

MINUTES
SENATE FINANCE COMMITTEE
April 30, 2003
9:00 AM

TAPES

SFC-03 # 68, Side A
SFC 03 # 68, Side B
SFC 03 # 69, Side A

CALL TO ORDER

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

PRESENT

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

Also Attending: SENATOR GRETCHEN GUESS; TOM IRWIN, Commissioner, Department of Natural Resources; CAMERSON LEONARD, Assistant Attorney General, Natural Resources Section, Civil Division, Department of Law; JOE BALASH, Staff to Senator Gene Therriault; ROBERT FLINT, Attorney, Hartig Rhodes Hoge & Lekisch

Attending via Teleconference: From Anchorage: CAMERSON LEONARD, Assistant Attorney General, Natural Resources Section, Civil Division, Department of Law; From an offnet site: STEVE VAN SANT, State Assessor, Division of Community and Business Development; RON MILLER, Executive Director, Alaska Industrial Development & Export Authority, Department of Community and Economic Development; From Juneau: TAMARA COOK, Director, Legislative Legal and Research Services, Legislative Affairs Agency

SUMMARY INFORMATION

SB 146-COMMEMORATIVE VETERANS LICENSE PLATE

The committee heard from the sponsor and reported the bill from Committee.

SB 142-DNR LEAD RESOURCE DEVELOPMENT PROJECTS

The Committee heard from the Department of Natural Resources, and reported the bill from Committee.

SB 117-ELIMINATING LONGEVITY BONUS PROGRAM

The Committee adopted a committee substitute and held the bill in Committee.

HB 112-AIDEA: BONDS & MUNICIPAL TAX EXEMPTION

The Committee heard testimony from the State Assessor, Tech Cominco Alaska Incorporated, the Alaska Industrial Development & Export Authority, and Legislative Legal and Research Services. A committee substitute was considered but failed to be adopted, and the bill was held in Committee.

#sb146

SENATE BILL NO. 146

"An Act relating to a commemorative veterans' license plate; and providing for an effective date."

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

SENATOR GRETCHEN GUESS, the bill's sponsor, noted that she is available to answer questions, and she asked for the Committee's support of this bill.

Senator Taylor offered a motion to report the bill from Committee with individual recommendations and accompanying fiscal note.

There being no objection, SB 146 was REPORTED from Committee with fiscal note #1 in the amount of \$13,500 from the Department of Administration.

#sb142

SENATE BILL NO. 142

"An Act designating the Department of Natural Resources as lead agency for resource development projects; making conforming amendments; and providing for an effective date."

CS FOR SENATE BILL NO. 142(RES)

"An Act designating the Department of Natural Resources as lead agency for resource development projects; making conforming amendments; and providing for an effective date."

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

Co-chair Wilken informed that the Senate Rules Committee at the request of the Governor sponsors this legislation. He stated that the intent of this legislation is to identify the Department of Natural Resources as the lead agency for resource development projects and to establish an Office of Project Management and Permitting within the Department. He noted that "this office would lead and coordinate all matters relating to the State's review and authorization" of these projects.

Senator Bunde moved to adopt the original bill, SB 142, Version 23-GS1070\A rather than the Senate Resources committee substitute.

Co-Chair Wilken asked that Members refrain from offering any motions at this time. He specified that the Senate Resources committee substitute is before the Committee.

Without objection, Senator Bunde WITHDREW the motion.

Co-Chair Wilken clarified that CS SB 142(RES) is before the Committee for discussion.

TOM IRWIN, Commissioner, Department of Natural Resources, introduced Kurt Fredriksson, Deputy Commissioner, Department of Environmental Conservation, Mary Siroky and Janet Burleson Baxter, Legislative Liaisons for the Departments of Environmental Conservation and Natural Resources, respectfully, and noted that Richard LeFebvre, Deputy Commissioner, Department of Natural Resources, and Cameron Leonard, Natural Resources Section, Department of Law, were available via teleconference.

Commissioner Irwin voiced support of Governor Frank Murkowski's efforts to develop and utilize the State's resources. He continued that this bill would facilitate and expedite the use of State resources by providing the Commissioner of the Department of Natural Resources with statutory authority to lead and coordinate all matters relating to the State's review and authorization of resource development projects. He stated that in order to accomplish this goal, the Department must have clear and explicit authority. He noted that while the Department is currently the lead agency for mining activities, this bill would provide "the explicit

authority" required for other resource development activities.

Commissioner Irwin continued that the establishment of the Office of Project Management and Permitting would allow the Department to efficiently review and authorize large projects and oversee the Alaska Coastal Zone Management Program. He stated that where possible, the permitting process would entail a project team approach. He stressed that the intent of this legislation is to coordinate and integrate projects and that this change would not alter the decision-making authority from other entities such as the Department of Environmental Conservation. He attested that the goal of this legislation "is to get people together."

Commissioner Irwin continued that small, less complex projects that require few permits could benefit from the establishment of a lead agency coordination for review. He stated that these projects might or might not require the establishment of a project team.

Commissioner Irwin specified that resource development projects that utilize the lead coordinating agency and project review team approach would have a three-phase process that would include evaluation of the project to determine whether the lead agency review project team approach would adequately address the review and permitting needs of the project; would result in the establishment of the project team, development of an integrated review schedule, and the dissemination of information requirements and completion of necessary agreements amongst the agencies and applicants; and lastly the actual project review and authorization process including public participation that adheres to the requirements specific to that project. Additionally, he noted that the bill would assist the Department's efforts to streamline project review and authorization by facilitating the state's ability to pull together agencies to address project specific concerns and to facilitate and expedite the review and authorization process; and to develop a more cohesive working relationship among representatives of the agencies. He stated that this is where the teamwork and communication develops. Thirdly, he stated that through better communication, more efficient permitting and consolidated public process, where possible, would assist in integrating the State and federal agency process requirements.

