

**MINUTES**  
**SENATE FINANCE COMMITTEE**  
**May 05, 2003**  
**9:02 AM**

**TAPES**

SFC-03 # 75, Side A  
SFC 03 # 75, Side B  
SFC 03 # 76, Side A

**CALL TO ORDER**

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

**PRESENT**

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

**Also Attending:** REPRESENTATIVE NORM ROKEBERG; SENATOR GARY STEVENS; JEFF OTTESEN, Acting Director, Division of Statewide Planning, Department of Transportation and Public Facilities; JOHN MACKINNON, Deputy Commissioner of Highways & Public Facilities, Department of Transportation and Public Facilities; JOHANNA BALES, Auditor, Department of Revenue; RICK URION, Director, Division of Occupational Licensing, Department of Community and Economic Development; CHUCK HARLAMERT, Juneau Section Chief, Tax Division, Department of Revenue

**Attending via Teleconference:** From Anchorage: JENNIFER APP, Alaska Advocacy Director, American Heart Association; From Ketchikan: MIKE ELERDING, Owner, Northern Sales Company

**SUMMARY INFORMATION**

SB 100-APPROP: CAPITAL PROJECTS

The Committee continued discussion on a Department of Transportation and Public Facilities amendment, and the bill was held in Committee.

HB 9-HOME INSPECTORS/CONTRACTORS

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

SB 168-CIGARETTE SALE/DISTRIBUTION

The Committee heard from the sponsor, the Department of Revenue, the industry, and took public testimony. One amendment was adopted, and the committee substitute was reported from Committee.

SB 114-INCREASE BUSINESS LICENSE FEE

The Committee heard from the sponsor, the Department of Community and Economic Development, and the bill was held in Committee.

HB 90-TAX CREDIT: SALMON DEVELOPMENT/UTILIZATION

The Committee heard from the sponsor and the Department of Revenue. A committee substitute was adopted, and the bill was held in Committee.

SB 177-PERS/TRS COLA FOR ACTIVE DUTY MILITARY

The Committee heard from the sponsor and the bill was held in Committee.

#sb100

SENATE BILL NO. 100

"An Act making capital appropriations and reappropriations; capitalizing a fund; making appropriations under art. IX, sec. 17(c), Constitution of the State of Alaska, from the constitutional budget reserve fund; and providing for an effective date."

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

Amendment #8: This amendment is outlined in a memorandum from Mike Barton, Commissioner, Department of Transportation and Public Facilities to Cheryl Frasca, Director, Office of Management and Budget dated May 2, 2003, which reads as follows.

The Department of Transportation and Public Facilities is requesting amendments to the capital budget bills (HB 150 and

SB 100) before the Legislature.

#### Rural Airport Projects

The Department is requesting the following changes to rural airport capital projects:

##### Amend

###### Chevak: Snow Removal Equipment Building

Increase from \$50,000 to \$200,000 federal receipt authority. The cost to build this structure has increased over previous estimates. This amount is needed in addition to an FY 03 appropriation to bring the total estimated cost to \$750,000.

##### Add

###### Scammon Bay: Airport Snow Removal Equipment Building

\$100,000 federal receipts. Reflects revised Airport Improvement Program request. This project will upgrade the Scammon Bay Snow Removal Equipment Building.

###### Statewide: Various Airport Snow Removal Equipment

\$4,300,000 federal receipts. This was inadvertently omitted from the Department's original request. The project provides federal authority to purchase new or replacement snow removal equipment at several rural airports.

#### Surface Transportation Projects

The Department's current AMATS [Anchorage Metropolitan Area Transportation Study] and Surface Transportation requests are \$68,734,000 and \$416,092,600.

The following reductions are being requested to various highway projects:

(\$39,906,000) - Over the past year there has been a decrease in the amount of federal fuel tax revenues collected, which have caused a corresponding reduction in the highway construction program. A reduction in specific projects is being requested to reflect delays due to the decreased federal funding.

(\$48,125,000) - This amendment requests project reductions where the Department has determined that adequate project authority already exists to continue work through FY 04.

(\$1,205,000) - Also being requested is a reduction in TRAAK [Trails and Recreation Access for Alaska] projects to reflect a program allocation decrease.

The following additions are being requested:

\$55,416,000 - New or increased federal project authority is being requested where scope changes, funding breakdown, updated estimates or priorities have changed.

\$21,700,000 - Project authority is needed for earmarks contained within the recently approved congressional appropriation bill.

Finally, the amendment contains the elimination of individual pavement and bridge projects and combines them into regionwide allocations. This will provide the regions flexibility in determining their greater need, pavement or bridge repair. Similar adjustments are taking place for AMATS and FMATS [Fairbanks Metropolitan Area Transportation Study] projects.

The net effect of these amendments is a reduction of \$12,220,000 to the AMATS and Surface Transportation appropriation requests. A spreadsheet with the changes is attached [copy on file].

This amendment was initially discussed at the May 2, 2003 hearing on this bill.

Co-Chair Wilken informed that the projects identified in Amendment #8 are included in the updated Department of Transportation and Public Facilities spreadsheet [copy on file], dated May 2, 2003.

Senator B. Stevens stated that lines 78 through 80 of the new spreadsheet specify that the total pavement and bridge refurbishment expense would be \$46 million. He noted that the components comprising this amount are: lines ten through twelve that total \$14 million; lines 36 and 37 that total approximately \$10.5 million; and lines 48 and 49 that total \$6.1 million. However, he pointed out that the \$6.1 million total of lines 48 and 49 is included in each of the two aforementioned totals. Therefore, he argued that the total of these three items should be \$30.6 million rather than the \$46 million reflected on the spreadsheet. He puzzled as to how the total was calculated.

