

MINUTES
SENATE FINANCE COMMITTEE
May 07, 2003
9:01 AM

TAPES

SFC-03 # 79, Side A
SFC 03 # 79, Side B
SFC 03 # 80, Side A
SFC 03 # 80, Side B
SFC 03 # 81, Side A

CALL TO ORDER

Co-Chair Gary Wilken convened the meeting at approximately 9:01 AM.

PRESENT

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

Also Attending: JEFF OTTESEN, Acting Director, Statewide Planning, Department of Transportation and Public Facilities; PAT WALKER, Staff to Senator Lyman Hoffman; DAN FAUSKE, CEO and Executive Director, Alaska Housing Finance Corporation, Department of Revenue; JOE DUBLER, Chief Financial Officer and Finance Director, Alaska Housing Finance Corporation, Department of Revenue; JOHN ALCANTRA, Government Relations Director, NEA-Alaska; BRUCE JOHNSON, Representative, Alaska Association of School Boards; MARY FRANCIS, Representative, Alaska School Administrators Association; EDDY JEANS, Finance Manager, School Finance and Facilities Section, Education Support Services, Department of Education and Early Development; RICHARD SCHMITZ, Staff to Senator John Cowdery; MARK O'BRIEN, Chief Contracts Officer, Contracting, Procurement and Appeals Section, Office of the Commissioner, Department of Transportation and Public Facilities; DICK CATTANAUGH, Executive Director, Associated General Contractors of Alaska; WENDY REDMAN, Vice President of University Relations, University of Alaska; LANDA BAILY, Auditor, Department of Revenue; JOHN MACKINNON, Deputy Commissioner of Highways & Public Facilities, Department of Transportation and Public Facilities; KEVIN JARDELL, Assistant Commissioner, Department of Administration

Attending via Teleconference: From an Offnet Site: DUANE BANNOCK, Director, Division of Motor Vehicles, Department of Administration; From Anchorage: STEVE KALMES, Director of Transportation, Municipality of Anchorage School District; BARBARA SCHUHMANN, Parent; PHYLLIS JOHNSON, Vice President and General Council, Alaska Railroad Corporation, Department of Community and Economic Development; From Fairbanks: JOHN BINKLEY, Chair, Board of Directors, Alaska Railroad Corporation, Department of Community and Economic Development

SUMMARY INFORMATION

SB 100-APPROP: CAPITAL PROJECTS

The Committee heard from the Department of Transportation and Public Facilities, rescinded action on one amendment, adopted six amendments, failed to adopt one amendment, and one amendment was offered but withdrawn from consideration. The bill was held in Committee.

HB 170-MOTOR VEHICLE REGISTRATION FEES

The Division of Motor Vehicles presented testimony, and the bill was reported from Committee.

HB 256-DIVIDEND PAYMENT TO STATE BY AHFC

The Committee heard testimony from the Alaska Housing Finance Corporation. One amendment was adopted and the bill reported from Committee.

SB 202-EDUCATION FUNDING &PUPIL TRANSPORTATION

The Committee heard from the Department of Education and Early Development and took public testimony. The bill was held in Committee.

SB 125-STATE CONTRACTS

The Committee heard from the sponsor, the Department of Transportation and Public Facilities, the University of Alaska, and the industry. Two amendments were adopted and the bill reported from Committee.

SB 112-INCREASE MOTOR FUEL TAX

The bill heard testimony from the Alaska Railroad, the Department of Revenue, the Department of Administration, and the Department of

Transportation and Public Facilities. The bill was held in Committee.

SB 31-RAILROAD UTILITY CORRIDOR TO & IN CANADA

The committee heard testimony from the bill's sponsor and the Alaska Railroad. 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 thirteenth 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 FH 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].

Co-Chair Wilken moved for the adoption of Amendment #8 and objected for discussion. He shared that the Department of Transportation and Public Facilities has submitted this amendment as the result of an expected decrease in FY 04 federal funding.

Amendment to Amendment #8: This amendment to the amendment proposes to alter the funding methodology regarding Anchorage Metropolitan Area Transportation Study (AMATS) and Fairbanks Metropolitan Transportation Study (FMATS).

Co-Chair Wilken moved to amend Amendment #8. He stated that this motion is in response to Committee questions regarding the amendment's affect on AMATS and FMATS. Furthermore, he stated that the effective date of June 30, 2003, as referenced on page two, line eight of Amendment #8, should be correctly identified as July 1, 2003. Co-Chair Wilken objected to the motion in order to allow for further explanation.

At Co-Chair Wilken's request, Senator B. Stevens explained that the amendment to the amendment would address Committee concerns regarding proposed funding reductions to AMATS and FMATS. He stated that upon discussion with the Department, the determination was made to combine sections of the budget pertaining to pavement and bridge refurbishment improvements and to divvy up that combined \$46 million in funding between the National Highway System and non-National Highway System entities also referred to as non-Metropolitan Planning Organizations (non-MPOs) and MPOs. He continued that due to the uncertainty of the actual amount of federal funding that would be available, intent language is included to specify that AMATS would be allocated its historical funding level of 27 percent and FMATS would be allocated 6.9 percent of the forthcoming federal funds. He stated "this is a good solution to the issue," and he urged the Committee to support the amendment to the amendment.

JEFF OTTESEN, Acting Director, Statewide Planning, Department of Transportation and Public Facilities stated that the amendment to the amendment would compress the three regional projects breakouts into a single line item in the budget. Subsequently, he continued, the intent language would specify that a pro-rata system, based on the Statewide Transportation Improvement Plan (STIP) formula, be used to distribute money to the MPOs. Therefore, he concluded, the federal funds received by the State would be "fairly" appropriated to the non-MPOs and MPOs as these federal funds "rise and fall."

Senator Hoffman asked whether the intent language would negatively affect the flexibility of the Department to allocate funding and potentially jeopardize construction projects that might incur cost

overruns in either Fairbanks or Anchorage.

Mr. Ottesen responded that MPOs are allocated a specific quantity of money to manage. He stated that were a project to incur cost overruns, the MPO could shift funding to it. However, he noted that by doing so, the MPO might be required to delay another project. Additionally, he noted that historically, when large projects have incurred cost overruns, MPOs have submitted additional funding requests to the State. He communicated that, on occasion, the State has awarded additional monies to the MPO.