Commissioner Irwin informed that the laws for resource development have expanded and that more agencies with permitting authority are involved in the process. He asserted that, "resource development should not be held up by the sheer complexities of government." He stated that this bill is intended to assist in alleviating that problem.

Commissioner Irwin voiced that the provision relating to a repeal of this statute that is included in the Senate Resources committee substitute is a "sound concept" which is being expanded to other State projects. He informed that rather than this being a new concept, the Department currently utilizes the provision in its large mining project permitting. He further announced that the concern regarding the unintended consequences of the termination date clause, or "what follows down the road" is a key element in this discussion. He stated that by specifying that the lead agency authority being granted to the Department of Natural Resources would be repealed or sunset on July 1, 2007 would send the wrong message to developers and investors because he stressed that entities, which invest millions of dollars in a project, over as much as a twenty-year period, would interpret "the message as that the State will only stick with them for four years. This is not the intent we want to give out there. The perception is bad enough already." He avowed that the State is addressing this issue to verify that Alaska "in this for the long haul... we're going to make a program that works and that people are going to want to keep going." He stated that this lead agency legislation is one of many pieces of legislation that the Administration is furthering to accomplish efficient permitting.

Senator Taylor voiced concern that other than establishing some timelines and a lead agency that would conduct hearings, the only thing accomplished by this legislation over the current process established by the Office of Governmental Coordination is the establishment of some firm timelines that would require entities to state positions on projects "within a given period."

Sec. 46.35.071 (e) Each state agency having jurisdiction to approve or deny an application for a permit shall have the power vested in it by law to make such determinations. Nothing in AS 46.35.031 - 46.35.071 lessens or reduces these powers, and AS 46.35.031 - 46.35.071 modify only the procedures to be followed in the carrying out of the powers.

Senator Taylor questioned why Section 46.35.071(e) provides each agency with the independent authority to approve or deny a permit as he attested that "if the Department of Natural Resources is truly going to be the lead agency, then all other agencies in State government should be advisory." He stated were this the case, the Department of Natural Resources could make a decision and the process could move forward. However, he asserted that "if every agency is allowed to have the veto power that we have seen exercised other the last several years, then I'm not sure that we're really accomplishing much other than electing the cheerleader for the committee and setting the timeframe for how long it would

take them to kill the project for you."

Commissioner Irwin responded that, while he understands Senator Taylor's concern, the large project team approach "does work." He stated that having a designated lead agency provides "the authority to get individual agencies to the table and that's what's critical." He stated efficiency is created by establishing communication at the onset of a project as opposed to affected agencies becoming involved as the project progresses and thereby causing project delays. He stated that, in addition to involving all agencies at the beginning of a project, the permittee is made aware of the flow of communication and project requirements and timelines. He stated that upon completion of the project team meeting, the Department of Natural Resources, as the lead authority, would establish timelines and the schedule of events and responsibilities. He reiterated that the process would work.

Co-Chair Wilken questioned why the adoption of the sunset language amendment enlarged the original two-page bill to a fourteen-page bill as reflected in CS SB 142(RES), Version 23-GS1070\D.

CAMERSON LEONARD, Assistant Attorney General, Natural Resources Section, Civil Division, Department of Law, testified via teleconference from Anchorage to confirm that the bill was expanded "purely" because of the sunset provision adopted by the Senate Resources Committee. He informed the Committee that the Murkowski Administration requests that the original version of the bill, which does not contain the sunset provision, be adopted.

Co-Chair Wilken asked whether the Department of Natural Resources is unable to support the sunset clause because "it sends the wrong message to developers."

Commissioner Irwin responded that the four-year sunset clause does send the wrong message to developers and that, instead, the State should send a message to developers conveying that the State is committed "to making this work." He expressed that the Legislature could conduct an annual review of the process and require the Department to be accountable for moving the process forward.

Co-Chair Wilken surmised that a future administration might possess a different approach to the purpose of this legislation, and that the approach might "be an automatic retreat from this type of development in the State."

Commissioner Irwin noted that the "power of an Administration can speed up or close down any process." He stated that the omission of the sunset clause would assist this Administration's efforts; but

he voiced that, "it doesn't cure the problem of what future administrations might do."

Amendment #1: This conceptual amendment transfers \$36,200 from the Department of Environmental Conservation personal services budget to provide funding for Department of Natural Resources expenses that would be generated by this bill.

Senator Olson offered a motion to adopt Amendment #1. He stated that this bill appears to reduce the demand on services provided by the Department of Environmental Conservation while increasing the demand for services in the Department of Natural Resources.

Co-chair Wilken objected. He asked which of the two accompanying fiscal notes would be affected.

Senator Olson identified the affected fiscal note as the Department of Environmental Conservation fiscal note #1.

A roll call was taken on the motion.

IN FAVOR: Senator Hoffman and Senator Olson

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

The motion FAILED (2-5)

Amendment #1 FAILED to be adopted.

Senator Bunde moved to adopt the original bill, SB 142, Version 23-GS1070\A as the working document.

[Note: Co-chair Wilken identified this motion as Amendment #2 during discussion on the bill.]

There being no objection, SB 142 was ADOPTED as the working document.

Co-chair Wilken asked for confirmation that the Administration supports this action.

Commissioner Irwin concurred.

AT EASE 9:22 AM / 9:24 AM

Senator Taylor moved to report the original bill from Committee with individual recommendations and accompanying fiscal notes.

