

**MINUTES**  
**SENATE FINANCE COMMITTEE**  
**April 15, 2003**  
**9:04 AM**

**TAPES**

SFC-03 # 49, Side A  
SFC 03 # 49, Side B  
SFC 03 # 50, Side A

**CALL TO ORDER**

Co-Chair Lyda Green convened the meeting at approximately 9:04 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:** RON MILLER, Executive Director, Alaska Industrial Development and Export Authority; STEVE VAN SANT, State Assessor, Division of Community and Business Development, Department of Community and Economic Development; ROBERT FLINT, Attorney representing Teck Cominco Alaska; MIKE BARRY, Chair, Board of Directors, Alaska Industrial Development and Export Authority;

**Attending via Teleconference:** From an offnet location: STEVE BRANCHFLOWER, Director, Office of Victims' Rights, and former Director of the Medicaid Fraud Control Unit, Department of Health and Social Services; RANDALL SCHLAPIA, Unit Manager, Provider Review and Rate Setting, Division of Medical Assistance, Department of Health and Social Services; JACK NIELSON, Executive Director, Medicaid Rate Advisory Commission, Division of Medical Assistance, Department of Health and Social Services; DON KITCHEN, Assistant Attorney General, Medicaid Provider Fraud, Office of Special Prosecutions and Appeals, Criminal Division, Department of Law;

**SUMMARY INFORMATION**

HB 75-APPROP: OPERATING BUDGET/LOANS/FUNDS

HB 76-APPROP:MENTAL HEALTH BUDGET

The Committee adopted a committee substitute incorporating the recommendations of the budget subcommittees.

HB 112-AIDEA : BONDS & MUNICIPAL TAX EXEMPTION

The Committee heard from the Alaska Industrial Development and Export Authority, the Department of Community and Economic Development and Teck Cominco Alaska. The bill was held in Committee.

SB 41-MEDICAL CARE: CRIMES,COSTS,AUDITS

The Committee heard from the sponsor, the Office of Victims Rights, and the Department of Law. An amendment was considered, amended and adopted and the bill reported from Committee.

#HB75

#HB76

CS FOR SS FOR HOUSE BILL NO. 75(FIN) am(brf sup maj fld)  
"An Act making appropriations for the operating and loan program expenses of state government, for certain programs, and to capitalize funds; and providing for an effective date."

AND

CS FOR SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 76(FIN)  
"An Act making appropriations for the operating and capital expenses of the state's integrated comprehensive mental health program; and providing for an effective date."

Senator Taylor moved for adoption of CS HB 75, 23-GH1002\X as a working draft.

There was no objection and the committee substitute Version "X" was ADOPTED as a working draft.

Co-Chair Wilken moved for adoption of CS HB 76, 23-GH1004\Q as a working draft.

Without objection the committee substitute Version "Q" was ADOPTED as a working draft.

AT EASE 9:07 AM / 9:08 AM

Co-Chair Wilken chaired the remainder of the meeting.

#HB112

CS FOR HOUSE BILL NO. 112(FIN)

"An Act relating to the authority of the Alaska Industrial Development and Export Authority to issue bonds and to a municipal tax exemption for certain assets and projects of the Alaska Industrial Development and Export Authority; and providing for an effective date."

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

Co-Chair Wilken stated this bill, requested by the Governor, contains two sections. He explained, "Section 1 extends the statutory authority of AIDEA [Alaska Industrial Development and Export Authority] to issue bonds not to exceed \$10 million for development of projects until July 1, 2007. Section 2 repeals the sunset provision and permanently provides for a tax exemption to the DeLong Mountain transportation system."

RON MILLER, Executive Director, Alaska Industrial Development and Export Authority (AIDEA) and Alaska Energy Authority (AEA), read testimony into the record as follows.

This bill would extend AIDEA's general bonding authority to July 1, 2007 and without this extension we would need legislative authorization to issue bonds to develop projects under \$10 million. We'd also be restricted from using any bonds to finance the purchase of loan participations without legislative authorization.

Examples of bond issues that we've had in the past that fell within this exception are bond series 1995A, \$8,500,000 of tax exempt funds, for loan participation made to the Kodiak Fish Wheel Company for fish byproduct processing plant, [and] \$7 million AIDEA revolving fund bonds series 1991Am which provided tax exempt funds for the expansion and improvement of the Unalaska Marine Center.

[The] following requirements within our statutes are not affected by HB 112: all development projects over \$10 million for which bonds are to be issued would still require legislative authorization prior to issuing the bonds, and prior to issuing bonds over \$6 million, AIDEA is required to receive approval from the local government in which the

project is to be located. That provision will not be affected by this bill, and all development projects for which bonds are to be issued require AIDEA to make findings that the project is economically and financially feasible.

What this bill does is gives us another tool in our portfolio for financing projects. It simply addresses a timing issue. Without this authorization, we may have to wait [until the next legislative session] for legislative authorization to issue bonds.

