

MINUTES
SENATE FINANCE COMMITTEE
April 10, 2003
9:00 AM

TAPES

SFC-03 # 44, Side A
SFC 03 # 44, Side B

CALL TO ORDER

Co-Chair Gary Wilken convened the meeting at approximately 9:00 AM.

PRESENT

Senator Lyda Green, Co-Chair
Senator Gary Wilken, Co-Chair
Senator Con Bunde, Vice Chair
Senator Robin Taylor
Senator Ben Stevens
Senator Lyman Hoffman
Senator Donny Olson

Also Attending: SENATOR TOM WAGONER; SUSAN COX, Chief, Assistant Attorney General, Civil Division, Department of Law; BRAD THOMPSON, Director, Division of Risk Management, Department of Administration

Attending via Teleconference: From Kenai: LARRY SEMMENS, Finance Director, City of Kenai; From Anchorage: RANDY HOFFBECK, Petroleum Property Assessor, Tax Division, Department of Revenue

SUMMARY INFORMATION

SB 136-RESIDENTIAL PROPERTY TAX EXEMPTION

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

SB 120-CLAIMS BY STATE-EMPLOYED SEAMEN

The Committee heard from the Department of Law and the Department of Administration. The bill was held in Committee.

#SB136

SENATE BILL NO. 136

"An Act increasing an optional exclusion or exemption from municipal taxation for residential property."

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

Co-Chair Wilken stated this bill "raises the amount that a municipality may exempt residential property from taxation from \$10,000 to \$50,000."

SENATOR TOM WAGONER read the sponsor statement into the record as follows.

SB 136 amends current statutes to provide for an exemption of up to \$50,000 on residential property, to give local governments flexibility in taxing decisions.

Under current law, municipalities may exempt up to \$10,000 of the assessed value of any single residential property. This authorization has been law since 1974.

Five municipalities offer this exemption:

- Bristol Bay Borough
- Kenai Peninsula Borough
- Fairbanks North Star Borough
- North Slope Borough
- City of Valdez

In 2002, the voters of the Kenai Peninsula rejected an initiative that would have restricted food items from sales taxes. Argument in opposition to the initiative was that the sales tax was a mechanism for obtaining fees from visitors. The logic of that was disputed when it was pointed out that residents pay the same tax.

Providing the local governments the ability to increase the property tax exemption up to \$50,000 allows the local government flexibility so they could still collect sales taxes from visitors and then provide tax relief from residents.

Senator Wagoner clarified that the tax exemptions would not be implemented without voter approval. He shared that this legislation was offered at the request of the Kenai Peninsula Borough.

Co-Chair Green cited a portion of the analysis statement in the

Department of Community and Economic Development fiscal note as follows.

...That subsequent effect on state oil and gas property tax revenue is hard to calculate, which is why the fiscal note shows an indeterminate amount...Therefore, we cannot accurately project what effect this legislation would have on state property tax revenues.

Co-Chair Green surmised that any advantage to a borough resident property owner would result in an equal disadvantage to the State through the loss of revenue.

Senator Wagoner admitted this was a possibility but assured that if the Kenai Peninsula Borough were to increase the exemption with the intent to increase the mill rate to recoup revenue lost by that exemption increase, he would "be the first one to come out publicly" in opposition of the proposal. He stressed the purpose of this legislation is to allow a municipality to provide tax relief in the event of excess revenues.

LARRY SEMMENS, Finance Director, City of Kenai, testified via teleconference from Kenai in opposition to the bill on behalf of the administration of the City. He referenced written testimony he had submitted [copy on file.] He added that the mayor had written a letter "to our delegation" [copy not provided] in opposition to the bill at the request of the City Council, although the City Council has not issued an official opinion on the matter, as it has not yet had an opportunity to meet on the issue.

Co-Chair Wilken interjected that the Kenai Peninsula Borough has adopted a resolution in support of the legislation, although the City government is opposed.

Senator Olson clarified that the witness' statements reflect the witness' opinion and do not necessarily represent the views of the City Council, as it had not issued an opinion to date.

Mr. Semmens affirmed but noted the City Council had directed the mayor to speak in opposition. He reiterated that the Council had not had an opportunity to adopt a resolution.

Mr. Semmens read his written testimony into the record as follows.