JEFF OTTESEN, Acting Director, Division of Statewide Planning, Department of Transportation and Public Facilities shared that one of the major difficulties the Department has experienced in preparing its capital budget request is that the Department has had "to guess what the new formula will be in the reauthorization of the [federal] transportation bill," as he explained, the federal formula might not be finalized until the spring of 2004. He expressed that this lack of finality has resulted in "much uncertainty" in the budget. He reminded that numerous FY 03

preventative maintenance activities were eliminated because of a decrease in federal funds "late in the year." Continuing, he voiced the Department's desire to provide the various regions of the State with the flexibility to use any excess federal aid the Department might receive, to "catch up" on preventive maintenance activities and other necessary projects.

Senator B. Stevens noted that the budget for the Central region has increased from \$14 million to \$20 million and that the Northern region's budget has increased from \$10 million to \$20 million. In addition, he reiterated that the newly created Southeast region's \$6 million proposed budget, as specified on lines 48 and 49, is incorporated into the total budget three times. He continued to voice confusion regarding how the budget was calculated.

Co-Chair Wilken asked the Department to provide the Committee with a summary sheet to further define the total expense.

Mr. Ottesen clarified that rather than attempting "to be the exact sum of the old lines," the revised lines in the spreadsheet are intended to include the old lines "plus the extra authority" that might be forthcoming from the federal government.

Co-Chair Wilken understood that the federal funding in question is specific to the Anchorage Metropolitan Area Transportation Study (AMATS) and the Fairbanks Metropolitan Area Transportation Study (FMATS).

Mr. Ottesen clarified that the federal funding would have a region-wide effect.

Co-chair Wilken asked the Department to provide a revised spreadsheet to clarify the funding.

Senator B. Stevens noted that, were Amendment #8 adopted, FMATS projects would be reduced approximately \$545,000 and AMATS projects would be reduced \$12.3 million for an AMATS total of \$54.2 million as compared to its original budget proposal of \$66.5 million.

Senator B. Stevens additionally asked for an explanation of the new Metropolitan Planning Organization (MPO) item on line 74 as well as a clarification as to whether Anchorage's University and Illinois Avenues, as identified on line 21 in the new spreadsheet, are considered part of the MPO road system or are classified as State-owned roads.

Mr. Ottesen explained that University and Illinois Avenues are considered State-owned roads.

Senator B. Stevens opined, therefore, that they are included in the National Highway System (NHS).

Mr. Ottesen replied no. He explained that although these are State roads, their location within a MPO mandates that their funding be included in the MPO budget. He noted that roads designated as National Highway System routes would be the exception to this determination.

Senator B. Stevens declared that his AMATS and FMATS budget reduction calculations and percentages differ from the Department's, and he remarked that his primary concern is the \$12.3 million reduction in AMATS funding. He communicated that the proposed FMATS and AMATS \$12.7 million total budget reduction equates to 16.1 percent of the total budget reduction. He asked the Department to identify similar levels of reductions in other areas in the State, as he asserted that rather than AMATS carrying the brunt of total budget reduction, the entirety of the components should reflect a 16-percent Community Transportation Program (CTP) reduction

Co-Chair Wilken asked the Department to provide a reconciliation of the numbers.

Mr. Ottesen affirmed that further information would be provided.

Mr. Ottesen reviewed the Department's funding approach by explaining that in November 2002, the Department projected a total funding level of \$205 million for CTP and Trail and Recreation Access in Alaska (TRAAK). He communicated that these two categories fund MPO allocations. Continuing, he noted that current non-MPO funding is estimated to total "only" \$94 million. Therefore, he explained that the revised FY 04 spreadsheet "is an attempt to restart" funding allocations to produce "equality across the board," between the MPOs and the non-MPOs in the State.

Mr. Ottesen reminded the Committee that previous "transitional funding" levels authorized for Illinois Avenue and University Drive upgrades were at the 100 percent level; however, due to a downturn in available funding, the transitional funding specified for them in FY 04 is at the 50-percent level. He explained that these transitional funds are in addition to the regular funding mechanism for these avenues, and he noted that this type of extra funding has occurred frequently over time. He expressed that other projects have received additional funding in this manner, and he assured that the extra funding has been provided "judiciously and for good reason."

Co-Chair Wilken announced that the Department would continue to work with Senator B. Stevens to address his concerns.

Senator Hoffman noted that the revised FY 04 budget totals \$350 million as opposed to the original budget of approximately \$450 million. He asked the Department to identify which Statewide Transportation Improvement Program (STIP) projects have been eliminated due to the funding reduction.

Mr. Ottesen explained that the red line denoted on the budget chart accompanying the revised spreadsheet indicates the original federal funding level that was estimated for FY 03 through FY 06 while the yellow line on the chart reflects the current anticipated federal funding level reduction of approximately \$75 million per year. He noted that the federal and State match funding levels are also depicted.

Senator Hoffman asked which projects would be affected.

Mr. Ottesen stated that the reduction would be all encompassing.

Senator Hoffman surmised therefore that the project reductions in their entirety would equate to approximately \$75 to \$80 million per year.