Co-Chair Wilken requested the witness speak to the relevance of the provision in Section 2 of the bill.

Mr. Miller noted this language was inserted by the House Finance Committee and relates to a permanent extension of the DeLong Mountain Transportation System (DMTS) tax exemption. He explained this publicly owned system of AIDEA is connected to the Red Dog Mine. He qualified that the current membership of the AIDEA board of directors has not taken a position on this issue, the historical precedence of AIDEA has "assumed that AIDEA development projects are not subject to property taxes; however private users and the local political subdivision may enter into agreements providing for payments in lieu of taxes." He informed that Teck Cominco Alaska, owner of the Red Dog Mine, and the Northwest Arctic Borough have a pilot agreement for payment in lieu of taxes. He furthered that the DMTS and Teck Cominco's use of that system was exempt from tax evaluation until the year 1999, at which time an assessment was made and the legislature in 2000 provided a tax exemption with a sunset provision that expires in the current year.

Co-Chair Wilken suggested that Members pose questions first to Section 1, as the two sections address different issues.

Senator Taylor asked if the current \$10 million limitation is a "workable number" or whether it is too low or too high. He recalled that when this limitation was originally imposed, no specific reason was given for determining the \$10 million amount.

Mr. Miller replied that AIDEA would not be hindered by this limitation amount. He stated that this AIDEA could function without this extension for another year, although passage would benefit the Authority. He explained that if a project of less than \$10 million were proposed during the upcoming months and this authorization were not granted, the project would be delayed until the following legislative session.

Senator Hoffman asked if any of the bonds have "failed for payment"

that were issued under the current limitation.

Mr. Miller answered no.

Senator Bunde asked if in the event of catastrophic failures, would the State bear the "ultimate responsibility" for honoring the bonds.

Mr. Miller responded this would depend upon the type of bond in question, explaining that neither the faith nor credit of the State or AIDEA is involved for a conduit bond. He furthered that AIDEA has sufficient resources to secure the bonds it issues.

Co-Chair Wilken next addressed Section 2 of the bill. He detailed a photograph showing the mine, a road and docking and storage facilities, and clarified that the road shown is the subject of discussion [copy on file].

Co-Chair Wilken referenced a handout titled, "Red Dog Mine full Value Issue History" distributed by the State Assessor [copy on file] and reminded of the legislative property tax exemption granted in the year 2000 for three years. He noted the exemption period is approaching termination.

STEVE VAN SANT, State Assessor, Division of Community and Business Development, Department of Community and Economic Development, told of assessment undertaken in 1998 of the Northwest Arctic Borough for full value determination purposes as required by law, which included the Red Dog Mine. At that inspection, he informed that he collaborated with tax assessors from the City and Borough of Juneau and the Fairbanks North Star Borough to ensure consistent evaluations of mining facilities throughout the State. He stated that during this review, it was discovered that certain assets of approximately \$154 million should have been included in prior full value determinations but were not. He shared this information with the Northwest Arctic Borough attorney and informed him that these items, which include the value of a portion of the road, the dock facilities, and two storage facilities, would be included in the 1998 assessment. Mr. Van Sant noted this determination was appealed to the commissioner of the Department of Community and Economic Development based on the argument that the cost to the Borough, at that time, would have been approximately \$1.2 million in funding for education. He pointed out that the figure includes approximately \$600,000 in State funding. He recalculated the amount to be approximately \$300,000 at present that would "return to the State" resulting in the zero fiscal note for this legislation.

Senator Bunde asked if the \$300,000 includes education foundation

formula funding.

Mr. Van Sant affirmed.

Senator Bunde clarified this amount is not currently appropriated elsewhere in the State.

Mr. Van Sant affirmed.

Co-Chair Wilken pointed out that this bill requires that the State Assessor exclude the value attributable to the assets of AIDEA from the full value determination for the Northwest Arctic Borough. He asked that because AIDEA is a State agency whether these assets would be exempt anyway.

Mr. Van Sant agreed that AIDEA assets are exempt from property taxation. However, he emphasized that the private use of those assets by a company or individual, which he referred to as "possessory interest," is taxable under the Alaska Constitution and statute. He gave an example of space located at the Ted Stevens International Airport that is leased by Alaska Airlines in which the airlines is assessed taxes.

Co-Chair Wilken clarified that the ownership is not taxable but rather the ability to use and generate income from that use.

Mr. Van Sant affirmed and noted that several State court cases have upheld this. He listed parties involved in these cases including Alaska Industrial Air, Kodiak SeaLand, Golden Heart Utility, Kodiak Island Borough and the Fairbanks North Star Borough.

Co-Chair Wilken asked if the inclusion of the possessory interest values for property tax purposes is a standard practice in Alaska.