Increasing the residency exemption to \$50,000 is poor public policy because it shifts the burden of support of local governments from the majority of voters (homeowners) to a small minority of business owners. This will allow decisions

to be made by people who do not pay the bill. It will also promote a lack of interest on the part of the residents and voters; after all, someone else will be paying, so who cares. We are starting to see intense interest from the voters in the affairs of the State. Why? Because there is talk of needing more money, of people having to pay for the services they get. This is a positive development. People will have an interest in their government if they have to pay for what they are getting. Increasing the residency exemption will promote apathy and it will result in a more unequal distribution of the bearing the burden of the cost of local government.

The theory that businesses can pass this higher cost back to their customers (homeowners) may be true in some municipalities. In Kenai, this is not true. Competitive forces from outside the municipal boundaries may make it impossible to pass increased costs to customers. Businesses will have to pay the higher costs from already shrinking profits, or choose to locate their businesses elsewhere.

In Kenai, we are experiencing a severe economic downturn due to the closure of Kmart, poor commercial fishing seasons and rumors of layoffs at Agrium. The budget situation guarantees that Kenai will not adopt the \$50,000 exemption because it would cost over \$200,000 annually. The problem with not adopting the exemption is that this will provide another reason for new housing development to be made outside the City. The City's residential development is already strangled by the State's rural loan program that provides low interest loans for housing outside of the City.

While the exemption is voluntary for each municipality, it is clear that there will be pressure to adopt the exemption when the area's outside the City adopt it.

I hope that you will consider the impacts of this bill and not pass it out of your committee.

Co-Chair Wilken asked the date the \$10,000 exemption amount was established

Senator Wagoner answered, 1974.

Co-Chair Wilken referenced a spreadsheet and requested an explanation.

RANDY HOFFBECK, Petroleum Property Assessor, Tax Division, Department of Revenue, testified via teleconference from Anchorage

detailed the information contained in a spreadsheet titled "Estimated annual Loss in State Revenues Due to Proposed Increased Allowance for Residential Exemption". [Copy on file]

AT EASE 9:18 AM / 9:19 AM

[Note: It was established that the Committee was working off a different spreadsheet and the witness was requested to repeat his overview once this spreadsheet was distributed.]

Mr. Hoffbeck listed the figures pertaining to the Kenai Peninsula Borough, referenced as lettered columns, as follows.

Current 10K Exemption

- A. Total Local Assessed Value-Prior to Residential Exemption: \$3,990,563,602
- B. Residential Exempt \$ @ \$10K (Actual-Reported): \$101,524,300
- C. Taxable Value (C = A - B): \$3,889,039,302
- D. Borough/City Wide Mill Rate (TY 2000): 9.500
- E. Revenue Generated (E = C x D/1000): \$36,945,873

Proposed 50K Exemption

- F. Local Assessed Value-Prior to Residential Exemption (F=A): \$3,990,563,602
- G. Residential Exempt \$ @ \$50K (Estimated @500%): \$507,621,500
- H. Taxable Value (H=F-G): \$3,482,940,102
- I. Borough/City Wide Mill Rate Necessary for New Exemption (I = J/H): 10.608
- J. Revenue Generated (J = E): \$36,945,873
- Revenue Loss: 9.500 (\$3,857,923)

Mr. Hoffbeck noted the estimated residential exemption amount with a \$50,000 exemption allowance was calculated by multiplying the amount of the current exemptions claimed by five. He stated this makes the assumption that residents currently receiving a \$10,000 exemption would receive a \$50,000 exemption.

Mr. Hoffman explained the adjusted mill rate was determined as the increase necessary to generate the same amount of revenue as currently generated under the \$10,000 exemption program.

Estimated Loss in State Revenue

- K. Value of AS 43.56 Property: \$660,927,900
- L. Change in Mill Rate (L = I - D): 1.108
- M. Effect on State Portion of AS 43.56 (M = K x L): \$732,084

Mr. Hoffbeck identified AS 43.56 Property as "oil and gas property".

Mr. Hoffbeck explained the change in mill rate as the difference between the current mill rate and the estimated increased mill rate instituted by the Borough to offset revenues lost due to the increased exemption. He detailed the process whereby the State collects taxes on oil and gas property at a mill rate of 20.0, less the mills collected by the local municipality. Therefore, he stated the increased mills collected by the Kenai Peninsula Borough would result in same amount of decreased revenues to the State.