Mr. Ottesen clarified that the net affect would be approximately \$160 million, as the downturn in federal funds would affect the current year's funding in addition to the FY 04 funding. He affirmed that the issue is complex because the total includes the new SHAKWAK funding category that is limited in its scope of usage and is excluded from the regular federal funding formula.

In response to a question from Senator Hoffman, Mr. Ottesen replied that the Department was unaware of some of the federal FY 03 funding reductions until approximately four weeks prior. He assured that the Department is currently revising both the FY 03 and FY 04 budgets in an attempt to re-schedule and/or delay projects. He communicated that this is the first time in fifteen years that the Department has faced a downturn in federal funding.

Senator Taylor questioned the methodology used to determine which projects were selected for funding reductions; specifically whether such things as the elimination of \$1.4 million in federal receipts designated for the Saxman ferry terminal occurred because of the Department's knowledge that the delivery of the ferry was being delayed.

JOHN MACKINNON, Deputy Commissioner of Highways & Public Facilities, Department of Transportation and Public Facilities, stated that the Department's three regional directors and staff worked to make "cuts proportionately" and to reach agreement on which projects could be delayed "with minimum impact" or with a determination that a project's funding authority would not be included because the project was behind its projected timeline. He clarified that rather than jeopardizing a project, its delay would appropriately reflect the project's current situation. He noted that these projects might be behind schedule due to such things as right-of-way conflicts, utility delays, or construction schedules.

Senator Taylor voiced concern regarding two big projects in his district; specifically the \$6 million Gravina Island access bridge to the airport project and the \$1.9 million Tongass Avenue resurfacing project.

Mr. MacKinnon referred the Committee to the spreadsheet as it's comment section specifies that sufficient money would be available in the proposed budget to continue those projects through FY 04.

Senator Taylor requested that some assurance be provided to substantiate that the projects would be adequately addressed in the FY 05 budget proposal.

Mr. MacKinnon assured that these projects would be furthered, provided that sufficient federal funding becomes available.

Senator Taylor asked whether this assurance is based on the historical level or the projected level of federal funding.

Mr. MacKinnon clarified that it is based on the anticipated level of federal funding, which, he characterized "as a more realistic level" of what the funding would be.

Senator Taylor asked regarding the deletion of the \$6.5 million Prince of Wales Coffman Cove Road from the FY 04 budget. He asked for assurance that this project would move forward even though the accompanying comment section specifies that the its funding would not be required until FY 05.

Mr. MacKinnon responded that the Coffman Cove project is a federal forest service project that has been bid and is currently being awarded. He assured that the project would be included in the FY 05 budget, as its funding would not be required until August 2004.

Senator Taylor declared therefore, that the project would be addressed in the FY 05 budget.

Mr. MacKinnon concurred.

Senator B. Stevens asked whether the ferry system projects on lines 65 and 67 of the revised budget were included in a recently adopted amendment pertaining to SHAKWAK designated funds of \$68 million.

Senator Taylor interjected that the funding for these projects is separate from the \$68 million SHAKWAK amendment.

Mr. MacKinnon concurred.

Co-Chair Wilken reiterated that the Department would provide information to the Committee regarding questions that arose during this meeting.

Co-Chair Wilken ordered the bill HELD in Committee.

#hb9

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

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

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

REPRESENTATIVE NORM ROKEBERG, the bill's sponsor, voiced appreciation to the Committee for the thorough discussions that the Committee has conducted on this legislation.

Co-Chair Wilken clarified that SCS CS HB9 (FIN) Version 23-LS0029\U with three adopted amendments is before the Committee.

Co-Chair Green moved to report the committee substitute for HB 9 from Committee with individual recommendations and accompanying fiscal notes.

Senator Taylor objected.

AT EASE 9:31 AM / 9:32 AM

Co-Chair Wilken clarified that Amendment 23-LS0029\U.1, Amendment 23-LS0029\U.2, and Amendment 23-LS0029\U.4, were previously adopted and would be incorporated into the Version "U" committee substitute.

Senator Taylor voiced concern that "the shifting of the statute of limitations to one year" would modify the "normal civic system to provide a different standard for one group of people." He puzzled as to the reason that a one-year statute of limitations would be specifically identified for the home inspector profession as opposed to the standard three-year statute of limitations for other construction related entities such as plumbers and electricians.

Representative Rokeberg responded that the intent of this language is to prevent "the shift of liability from one element of a real estate transaction to a home inspector without due cause." He continued that the one-year statute of limitations timeframe has been identified for home inspectors for several reasons including the fact that while liability insurance is available for Existing Home Inspectors, it is unavailable for New Home inspections. Furthermore, he noted that the liability is limited to \$350.

Representative Rokeberg explained that in a new home construction, the responsibility for a defect would be, as first recourse, the contractor or other construction entities. However, he attested, in an existing home inspection, were a defect to surface after one year from the date of the home inspection report, other factors such as owner neglect, natural disasters, the weather, or other unforeseen events could be responsible for the defect. In this situation, he noted that the seller or the real estate agent might not have disclosed pertinent information.

Senator Taylor asked for further clarification regarding available insurance coverage.

Representative Rokeberg reaffirmed that insurance is not available to home inspectors for new construction; however, he stated that insurance is available to the building contractor. He noted that the cost of that insurance has increased dramatically in recent years.

Senator Taylor stated that the home inspector's report is a "critical element" in the new home construction process and without

that report, financial and construction requirements could not be finalized. He argued that the effect of this legislation would be that, after one year, were it determined that the home inspector was the negligent party, the home owners would not have any recourse as the home inspector would be exempt from a lawsuit. He declared that the unavailability of insurance coverage for new home construction for home inspectors should not dictate a change in State policy.