There being no objection, SB 142 was REPORTED from Committee with zero fiscal note #1 from the Department of Environmental Conservation and zero fiscal note #2 from the Department of Natural Resources.

AT EASE 9:26 AM / 9:27 AM

#sb117

SENATE BILL NO. 117

"An Act eliminating the longevity bonus program and making related conforming changes; and providing for an effective date."

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

Co-chair Wilken explained that the elimination of the Alaska Longevity Bonus Program would save the State approximately \$47,500,000. He stated that the committee substitute, CS SB 117, Version 23-GS1100\I would provide for the continuation of the program as a needs-based program for Alaskan seniors with a monthly income of 150 percent over the Alaska federal poverty level.

Senator Bunde moved to adopt CS SB 117, Version 23-GS1100\I as the working document.

Senator Taylor objected. He voiced the concern that while the original version of the bill would terminate the program, the committee substitute would "convert the program basically to a welfare program" based on specific standards. He announced that he opposes both of these options, "but if in fact the final result of the Committee or legislative action is: rather than destroying the program we end up with a program that still exists in part for the most needy Alaskans, then that is the preferred alternative." He opined that, "it is preferable to save a portion of the program rather than destroying the whole program."

Senator Taylor withdrew his objection.

Senator Hoffman objected. He stated that while the opportunity exists to make the longevity program a needs-based program; he asserted, "that the problem is that this bill goes too far." He stated; therefore, that while he supports the concept of providing the State "with some savings," he could not support the committee substitute.

Senator Hoffman withdrew his objection.

There being no further objection, Version "I" was adopted as the working document.

JOE BALASH, Staff to Senator Therriault, presented testimony as follows.

The Governor's proposal - the original version of SB 117 - eliminated the Longevity Bonus program in its entirety.

In public testimony before the Senate State Affairs Committee - and its counterpart in the House - recipients of the Bonus made it clear that they depend on the monthly checks they receive to make ends meet.

The Committee Substitute in front of you preserves the program, but applies a two-part means test in order to make sure those recipients that need the Bonus continue to receive it.

The first test is on income

The second test is on assets

In order to make the revised program easier to administer, the CS adopts the same definitions for calculating income and assets as the current Adult Public Assistance program. That means there are items that are disregarded when the respective calculations are made.

For income purposes, the PFD, 50% of earned income, the first \$2000 of an ANCSA dividend, and any other needs-based state assistance received by the person are all excluded.

For assets purposes, one home, one car, personal property (clothes, furniture, etc.), funds set aside for burial, non-cash ANCSA distributions, Native allotments, and reparations/settlements are all excluded.

The reason for an asset test is that people have large assets available to them and are able to structure their finances so they have relatively lower monthly income.

When we began looking into how to apply a means test, we first looked at the requirements for Adult Public Assistance. However, those income and asset levels appeared to be very modest...just over \$1,000 in monthly income for a single person and just over \$1500 for a couple.

This CS sets each of those figures approximately \$400 higher and also doubles the assets test threshold to \$4000 per person and \$6800 per couple.

In order to qualify for the revised program, individuals and couples will need to go through an annual review to verify their eligibility. It is projected that roughly 4300 people will qualify under these conditions.

So that we can cut down on the administrative expense of

this review, eligibility for APA constitutes eligibility for the Longevity Bonus. That should eliminate the necessity to review approximately 2/3 of the recipients. That leaves the cohort of people who exceed the APA thresholds, but fall under the ALB thresholds (approximately 1600 people) who the departments will need to review.

After the initial review, recipients will only need to check off on their monthly residency forms that they continue to meet the income/asset requirements.

Now, when the program goes into effect later this year, there will be some implementation issues.

Currently, when a check arrives in the mail for the month of May, it is based on residency two months prior (March). So, if the new edibility requirements go into effect on July 1, current recipients will continue to receive checks into July and August of this year due to their eligibility in May and June.

Which brings me to a technical amendment to this draft that's necessary for implementation. On page 2, line 17, the language needs to read September 1 rather than July 1.

Once we get to implementation, there will be some Longevity Bonus recipients who do not qualify under this set of tests. However, if at some point down the line that person's circumstances change and they do meet the thresholds, they will be able to resume their participation.

Finally mister chairman, we get to the fiscal note and costs of the new program.

Due to the two-month lag in payments, we will have two months worth of status quo payments - \$4.1 million each month for a total of \$8.2 million. For the balance of the fiscal year, monthly costs for the payments will be just under \$1 million per month for a total of \$9.5 million. With the additional administrative costs added in, the total costs of the ALB for FY 04 will be around \$18 million.

Based on the \$44.8 million in both the House and Senate approved operating budgets, this amounts to an overall savings of nearly \$27 million for FY 04.

Due to the 2-month lag factor, there will be an additional savings of \$4 million in FY 05 and then the program will resume its gradual erosion over time.

That concludes my testimony Mr. Chairman.

Senator Bunde asked for an explanation regarding the disparity between the Department of Administration fiscal note #1, dated March 5, 2003, which reflects a \$47.5 million savings reduction as opposed to Mr. Balash's testimony referencing a savings of \$44 million.

Mr. Balash clarified that the \$47 million fiscal note is based on the FY 03 cost of the Longevity Bonus program while the \$44.8 million is the amount approved for the FY 04 operating budget by both the House of Representatives and the Senate.

Senator Bunde asked for confirmation that, were this committee substitute approved, the cost of the program would be \$11.3 million in FY 04.

Mr. Balash responded that the \$11.3 million would support "twelve months worth of the revised program's costs."