Mr. Hoffbeck qualified the amounts listed on this spreadsheet reflect a scenario whereby the Borough increases the exemption to the maximum amount allowable and also offsets the lost revenues with an increased mill rate.

"Local" Effect of Increased Mill Rate
N. Value of non-AS 43.56 Property (N = H - K): \$2,822,015,012
O. Change in Mill Rate (O = L): 1.108
P. Effect on "Local" Portion of AS 43.56 (P = N x O):
\$3,125,839
Revenue Loss: \$3,857,923

[Data pertaining to the remaining four municipalities are contained on the spreadsheet on file.]

Mr. Hoffbeck qualified this information does not pertain to State revenue, rather details the mill rate increase necessary to offset the lost revenues incurred if the exemption was increased. He noted this would be collected from other property owners.

Co-Chair Wilken asked if the "other property owners" are business property owners as well as those residential property owners benefiting from the \$40,000 additional exemption.

Mr. Hoffbeck affirmed.

Co-Chair Green asked for a definition of "Local" as indicated on the spreadsheet.

Mr. Hoffbeck responded this indicates all taxpayers within the Kenai Peninsula Borough.

Senator Wagoner commented that the figures contained in the spreadsheet assume the Kenai Peninsula Borough would "need" to increase the mill rate. He expressed this is not the intent of the Borough, and instead Borough "would not be increasing the mill rate".

Senator Wagoner referenced information from the Kenai Peninsula Borough Tax Assessor disputing the data presented by the Department of Revenue [copy not provided.]

Senator Wagoner charged that assuming that the Kenai Peninsula Borough would increase the mill rate "so we can come up with these figures, to me is an erroneous statement because that is not their intent."

Co-Chair Wilken asked if the State must make up the difference between the \$732,084 (column M) and the revenue loss of \$3,857,923.

Senator Wagoner clarified the spreadsheet lists the amount of reduced revenue to the State in taxes on oil and gas properties due to an increased mill rate imposed by the Borough. He stressed this would only occur in the event the Borough increased the mill rate.

Senator Taylor asked if revenue to the State would be reduced under this legislation regardless of whether the Borough mill rate is increased and that only the amount would vary depending on the amount of a mill rate change.

Senator Wagoner disagreed and asserted the State revenue would remain the same if the mill rate were not increased.

Senator Taylor pointed out that under existing law the \$10,000 exemption reduces the amount of taxable property within the Borough.

Senator Wagoner clarified the exemption does not reduce the amount of taxable property but rather the value of the taxable property.

Senator Wagoner remarked that the assumption is that the Borough would increase the exemption to \$50,000, the maximum allowed under this legislation; however he surmised the Borough might increase the exemption only to \$15,000. He shared he was unsure the actual intention of the Borough.

Senator Taylor expressed that a residential property owner would advocate to the Borough to increase the exemption to the maximum amount allowable.

Senator Wagoner agreed, but said this would be the decision of the Borough. He predicted that if this legislation passes, considerable discussions on the matter would occur at the Borough and Municipal levels of government. One topic, he stated would be the amount of the exemption.

Co-Chair Wilken announced the amount of \$50,000 should be referenced for discussion purposes.

Senator Taylor questioned how the Kenai Peninsula Borough could resist the pressure to reduce taxes \$36 million. He surmised residents would vote for the full exemption. He stated that other tax increases would subsequently be necessary, although these increases would not be distributed equally among all taxpayers because of the \$50,000 exemption.

Senator Wagoner corrected the actual revenue reduction for the Borough would be \$3.8 million.

Co-Chair Wilken stressed the need to better understand this issue.

Senator Hoffman asked what is currently exempted under existing law.

Senator Wagoner replied that the exemption is available for the primary residences of all property owners in the Borough. He noted an application must be submitted annually to participate in the exemption.

Senator B. Stevens referenced the notation to the Kenai Peninsula Borough data on the spreadsheet indicating, "Used Nikiski Mill Rate minus the 2.3 mill levy for fire service district" and asked what services are provided.

Senator Wagoner noted the services vary by service area and that he would provide further information.

Senator B. Stevens noted this would affect residents in the Borough based upon the location of their property within the Borough.

Co-Chair Wilken ordered the bill HELD in Committee.

#SB120

SENATE BILL NO. 120

"An Act relating to the state's sovereign immunity for certain actions regarding injury, illness, or death of state-employed seamen and to workers' compensation coverage for those seamen; and providing for an effective date."