Senator Taylor asked how a real estate transaction occurring six months after a home inspection was completed would fare under this legislation, specifically whether the liability would be limited to the remaining six months.

Representative Rokeberg responded that provisions in the bill limit the validity of a home inspection report to 180 days. He noted that the one-year timeframe would allow the dwelling to be exposed to the various seasonal weather-related elements to test "the integrity" of the structure. He asserted that the one-year timeframe is sufficient as that "it would be unfair to have liability attached" to a home inspector who "only charges" approximately \$350 for a visual report, after that timeframe because any defeats should become apparent in that year.

Senator Olson asked whether the sponsor would be opposed to an amendment that would change the statute of limitations.

Representative Rokeberg reminded that Amendment #4 changed the two-year statute of limitations for new home construction liability to one-year.

Senator Taylor asked the location of the language regarding the validity dates of the home inspection report in the bill.

Representative Rokeberg stated that this language is included in Section 7(d) on page six, line 16. He opined that permitting a home inspection report to be valid for 180 days is too long.

A roll call was taken on the motion.

IN FAVOR: Senator Olson, Senator Bunde, Co-chair Green, and Co-chair Wilken

OPPOSED: Senator Taylor and Senator Hoffman

ABSENT: Senator B. Stevens

The motion PASSED (4-2-1)

SCS HB 9 (FIN) was REPORTED from Committee with zero fiscal note #1 from the Department of Revenue; zero fiscal note #2 from the Department of Law; zero fiscal note #3 from the Department of Labor and Workforce Development; and fiscal note #4 in the amount of \$66,100 from the Division of Occupational Licensing, Department of Community and Economic Development.

#sb168

CS FOR SENATE BILL NO. 168(L&C)

"An Act relating to issuance and revocation of licenses for the importation, sale, distribution, or manufacture of cigarettes and tobacco products; relating to a tax refund or credit for unsaleable, returned, or destroyed tobacco products; relating to restrictions on and penalties for shipping or transporting cigarettes; relating to records concerning the sale of cigarettes; amending and adding definitions relating to cigarette taxes; relating to the payment of cigarette taxes; relating to penalties applicable to cigarette taxes; relating to the definition of the wholesale price of tobacco products; relating to payment of cigarette taxes through the use of cigarette tax stamps; relating to provisions making certain cigarettes contraband and subject to seizure and forfeiture; relating to certain crimes, penalties, and interest concerning tobacco taxes and stamps; relating to cigarette sales; and providing for an effective date."

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

Co-chair Wilken explained that this legislation addresses cigarette sales and distribution by mandating that a tax stamp be applied to each pack of cigarettes sold in the State thereby signifying that the tobacco tax has been paid.

Senator Bunde, the bill's sponsor, expressed that "this is a tobacco distributor-friendly bill" as it would impede "the gray or black" marketing of cigarettes in the State that is negatively impacting legitimate businesses that pay the one dollar a pack State tax. He noted that requiring the State stamp to be affixed to each pack of cigarettes would assure that the State tax would be paid. He informed that this legislation was prompted by a radio advertisement he heard for an out-of-state tobacco distributor who claimed that, by purchasing cigarettes from him, the purchaser would avoid paying the State tax. Upon hearing that advertisement, Senator Bunde checked with the Department of Revenue and learned

that numerous out-of-state purchases are being made and are circumventing the current dollar-a-pack tax.

Senator Bunde informed that the State must establish a State stamp program in order to qualify for a federal law that specifies that it would be illegal for an entity to sell cigarettes without the affixed stamp were a State stamp required. He stated that this would address the out-of-State distributor issue. He communicated that Alaskan distributors support this legislation as it is intended to address those entities that receive an unfair tax advantage by not paying the State tax.

Furthermore, Senator Bunde explained that this legislation provides a minimum price provision for wholesalers and retailers based on the wholesale list price provided by the tobacco manufacturers. This minimum price, he attested, would create a level playing field for competition in the State. He noted that higher cigarette prices might also deter young people from smoking.

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Senator Bunde stated that while the Department of Revenue estimates that the stamp tax could increase State revenue by approximately \$500,000, the exact amount of money that this legislation might raise is speculative. He pointed out that Hawaii vigorously enforces its tax stamp program and has increased its cigarette tax revenue by fifty percent. In contrast, he noted that Michigan has not vigorously enforced its program and has increased its revenue approximately ten percent.

Senator Olson asked whether the industry has indicated that compliance with this legislation would present a hardship.

Senator Bunde stated that industry representatives would be presenting testimony.

Co-Chair Wilken stated that the tobacco tax currently generates approximately \$40 million annually. He calculated that were the State to collect an additional ten percent of that amount, it would generate four million dollars for the general fund and the tobacco tax school fund.

Senator Bunde explained that the tobacco tax revenue could be dedicated toward the school fund because these appropriations were "grandfathered in" as existing policy.

Co-chair Wilken expressed that 70 percent of the revenue would be dedicated to the school fund with 24 percent dedicated to the general fund. He stated that this would be significant money.