Senator Bunde surmised that the twelve-month timeframe would commence in September 2003.

Mr. Balash concurred.

Senator Olson noted that many Native elders who reside in the Bush areas of the State have such things as snowmobiles and four-wheelers rather than a licensed automobile. Therefore, he questioned whether these items would be included in the determination of the asset list language that reads as follows.

Sec. 5 AS 47.08.060(c) is amended to read:

(c) In applying the formula to determine the applicant's share, the total gross income and the total assets of the family of the applicant may be taken into account, with the following exceptions:

- (1) the applicant's permanent place of abode;
- (2) one noncommercial vehicle;
- (3) tools, equipment, vehicles, and other assets required in a trade or business;
- (4) ordinary household and personal effects;
- (5) (5) \$1,000 of liquid assets;
- (6) all nonliquid assets unless this exclusion would bring about an inequitable result; however, all income derived from this property shall be taken into consideration in determining the recipient's gross income;
- (7) inalienable shared in a Native corporation created under 43 U.S.C. 1601-1628 (Alaska Native Claims Settlement Act), for the period of their inalienability as specified in the Act;
- (8) Alaska longevity bonus payments under former AS 47.45
- (9) any other assets specifically restricted for the use of the recipient by state or federal

law.

Mr. Balash clarified that were the mode of transportation not factored against someone qualifying for the adult public assistance program, then that same exemption would apply in this program. He stated that the adult public assistance program's definitions and regulations are being applied to this program for "simplicity sake" rather than creating a whole new set of exemptions.

Senator Olson clarified that the adult public assistance guidelines would be used in this program.

Mr. Balash confirmed.

Co-chair Wilken informed the Committee that copies of the committee substitute have been distributed to Pioneer Homes, the Commission on Aging, and to the Legislative Information Offices. He stated that public testimony on the bill would commence this evening.

Co-Chair Wilken ordered the bill HELD in Committee.

AT EASE 9:36 AM / 9:38 AM

#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 second hearing for this bill in the Senate Finance Committee.

Senator Bunde moved to adopt CS HB 112, Version 23-GH1018\I as the working document.

Senator Olson objected to the committee substitute, Version "I," as it would have "a major impact on the viability of the mine in his district."

AT EASE 9:39 AM / 9:40 AM

Senator Olson asked for an explanation of the committee substitute.

Senator Taylor also objected to the adoption of the committee

substitute in order to hear an explanation regarding the changes to the bill imposed in the committee substitute.

Co-Chair Wilken explained that the committee substitute addresses the road, ore handling facilities, and dock assets at the Red Dog Mine operated by Tech Cominco Alaska Incorporated (Cominco). He stated that the State Assessor has determined that these entities should be taxed at full value determination because Cominco has a possessory interest in them. He continued that, "the committee substitute recognizes the possessory interest but allows the tax exemption to continue on the roadway part." He stated that, "this is more a public policy issue more than anything."

Co-chair Wilken stated that the committee substitute specifies that, in a possessory interest situation, when the Alaska Industrial Development & Export Authority (AIDEA) and a user have a non-exclusive use agreement regarding a road that the road would not be subject to taxation. He stated that, "it would apply to this road and all other roads to come." He noted that the committee substitute does not exempt the dock, the warehouse, or material handling facilities. He stated that, "this is a public policy call to recognize the roads in our State as non-taxable."

Senator B. Stevens asked whether the omission of the University of Alaska in Section 2 (a) of the bill that specifies which property in the State is exempt from taxation, is the result of a drafting error. He conveyed that the existing Statute language includes the property of the University of Alaska, however, he pointed out that the proposed committee substitute language eliminates the University.

Discussion ensued among Committee members attempting to establish the reason for the omittance of the University of Alaska.

STEVE VAN SANT, State Assessor, Division of Community and Business Development, Department of Community and Economic Development, testified via teleconference from an offnet site in Anchorage and confirmed that the committee substitute does omit the University of Alaska; however, he specified that this is the result of a drafting error and that the University should be included in "the exempt from general taxation language."

Senator B. Stevens pointed out an additional drafting error regarding the exemption status of the University occurs on page 2, line 19 of the committee substitute, Version "I."

Mr. Van Sant reiterated that the omissions pertaining to the taxation exemption of the University appear to be unintentional.

Mr. Van Sant responded to a question from Co-chair Wilken by stating that, other than the University of Alaska discrepancy, Co-chair Wilken's explanation of the committee substitute, Version "I" is correct. He reiterated that the intent of Version "I" is to "reinstitute the exemption for the roadway, or any future roadway, that would be utilized without a non-exclusive use agreement" by another user who receives AIDEA funding.

AT EASE 9:47 AM / 9:50 AM

TAMARA COOK, Director, Legislative Legal and Research Services, Legislative Affairs Agency, testified via teleconference from Juneau and informed that the incorporation of technical legislation changes adopted since FY 2000 has inadvertently resulted in the omission of the University of Alaska property exemption in Version "I" of the bill. She assured that it would be acceptable to correct this oversight through the technical correction process.

SFC 03 # 68, Side B 09:54 AM

Senator Hoffman qualified that, by law, the changes to the legislation would be limited to "only the highlighted language" in the bill. Therefore, he informed, "existing law would prevail" in regards to any technical error corrections.

Ms. Cook concurred with Senator Hoffman's assessment. She informed that this section amends a law that was enacted in the year 2000, and that law, she informed, "did not reflect changes to the statute that occurred during the last two years." She stated that it would be acceptable for the Committee) to amend Session Laws (SLA) to reflect recent changes and other technical corrections. She reiterated that, as Senator Hoffman has attested, "this bill would have the effect of making only the changes to the SLA that are bracketed out and underlined. It would not change the other provisions. We have other laws that have changed those other provisions."