Mr. Van Sant affirmed and told of a workshop held in 1980 with all assessors in Alaska in which methods established by the State of California method were adopted. He explained this provision applies to assessment for the use by a taxable entity for use of a nontaxable property, including State, federal, city and borough lands and Native allotments.

Co-Chair Wilken asked if all city and borough governments assess these interests and the consequences of those who do not.

Mr. Van Sant responded that all local governments follow this methodology, although the Municipality of Anchorage does not exclusively. As a result of the Municipality of Anchorage practices, he stated that the State has identified an additional

\$155 million to the full value of assets.

Senator Taylor pointed out that the State of Alaska does not assess tax on property.

Mr. Van Sant affirmed but clarified that the State annually calculates the full value for each community to be used for revenue sharing and education funding.

Senator Taylor understood the State performs an evaluation of the assessed value of all real property in Alaska, which is utilized by other State agencies to determine the amount of required local support. He noted that the State allows exemptions for property owners over the age of 65, although does not allow exemptions for other property owners. He remarked this is a unique system

Mr. Van Sant explained the full value "equalizes the playing field for all municipalities", noting that the Municipality of Anchorage assesses almost all real and personal property, with few exemptions, while the Fairbanks North Star Borough does not assess personal property. Therefore, he said the State calculates all optional exemptions for each local government. He emphasized that the State does not require municipalities and boroughs to actually levy the taxes. He furthered that other states employ this method for their formula funding calculations.

Co-Chair Wilken asked if other boroughs formed, whether the State Assessor would include the value of possessory interest of mines located within those boroughs.

Mr. Van Sant answered this would occur and reiterated that possessory interest has been determined for mines located in existing boroughs.

Co-Chair Wilken referenced the Fort Knox mine in the Fairbanks North Star Borough and asked if the possessory interest has been assessed for the road between the Steese Highway and the mine.

Mr. Van Sant replied that the road as well as the right-of-way for the power line, which is owned by the Golden Valley Electric Association, is assessed. He furthered that the federal land permit for the road at Greens Creek in the City and Borough of Juneau is also assessed.

Senator Taylor asked about the power line to the Fort Knox mine.

Mr. Van Sant explained that because the mine is the single source user of the right-of-way, a possessory interest has been evaluated.

Senator Taylor clarified that because only one customer exists, that customer must pay a tax on the power line right of way.

Mr. Van Sant affirmed.

Senator Olson asked the affect of this reassessment of possessory interest on AIDEA projects.

Mr. Van Sant pointed out that other mine facilities pay these taxes as a cost of business, although he was unable to respond to whether harm is caused.

Senator Olson commented that imposition of the additional taxes would not benefit the Red Dog Mine. He stated that profitable entities are able to pay the taxes, but those that are not profitable would "fall by the wayside".

Mr. Van Sant responded that the matter consists of a taxability issue and an evaluation issue. He explained that if a project were not feasible, the evaluation would be affected; however, the taxability of the possessory interest remains.

Co-Chair Wilken recalled discussion regarding Teck Cominco Alaska payment in lieu of taxes and asked whether this relates to the taxability of this property.

Mr. Van Sant replied it does not and detailed motor vehicle registration fees colleted in lieu of property tax. He reiterated the need to assess property comparably across the State.

Senator B. Stevens asked if AIDEA financing is involved in the Greens Creek Mine and the Fort Knox Mine.

Mr. Miller responded that AIDEA is not involved in the Greens Creek Mine operation and has invested approximately \$71 million in financing in the Fort Knox Mine.

Senator B. Stevens asked the portion of the Fort Knox project that AIDEA is involved.

Mr. Miller described the tax-exempt bonds issued for a leaching project. He specified that AIDEA has no investment in the infrastructure, road or power line.

Senator B. Stevens asked therefore, why a project that receives no AIDEA financing with another that does receive AIDEA financing.

Mr. Van Sant responded that AIDEA financing is irrelevant. Instead, he emphasized the matter relates to the taxability of the private entity utilizing tax-exempt property.

Senator B. Stevens questioned the comparison of possessory interest of airport facilities used by airlines to the use of the road by the Red Dog Mine. He explained that Alaska Airlines leases the property and pays a fee for sole use of the property; and has discretion to prohibit other parties from using that property. He asked if another entity would be required to negotiate with Teck Cominco Alaska to use the DMTS in the event another enterprise was developed, such as coal mining.

Mr. Van Sant understood negotiations would be made with both AIDEA and Teck Cominco Alaska. He stressed that the most recent Alaska Supreme Court decision on the matter ruled, "A nonexclusive use lease was still taxable due to the extent of the possession."

Mr. Miller interjected that negotiations would be made with AIDEA, the owner of the road.

Mr. Miller clarified his earlier statements that AIDEA "debt participates" in Fort Knox although it does not "own any of that project".

Senator Olson spoke of the interest in the success of Teck Cominco Alaska by Governor Murkowski and others. He asked if extension of the tax exemption would allow resource development to continue.