Co-Chair Wilken removed his objection to the motion.

There being no further objection, Amendment #8, as amended, was ADOPTED.

Amendment #10: This amendment deletes the "Alaska Boating Safety (ED [Election District] 99)" component and the \$720,000 other funds appropriation from the Department of Natural Resources on page 27, lines 15 and 16.

Co-Chair Wilken moved for adoption of Amendment #10 and objected for purposes of explanation. He stated that when the original Boating Safety bill was adopted a few years earlier, the Legislature understood that the program would be 100 percent federally funded and that no additional funds would be required to administer the program. He communicated that, without affecting the federal contribution, the State annually collects approximately \$120,000 in user fees, which are deposited into the general fund.

Senator Bunde asked which boating safety programs would be impacted by the funding reduction.

Co-Chair Wilken clarified that the program's overall funding was decreased from the requested \$720,000 to \$600,000. He mentioned that, at the \$600,000 level, the program would receive essentially flat funding, as its historical funding levels were \$600,000 in FY 03 and \$660,000 each for FY 02 and FY 01.

Senator Hoffman questioned the Amendment's wording as it indicates that the entire funding amount of \$720,000 would be eliminated.

AT EASE 9:12 AM / 9:13 AM

Amendment to Amendment #10: This amendment specifies that the funding level for the Boating Safety Programs would be \$600,000.

Co-Chair Wilken moved to amend Amendment #10. He concurred that the

dollar amount specified in the amendment is in error. He moved to amend the amendment to retain the "Alaska Boating Safety (ed 99)" component and appropriate \$600,000 in federal funds. He noted that the language being altered is located on page 27, line 15 of the bill.

There being no objection, Amendment #10, as amended, was ADOPTED.

Amendment #11: This amendment adds a "Juneau Public Health Center Heating and Ventilation Upgrades, Phase 2 (ED 3)" component in the Department of Health and Social Services and appropriates \$647,191 general funds and \$142,066 federal funds on page 24. Accompanying explanatory language reads as follows.

The heating and ventilation systems at the Juneau Public Health Center are on the edge of failure. Restoring funding for this Governor's request will complete a phased project for which the legislature has appropriated startup money in recent years.

The current systems at the Public Health Center are inadequate for patient care, staff comfort, and the air quality necessary at a medical facility. The systems are in such dire need of work that they are out of compliance with building codes. The existing stopgap measures are expensive electric baseboard heaters and opening and closing windows. Should the systems fail completely, patient care will be compromised and the center may face closure.

Because the heating and ventilation systems must be completely replaced, further phasing of this project is not possible.

Senator Olson moved for adoption of Amendment #11.

Co-Chair Wilken objected.

Senator Olson explained that this amendment would address local concerns regarding an inadequate and non-compliant air quality system at the medical facility.

Co-Chair Wilken reminded that the State has previously spend approximately \$750,000 on air quality improvements at this facility. He voiced concern that, were this amendment adopted, the total amount spent on addressing the system would exceed one million dollars. He suggested that perhaps the Center should consider relocating to another facility, as the current system's expense would be "extraordinary." He asked the Committee to not adopt this amendment.

Senator Hoffman referenced previous comments made by Co-Chair Wilken whereby he had specified that the State would capitalize all federal matching funds. Senator Hoffman continued that the amendment denotes that \$142,000 in federal funds would be available for this funding request. Therefore, he asked Co-Chair Wilken to comment about not "capturing" these federal funds.

Co-Chair Wilken stated that he was "in error" when he voiced that the State would match all federal match money. He stated that even capturing \$142,000 in federal money "would not make this project better."

A roll call was taken on the motion.

IN FAVOR: Senator Hoffman and Senator Olson

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

The motion FAILED (2-5)

Amendment #11 FAILED to be adopted.

Amendment #12: This amendment adds a "Division of Sport Fish - Lower Kenai River Public Use Impact Study" component and \$100,000 Fish and Game Fund appropriation to the Department of Fish and Game and inserts intent language to read as follows.

It is the intent of the Legislature that the Department of Fish and Game enter into an agreement for services with the Department of Natural Resources to conduct a public analysis on the impact of overcrowding on the lower Kenai River by recreational user groups.

Accompanying explanatory language reads as follows.

This project and accompanying intent language, allows the Department of Fish and Game to contract with the Department of Natural Resources (Department of Natural Resources) for an analysis on the impact of overcrowding on the lower Kenai River by recreational user groups. The previous Administration imposed a hasty guide moratorium on the Kenai River and the current Administration rescinded that moratorium. This project will enable the Department of Natural Resources to seek the input of recreational users and businesses before any further use restrictions are imposed.

This amendment also adds a "Division of Wildlife Conservation - Laboratory Remodel" component and \$150,000 Fish and Game Fund appropriation for the Department of Fish and Game. Accompanying explanatory language reads as follows.

This project was submitted by the Office of Management and Budget on March 24, 2003. Backup is attached [not provided.]

Co-Chair Wilken moved to adopt Amendment #12. He commented that this amendment would result in a net zero change in the capital budget. He clarified that in order to act upon Amendment #12, the Committee would be required to rescind its previous action on Amendment #6 which specifies that the fund recipient be the Department of Natural Resources. He explained that Amendment #12 correctly specifies that the recipient of the funds be the Department of Fish and Game. He clarified that the change is required because State statutes require Department of Fish and Game funds to be tunneled through the Department of Fish and Game.

In order to act on Amendment #6, Co-Chair Wilken withdrew his motion to adopt Amendment #12.

Without objection, Amendment #12 was WITHDRAWN.

Amendment #6: This amendment adds a "Division of Parks - Lower Kenai River Public Use Impact Study" component and \$100,000 Fish and Game Fund appropriation to the Department of Natural Resources on page 27. Accompanying explanatory language reads as follows.

This project allows the Department of Natural Resources to conduct a public analysis on the impact of overcrowding on the lower Kenai River by recreational user groups. The previous administration imposed a hasty guide moratorium on the Kenai River and the current administration rescinded that moratorium. This CIP [Capital Improvement Project] will enable the Department to seek the input of recreational users and businesses before any further use restrictions are imposed.

This amendment also adds a "Division of Wildlife Conservation - Laboratory Remodel" component and \$150,000 Fish and Game Fund appropriation to the Department of Fish and Game on page 23. Accompanying explanatory language reads as follows.