Co-Chair Green agreed with the legal assessment provided by Ms. Cook; however, she voiced that litigation might argue that the omission of this language was intentional. She stated that, while this discussion clarifies that this omission was unintentional, she requested, "a review be conducted to verify that what is before the Committee is reflected in statute."

Ms. Cook suggested that were the Committee to adopt Version "I," it

could additionally "grant the authority to further amend that SLA to include any changes that have been made to statutes since the time of its enactment."

Senator Taylor asked whether Version "I" would affect the current taxation status of the dock and the other properties, as he understood that it would only impact the road.

Mr. Van Sant responded that, in addition to providing the exemption for the Red Dog Mine road, this legislation would additionally eliminate the termination date regarding the exemption of the port and ore storage facility. He clarified that Cominco's possessory interest in the ore storage buildings and the port facilities would be taxable were this bill adopted.

Senator Taylor asked for clarification as to whether this information is included in Version "I" or CS HB 112, Version 23-GH1018\H.

Mr. Van Sant clarified that the version being discussed is Version "I."

Senator Taylor asked for specifics regarding Version "H."

Mr. Van Sant informed that he does not have access to Version "H."

Co-Chair Wilken clarified that Version "H" is the version that was reported from the House of Representatives Finance Committee. He explained that Version "H" includes the road, whereas Version "I" excludes the road from taxation.

Ms. Cook interjected that Version "H" repeals Sections 3 and 19 of Chapter 117 SLA 2000.

Co-Chair Wilken furthered that Version "H" would remove the full value determination sunset provision for the exemption of the assets and thereby "include the road, the port, and the dockage facilities in place for full valued determination."

Ms. Cook confirmed that it "would eliminate the sunset."

Co-Chair Wilken clarified that Version "I" mirrors Version "H" except that it would not include the 52-mile road in the valuation determination.

Ms. Cook concurred, and stated that Version "I," rather than repealing the sunset "provision, would limit its application."

Co-Chair Wilken summarized that Version "I" would exempt the 52-mile road from taxation.

Senator Hoffman asked Cominco's response to the legislation.

ROBERT FLINT, Attorney, Hartig Rhodes Hoge & Lekisch, representing Tech Cominco Alaska Incorporated, stated that the House version of the bill, Version "H," "maintains the status quo by continuing to exempt the whole system," which includes the road and the port from the assessment for fair value determination or property taxation. He stated that the Senate committee substitute "basically includes in-taxation everything but the road."

Mr. Flint continued that in terms of dollar amounts, the versions "are opposite" as the House committee substitute taxes the entire system. He shared that, in 1999, the assessor valued the road during the construction phase when it was at its peak value, and "it is the highest component of the system;" however, he asserted that the road "is the one component that is most rapidly depreciated." He shared that when the assessment was first determined, "the road constituted approximately 16 percent of the total assessment of the DeLong Mountain Transportation System (DLMT). He continued that because the depreciation on the road "is more rapid than the depreciation on the other assets," he "assumed that by 2003, that the proportion is even lower." He stated that, "the affect of the committee substitute would be to add over 80 percent of the system to the assessment roles for the DLMT which is owned by AIDEA; excluding only, he attested, "the small portion now attributable to the assessed valuation of the road."

Co-Chair Wilken noted that the overview provided by Mr. Van Sant titled " Red Dog Mine Full Value Issue History"[copy on file] identifies the various component values. He continued that the total 1999 value was \$154 million and that of that total, \$24.5 million was attributed to the value of the road.

Co-Chair Green asked whether the language on page two, lines seven and eleven of Version "I" "more clearly defines the exemption parameters for the State Assessor."

Mr. Van Sant agreed that the language would define, "for assessors across the State, that any non-exclusive use roadway that is financed with AIDEA funds would not be included in the valuation process.

Co-Chair Wilken exemplified that, were the 28-mile Pogo road or the road to Donlin Creek, financed by AIDEA, they "would be transparent to taxation."

Mr. Van Sant agreed and stated that Version "I" provides assessors with marching orders" not to include AIDEA-funded roads in a valuation.

Senator Bunde questioned how this exemption would apply to an exclusive-use road situation. He noted that "other people can and do use the road to the Red Dog Mine."

Mr. Van Sant clarified that an exclusive-use AIDEA financed road would be taxable; however, he furthered that were that road issued a non-exclusive use agreement, it would be non-taxable.

Co-Chair Wilken asked whether the terms non-exclusive and possessory interest are synonymous.

Mr. Van Sant clarified that the term non-exclusive applies to the use of a property, and that as such, according to the Alaska Court System, would be taxable and subject to the possessory interest for taxation; however, he continued that this language specifies that a non-exclusive use road financed by AIDEA "would not be taxable and would not be subject to the full value."

Co-chair Wilken surmised, therefore, that this exemption is limited to AIDEA projects.

Senator B. Stevens stated that the language of Version "I" "re-interprets the agreement between Cominco and AIDEA concerning the DeLong Mountain Regional Transportation System" as it states that the port facilities and the road are the property of AIDEA once the bonds are retired. He asked whether this is correct.

RON MILLER, Executive Director, Alaska Industrial Development & Export Authority, Department of Community and Economic Development, testified via teleconference from an offnet site and expressed that the whole system is the property of AIDEA.

Senator B. Stevens restated the understanding that, when the bonds are retired, the whole system becomes the property of AIDEA.