Mr. Miller replied that repeal of the tax exemption would increase the operating costs for the Red Dog Mine. He pointed out that Teck Cominco Alaska pays AIDEA a tonnage fee for the use of the DMTS and that a tax would be an additional cost for utilizing the road and port.

Mr. Van Sant furthered that the Municipality of Anchorage granted a five-year economic exemption to the property used by the seafood plant, which is allowable under AS 29.45.050. He expressed that such exemptions are permitted to encourage economic development, although the State considers the full value of the assets.

Senator Hoffman noted the Fort Knox Mine project is completely privately owned while AIDEA owns the road and port of the Red Dog Mine project.

Senator Taylor asked if the success of a business affects the value of the possessory interest.

Mr. Van Sant explained that the appraiser assesses the real value of the property not the business venture. He qualified this is problematic, exempling a hotel that might be unprofitable due to poor management or because "the business just isn't there". He stated that failure of a business to success does not necessarily diminish the value of that property; however, if the value of ore dropped significantly, the value of the property would likely be affected.

Senator Taylor asked if assessment of closed canneries located in Southeast Alaska should be assessed at highest and best market value rather than at the current use of the property. He clarified that a cannery facility could be difficult to sell as a cannery, although it could be easier sold as a resort.

Mr. Van Sant agreed and stated that if a higher value use were possible, an assessor would give that consideration. He pointed out that some facilities have significant equipment, the value of which is dependent upon the stability of the industry market.

Senator Taylor commented that several seafood plants and lumber processors no longer in operation have decreased significantly in value.

Senator Taylor asked the amount of increased revenue to the State if the State were to exempt a pipeline and other equipment related to the oil industry from local taxation.

Mr. Van Sant replied that the Alyeska Pipeline generates approximately \$260 million in property taxes annually and that approximately \$40 of that amount is paid to the State.

Senator Taylor understood the dependence of some communities on this income to subsidize property tax revenue. He indicated this matter should be reviewed to "level playing fields" for communities that do not receive income from a large industry.

ROBERT FLINT, Attorney representing Teck Cominco Alaska, testified that the Red Dog Mine operated for ten years with parties under the assumption that the public facility was not to be included in the fair value determination for the Northwest Arctic Borough. He noted that the Borough contested the 1999 determination, although the issue became irrelevant after action by the legislature in the year 2000 to allow the exemptions.

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Mr. Flint qualified, however, that the legal issues over the assessment remain. He listed two issues for which the challenge to the assessment is based, one being that the user of a public road or facility who pays a toll does not thereby acquire a real property interest in that public facility. He differentiated this from a leasehold interest a private entity might have in public property. He exemplified the 55-year lease of State land or land owned by the Alaska Railroad, which is stated is common and always has been subject to taxation. He pointed out that in leasehold interest situations, the leaser has the authority to subcontract use of the public facility, compared to the DMTS, in which use by other parties would be negotiated with AIDEA. He added that payment for use of the road would be made to AIDEA rather than to Teck Cominco Alaska.

Mr. Flint continued with the second argument against the assessment that if such possessory interest existed the proper assessment method of that interest would result in zero value because "a full lease payment was made for the entire value". He admitted that the court ruled against this argument in litigation involving the Golden Valley Electric Association.

Mr. Flint stressed he does not expect the Legislature to act as a board of equalization or court of appeals to decide these issues. Rather, he said the matter is public policy for economic development in remote areas where an absence of public infrastructure is a "strong inhibiting factor". He pointed out the DMTS was publicly financed to encourage resource development in this area. He noted that extensive infrastructure exists along the railbelt that is utilized by many parties, facilitating economic development in that region. He expressed that the provision in Section 2 of the committee substitute "would appropriately eliminate what would otherwise be a discrimination between a built up area and a remote area."

Mr. Flint next agreed that the taxation situation is a formula driven fair value determination in that whatever amount is paid in either taxes or a pilot agreement, do not affect the formula. He remarked that the primary purpose of Teck Cominco Alaska projects is to provide jobs and the secondary purpose is to create a tax base for the local community. He reported that in the current year, Teck Cominco Alaska would pay \$5,850,000 to the Northwest Arctic Borough under the pilot agreement. He compared this to the amount that would be collected in the event property taxes were established and a mil rate imposed similar to other boroughs, and calculated that Teck Cominco Alaska would pay no more and likely a lesser amount.

Co-Chair Wilken asked if the pilot agreement is payment for the use of the road but not the port or storage facilities.

Mr. Flint replied the contract includes use of all facilities and amounts to approximately \$17 million annually.

BOB JACKO, President, Teck Cominco Alaska testified from a mining perspective the primary consideration is "predictability and consistency". He noted that changes impact the financial stability of any property. He listed location as another consideration, similar to the location of a restaurant or hotel. He explained that the existence of a road and port facility near the Red Dog Mine "opens up that whole region" and provides an advantage to promote economic development. He informed that in the years 2000 and 2001, a significant competitor was investigating ore deposits nearby and utilized the Red Dog Mine airstrip, exploration camp and accommodations. He stated that if significant deposits were located, the competitor would begin operations and subsequently utilize the DMTS. He attributed this possibility to the existence of the DMTS that would enable such operations.