This CIP request was submitted by the Office of Management and Budget on March 24, 2003. Backup is attached [copy on file.]

Senator Taylor moved to rescind Committee action on Amendment #6.

There being no objection, the action to adopt Amendment #6 was RESCINDED.

Amendment #12 was again before the Committee.

Co-Chair Wilken moved for the adoption of Amendment #12. He clarified that the language in Amendment #12 specifies that that the funds be allocated to the Department of Fish and Game rather than the Department of Natural Resources as incorrectly identified in Amendment #6.

In response to a question from Senator Taylor, Co-Chair Wilken stated that the funds in question are Department of Fish and Game funds monies and would result "in net zero" affect on the budget.

There being no objection, Amendment 12 was ADOPTED.

Amendment #13: This amendment deletes the "Municipality of Anchorage - Laurel St. Upgrade, Dowling Rd. to 64th Avenue (ED 17-32)" component in the Grants to Municipalities (AS 37.05.315) BRU and \$270,000 general fund appropriation on page 9, lines 13 - 16.

This amendment also inserts a "Municipality of Anchorage - Raspberry Road Upgrade, Minnesota Drive to Arctic Boulevard (ED 17-32)" component in the in the Grants to Municipalities (AS 37.05.315) BRU on page 9, lines 13 - 16 and appropriates \$270,000 general funds.

Accompanying explanatory language reads as follows.

According to the Municipality of Anchorage, sufficient local bond funding is available to complete the Laurel Street Upgrade. This amendment would utilize \$270,000 previously identified for Laurel Street Upgrade to fund the State owned portion of the Raspberry Road Upgrade project.

Co-Chair Wilken moved for the adoption of Amendment #13 and objected for explanation. He stated that this is a technical amendment to redirect funding to upgrade Raspberry Road rather than Laurel Street in Anchorage. He noted that the funding element would remain constant.

Co-Chair Wilken removed his objection.

There being no further objection, Amendment #13 was ADOPTED.

Amendment #14: This amendment to the Department of Transportation and Public Facilities budget is outlined in a letter to the co-

chairs of the Senate Finance Committee and the House Finance Committee from Cheryl Frasca, Director, Office of Management and Budget, dated May 6, 2003, as follows.

Amendment 1

Amends the title of the Surface Transportation Program allocation

From:

"Anchorage Metropolitan Area Transportation System 2004 Preventative Maintenance on State Roads"

To:

"Anchorage Metropolitan Area Transportation System 2004 Preventative Maintenance State and Local Roads"

Amendment 2

Amends the title of the Surface Transportation Program allocation

From:

"Fairbanks Metropolitan Area Transportation System 2004 Preventative Maintenance on State Roads"

To:

"Fairbanks Metropolitan Area Transportation System 2004 Preventative Maintenance State and Local Roads"

[Note: The components are not specified in the committee substitute as indicated.]

Co-Chair Wilken presented Amendment #14 on behalf of Governor Murkowski's Administration.

Co-Chair Wilken communicated that this is a technical amendment in that it would expand some previously adopted AMATS and FMATS project titles to include preventive road maintenance for local roads, in addition to State roads.

Senator Taylor asked for clarification that this is a title change rather than a reappropriation of funds.

Senator Stevens verified that the projects have previously been approved in the legislation and that this action "is simply a technical correction."

There being no objection, Amendment #14 was ADOPTED.

Amendment #15: This amendment adds a "City of Palmer - Eagle Avenue Improvement (ED 13-16) component and \$200,000 general fund appropriation to the Grants to Municipalities (AS 37.05.315) BRU on page 3, lines 21 and 22.

This amendment also reduces the general fund appropriations in the following amounts to the following components in the Grants to Municipalities (AS 37.05.315) BRU.

Page 5, lines 23 - 25

City of Wasilla - Gravel to Asphalt Road Program (ED 13-16)
Reduce \$250,000 to \$150,000

Page 5, lines 26 - 28

City of Wasilla - Maintenance Building (ED 13-16)
Reduce \$200,000 to \$150,000

Page 5, lines 29 and 30

City of Wasilla - Sports Arena Equipment (ED 13-16)
Reduce \$75,000 to \$25,000

Accompanying explanatory language reads as follows.

The net impact of this amendment to CS SB 100 (FIN) is zero. Eagle Avenue is a significant collector street connecting the Glenn Highway with north Palmer neighborhoods and the Sherrod School and Swanson School complex. The street is presently a gravel street. This project will reconstruct approximately 2,000 feet of Eagle Avenue from the Glenn Highway to the North Valley Way intersection to a paved street with drainage and sidewalk improvements. This project is important to the City as a new elementary school located at the end of Eagle Avenue is opening in the fall of 2003.

Co-Chair Green moved to adopt Amendment #15.

Co-Chair Wilken objected for an explanation.

Co-Chair Green stated that this amendment would shift some funds from the City of Wasilla to support a street project in the City of Palmer. She noted that the amendment is supported by both communities and would produce a net zero affect on the budget.

Co-Chair Wilken removed his objection.

There being no further objection, Amendment #15 was ADOPTED.

Amendment #16: This amendment adds a "Federally Funded Landowner Incentive Program - Bristol Bay/North Aleutians project" component and \$1,642,500 federal funds to the Department of Fish and Game on page 23, line 21.

Senator Hoffman moved to adopt Amendment #16.

Co-Chair Wilken objected.

Senator Hoffman spoke to the amendment by specifying that the amendment would provide \$1.6 million in federal funds to purchase land. He informed the Committee that several land user groups are participating in this project.

Co-Chair Wilken noted that a \$500,000 [unspecified] match would be required in order to receive \$1.6 million in federal funds with which to purchase conservation easements on private land in the Dillingham/Bristol Bay region. He reminded the Committee of its "considerable discussions" regarding the removal of private land from tax rolls and from potential development. He stated that these are the primary reasons for his objection to the amendment.

Senator Hoffman understood that the vast majority of the affected land would remain in private ownership.

Co-Chair Wilken agreed, but asserted that the conservation easement might hinder future development of the land.

PAT WALKER, Staff to Senator Lyman Hoffman, informed that a coalition comprised of fishing guides, local Native Corporations, and local community entities has been formed in Southwest Alaska with the intent of furthering fishing and sporting endeavors to provide future economic development opportunities in the region.