JENNIFER APP, Alaska Advocacy Director, American Heart Association, testified via teleconference from Anchorage in support of the bill on behalf of Alaska's tobacco-free kids. She stated that this legislation would decrease "the ability of people and businesses to illegally avoid the tax," and it would assist in keeping tobacco "out of the hands of youth." She attested that non-face-to-face sales such as websites and mail orders account for approximately 14-percent of all sales to youth. Furthermore, she asserted that these sales are detrimental to efforts to reduce youth smoking as no proof of age is required in these transactions and the ability to avoid paying the State tobacco tax allows purchase to be less expensive. She attested that this legislation would prohibit Internet and mail order distributors from avoiding the State tax. She stated that the proof of age issue is also addressed in this bill, as it requires that all shipments must be delivered to a person licensed under Sec. 43.50.105 or to other identified entities specified in Section 9 of the bill.

Co-chair Wilken asked whether the American Heart Association supports this legislation.

Ms. App responded in the affirmative.

Senator Bunde acknowledged the work conducted by the Department of Revenue in this endeavor.

JOHANNA BALES, Revenue Auditor and Program Manager, Cigarette & Tobacco Products Excise Tax, Department of Revenue informed the Committee that the Department is in favor of this tax stamp as she expressed that tax enforcement efforts are currently hampered by the absence of a stamp. Moreover, she attested that "it is virtually impossible" to determine whether the tax has been paid on any given pack of cigarettes as tracking via retailer invoice is impossible as no pack is distinguishable from another. She explained to the Committee that prior to the one-dollar-a-pack tax legislation, approximately 53 million packs of cigarettes were sold annually; however, she noted that the annual amount has decreased to approximately 42 million packs. She stated that the Department, in its attempts to enforce the tax, uncovered approximately 1,000 individuals who are purchasing cigarettes via the Internet. She stated that these individuals attest that were a stamp program in place, they would have known whether the tax was or was not paid by the vendor. She stated that the Department calculates that approximately \$600,000 was not collected due to Internet,

distributor, or mail order activities over a 13-month period.

Ms. Bales stated that once the State enacts a State stamp tax program, the federal Contraband Cigarette Trafficking Act would assist in the enforcement of tax. She affirmed that 46 states have tax stamp programs, including the program recently enacted in Hawaii, which has a "very aggressive" eleven-member enforcement team.

Co-Chair Green asked whether language in the bill addresses a situation wherein a person, while traveling out of state, purchases tobacco for his or her own personal consumption and transports it back to the State.

Ms. Bales clarified that this legislation proposes to change existing tobacco law by implementing a stamp tax. Furthermore, she stated that because no exemption for the transport of tobacco for personal consumption currently exists, the individual should currently be paying the State tax. However, she stated that while this scenario "is impossible to enforce," the Department does not consider it to be a "huge problem."

Co-Chair Wilken stated therefore that "the trip wire" would be when an individual distributes the cigarettes for profit or for some manner other than personal use.

Ms. Bales responded that current statute specifies that persons transporting cigarettes into the State should be licensed to transport the cigarette, should pay the cigarette tax, and should file a monthly report. She stated that the statute does not differentiate between personal and non-personal consumption. She stated that individuals who have been detected of transporting goods into the State for personal use have been treated "very leniently."

Co-Chair Green asked whether the transport of cigarettes is viewed with "the same sort of standard" as the transport of liquor.

Ms. Bales responded that "there is a very big difference" as the tax on alcohol is applicable at the point of purchase. Therefore, she informed that because the tax is paid at point of purchase, the alcohol could be legally transported, with the exception being that federal law prohibits the mailing of alcohol. Therefore she concluded that the alcohol tax "is not as problematic" as the cigarette tax.

Co-Chair Wilken asked for further information regarding the sale of cigarettes bought via the Internet.

Senator Bunde noted that the Internet seller does not require the purchaser to prove that they are of legal purchasing age.

Co-chair Wilken asked how this legislation would enforce the tax in this case.

Ms. Bales responded that this legislation would require a purchaser to apply to the Department of Revenue for a license, and upon receipt of the license, they could make a purchase. Furthermore, she explained that shipping cigarettes through the mail to an unlicensed individual is prohibited. In addition, she relayed that fines would be levied upon the common carrier shipping the cigarettes were the receiver of the cigarettes unlicensed. In conclusion, she stated that the intent of the bill is to curtail all shipment of cigarettes via interstate commerce unless it would be shipped to someone who is licensed and who is paying the tax.

Co-Chair Wilken surmised therefore that rather than placing the onus on the seller, the State would require the individual "sitting at home" making the purchase to be licensed. However, he attested, this would be difficult to enforce because the State would be required to become aware of the action.

Ms. Bales expounded that the federal Jenkins Act requires that anyone conducting interstate commerce by shipping cigarettes to someone who is not a licensed distributor must notify the state's Department of Commerce of that shipment. She stated that a violation of this Act would result in a misdemeanor charge. She continued that were this law violated under the federal Contraband Cigarette Act it would result in a felony charge. However, she reiterated that the Contraband Cigarette Act would not be applicable until the State incorporates a stamp tax.

Co-Chair Wilken asked whether the Internet seller would ask a purchaser for his or her license number.

Ms. Bales responded that this information would be required were the stamp tax legislation enacted.

Ms. Bales continued that, in addition, private carriers, such as Federal Express, who might ship cigarettes would be required to verify that the person receiving the package be of legal age and be licensed.

Senator Bunde pointed out that rather than the State being responsible for the enforcement, charges at the federal level could be levied. He stated that cigarette suppliers in the "sovereign

nations, the Indians [indiscernible] are potentially going to ignore it."