Mr. Jacko stressed that Teck Cominco Alaska has never assumed sole responsibility for the DLMS and has made efforts to ensure the system is available for multiple users. He exemplified fuel transfers to the Village of Noatak undertaken to offset fuel shortages, the use of the facilities to transport materials to expand the church in Noatak and build a pastor's home, as well as the transport of three homes to Noatak. He furthered that buildings no longer used by the Red Dog Mine have been relocated to villages.

Mr. Jacko shared that employees of the Red Dog Mine who serve on the Noatak Indian Reorganization Act (IRA) Council investigated the possibility of connecting the DMTS to the village. He expressed that Teck Cominco Alaska supports this venture, as it would benefit the region. However, he pointed out Teck Cominco Alaska is not authorized to approve this venture, which must be negotiated with AIDEA.

Mr. Jacko reported that the primary extraction from the Red Dog Mine is zinc, which is receiving the lowest prices since the Great Depression.

Co-Chair Wilken relayed that in the summer of 1999 he visited the mine as a member of a deferred maintenance task force. He was "dumbstruck" at the extent of the facilities and the benefit they provide to the area. He stated he utilizes this as a model of the benefits that resource development could provide to other Alaskans.

Senator Olson spoke of a "recent betrayal" to the legislative minority as a result of changes to taxes to the oil industry. He stated these changes were made based on the premise that one legislature is not bound by the actions of an earlier legislature. He asked if the witness shares similar concerns with the possible change to existing agreements.

Mr. Jacko agreed and expressed the elimination of the exemption would have a financial impact on Teck Cominco Alaska. He explained that the Borough's revenue would decrease approximately \$1.2 million, which would have a "ripple effect and it will come to us." He stressed the heavy reliance of the Borough on multiple funding sources and that the reduction from one source would force the Borough to generate additional funds from another, primarily Teck Cominco Alaska.

Senator Olson asked if Teck Cominco Alaska is considering other business ventures.

Mr. Jacko told of a draft Environmental Impact Statement study underway on a proposed project located near Delta Junction. He continued that the company owns additional land around the Red Dog Mine location, although the low price of zinc makes current development unfeasible.

Senator Olson asked who maintains the road.

Mr. Jacko responded that Teck Cominco Alaska maintains the road.

Senator Olson asked if any State funds are utilized for this purpose, particularly in the event of major damage, such as a washout. He indicated earlier discussion regarding a car dealer who does not pay the maintenance expenses on roads used to transport the vehicles it sells.

Mr. Jacko responded that if significant major damage occurred, Teck Cominco Alaska would request funding for the repairs from AIDEA, the amount of which would be added to the outstanding capital debt and repaid through toll fees.

Co-Chair Wilken shared a core section of ore from the Red Dog Mine, directing attention to the high concentration of ore.

Co-Chair Wilken reminded that the matter of the DMTS arose during the legislative session in the year 2000 in discussions on SB 248, relating to AIDEA and rural development. He noted a conference committee inserted the exemption into that legislation and he

referenced May 3, 2000 minutes from that committee expressing intent that time was needed to negotiate with the Borough to resolve the issue. He asked the efforts of past three years to recognize the assessor's full value determination.

Mr. Flint answered that he had been making efforts to appeal the assessment.

Co-Chair Wilken recalled a similar matter involving the Golden Heart, which has subsequently been decided by the Alaska Supreme Court.

Mr. Flint commented that the Borough has no assessment structure and that the payments are made through the pilot agreement.

Co-Chair Wilken detailed the process of appealing assessments of his property, first to the Fairbanks North Star Borough, then to the court if a satisfactory agreement is not reached. He pointed out the legislature is not part of this process and asked why the DMTS issue has not been addressed through regular court proceedings.

Mr. Flint elaborated on the absence of a property tax structure and ordinance in the Northwest Arctic Borough and therefore no procedure to protest an assessment exists. He noted the Borough challenged the assessment and reiterated the perceived economic development policy issue, in which the legislature is a proper forum for discussion. He noted the court is not the proper forum for addressing economic development policies.

Co-Chair Wilken asked how the matter could be addressed in the court system to avoid the issue arising every five years.

Mr. Van Sant told of the appeal process in which the Borough could appeal to the Department of Community and Economic Development commissioner then appeal further to the court. He qualified that the Borough could not make a judicial appeal at present due to the exemption; however, if the exemption expired, an appeal could be made in the year 2004.

Senator Taylor suggested the Borough must first institute a property tax and assess the amount of that tax.

Mr. Van Sant corrected that from the "State perspective" the Borough has the authority to levy a tax after completing certain procedures.