Co-Chair Wilken understood that a conservation easement "would not allow future development of the land."

Ms. Walker responded that the intent of the coalition is to open up the region to these activities.

Senator Taylor inquired as to how an easement would affect the viability of the land; specifically how would it "make property better or worse."

Ms. Walker stated that the coalition is working to avoid adverse impacts on the land.

Senator Taylor asked for further information regarding possible adverse impacts.

Ms. Walker responded that pollution might be an adverse impact.

Senator Taylor stated, "that development could only happen" if

private owners chose to sell the land to developers or develop it themselves.

Ms. Walker clarified that the Southwest Alaska coalition is comprised of a multitude of people in the area including private landowners. She noted that a resolution [copy on file] in support of the easement has been provided with the amendment.

Senator Hoffman stated that, without these funds, the land could not be purchased and utilized to enhance the economy of the region. He asked Ms. Walker how the status of the land would be affected were it not purchased.

Ms. Walker responded that she is unsure of the affect.

Co-Chair Wilken understood that 10,000 acres of land could be purchased; however, he attested that the acreage has not been identified.

Senator Bunde commented that, "realistically ... the only industry" that could be developed in this region would be sport fishing and sport hunting. He voiced that granting conservation easements would have "little negative impact."

Co-Chair Wilken characterized this situation as a "policy call," since this transaction would involve mainly federal funds.

Senator Taylor asked for examples of the entities that would provide the matching funds.

Ms. Walker stated that, in addition to the \$1.6 million in federal funds, a \$500,000 local match, including money from the Conservation Fund, would be required. She stated that the Department of Fish and Game has been working with the Conservation Fund on this issue.

Senator Taylor asked for further information regarding the Conservation Fund organization.

Co-Chair Wilken noted that he could provide information [copy not provided] regarding the Conservation Fund and the Southwest Alaska Coalition to Committee members.

Senator Stevens asked the current titleholder of the land in question.

Senator Hoffman responded that the land is private property and he assumed that it belonged to a Native corporation.

Senator Hoffman removed his motion to adopt Amendment #16 in order to obtain further information to present to the Committee.

There being no objection, the motion to adopt Amendment #16 was WITHDRAWN.

Co-Chair Wilken stated that the information regarding the Conservation Fund and the Southwest Alaska Coalition would be provided to Members.

Co-Chair Wilken ordered the bill HELD in Committee.

#hb170

HOUSE BILL NO. 170(efd fld S)

"An Act increasing certain motor vehicle registration fees."

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

Co-Chair Wilken noted that the House Rules Committee presents this legislation at the request of the Governor. He stated that this bill would increase motor vehicle registration, title, and lien filing fees.

DUANE BANNOCK, Director, Division of Motor Vehicles, Department of Administration testified via teleconference from an offnet location in Anchorage to note that while the current vehicle licensing fees have "barely changed" in thirty years, the expenses associated with providing the service have been increasing. He explained that one of the three primary sections addressed by the bill pertains to non-commercial vehicles, which account for approximately 70 percent of the licensed vehicles in the State. He stated that this classification of vehicles would be assessed a \$100 biennial registration fee, which he stated would be a slight increase in fees. Furthermore, he shared that existing pick-up truck or non-pick-up truck subsections within the non-commercial vehicle classification would be eliminated.

Mr. Bannock continued that the second section addressed in this legislation specifies that commercial vehicles would experience a ten-dollar annual registration fee increase. He noted that commercial vehicle owners would have the option of paying their fees on an annual or biennial basis.

Mr. Bannock noted that the third section would provide for an

increase in title, duplicate title, and lien fees.

Senator Taylor asked for more information regarding how vehicle weight would affect the registration fees charged for commercial vehicles, as specified in Section 2 of the bill.

Mr. Bannock responded that the State has established four commercial class fee structures, based on vehicle weight. He stated that the amount of the increase being proposed would equate to a ten-dollar across the board annual increase of current fees. Additionally, he noted that an existing one-dollar annual reduction incentive would be eliminated.

Senator Bunde moved to report the bill from Committee with individual recommendations and accompanying fiscal note.

Senator Taylor objected to the motion. He voiced concern that issues might develop regarding a disproportionate fee between some of the various classes of commercial vehicles such as semi-tractor trailers.

Senator Taylor withdrew his objection.

There being no further objection; HB 170(efd fld S) was REPORTED from Committee with zero fiscal note #1 from the Department of Administration.

#hb256

HOUSE BILL NO. 256

"An Act relating to a dividend payment to the state made by the Alaska Housing Finance Corporation each fiscal year; and providing for an effective date."

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

Co-Chair Wilken stated that the House Finance Committee sponsors this legislation, which "amends and codifies the existing agreement between the Alaska Housing Finance Corporation (AHFC) and the Legislature regarding an annual AHFC dividend." He continued that this legislation would provide for a \$103,000,000 dividend while maintaining AHFC's strong bond rating.

Amendment #1: This amendment changes the fiscal year date from FY 2007 to FY 2008 in Sec. 2, subsection (5)(B) on page 4, line 13 in HB 256, Version 23-LS0838\I. This language would read as follows.

(B) minus the amount of money from the Alaska Housing Finance Corporation used during fiscal year 2008 for bond repayments and other costs related to the bonds issued under

Co-Chair Wilken moved to adopt Amendment #1. He stated that this amendment addresses a technical change in the bill and is offered at the request of AHFC.

There being no objection, Amendment #1 was ADOPTED.

DAN FAUSKE CEO and Executive Director, Alaska Housing Finance Corporation, Department of Revenue spoke in support of the bill. He reviewed that the AHFC dividend transfer plan was established in 1995 as a means of transferring some of the Corporation's net profits to the State to support, in particular, State capital projects. He stated that a major concern addressed in those initial discussions was that the specified transfer amount not affect the Corporation's credit ratings. For numerous years, he declared, the total annual transfer amount has been \$103 million, based on a variety of factors including net income levels.

Mr. Fauske expressed that, in recent years, the reduction in lending interest rates has resulted in a significant increase in the Corporation's lending activities as well as "investment earnings on short-term monies." However, he informed that, while "the business profile is excellent, the Corporation's net income has fallen."