Co-Chair Green asked whether a person, with cigarettes and doing interstate travel, would be required to follow these same licensing regulations.

Ms. Bales stated that it depends on the individual state's law; however, she continued, were that a state's law similar to this legislation, the person should pay the state's tax. She noted that some states allow a person to transport a specified number of cigarettes for personal consumption without penalty.

Co-Chair Wilken exemplified a scenario wherein a business might order cigarettes via the Internet, and upon receipt of the cigarettes, would sell them at the going market value and "pocket the tax." He asked whether this type of activity occurs.

Ms. Bales declared that this does happen. She further exemplified the difficulty of enforcing the current State cigarette tax by sharing that a licensed distributor could present the State examiner with a legitimate invoice on which the State tax is reflected as being paid. However, she continued that without a stamp being affixed to each packet of cigarettes, the examiner has no method by which to identify the packs of cigarettes on which a tax has been or has not been paid.

Co-Chair Wilken asked who is authorized to apply the stamp to the pack.

Ms. Bales clarified that generally the distributor would affix the stamp to the pack; however, the retailer could purchase the equipment and the stamp from the Department and affix the stamp.

Senator Taylor asked for the amount of the total current State tax on cigarettes.

Ms. Bales explained that the State tobacco tax is currently five cents per cigarette or one dollar per pack of twenty cigarettes.

Senator Taylor asked whether, according to State statute, he would be required to remit to the State of Alaska 97-cents were he to purchase a pack of cigarettes, for example in Kentucky which charges a three-cent per pack cigarette tax.

Ms. Bales clarified that the State of Alaska would not credit a purchaser for the amount of tax they paid in another state; therefore, she stated that the State tax of one dollar per pack of

cigarettes should be remitted to the State. However, she stated that Kentucky would issue a credit to an Alaskan distributor for the Kentucky tax, were the cigarettes purchased in Kentucky for resale in Alaska. Additionally she noted that Kentucky would not require the Kentucky stamp to be affixed to packs being shipped to Alaska for consumption.

Co-Chair Wilken referred the Committee to the "State Tax Guide" comparison chart, dated January 1, 2003 [copy on file] that was supplied by Senator Bunde. He noted that Kentucky, with a cigarette tax of three cents per pack, has the lowest tax while Massachusetts, with the highest state tax, charges \$1.50 tax per pack.

MIKE ELERDING, Owner, Northern Sales Company, testified via teleconference from Ketchikan, and stated that his company and other Alaska-based wholesale tobacco distributors support this legislation. He avowed that the stamp tax would enable the State to collect a ten-dollar per carton cigarette excise tax on every carton of cigarettes imported into the State. In addition, he attested that the legislation would provide Alaskan-based distributors with the ability "to compete on a level playing" with out-of-state distributors. He urged the Committee to support this legislation.

Senator Olson asked whether there are concerns regarding stamp counterfeiting.

Ms. Bales confirmed that counterfeit stamps are a nationwide problem. She continued that stamp manufacturers are diligently addressing this issue and are producing stamps that are difficult to counterfeit. She announced that, as specified in the Department's fiscal note, the State is proposing "to purchase the most expensive stamps which have the most up-to-date counterfeit measures" including special inks.

Co-Chair Wilken commented that the Members' backup material addresses the counterfeit issue and includes information about Meyercord, a stamp manufacturer.

Co-chair Wilken asked the distributor to explain the process whereby the State stamp is affixed to each pack of cigarettes.

Mr. Elerding explained that wholesale distributors, who order cigarettes directly from manufacturers, would be required to have stamping equipment in their facility and would affix the stamp on each pack at that location. He stated that his company would be required to centralize the stamping operation at a single location

rather than conducting it at each of its five distribution centers.

Co-Chair Wilken asked for clarification that each pack, rather than each carton, would require a stamp.

Mr. Elerding verified that while the stamp must be affixed to each pack, the automated stamping equipment would provide an efficient stamping process. He communicated that the legislation provides for a State "reimbursement to the distributors that is close to covering the cost of the stamp operation." Nonetheless, he communicated that the process would be an expense and that small distributors could not amortize the expense as well as larger distributors. He noted however, that the Unfair Cigarette Sales Measure, defined in Article 6 of Section 17 of the bill, would assist distributors in offsetting the additional expense associated with the stamping process.

Co-Chair Wilken asked whether a uniform State stamp or an individual distributor stamp would be used.

Mr. Elerding clarified that the State stamp would be the only stamp allowed.

Co-chair Wilken asked the amount the distributor anticipates spending on this project.

Mr. Elerding stated that, in addition to the cost of the equipment, the company would be required to locate adequate space in which to conduct the stamping procedure and must provide the necessary labor. He estimated the total expense to be approximately \$75,000 a year, with \$50,000 of that being reimbursed by the State by means of a discount on the purchase of the stamps.

Senator Taylor understood that Canada has experienced "huge problems" with bootlegging, hijacking, and counterfeiting since the nation increased its cigarette taxes. He asked whether the State of Alaska has experienced an increase in bootlegging or black-marketing since the cigarette tax was raised to one dollar a pack.

Ms. Bales responded that the State has experienced an increase in these activities; particularly, in "gray market" activities where cigarettes manufactured for other countries are finding their way to the United States. She noted that while the State might be aware of this situation, there are no current provisions in Alaska law that would allow these cigarettes to be seized. She asserted that enacting a stamp tax would address this situation.

Senator Olson asked the projected costs associated with the

enforcement of this legislation.