Mr. Flint clarified that the facilities currently belong to AIDEA, and that "there is no residual ownership of any kind, like Tech Cominco, in that whole system."

Senator B. Stevens objected, "to splitting up" the State's road transportation system. He continued that, "one piece, while still owned by a State agency, can be included in the tax assessment while another piece, while still owned by the same state agency" is

exempt from taxation and assessment."

Mr. Van Sant explained that in the agreement between Cominco and AIDEA, Cominco has priority right to use certain properties, and that Section 1(b)(3) of the bill, specifies that, at any time that Cominco is not fully using its priority rights to use the facilities at the dock area, AIDEA may, with Cominco's consent, license others to use that property. Were this to occur, he continued, AIDEA would charge a license fee for the usage, and then funnel that money to Cominco. However, he elaborated that this language provision does not apply to road facilities. He stated that upon review, the road was determined to be "the more appropriate component" not to be taxed. He stressed that "its not ownership we're assessing, it's a right-to-use that property." He continued that Cominco does possess the priority right to use the properties identified in the agreement.

Co-Chair Wilken stated that were Cominco to allow, for example, the Acme Gold Company to use the facility, then Acme Gold Company would pay AIDEA, and then AIDEA would pay Cominco. Therefore, he opined that, "in essence," Cominco benefits from ACME Gold "being there and using the excess capacity of the facility."

Mr. Van Sant concurred that this is the procedure specified in the agreement.

Senator Taylor asserted that when the Governor, the Department of Natural Resources, and AIDEA reviewed the situation, it was noted that taxation laws have changed as the result of new rulings or new interpretations of a tax law. He stated that this, in conjunction with the July 1, 2003 sunset provision, required addressing. Therefore, he continued, the Governor submitted legislation to continue the status quo.

Senator Taylor furthered that this situation involves an operating zinc mine in which the State "has invested heavily," and is being repaid for that investment. He also noted that as part of the process, there was a need to develop a road, which the State Assessor has now determined could provide a taxing opportunity. He questioned the need to change the status quo agreement as he attested that it has been adequate and should be continued without interruption.

Senator Taylor voiced that the State's fiscal dilemma and in particular, the need for adequate education funding, might have triggered the change. He voiced the understanding that Cominco currently pays approximately one million dollars a year in education funding to the Northwest Arctic Borough (NWAB).

Mr. Flint stated that Cominco would pay \$5,850,000 to NWAB this year.

Senator Taylor exclaimed that the tax resulting from this legislation would not be paid to the State, but would rather be paid to the NWAB, which is already collecting a tax from Cominco. He asked for further information regarding the current taxing authority of the NWAB.

Mr. Flint expressed that there is no tax imposed by the NWAB, but rather that this money is paid as a condition of a "Payment in lieu of taxes" (PILOT) agreement between the two entities.

Senator Taylor interjected that the NWAB could enact a tax, but opted instead to establish a PILOT agreement with Cominco.

Senator Taylor asked why the State would subject the mine to a tax that exempts a portion of a road and which might not result in any additional funds being paid to the Borough. He asked whether NWAB supports this legislation.

Co-Chair Wilken reviewed that the original House bill was sponsored as a Governor's bill "to simply extend AIDEA's bonding authority." He furthered that the bill was expanded in the House Finance Committee to include the taxation issue involving the Red Dog Mine. He stated that this subject, rather than the AIDEA bonding authority, is currently being discussed. He clarified that the \$5.8 million being paid to the NWAB supports borough services. He continued that were Cominco's possessory interests taxed in the manner supported by the State Assessor, it would result in approximately \$259,000 being paid to support education in the NWAB. He stated that this payment would reduce the amount the State would pay to the Borough to support education funding. He stated that the issue at hand "is the 4 mils requirement based on full and true value, and this obviously increases by some \$100 million, because of the possessory interest, the taxable property in the NWAB."

Senator Olson pointed out that the road to the Pogo Mine was an existing road as opposed to the development of both a new road and a port to enable Red Dog Mine resources to be transited to market. He stated that this point should be a consideration in the assessment.

Senator Bunde voiced that this and other recent discussions have provided the Committee with opportunities to discuss whether "one group of people should be treated differently than another and how long the State could continue to afford subsidies" created when the

State had considerable cash flow revenue. He asserted, "these are valid issues that need to be discussed."

Co-Chair Wilken commented, "this bill is very clear...do we, as a Legislature, support what we ask our State Assessor to do. If we don't, we should just tell him to make his rules as he wishes to make them" and then either the Legislature can change them or that citizens, through the use of the Court System, could challenge them.

Co-chair Wilken continued that the committee substitute addresses a public policy call whereby the Legislature could assess roads as a means of encouraging development in the State by excluding them from asset valuation. He stated that the Legislature's current position is that roads could encourage development in the State; and that the question is, in this situation, whether the Legislature should overturn the decision of the State Assessor who has performed his duties as requested. He stated that this is what the committee substitute, Version "I" does. He stressed that some compromise legislation should be developed.

Senator Olson commented that Co-chair Wilken presents a valid point, as he agreed that the Assessor is performing his job responsibilities. However, he contended that it is the Legislature's duty to develop long-range plans, specifically those relating to resource development that would benefit the State. He asserted that, in addition to the extensive time required to receive a ruling, legal system challenges have the affect of putting a stop or a "yellow light" to developers who might invest in the State "because the rules might change." He stated that investors are uncomfortable with this situation.

Co-Chair Wilken agreed and stated that this is the reason to move this bill forward. He stated that this issue must be resolved in order to remove the uncertainty caused by sunset provisions such as the one included in this committee substitute. He stated that to eliminate the uncertainty that investors might face, either the Legislature or the Court System could resolve the issue; however, he voiced that resolving it at the Committee level could deter legal delays and the need to revisit the issue again when another sunset date approaches.