Mr. Fauske explained that in 2002, in anticipation of continuing lower net income levels, AHFC requested that the Legislature readdress the amount of the AHFC dividend paid to the State. He informed that the Corporation's FY 03 net income is projected to be approximately \$75.6 million; and therefore, he asserted that a plan must be developed to enable the Corporation to continue to contribute the \$103 million amount "that the State has grown accustomed to." Additionally, he stressed that the plan must allow the Corporation to be sustained at a level that would not adversely affect its ability to conduct its business. He stressed that the level must also be acceptable to the financial community and investors.

Mr. Fauske noted that this legislation would address these concerns by proposing that "a percentage of net program" be implemented that would allow a gradual reduction in the amount of dividend being paid to the State. The proposed plan, he explained, would allow the total dividend that would be paid to the State for the next three fiscal years to remain at the current \$103 million level and that,

by FY 09, the amount of the dividend would be calculated at a 75-percent of net income level. He reminded that the final payment on a \$50 million debt service that AHFC assumed on behalf of the State would be paid off in December of 2006.

Mr. Fauske communicated that this proposal would allow the Corporation to increase its equity position; would allow dividends to be paid to the State, which is its parental entity; and would provide the Corporation with sufficient monies to reinvest in AHFC programs in order to continue its viability and continue to retain its healthy and predictable profile with financial entities. He opined that in consideration of the Corporation's current status, "this is a good bill." He assured that, as the financial market progresses, the issue could be revisited.

Senator Taylor asked whether a separate proposal for a five-percent of market value annual dividend program would provide the stability and continuity that AHFC would require. Furthermore, he asked whether a program of this type would be more acceptable to the New York City Wall Street financial market than this legislation.

JOE DUBLER, Chief Financial Officer and Finance Director, Alaska Housing Finance Corporation, Department of Revenue stated that the amount of the FY 04 transfer, based on this bill's language, would amount to 5.8 percent of the Corporation's total liquidity as of June 30, 2002. He stated that this bill would allow the Corporation to implement a payout policy based on net income as opposed to a payout based on net assets. He noted that this predictable payout would be acceptable to Wall Street investors and would, therefore, enable AHFC to continue to fulfill its mission of providing access to housing for Alaskans. He opined that paying a dividend "based on percentage of net income is the appropriate approach" for AHFC.

Senator Taylor acknowledged that a dividend based on a percent of net income would be more appropriate program as, he calculated that a percent of asset formula "would eventually, significantly erode" the Corporation's asset base.

SFC 03 # 79, Side B 09:49 AM

Senator Taylor furthered that a dividend program that might erode the Corporation's asset base would negate the ability of the Corporation to lend money, which is the basis of the Corporation's mission.

Mr. Fauske agreed.

Senator Hoffman stated that the proposal specifies that the dividend to be paid in fiscal years 2007 through 2009 would be 95, 85, and 75 percent of net income, respectfully, based on the "prior year's income minus debt service." He asked for a recap of the formula specified for FY 04 through FY 06.

Mr. Dubler clarified that the annual dividend for fiscal years 2004 through 2006 would be \$103 million rather than a percentage of net income.

Senator Hoffman asked how \$103 million would equate to a percentage of net income basis.

Mr. Dubler explained that the annual dividend determination would be calculated as a percent of the net income of the base fiscal year, which is the fiscal year ending two years before the end of the current fiscal year. In response to Senator Hoffman's question, he calculated that the \$103 million dividend in FY 04 would equate to 147 percent of the FY 02 net income; the FY 05 dividend would be 150 percent of the projected FY 03 net income, and the FY 06 dividend would equate to 147 percent of the projected FY 04 net income.

Senator Hoffman asked how these dividend levels, which are higher than 100 percent of net income, would affect the Corporation's bond ratings with consideration given that, as of FY 07; the dividend would be determined at a lower percentage of net income rate.

Mr. Fauske qualified that the Corporation has been paying out more than it has been earning for several years. He asserted that the dividend program specified in this legislation recognizes that AHFC is a strong financial institution and that, while the FY 04, FY 05, and FY 06 dividends would exceed net income, "relief" would be forthcoming in later years.

Mr. Fauske relayed that "there has always been apprehension" in the Stock Market that the State would request dividends in excess of \$103 million. He communicated that "the strength" in this legislation is that it "would place in statute a predictable and sustainable payout to the State." He communicated that while the investment market is unpredictable, expectations are that, in contrast to the current refinancing trend, the next market "cycle" would allow the Corporation to experience an increase in net profits due to an increase in conventional loans to first-time home buyers and an increase in the interest levels earned on Corporation's investments. He stated that during discussions with the rating agencies, it is recognized that AHFC must begin making

contributions into its "equity positions" over time.

Mr. Dubler commented that this legislation is based on AHFC's historical financial projection methodology that takes into consideration such things as the Corporation's long-term bonds. He noted that while AHFC's longer-range financial projection mode is atypical to the normal State financial projection methodology, it "has worked very well" for the Corporation.

Co-Chair Wilken asked the Corporation to distribute to Committee members a pro forma document titled "Summary of Projected Amounts Available for Appropriation" [copy on file] that was developed during initial discussions on this bill. He stated that this document would provide Members with projected dividend amounts based on a percent of net income formula.

Co-Chair Wilken pointed out that other material in the Members' packet includes a Moody's Investors Service report [copy on file] dated March 2003 that specifies that, of the 15 states with a Housing Finance Corporation (HFC), Alaska's program is ranked number two "in its contribution back to the State." Furthermore, he noted that the report highlights the concern that states are demanding higher levels of contribution from their HFCs. He called to the Committee's attention the fact that AHFC contributes a "significantly" higher amount per capita than other HFC programs.

Co-Chair Green voiced that the sponsor's statement "implies" that the AHFC dividend would fund debt service for certain bonds and capital projects. However, she noted that language in Section 1, page 1, beginning on line 7, specifies that, "the legislature may appropriate the dividend for capital projects." She questioned whether this language should be changed to include the phrase debt service.

Mr. Dubler responded that debt service is addressed in Section 1, subsection (2) that reads as follows.

- (2) minus the amount of money from the corporation used during that current fiscal year for bond repayment and other costs related to the bonds issued under
 - (A) ch.26, SLA 1996, up to a maximum of \$1,000,000;
 - (B) sec. 10(b), ch. 130, SLA 2000;
 - (C) sec. 1, ch. 1, SSSLA 2002; and

Co-Chair Green surmised, therefore, that this language provides for the inclusion of the debt service in the calculation.