Ms. Bales responded that while the Department of Law has a zero fiscal note attached to this legislation, the Department of Revenue's \$251,700 fiscal note would provide for three positions to handle the purchase, sale, administration, and enforcement of the new tax stamp program and cigarette shipping restrictions.

Senator Olson asked whether this tax stamp legislation would encompass all types of tobacco.

Ms. Bales responded that the tax would be limited to cigarettes as it would be impossible to automate a stamp process for the various packaging or variety of product sizes.

Senator Olson asked whether the intent of this legislation is to penalize transporters of cigarettes.

Ms. Bales responded yes, that private carriers would be penalized were they to knowingly deliver cigarettes to an underage and unlicensed individual.

Senator Olson voiced concern that transporters would be responsible for enforcing this legislation.

Senator Bunde voiced the importance of noting that the key element regarding the responsibility of transporters is the term "knowingly."

Senator Olson furthered that "the last thing" on a small rural transporting company's mind would be to monitor each pack of cigarettes. He continued to voice concern regarding the transporting issue.

Amendment #1: This amendment inserts a new subsection into Section 43.50.849 Definitions. of the bill on page 21, line 28 as follows.

(12) "trade discount" means a price reduction that is offered by a cigarette manufacturer on the date of sale, is reflected on the invoice as a deduction from the manufacturer's list price and is fully earned and determininable on the date of sale.

Senator Bunde moved for the adoption of Amendment #1.

Co-Chair Wilken objected for explanation.

Senator Bunde stated that, at the request of distributors, this

amendment would define the term "trade discount" which is a price reduction offered by a cigarette manufacturer on the date of sale. He explained that the discount would be reflected on the invoice and would be a factor in the "minimum markup" determination of the retail price of the cigarettes. He stated that the Department of Revenue does not object to the amendment.

Ms. Bales clarified that the intent of the amendment is to assure that cigarettes could not be sold below "cost" which is defined as the price paid less the discount.

Co-chair Wilken surmised that this amendment, rather than address concerns regarding the tax stamp, addresses industry trade concerns.

Senator Bunde voiced that it addresses minimum price concerns.

Co-chair Wilken removed his objection.

There being no further objection, Amendment #1 was adopted.

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

Senator Taylor then objected to his motion. He voiced his continuing objection to taxation legislation; specifically tax legislation that would result in expenses and enforcement difficulties to the State. He reminded Members of testimony indicating that the cigarette tax has resulted in bootlegging and other illegal activities, and he worried that this legislation would further those activities. He voiced that while Alaskan retailers and wholesalers have legitimate concerns, the expense associated with this legislation is "far greater" than its projected benefit.

Senator Taylor removed his objection.

There being no further objection, CS SB 168 (FIN) was REPORTED from Committee with fiscal note #1 in the amount of \$251,700 from the Department of Revenue and zero fiscal note #2 from the Department of Law.

#sb114

CS FOR SENATE BILL NO. 114(L&C)

"An Act relating to the fee for a state business license; 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, is sponsoring this legislation. He stated that this bill would increase the annual business license fee from \$25 to \$100 for sole proprietorship businesses and \$300 for other business categories. He specified that the Labor and Commerce version of the bill is before the Committee.

RICK URION, Director, Division of Occupational Licensing, Department of Community and Economic Development, testified that this legislation would align the business license fees with current operational expenses as the current fee structure has been in affect since 1949. He mentioned that, originally, the discussion allocated a \$200 flat fee across the board, but he stated that it has evolved to a two-tier approach. He noted that there has been no opposition to the bill from organized business groups. He urged the Committee to adopt the legislation "as it is a good measure" and would generate a "substantial" amount of revenue for the State.

Senator Bunde noted that Senator Ralph Seekins, who is a private businessman, contributed substantially to the development of this legislation. He continued that while the fee structure proposed in the Labor and Commerce version of the bill has altered from that of the original bill, it is a good compromise.

Mr. Union informed that, under this legislation, business licenses would be issued annually rather than bi-annually, as is current practice. However, he noted that the Committee should address existing statutes concerning the 1,256 businesses that have business licenses with tobacco endorsements as the endorsement language specifies that the endorsement is valid "for the term of a business license." The new language being proposed, he explained, would inadvertently increase the fee for tobacco endorsements to \$100 annually rather than \$100 biennially, as intended.

Senator Taylor asked for further clarification regarding the tobacco endorsement fee.

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Mr. Union stated that were this legislation adopted as is, the annual fee for the tobacco endorsement would increase to \$100.

Co-Chair Wilken stated that this issue would be addressed in separate legislation.

Co-Chair Wilken ordered the bill HELD in Committee.

#hb90

CS FOR HOUSE BILL NO. 90(FIN)

"An Act relating to a salmon product development tax credit and a salmon utilization tax credit under the Alaska fisheries business tax; and providing for an effective date."

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

Co-chair Wilken stated that this legislation is sponsored by Senator Gary Stevens, and is endorsed by the Salmon Task Force. He continued that this bill would provide tax credits for salmon product development and salmon utilization, with the intent of "encouraging industry to invest in new value-added salmon products to improve marketability."

Co-Chair Green moved for the adoption of SCS CS HB 90, Version 23-LS0525\W as the working document.

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

Co-chair Wilken ordered the bill SET ASIDE until the bill's sponsor could present it.

[HB 90 was re-addressed later in the meeting.]