Senator Olson voiced support of this endeavor. He stated that "three years ago, I wasn't at your side...but I am now."

Mr. Flint voiced that Cominco would prefer that the Legislature, rather than the State Assessor or the Alaska Court System, establish the State's economic policy. He stated that this

legislation should be treated as an economic situation and, he asserted, "that there is no rational basis for splintering up the DMTS as far as taxes are concerned." He stated that the system in its entirety is intended to provide access to a remote area for resource development. He stressed that each component such as the road, the storage area, the port, and the loader are crucial to the operation. He stated that the agreement between AIDEA and Cominco specifies that "the project is a unitary system" and that each component, including the road, is an integral part of the system and are all subject to priority rights. He stated that Tech Cominco, as the first user, "pays for it all." He stressed that general funds are not utilized, and that Tech Cominco would willingly grant another entity access to the facilities as specified in the agreement, in order to share operational costs.

Mr. Flint confirmed that any company would desire assurances rather than uncertainty, and he asserted that, "this committee substitute would serve to create uncertainty to Tech Cominco by creating taxes on basically the whole project." He voiced, "if it isn't broken don't fix it," as he attested that no one had a problem with the process until 1999 when the State Assessor "found a theory by which he thought the assessment could be expanded."

Mr. Flint stated that through analysis, it was determined that, were a mil rate in place, the local share for this project is above those of comparable boroughs. Additionally, he noted that the State is reimbursed for the loan with the rate of return plus the extra tonnage fees, which he attested, generate extra money that AIDEA might be able to flow into the general fund. He stated that this committee substitute would be counterproductive from an economic development point of view as the status quo has been quite productive. He stated that Tech Cominco would prefer that the status quo be continued.

Senator Bunde asked for confirmation that this proposal excludes the road from taxation, but includes the single use storage facilities as well as the multiple use port facility.

Mr. Van Sant responded that is correct.

Senator Bunde opined that the multiple use argument could apply to the road and the port, but would exclude other facilities such as the storage facility.

Mr. Flint interjected that the storage facility could store any ore or other items.

Co-Chair Wilken asked Mr. Flint for suggestions on how the State

might address future AIDEA-funded large resource development projects; specifically how the taxation exemption policy regarding assets such as roads and facilities could be developed to provide financial and educational benefits to the citizens in the region.

Mr. Flint responded that in order to encourage economic development, policy makers should look at the situation "generically"; that is to consider the entire situation including such things as roads and other public infrastructure in the remote area as well as the tradeoffs between the development of a tax base and a resource development. He stated that, while these tradeoffs could affect revenue, such things as excess tonnage fees could be implemented to offset it. He stated that policy makers rather than a business should make policy determinations regarding economic development on a statewide basis.

Co-Chair Wilken asked whether the Greens Creek Mine in Southeast Alaska has a possessory interest classification.

Mr. Van Sant stated that it does.

Co-Chair Wilken asked whether the State might be "required to forsake the taxable value" of the Fort Knox Gold Mine and the Greens Creek Mine which have possessory interests in their project's roads and facilities. He stated that allowing this legislation to proceed as proposed would not be limited to jeopardizing governments' future ability to access funds from resource developments but could also cause existing resource developments to be reevaluated.

Mr. Flint replied that one of the important things for promoting economic development in remote areas is the consideration of an existing public infrastructure. He noted that the lack of an infrastructure is a detriment to developing remote areas, as, were a company to choose, it would choose a developed area. He stressed that the State should "try to even the playing field" as much as possible in order to encourage development in areas where there is a lack of public infrastructure. He stated that while this might result in tradeoffs, "the overall policy might outweigh that."

Senator Taylor declared that the NWAB and Red Dog Mine PILOT agreement is in lieu of a taxation system based on mil rates and assessed valuation. He asked the amount of money that the NWAB would have collected were the proposed committee substitute, which is based on a Court decision upholding the State Assessor's valuation determination in place at the onset of the Red Dog Mine project. Additionally, he asked the mil rate that would be required to garner revenue equal to the current PILOT agreement amount.

Co-Chair Wilken clarified that rather than a Court System decision furthering this endeavor, it was incorrectly understood by the State Assessor, that a valuation system rather than a PILOT agreement existed in the NWAB. Subsequently, the State Assessor furthered the valuation issue.

Mr. Van Sant affirmed that the Legislature, rather than the State Assessor, establishes State policy, and that "taxation is the rule, and this exemption is the exception to that rule." He shared that, in 1998, he had assumed, when he visited the NWAB, that the taxation system was based "on the full value rule." He stated that subsequent to that visit, it was clarified that a PILOT program, rather than an asset assessment program existed. He stated that rather than setting policy, the Assessor's "job is to make sure that all property in the State is assessed equitably, and in this case, right now, we are not doing that."

Mr. Van Sant continued that direction from the Legislature is being sought to determine how resource development projects should be approached and whether "we continue with inequities across the State." He stated that were this the direction given, the Assessor's Office would comply. However, he expressed that currently a variety of assessments are conducted such as Kodiak's SeaLand assessment based on a preferential use agreement on the public dock and Anchorage's consideration of granting a preferential use agreement to SeaLand. He reiterated that, rather than changing policy, the State Assessor is attempting "to make sure that everything that is taxable is on the assessment role."