Mr. Dubler concurred.

Co-Chair Green noted that separate legislation being entertained by the Committee contains a different definition of the term "net income." Therefore, she questioned "the appropriateness" of there being multiple definitions of this term in State regulations.

Mr. Dubler explained that the difficulty in arriving at a single definition of the term net income arises from ongoing changes in the nationally recognized General Accounting Standards. He stated that programs have been formulated using whatever definition was in effect at the time. Therefore, he attested that to adjust to one terminology would be tedious; and therefore, each situation involving net income is defined accordingly.

Co-Chair Green continued to voice concern that State statutes incorporate numerous definitions of net income. She asked whether crafting one definition would be possible.

Mr. Dubler stated that a goal of financial accountants is to develop one definition. Unfortunately, he stated, the process might be lengthy due to the multitude of entities and terminologies that would be affected.

Co-Chair Green voiced frustration at being required to determine which net income definition is specific to each piece of legislation being addressed.

Senator Hoffman asked the present AHFC financial rating as well as what bond rating projections the Corporation expects after FY 04. Furthermore, he asked what type of housing loans would be expected based on State population growth forecasts.

Mr. Fauske stated that currently the Corporation has an AA and AA+ rating by two major rating agencies; however, he voiced that were the ratings determined by statistical analysis, AHFC would be rated AAA as it is one of the strongest performing HFAs in the nation. He voiced that the official rating is affected by subjective criteria based on such things as the State's economy, the State's fiscal gap, the activity in Prudhoe Bay, and the fishing industry in Bristol Bay. He credited the Legislature for honoring the intent language specified in every AHFC appropriation bill, as he stated that that action has allowed AHFC to maintain its high credit rating.

Mr. Fauske predicted that were this legislation adopted, AHFC's credit rating would further improve and that the Corporation would be able to contribute more to the State without jeopardizing its ability to carry out its mission or negatively affecting its credit

rating.

Mr. Fauske continued that AHFC tracks the economy closely in order to effectively anticipate future business opportunities. He attested that such things as unemployment and demographics changes, including an aging population, are monitored. He stressed that the job market is critical to a healthy economy, as jobs are necessary to attract younger people who might purchase homes and require loans. He avowed that because AHFC is a strong entity with a good market share, financial programs such as Fanny Mae and Freddie Mac and other major lenders are able to operate in the State. He voiced confidence that the Legislature would adequately address the State's fiscal situation, as he qualified that a healthy State fiscal plan is important to the State and to the success of AHFC.

Mr. Fauske stressed that the housing market must be sustained, as it is a "big player" in the State's economy in that it "occupies 25 percent of the State's domestic product."

Senator Hoffman concluded therefore, that AHFC does not anticipate a drop in their bond ratings through FY 09.

Mr. Fauske affirmed.

Senator Taylor voiced that this legislation would establish policy regarding AHFC dividends today and for the future. He allowed that while the proposed formula could be changed in the future, the proposal currently "gives an illusion to the market and to the people of Alaska" that the State "would not get so desperate as to liquidate an asset" that provides funds to the State. "As a fiscal conservative," he argued that the legislation should be altered to eliminate the requirement of a \$103 million dividend in FY 04, and immediately set in motion the proposed percentage of net income payout as, he declared, that continuing the status quo dividend for three years would be an invasion of the Corporation's corpus.

Co-Chair Green asked regarding the recurring phrase "unrestricted, unencumbered money of the corporation" in Sec. 2 subsection (2) (C) located on page 3, lines 1 -3 and Sec. 2, subsection (3) (C) on page 3, lines 25-27 that reads as follows

(2) (C) minus any appropriation of unrestricted, unencumbered money of the corporation during fiscal year 2005, other than an appropriation for the corporation's operating budget;

(3) (C) minus any appropriation of unrestricted, unencumbered money of the corporation during fiscal year 2006,

other than an appropriation for the corporation's operating budget;

Mr. Dubler responded that this language is included "in an attempt to make an all encompassing reference" to all funds transferred to the State by the Corporation in order to prevent the Legislature from classifying some of those funds as non-dividends, and saying that "they don't count."

Co-Chair Green asked whether this language is a change from the historical recognition of transferred funds, and she asked whether it would allow funds to be "manipulated."

Mr. Dubler responded that the concept of this language is to define which funds being transferred from AHFC to the State should be recognized as "a dividend."

Senator Taylor ascertained, therefore, that other funds the State might receive from AHFC would be classified as "operating expenses."

Mr. Dubler reiterated that the intent of the language is to clarify which of the funds being transferred to the State would be considered dividends. He communicated that the bill could be amended to provide further clarification.

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

There being no objection, SCS HB 256 (FIN) was REPORTED from Committee with zero fiscal note #1 from the Department of Revenue.

#sb202

SENATE BILL NO. 202

"An Act relating to school transportation; relating to the base student allocation used in the formula for state funding of public education; and providing for an effective date."

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

Co-Chair Wilken stated that the Senate Finance Committee sponsors this legislation. He shared that this legislation would change the methodology of the grant program that the State has used to reimburse K-12 public education school districts for local pupil transportation expenses. In addition, he stated that the bill would

increase the per student base allocation funding to \$4,169, an increase of \$159 per student, by absorbing Learning Opportunity Grants that total \$2.2 million into the student education foundation formula. Co-chair Wilken suggested that the Committee address these two bill components separately.

JOHN ALCANTRA, Government Relations Director, National Education Association of Alaska (NEA-Alaska) stated that the State's 12,700 public school employees who belong to NEA-Alaska realize that the Committee's recently adopted operating budget bill is contingent on the two issues addressed in this bill. He voiced appreciation for the Committee's efforts toward increasing the level of the base student allocation funding which he declared would provide school districts "stability of funding and help them reach some of the requirements of the State (Education) Standards."