#sb177

SENATE BILL NO. 177

"An Act relating to cost-of-living benefits for retired members in the public employees' retirement system and the teachers' retirement system who are called to active military duty; and providing for an effective date."

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

Co-chair Wilken explained that this legislation addresses situations wherein a retired public employee, residing in Alaska,

might be called to active military duty outside of the State. He stated that this service could thereby jeopardize the retired employee's receipt of the Alaska cost-of-living allowance (COLA) benefits.

Senator B. Stevens, the bill's sponsor, explained that this bill would address "the unexpected call to active duty" of retired military and military reserve units. He shared the experience of a retired Vietnam veteran/retired teacher who, as a member of a reserve unit, has been called to active military duty and would serve in this capacity outside of the State. As a result of being on active duty outside of the State, Senator B. Stevens explained that this individual would lose his COLA adjustment as it would be cancelled because current regulations specify that an individual in a retirement system could not be absent from the State for longer than 90 days without a medical or family-illness waiver. He stated that this simple change would not incur a fiscal note and would impact approximately ten people.

Senator B. Stevens informed the Committee that an amendment might be forthcoming as the result of the incorporation of separate but similar legislation, being proposed by Senator Kim Elton that addresses non-state employees being called to active duty.

Co-Chair Wilken ordered the bill HELD in Committee to provide time to coordinate the two pieces of legislation.

#hb90

CS FOR HOUSE BILL NO. 90(FIN)

"An Act relating to a salmon product development tax credit and a salmon utilization tax credit under the Alaska fisheries business tax; and providing for an effective date."

[Note: This bill was heard earlier in the meeting.]

SENATOR GARY STEVENS, the sponsor of the bill, stated that this legislation would allow tax credits to be issued to assist an industry that is "in crisis." He stated that the Salmon Task Force, which is chaired by Senator Ben Stevens, has identified this bill as one of its highest priorities because it would encourage new investments in the salmon processing industry to further diversify salmon products.

Senator Bunde asked how these tax credits would generate a return on the investment.

Senator G. Stevens responded that the intent of the legislation would be to raise the viability of the entire industry and provide more jobs and "keep fishermen" and "processors active." He reminded the Committee that similar tax credits were awarded to the bottom fish industry a few years prior and "proved to be very effective."

Senator Bunde commented that the goal is "laudable;" however, he voiced that an investment of State money should be rewarded with a monetary return to the general fund.

Senator G. Stevens specified that a vibrant industry would generate "more money going into State treasury" by means of the Salmon Fisheries Tax.

Senator B. Stevens referred the Committee to a Department of Revenue Tax Division spreadsheet [copy on file], dated April 24, 2003 that depicts the Fisheries Business Tax revenue generated by the various fisheries. He pointed out that the Salmon industry generated \$11.2 million in tax during calendar year 2000; however, he noted that the 2002 calendar year revenue decreased to \$5.6 million. Therefore, he stated that the goal of this legislation would be to attract and encourage additional investment in the industry; and thereby "increase the taxable contribution to the general fund."

Co-chair Wilken asked regarding the Department of Revenue's indeterminable fiscal note.

Senator Stevens stated that the fiscal note is indeterminate at this time because the number of processors who might take advantage of the proposed tax credit is unknown. He estimated that this legislation would cost the State \$2.8 million in tax credits were the total amount of the 2002 Salmon Fisheries Tax revenue of \$5.6 million invested by the 84 processors paying that tax.

Co-Chair Wilken surmised therefore that were half of the processors to invest in projects, it would cost the State \$1.4 million.

Senator B. Stevens clarified that the credit would depend on which processors invested, as large processors account for the majority of the total Fisheries Business Tax.

Co-Chair Wilken asked the Department of Revenue to further explain the fiscal note.

CHUCK HARLAMERT, Juneau Section Chief, Tax Division, Department of Revenue, informed the Committee "that the majority of the tax is paid by a relatively small group of large processors." He stated

that the overall time frame of the credit program would be six years as the credit incentive would accumulate based on the total of three years of paid taxes with the amount being applied as a credit for up to three years.

Co-Chair Wilken asked whether the State's maximum credit exposure would be \$1.4 million provided that 42 of the total 84 processors invested.

Mr. Harlamert responded that the credit amount would depend on which half invested, as he reiterated that a small number of processors pay the majority of the tax. He explained that full participation by a dozen of the larger processors would affect up to 90 percent of the tax.

Senator B. Stevens expressed that the tax incentive would not be spread equally as it is credited based on a participant's Fisheries Business Tax volume. He furthered that the larger the volume, the higher the tax a processor pays. He communicated that eight processors account for up to 90 percent of the tax.

Co-Chair Wilken asked for clarification as to whether \$100,000 is the maximum credit allowed per processor, regardless of volume.

Senator B. Stevens responded no, that some processors might be entitled to more, some to less, as the credit is dependent on the amount of tax each processor paid.

Co-Chair Wilken acknowledged.

Senator Taylor reminded that the Fisheries Business Tax's income stream is divided with the State receiving half and the qualified communities receiving half. He voiced support for the tax incentive concept, but he reminded the Committee that the State has used its portion of the tax to fund the Division of Commercial Fisheries in the Department of Fish and Game. Therefore, he asserted, the impact on the funding of that Division would need to be addressed were this legislation adopted.

Co-Chair Wilken ordered the bill HELD in Committee.

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**ADJOURNMENT**

Co-Chair Gary Wilken adjourned the meeting at 10:59 AM.