Mr. Van Sant was unable to answer Senator Taylor's question regarding the revenue or mil rate for the NWAB. He stressed that his job is to attempt to determine the "full valuation estimate for everything that is taxable up there, and that is what I attempted to do in 1998." He stated that the goal of this committee substitute, rather than being an attempt to change things, is to determine whether the Legislature wishes to exclude resource development projects from taxation. He ventured that the NWAB would support resource development projects being taxed, as would the communities of Fairbanks or Juneau. He stated that were a change desired, then the Legislature must let the State Assessor know what that change is.

Senator Taylor calculated that, in order for the NWAB to achieve the amount collected under the PILOT agreement, the project must be assessed at \$500 million with ten-mil rate. He voiced amazement that the State Assessor and the NWAB attorney were unaware that a PILOT agreement existed "between AIDEA and the State and the NWAB"

to have a payment made in lieu of taxes and thus not have those assets not listed on their tax roles."

Mr. Van Sant communicated that at the time he became aware of the PILOT agreement between Cominco and the NWAB, the monetary terms of that agreement were not investigated because he asserted that the amount of the agreement is not something that should concern him. He shared that Cominco maintains an extensive list of mine assets, and he commended their accountants for keeping current on the hundreds of thousands of pages of items "that come and go through that mine." He noted that the PILOT agreement was discovered when a site visit was conducted.

Mr. Flint disclosed that the NWAB does not have an assessor because it does not have a tax role.

Senator Taylor argued, nonetheless, that a contractual agreement does exist between the NWAB and Cominco.

Senator Bunde responded to Senator Taylor's comment that a company would not agree to a PILOT payment that would be higher than a tax. Senator Bunde suggested that a company would support a PILOT agreement for two reasons: 1) certainty and 2) to pay an amount that is "a lesser number than taxes, as no business would volunteer to pay a higher assessment than absolutely required."

Mr. Flint explained that the PILOT agreement amount was driven by the NWAB school-funding needs. He informed that the mine is the only private business paying to the local government, as the Borough has no taxation system. He stated that the NWAB is largely a school district and it is "claimed" that 77 percent of the PILOT agreement revenues fund school expenses. He continued that analysis estimated that were the 77 equated to a mil rate, the rate would be higher than Tech Cominco would pay in the Juneau or Anchorage boroughs. He stated that another important consideration is that Cominco is committed to hiring local NANA Regional Corporation shareholders.

Co-Chair Wilken voiced that by his calculations, the Fort Knox Gold Mine in the Fairbanks North Star Borough is taxed at 18 mils with an assessed value of \$383 million. He stated that this calculates to \$6.82 million.

Mr. Flint clarified that his calculation is based on the 77-percent of the PILOT agreement payment that supports the NWAB school program as compared to, for instance, the 8.4 percent school mil rate in the Fairbanks area.

Co-chair Wilken concurred.

Senator Taylor asserted that the PILOT program is an "extensive agreement" that includes other provisions including training and local hire requirements.

Mr. Flint agreed and stated that the commitment to hire local residents is a critical component and should be "the number one goal" of economic development.

Senator Taylor understood the PILOT agreement to be between Cominco and the NWAB.

Mr. Flint responded that the Borough, Cominco and AIDEA are parties to the agreement as well as the NANA Native Corporation. He informed that Cominco leases land from the NANA Native Corporation. He noted that the NWAB's obligation is to provide training to local citizens.

Senator Taylor opined that any community would make concessions in order to encourage economic development in its area. He stated that the City and Borough of Juneau's annexation of the Green's Creek Mine on Admiralty Island is such an example. He furthered that the Red Dog Mine provides job opportunities to the people in the NWAB. However, he voiced concern about the "message being sent" by the continuance of the status quo situation; however, he stated that the Legislature is setting a new economic policy, which would negate an ongoing economic agreement, and he asked for a legitimate economic reason to do this. He voiced support for a region negotiating economic development plans with a developer with provisions such as hiring a specific number of local residents and paying a certain amount of taxes.

Senator Taylor reminded the Committee that previous Legislators awarded a five-year tax deferral to the timber industry in Ketchikan as a means of attracting development. He stated that numerous communities and states provide incentives to developers in order to promote economic activity. He declared that this committee substitute is a "dramatic" policy shift that he could not support.

Mr. Van Sant responded that, while Anchorage and Fairbanks have local economic incentives such as an exemption from local taxes to encourage development, the full value of the business is depicted in the State's property tax assessments of the communities.

Co-Chair Green commented that this is very complicated issue and that the discussions are appreciated. However, she stated that she has "come to the realization that", in the future, when AIDEA project proposals come before the Committee for approval, she would understand that these projects would be granted "a different, unreachable status apparently." She stated that, "this has a chilling influence" on her decisions, and she stated that rather than seeking AIDEA funding, these companies should pursue private funding.

Co-Chair Wilken stated that this is a simple but "very important bill for the future of Alaska," and "that is why the Committee is spending so much time on it."

Senator Olson stated that the Red Dog Mine has been operating at a profit; however other projects, such as the Healy Coal Project, have not. He asked whether the Healy Coal Project is recognized as a possessory interest project.

Mr. Van Sant responded that because the Healy Coat Project has no private sector interest, there is no possessory interest.

A roll call was taken on the motion to adopt Version "I".

IN FAVOR: Co-chair Green and Co-chair Wilken

OPPOSED: Senator B. Stevens, Senator Taylor, Senator Hoffman, and Senator Olson

ABSENT: Senator Bunde

The motion FAILED (2-4-1)

The Version "I" Committee Substitute FAILED to be ADOPTED.

Co-Chair Wilken informed that the bill would be HELD in Committee.

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ADJOURNMENT

Co-Chair Gary Wilken adjourned the meeting at 10:52 AM