Mr. Alcantra voiced appreciation for the \$159 per student increase, but announced that NEA-Alaska's "ultimate" base student allocation goal is \$4,280 per student. He communicated that according to nationally recognized business research [not provided], the \$4,280 funding level would assist school districts in addressing projected "one-year inflationary costs and just one year of unmet needs." Continuing, he informed the Committee that this research recommends a five-year phased in increase of \$365 per student, plus additional funds to address the inflationary erosion of funding. However, he stated, that in recognition of the State's fiscal situation, NEA-Alaska is limiting their funding request to the one-year funding request of \$4,280 per student. He stated that this request would cost the State an additional \$23 million in FY 04 and would assist in accomplishing the State's constitutionally mandated provision to provide quality public education.

Mr. Alcantra reminded Committee members that the FY 03 budget was based on a specific crude oil barrel price along with a specified draw on the Constitutional Budget Reserve (CBR). He attested that because the average price per barrel for the initial ten months of the fiscal year exceeded the specified price, the amount drawn from the CBR account was reduced. Therefore, he suggested that some of those CBR savings could be used to support the proposed \$23 million FY 04 funding increase that would be needed to adequately support student education funding.

[NOTE: At this point, a brief and indiscernible dialogue between Senator Bunde and the testifier transpired.]

Senator Bunde asked whether a "guarantee of results" such as the majority of high school students passing the State's High School Graduation Qualifying Examination (HSGQE), could be provided were

this funding request approved.

Mr. Alcantra remarked that education standard requirements are important. He stated that no guarantees could be provided to ensure that all students, including those identified by measures such as the federal No Child Left Behind Act, would pass the high school exit exam; however, he avowed that an appropriate education funding level would assist districts in providing the most important aspect of an education which is providing quality teachers, quality support professionals and other necessary resources.

Co-Chair Wilken mentioned that Senator Bunde was one of the prime sponsors of the HSGQE legislation.

BRUCE JOHNSON, Representative, the Alaska Association of School Boards, thanked the Committee for consolidating the Learning Opportunity Grants into the total funding allocated to the base student allocation formula as it would assist school district funding. He testified that while the issue of flat funding remains, it could be addressed at another time.

Senator Hoffman voiced concern regarding "the eroding floor" of unmet funding needs, as referenced in the "Change to Floor" column in the Department's fiscal note #1 analysis. He noted that were this legislation adopted, \$1.4 million would be allocated toward that eroding floor; however, he asked the Department to provide the Committee with the remaining "unmet" funding need level for each school district.

Co-chair Wilken stated that the Department of Education and Early Development would address Senator Hoffman's concern during its forthcoming testimony.

MARY FRANCIS, Representative, Alaska School Administrators Association, testified that the administrators "add their voice to those who support the increase in the base student allocation" as it assists in addressing the funding "erosion" that has been taking place. She avowed that, "this is a more protected mechanism for raising the student allocation."

Co-Chair Wilken stated that this concludes the testimony regarding the base student allocation funding. He specified that the transportation component of the bill would now be addressed.

EDDY JEANS, School Finance Manager, Department of Education and Early Development, responded to Senator Hoffman's "eroding floor" question by stating that the Department would develop and distribute to Members a schedule that would reflect "the remaining

balance of the supplemental funding floor" were this bill to take effect. He estimated that, were this legislation adopted, approximately \$1.5 million could be allocated toward the remaining supplemental funding floor balance of approximately \$9.5 million.

Co-Chair Wilken read from a school transportation cost schedule [not provided] that denoted the increase in pupil transportation expenses from FY 97 to FY 03. He stated that transportation costs in FY 97 amounted to \$32.8 million in general funds and a total of \$53.9 million in general funds in FY 03. He stated that this equates to an eleven-percent increase per year. He stated that numerous options, such as awarding contracts, are being proposed to address this expense.

Mr. Jeans explained that currently the State reimburses districts for transportation expenses according to specified percentage levels that are determined by such things as whether the route meets the minimum distance from a school or meets the minimum number of students per route requirements. He pointed out that exceptions are currently in place to allow reimbursement for situations wherein a local school board might authorize a bus route in an area that does not meet the minimum distance requirement but is deemed to have hazardous conditions.

Mr. Jeans stated that, in an effort to contain transportation expenses, this proposal would provide a grant to each district based on the total amount of the district's FY 03 transportation expenses divided by the number of students enrolled that year. He continued that the resulting number would be identified as the base per student dollar. This base dollar amount, he continued, would then be multiplied by the current year's enrollment to determine the grant total, specific to that district. He mentioned that were the district to lower its transportation costs by, for instance, consolidating routes, the resulting savings could be used by the district for other purposes.

Mr. Jeans pointed out that, even though the Department has encouraged districts to seek transportation efficiencies, costs have continued to increase. He noted that in addition to reimbursing districts for their transportation expenses, the current program includes a provision that provides a built-in inflation factor allowance.

Mr. Jeans attested, that, in his experience, these transportation contracts have not provided savings because "there was little incentive" to the school district to negotiate the price of the contract with the transportation provider. He stated that this grant program would provide the district with "the flexibility" to

negotiate with the provider.

Co-Chair Wilken referred the Committee to the Department of Education and Early Development fiscal note #2 which denotes the impact of the grant program on each school district.

Co-chair Wilken asked Mr. Jeans to explain the "\$1,200 cap per student" as noted in the fiscal note #2 spreadsheet.

Mr. Jeans responded that the Department is making a "policy statement" by specifying \$1,200 as the maximum limit the State would pay per student for transportation expenses. He communicated that five districts currently exceed this limit: the Alaska Gateway District with a rate of \$1,464 per student; the Bristol Bay District with a rate of \$1,322; the Copper River District with a rate of \$1,300; the Delta/Greely District with a rate of \$1,351; and the Southeast Island District with a rate of \$1,234. He pointed out that private entities are under contract in these districts to provide student transportation. He commented that, "it is conceivable" that districts could reduce transportation costs by conducting that service "in-house."

Mr. Jeans allowed that costs would be more difficult to negotiate in areas where there is a single bidder or limited competition.

Senator Taylor summarized that this legislation would allow individual school districts to receive transportation funding, but at a level based upon their FY 03 funding.

Mr. Jeans affirmed that the determination would be based on the FY 03 per student transportation funding amount as it relates to current student enrollment. He voiced that were student enrollment to lower or increase, the amount allocated would follow suit.

Co-Chair Wilken opined that this methodology, if adopted, would continue until such time as the Legislature changes it.

Mr. Jeans concurred. He forecast that the Legislature might alter the amount as a result of school district lobbying for a percentage increase that would be allocated across the board.