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

Co-Chair Wilken pointed out this bill was introduced by request of the Governor and, "requires the Alaska Marine Highway System (AMHS) crew members work-related injuries or illnesses to be covered under the State Workers' Compensation Act. Currently this coverage is provided through the federal jurisdiction of the Jones Act."

SUSAN COX, Chief, Assistant Attorney General, Civil Division, Department of Law testified this bill would assert the State's sovereign immunity in cases involving injuries, illness or death of employees of the State who are seamen. She informed that, for litigation purposes these workers are currently covered by traditional maritime remedies of maintenance and care, unearned wages as well as the Jones Act. This legislation, she stated, would instead provide workers' compensation coverage to effectively provide a uniform system of remedy for State employees who are injured on the job.

Ms. Cox noted this would be accomplished by amending AS 09.52.50, the statute that waives the State's sovereign immunity to be sued in court. She told of a 1990 Alaska Supreme Court decision on State of Alaska versus Robert Brown involving the Department of Public Safety, which determined that the State's workers' compensation law could not be applied as the exclusive remedy for seamen because the State had unconditionally waived its immunity to be sued and was therefore subject to federal maritime remedies in the Jones Act. However, she pointed out this decision also ruled that if the State desired to withdraw its consent to sue, it could do so and provide workers' compensation by amendment the aforementioned statute. She informed that this approach was utilized by other states, including Texas and North Carolina, and has been addressed at the federal level as well.

Ms. Cox pointed out this legislation would not impact privately employed seamen, only those employed by the State.

Ms. Cox further noted this legislation would not only affect AMHS employees, as the Department of Public Safety, the Department of Fish and Game and other departments also employ some workers who qualify as seamen. However, she stated that most seamen employed by the State work in the AMHS.

Ms. Cox stated that between 1983 and 1991, the AMHS ferry employees were covered by workers' compensation as a result of collective bargaining agreements with three unions. She detailed the agreements, which provided workers' compensation coverage in lieu of traditional maritime remedies and Jones Act litigation. In 1991, she informed, the Alaska Supreme Court ruled that arrangement, as a result of collective bargaining, was not enforceable and that the

unions could not waive their individual members' rights under federal law. She stated that the only option to substitute workers' compensation for State-employed seamen would therefore be through legislation.

Ms. Cox expected this change would save the State money reporting that currently seaman injured or ill on a vessel, regardless of whether the injury or illness was caused by work, is entitled to certain no-fault remedies. She listed these remedies as including payment of wages until the conclusion of the voyage without reduction to sick leave accounts; payment of the approximately \$45 daily stipend, also called maintenance, until recovery and resumption of work; and continued payment of maintenance to augment sick leave payments until work is resumed. She compared this to workers' compensation practices whereby most illnesses are not covered unless occupational diseases, concluding that this legislation would result in the use of sick leave for payment of wages during most illnesses incurred by seamen.

Ms. Cox pointed out that workers' compensation would treat seamen with injuries "more favorably" in that workers would collect workers' compensation insurance rather than the \$45 per day maintenance payment. She reported the insurance payments are closer to the amount of the employee's regular wages and no deductions would be taken from the employee's leave account. Therefore, she stated that workers' compensation is more beneficial for injured employees who do not intend to sue the State for damages than other no fault remedies provided under maritime law.

Ms. Cox qualified that the range of possible damages allowed under the Jones Act is greater for those employees who do sue the State for damages due to work-related injuries. However, she stressed that the employee must prove fault or negligence on the part of the employer and are subject to affirmative defenses, such as comparative negligence. She furthered that the employee must hire an attorney and pay a contingent fee. She noted that both sides in a litigation matter incur expenses and she expected that the absence of litigation provided in the workers' compensation program would also save the State money.

Ms. Cox stated that State-employed seamen have benefits that many privately employed seamen do not, including sick leave, annual leave, health insurance, disability benefits, etc.

Ms. Cox concluded that the effective date of this legislation provides that the changes would affect new injuries or illnesses occurring after July 1, 2003. She noted the three-year statute of limitations for bringing claims or lawsuits under the Jones Act and

therefore, litigation would continue for a few years.

Senator Bunde asked the amount of claims and the cost of litigation of the current system versus the anticipated financial impact of a change to workers' compensation coverage.