Senator Taylor readdressed the matter of assessing the value of the

sections of the Alyeska Pipeline that are not taxed.

Mr. Van Sant reiterated his earlier response that of the approximately \$260 million generated in property taxes from the pipeline, approximately \$40 is received by the State.

Co-Chair Wilken stated that specific data is published annually and noted that several boroughs do not collect the full 20 mils assessed, and that the balance is received by the State.

Senator Taylor expounded upon original legislative debate and remarked that possessory interest was not the intent. He commented on the collection of taxes from Greens Creek Mine by the City and Borough of Juneau for the use of the State-owned road on Admiralty Island. He expressed concern about future similar road projects, suggesting they should be established as nonexclusive. He asked whether possessory interest could be determined for a party utilizing a State-owned road to conduct business.

Mr. Van Sant answered no and stated the possessory interest would apply in the event of a payment for an exempt use of public property.

Senator Taylor spoke about authority granted to AIDEA through legislation to issue bonds of up to \$29 million to construct a Bradfield toll road and up to \$50 million to construct the Whittier Tunnel toll road. He asked if AIDEA funds were utilized to construct a toll road whether commercial use of that road would be subject to a possessory interest.

Mr. Van Sant responded that if the private entity has exclusive use of the road, some possessory interest would probably be attached.

Senator Taylor repeated that when the DMTS was established, legislators never assumed that utilization of the facilities would be a taxable entity for the Borough.

MIKE BARRY, Chair, Board of Directors, Alaska Industrial Development and Export Authority testified that the Red Dog Mine project is the most successful effort of AIDEA to create economic development. He contended that not all possessory interests are "equal", as alluded to by Mr. Flint. Mr. Barry told of the a facility constructed at on leased State-owned land at the Ted Stevens Anchorage International Airport utilizing AIDEA issued bonds borrowed by Federal Express. He explained that Federal Express pays property taxes on this property because it has exclusive possessory interest that grants the company all rights to that facility. On the contrary, he remarked, the Red Dog Mine does

not have exclusivity of the DMTS.

Mr. Barry also informed of plans for expansion of the DMTS port facility to foster significant future development, including coal extraction. In studying this project, he relayed it was learned that the creation of a fuel oil terminal to serve the 17 communities of the Northwest Arctic region, would be feasible. He expressed that the cost of fuel oil to rural communities is "probably the single greatest deterrent to economic development" due to the high operating costs.

Mr. Barry next spoke to the seafood processing facility located in Anchorage, pointing out that the Municipality of Anchorage has several options for offsetting the revenue lost by granting the facility a property tax exemption. He stressed that the Northwest Arctic Borough, however has "no other avenues" to collect funding for education programs. He emphasized the matter is not whether other taxpayers within the Borough would bear the financial responsibility, but rather that children would not receive an education.

Mr. Barry warned of the economic impacts that elimination of this exemption would create in the region. He stressed that potential investors must consider all operating expenses compared to the global economy. He pointed out that Teck Cominco Alaska has contracted with AIDEA to pay all the costs to construct and maintain the DMTS, as well as pay the Borough in lieu of taxes to fund education. He remarked that the tax exemption therefore demonstrates that Alaska supports "positive development."

Senator Bunde asked if an acceptable compromise would be an extension of the exemption rather than a permanent exemption.

Mr. Barry responded that approximately 37 years remains on the "bond life" of the DMTS debt and that the extension should be granted at least until the debt is paid. He indicated that studies indicate the DMTS would have a significantly longer useful life than the terms of the debt.

Senator B. Stevens asked the party that would own the DMTS after the debt is paid.

Mr. Barry answered AIDEA.

Co-Chair Wilken asked the position of the AIDEA Board of Directors on this issue.

Mr. Barry informed the Board would meet at the end of the current

month and would address the issue.

Co-Chair Wilken asked the best way to resolve this matter.

Mr. Barry responded that a long term exemption would be in the best interest of AIDEA and of economic development, as "the world would know what the facts are going to be." He cautioned that it would not be beneficial to "tie up the resources" of the Borough, which has "meager resources" nor the operator "that's under a great deal of stress in the global market today" to undergo a litigation process.

Co-Chair Wilken asked if the pilot agreement, which expires in the year 2012, is available for renegotiation if necessary.

Mr. Barry was not familiar with the terms of the agreement.

Senator Taylor assumed if the exemption were not extended, AIDEA would seriously consider whether to finance additional improvements in the area.

Mr. Barry responded that the matter would be considered, although he could not predict to what extent. He stressed the biggest problem would be the uncertainty that a removal of the exemption would create.

Senator B. Stevens asked the terms of the agreement for the DMTS between AIDEA and Teck Cominco Alaska. He understood that possessory interest stipulates an exclusive use and asked if such is contained in the DMTS agreement.

