent is to levy the tax on each tire only once.

Co-Chair Wilken indicated the matter would be reviewed to avoid Co-Chair Green's concern.

Co-Chair Wilken removed his objection and the amendment was ADOPTED.

Co-Chair Wilken announced intent to consider this bill with the updated fiscal note at the following meeting.

Senator Olson understood the intent of the fee to generate revenue to offset the impacts vehicles have on roads. He asked if tires sold for vehicles that do not utilize the road system would be exempt from this tax.

Co-Chair Wilken cited AS 28.40.100(a)(12) as follows.

(12) "highway" means the entire width between the boundary lines of every way that is publicly maintained when a part of it is open to the public for purposes of vehicular travel, including but not limited to every street and the Alaska state marine highway system but not vehicular ways or areas;

Senator Olson surmised if the tires would be mounted on a vehicle located in an area containing no public roads the fee would not be levied. He gave an example of a resident in the Village of Savoonga who would drive a truck along the beach to reach a fish camp.

Co-Chair Wilken remarked the intent of this legislation is to levy the tax on the purchase of all motor vehicle tires in Alaska.

Senator Olson clarified no exemption would be given to tires designed for highway use.

Co-Chair Wilken affirmed.

Senator Bunde pointed out that the same driver in Savoonga is also paying the motor fuel tax.

Amendment #1: This amendment inserts a new subsection to Section 43.98.028(d) to read as follows.

(2) studded tires exclusively for use on a motor vehicle that meets the qualifications under AS 28.22.011(a)(1) for exemption from the motor vehicle liability insurance requirement of AS 28.22.011.

[Note: This amendment was also referenced as Amendment #6.]

Senator Olson moved for adoption.

Co-Chair Wilken objected for an explanation.

Senator Olson noted Departmental testimony to the damage caused by

studded tires and heavy traffic use on publicly maintained roadways and the need to generate revenue to assist with maintenance expenses. He stated that tires that would not be used on publicly maintained roads should not be charged this tax. He spoke to the importance of studded tires for safe travel along unmaintained roads.

Senator Olson pointed out that vehicles operating in areas without publicly maintained roads are exempt from registration and he remarked that tires for these vehicles should also be exempted.

Co-Chair Wilken clarified that tires purchased for mounting on vehicles operating in communities exempt from vehicle registration would be exempt from the fees proposed in this legislation.

Senator Olson affirmed.

Co-Chair Wilken maintained his objection.

Senator Bunde also objected to the amendment, arguing that supplies, equipment, and goods are transported over publicly maintained roads and highways for use in these communities.

Senator Olson countered that the tire tax would be paid on the tires mounted on the vehicles used to transport those goods.

A roll call was taken on the motion.

IN FAVOR: Senator Olson

OPPOSED: Senator Bunde, Senator B. Stevens, Co-Chair Green and Co-Chair Wilken

ABSENT: Senator Taylor and Senator Hoffman

The motion FAILED (1-4-2)

The amendment FAILED to be adopted.

Co-Chair Wilken ordered the bill HELD in Committee.

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ADJOURNMENT

Co-Chair Gary Wilken adjourned the meeting at 10:36 AM