BRAD THOMPSON, Director, Division of Risk Management, Department of Administration, informed that the Division administers the self-insurance program for the State agencies and operations, including workers' compensation coverage for State employees as well as the first \$1 million coverage for claims of State-employed seamen covered under the federal maritime laws.

Mr. Thompson directed attention to the fiscal note, which indicates significant cost saving would occur in the future. He emphasized that the savings amount is not specified due to the "method of funding the risk management program." He explained the program is funded on a "cash flow basis...for the claims expected to be paid in the next fiscal period," noting that the outstanding claims are "far greater than the sums that we put into the appropriation for that next fiscal period." He stated that were the program funded in the annual manner in which private insurance operates, the premium rates would be reduced with enactment of this legislation.

Mr. Thompson referenced a collection of spreadsheets with an accompanying analysis [copies on file.] He stressed this data reflects only claims resulting in an expense to the State from illnesses and injuries. He detailed the analysis as follows.

An analysis of AMHS crew claims costs compared to those provided under the Alaska Workers Comp Act (AWCA) for all other state employees.

The enclosed Excel workbook contains detailed breakouts of the actual incurred loss (cost to date plus anticipated expense) by each individual AMHS vessel for the past six fiscal years.

To objectively analyze the AMHS employee's injury experience to the state's overall employee injury rate, both frequency (number of claims) and severity (loss cost) are averaged and compared on a per 100 FTE (full time equivalent) basis.

Additional analysis was performed between AMHS and the five state agencies with the highest workers' compensation loss experience - to provide comparison to similar physically demanding jobs.

AMHS shows a five year average loss rate of 41 claims per 100

FTE's in comparison the state overall workers' compensation injury rate of 8, with the highest five agencies showing average loss experience of 10 claims per 100 FTE's.

On a cost per 100 FTE's analysis; AMHS actual claims experience during the last five years shows an average cost of \$197,065 compared to the top five state agencies averaged cost of \$64,145 during the same period.

The most significant difference is the award for the non-economic damages, not provided under workers compensation remedies and that life illnesses that are alleged to manifest during a voyage are covered under the Jones Act.

Mr. Thompson reported that this legislation would result in an approximate savings of \$850,000 in future years.

Senator Bunde asked whether a comparison was made against the period of time when the employees were covered under workers' compensation insurance in accordance with the bargaining unit agreements.

Mr. Thompson replied that because the information is co-mingled with claims submitted by other Department of Transportation and Public Facilities employees, such a comparison has not been undertaken.

Senator Hoffman asked why this change to workers' compensation coverage was not implemented in the past given the predicted significant savings.

Ms. Cox responded the matter has been considered for several years, although it has been "in need of a sponsor". She furthered that although the 1990 Alaska Supreme Court decision "suggested" this change is allowable, uncertainty over the federal constitutionality was not settled until recently.

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Senator Taylor asked what information the fiscal note is based upon. He asked whether evidence of a savings exists and when this savings would be realized.

Mr. Thompson referenced the spreadsheets showing a five-year historical average comparison of the rate of claims and cost per claims of MHS employees to other State employees, which

demonstrates. He qualified that the duties performed by MHS employees is different than other Department of Transportation and Public Facilities employees and the employees of the four other comparison agencies, but pointed out that Department of Labor and Workforce Development statistics indicate similar numbers of Occupational Safety and Health Administration (OSHA) reports of non-fatal injuries.

Senator Taylor asked if State policy requires MHS employees file notification of injuries regardless of whether costs are incurred.

Mr. Thompson replied that recently enacted regulations require such reporting, although this process is under implementation. Therefore, he noted the data does not reflect the incidents that had no expense.

Ms. Cox added that federal and international law requires reporting of all work-related injuries, in part, to accurately track safety issues. She noted the higher incidences of claims for MHS employees because illnesses and non-work related injuries are reported as well.

Senator Taylor understood the difficulty in comparing apples to oranges.

Ms. Cox agreed and stated that many incidences do not result in a claim.

Senator Taylor commented on the State workers' compensation system and opined that it is inadequate in protecting workers injured on the job.

Co-Chair Wilken noted a response would come later.

Co-Chair Wilken ordered the bill HELD in Committee.

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ADJOURNMENT

Co-Chair Gary Wilken adjourned the meeting at 09:56 AM