Mr. Barry replied that a toll use agreement is a more appropriate characterization of the contractual agreement. He furthered that Tech Cominco Alaska has agreed to pay fees to AIDEA for the use of the DMTS, which over the life of the facilities would amortize the full cost of construction and operation of the facilities.

Senator B. Stevens reiterated his understanding that possessory interest is contingent upon exclusive rights.

Mr. Barry stated the DMTS agreement is nonexclusive.

Co-Chair Wilken announced his intent to hold the bill in Committee.

Senator Bunde indicated Amendment #1, which he sponsored, was submitted to him by Teck Cominco Alaska as a compromise between the "need for predictability and a total exemption". This amendment he stated would extend the exemption to the year 2012.

Co-Chair Wilken assured resolution to this matter would be forthcoming.

Senator Taylor expressed that rather than dealing with the DMTS as an isolated case, he would consider State policy on taxation "to equalize across the board and across the State the manners and methods of taxation and exemptions there from that we give."

Senator Bunde informed that while he supports the Red Dog Mine project the exemption is not without cost and he therefore opposes a permanent exemption. He explained that currently, the exemption costs other school districts approximately \$300,000 per year, equaling approximately \$60,000 per school district.

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Co-Chair Wilken commented that it is not beneficial to the industry or to the Northwest Arctic Borough to reargue the issue every five years.

[The bill was subsequently HELD in Committee.]

RECESS 10:42 AM / 2:05 PM

#SB41

CS FOR SPONSOR SUBSTITUTE FOR SENATE BILL NO. 41(JUD)  
"An Act relating to medical care and crimes relating to medical care, including medical care and crimes relating to the medical assistance program, catastrophic illness assistance, and medical assistance for chronic and acute medical conditions."

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

[Note: Due to an audio malfunction a portion of the meeting was not recorded.]

Co-Chair Green, sponsor, read her testimony into the record as follows.

Why do we need SB 41?

- The cost of the Medicaid program in Alaska has increased an average of 20% per year since 1999, growing the program from \$396 million in FY 99 to \$936 million in FY 04 (a total increase of \$540 million over 5 years).
- We have limited ability to contain the majority of cost factors driving these increases, such as the increasing number of eligible recipients, the increased use of health services, and the rising costs of prescription drugs and long-term care.
- There is evidence that waste, fraud and abuse of public funds used to deliver Medicaid and Medicare services exists, both in Alaska and throughout the nation. Estimates of 7% for waste and 10% for abuse are commonly held perceptions.
- Alaska has no specific laws tailored toward health care crimes, making it difficult to prosecute dishonest Medicaid providers and keep them from continuing to abuse the system.
- The Division of Legislative Audit recently released their audit on the Division of Medical Assistance Internal Control Over Medicaid Payments. Two recommendations from the audit are addressed by this legislation:
  - Recommendation No. 7 states: "DMA's director should provide for a full-time, ongoing service provider audit function."
  - Recommendation No. 12 states: "The legislature should consider adopting specific criminal statutes related to Medicaid fraud to enhance the Medicaid Fraud Control Unit's effectiveness."

According to the audit, 46 other states have some form of criminal Medicaid fraud statutes.

What does SB 41 Do?

- It requires DHSS to contract for annual independent financial audits to identify errors, overpayments, and criminal violations within the Medicaid program.
- These audits complete the communication loop between DHSS and Law:
  - All audits will be provided to the Attorney General for possible criminal investigation.
  - The Attorney General will notify DHSS of any criminal charges brought against a Medicaid

provider.

- o All criminal charges will result in a complete review of outstanding claims with DHSS.
- It establishes the crime of medical assistance fraud defined with the culpable mental state of "knowingly and recklessly". It classifies the level of crime as a felony or misdemeanor based upon the aggregate value of charges similar to existing theft statutes.
- It provides a definition of "medical purpose" in relation to prescribing a controlled substance. The definition provides a framework within which a prosecuting attorney can argue whether a practitioner prescribed a drug for a medical purpose or for another purpose.
- It allows the commissioner to exclude a person convicted of medical assistance fraud from participation in the medical assistance program for a period up to 10 years following their unconditional discharge from sentence served.

Senator Taylor asked if this legislation provides for a "paper audit" or just a field audit.

Co-Chair Green responded that this requires that at least .75 percent of the total number of providers are audited each year. She stated this is more than the current number of audits conducted and also provides a "higher level of investigation". She furthered that the legislation would require the Department to follow up on audit findings and also requires communication between the Department of Law and the Department of Health and Social Services regarding providers that have been prosecuted and found to be not in compliance. She informed that in the past, lapses in this communication have occurred between the two departments. She stressed that this legislation would stop the Medicaid participation of those providers found guilty of Medicaid fraud.

Senator Taylor relayed that "a member of the medical community" indicated to him that an occasional comparison of a provider's claims to other claims would identify any irregularities that would warrant a complete audit. Senator Taylor requested assurances that the Department would conduct these reviews.

Co-Chair Green assured this was her understanding.

STEVE BRANCHFLOWER, Director, Office of Victims' Rights, and former Director of the Medicaid Fraud Control Unit, Department of Health and Social Services, testified via teleconference from an off net site that he was available to answer questions.

RANDALL SCHLAPIA, Unit Manager, Provider Review and Rate Setting, Division of Medical Assistance, Department of Health and Social Services testified via teleconference from an offnet location that he was also available to answer questions.

JACK NIELSON, Executive Director, Medicaid Rate Advisory Commission, Division of Medical Assistance, Department of Health and Social Services testified via teleconference from an offnet location that he was also available to answer questions.

DON KITCHEN, Assistant Attorney General, Medicaid Provider Fraud, Office of Special Prosecutions and Appeals, Criminal Division, Department of Law, testified via teleconference from an offnet location that he was also available to answer questions.

Senator Olson asked the percentage of the audits conducted that have resulted in questionable or egregious practices.

Mr. Branchflower responded that between July 1998 and December 2002, during his tenure at the Medicaid Fraud Unit, the Division of Medicaid Assistance contracted with a national accounting firm to conduct 164 audits at a cost of \$477,250. As a result of the findings of the audits, he informed that \$2,741,126 was recovered and returned to the State. He further told of eight outstanding cases at the time he left the Unit, with an additional \$18 million identified as overpayments. He concluded that the audits were cost effective and he therefore encouraged passage of the bill.

Senator Taylor repeated Senator Olson's question of the percentage of audits resulting in identification of fraud or questionable practices.

Mr. Branchflower replied that 85 percent of the audits did not find conduct that would merit criminal prosecution, although in almost all the cases, some overpayment was identified. He stated that in some instances, substantial overpayment was identified and because no criminal wrongdoing was determined, these cases were referred to the Division of Medical Assistance for the initiation of an administration recovery, as required under federal regulations. He was unaware of the status of the administrative recovery cases.

Senator Taylor clarified that approximately 75 to 80 percent of the audits found some overpayment was made and the remaining 15 percent warranted an additional criminal investigation.

Mr. Branchflower affirmed.

Senator Olson asked the number of providers charged were appealing the findings of their audit.

Mr. Branchflower told of two doctors convicted and imprisoned who are currently appealing their cases.

Senator Olson asked if the sponsor received input on this legislation from health care providers.

Co-Chair Green answered that she has received "very little" such input.

Amendment #1: This amendment changes the definition of "claim" under Sec. 47.05.290. Definitions., in Section 3 of the committee substitute on page 6 lines 4 - 8. The amended language reads as follows.

(2) "claim" includes a request for payment for medical assistance services under applicable state or federal law or regulations, whether the request is in an electronic format or paper format, or both;

This amendment also inserts "or medical services", and replaces "available to a medical assistance recipient" with "that may qualify for reimbursement under AS 47.07 or AS 47.08" on page 7 lines 6 and 7 in Section 3 of the committee substitute. The amended language of Sec. 47.05.290. Definitions., reads as follows.

(17) "services or medical services" means a health care benefit that may qualify for reimbursement under AS 47.07 or AS 47.08, including health care benefits provided, attempted to be provided, or claimed to have been provided to another, by a medical assistance provider, or "services" as defined in AS 11.81.900;

Co-Chair Green moved for adoption.

Co-Chair Wilken objected for an explanation.

ANNE CARPENETI, Assistant Attorney General, Criminal Division, Department of Law, noted a typographical error in the amendment.

Co-Chair Green offered a motion to amend the amendment to insert "assistance" following "medical" in Sec. 47.05.290(17) to read as follows.

(17) "services or medical assistance services" means a health care benefit that may qualify for reimbursement under

AS 47.07 or AS 47.08, including health care benefits provided, attempted to be provided, or claimed to have been provided to another, by a medical assistance provider, or "services" as defined in AS 11.81.900;

The amendment was AMENDED without objection.

Ms. Carpeneti then spoke to the amendment, noting that the clarification of a definition of "claim" is preferable in criminal statute, as the common definition of the word is different than that applied to a Medicaid claim.

Ms. Carpeneti furthered that the clarification of "services or medical services" is necessary because other services may qualify for reimbursement under the law, but are not necessarily available to a Medicaid eligible recipient. She exemplified oxygen bottles.

Co-Chair Wilken clarified the witness supported the amendment

Ms. Carpeneti affirmed.

There was no objection and the amended Amendment #1 was ADOPTED.

Senator Taylor offered a motion to report the committee substitute, as amended, from Committee with individual recommendations and accompanying fiscal note.

Without objection CS SS SB 41 (FIN) MOVED from Committee with fiscal note #1 for \$66,500 from the Department of Health and Social Services.

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**ADJOURNMENT**

Co-Chair Gary Wilken adjourned the meeting at 02:20 PM.