Senator Taylor asked whether this legislation could "lock in a number" on a statewide basis.

Mr. Jeans stated that rather than designating a specific amount, the grant level would fluctuate according to a district's student enrollment each year. He stated that this proposal is projected to cost the State \$54 million in FY 04.

Senator Taylor surmised that were the number of students to remain the same, the grant total would remain constant.

Mr. Jeans concurred.

Senator Taylor argued, therefore, that this proposal would reward districts with increasing enrollment and "punish" those with lowering enrollment.

Mr. Jeans countered that the current reimbursement program is viewed by school districts as a punishment "because their contracts have inflationary adjustments built into them." He stated that this "vested interest" proposal would provide districts with the ability to negotiate contracts and to revisit their current transportation system in order to reduce costs or generate savings. These savings, he attested, could then be used for other purposes in the district.

Mr. Jeans expressed that, under the current system, were the Municipality of Anchorage to lower its transportation costs, the savings generated at the State level would then be distributed to other areas of the State as opposed to being allocated toward other Anchorage expenses. He stated that were this legislation adopted, in this scenario, Anchorage would retain those savings and could use them as determined by the district.

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Senator Taylor agreed that this would be beneficial to districts that have this ability; however, he expressed that districts experiencing a declining enrollment would suffer. He argued that the proposal does not address the fact the districts with declining enrollment would still be required "to pick up students at the end of the road." Districts with declining enrollment, he attested, would receive "a double hit" as they would receive less transportation money and less money from the base student allocation factor. He stated that this proposal should include a hold harmless clause for districts with decreasing enrollment.

Senator Hoffman acknowledged Senator Taylor's concern regarding the expenses and requirements that face districts with declining enrollment. Furthermore, he voiced concern that this legislation would punish rather than reward those districts that have already lowered their transportation expenses, by receiving a lower per student amount than awarded to those districts that have exerted little effort toward addressing the issue. He commented that this

raises a question of fairness.

Mr. Jeans verified that the proposal is based on current district expenditures. He acknowledged that some districts with single transportation bidders have experienced substantial increases in expenses as opposed to districts with competitive situations. He continued that, by providing their own transportation, some districts might experience "cheaper transportation."

Mr. Jeans remarked that the Administration's position is that the current reimbursable system does not promote cost containment, and he commented that this proposal would allow local districts to make independent decisions regarding transportation. Furthermore, he stated that current regulations allow districts to charge user fees, but he remarked that because districts are reimbursed for their expenses, this option is not utilized. He stated that this option would continue to be available under the new system.

Senator Hoffman reiterated that districts whose expenses approach the \$1,200 per student limit could realize "substantial savings;" however, he contested that the districts "that are well below" that limit would not have similar options. He suggested that a flat rate per student be provided to all districts as he attested this might address the inherent problem with this proposal.

STEVE KALMES, Director of Transportation, Anchorage School District testified via teleconference from Anchorage to voice that contrary to the Department's testimony, he does not contribute the rising costs of student transportation to the current reimbursement program, as he contended, such things as the cost of buses, wages, driver training, fuel, and insurance drive expenses. He noted that adherence to the Department of Education and Early Development's mandate that transportation must be provided for special needs students incurs enormous expense to the District.

Mr. Kalmes disclosed that, in order to contain costs, the District has actively sought bidders and, with five bidders, "the prices were what they were." He communicated that one of the District's largest concerns regarding this grant proposal is how to address the high cost of transporting special needs students. He disclosed that the costs associated with transporting special needs students amount to approximately 42 percent of the District's total transportation expenses and equates to ten times the cost of transporting a regular program child. He exemplified that "the most expensive route in the district" is the one that transports special needs students from the Mat-Su valley to the Alaska State School for the Deaf that the District operates for the Department of Education and Early Development.

Mr. Kalmes understood that the grant amount would increase as enrollment climbed; however, he voiced surprise that funding would decrease were the opposite to occur. He stated that as enrollment increases, those students are absorbed within an existing bus route. However, he contended that were the number of students on a particular route to decline, that route would still be required to operate. He suggested that, were the grant program implemented, the FY 03 base level be used as the level that funding not drop below.

Co-Chair Green communicated that she had served on a committee that addressed the needs of special education programs in the State. She noted that the Anchorage School District met with that committee regarding the numerous education programs the District conducted. She identified that many of those programs were optional rather than mandatory programs. Therefore, she asked whether the District was mandated to operate the Alaska School for the Deaf (ASD).

Mr. Kalmes responded that the District is under contract with the Department of Education and Early Development to operate the ASD. He could not verify whether the program was mandated or optional.

Co-Chair Green identified ASD as being an optional program, and she asserted that the costs associated with running that program, including transportation costs, are included in the base student allocation calculation. She stated that the District should identify which programs are conducted on an optional, contractual basis verses those that are mandated.

Senator Olson asked whether the special needs bus transportation is provided by the District.

Mr. Kalmes responded that the transportation is comprised of a combination of District and contracted routes.

BARBARA SCHUHMANN, Parent, testified via teleconference from Fairbanks to suggest that the Department of Education and Early Development leave the current program in place. She opined that other cost containment options such as a route analyses, exist. She continued that this legislation contains assumptions such as that the same percentage of students rides buses in every district and that all costs are equal in all districts. She specified that parents rely on school bus service, and she expressed that the service should be viewed as a transportation and public safety service rather than being viewed as an education system service. She stressed that the risks involved in reducing routes should be investigated.

Senator Bunde asked whether school districts, particularly the Anchorage School District, have considered charging user fees to assist in offsetting the cost of school transportation.

Mr. Kalmes responded that an Anchorage citizen review panel recently asked the Department of Education and Early Development how a user fee program would affect the current reimbursement system. He commented that the current policy tends to be a disincentive to this approach because the Department determined that the reimbursement amount would be lowered by the same amount collected from the user fees.

Mr. Jeans verified that other districts have not pursued this option for that very reason.

Senator Bunde asked whether this option would be possible under the grant program system being proposed.

Mr. Jeans responded that a rider fee could be collected without an impact on the proposed grant system.

Senator Taylor countered that there is no language in the proposed grant system that would require a transportation system to be operated; therefore, he declared that a District could eliminate transportation and keep the money.

Co-Chair Wilken stated that this scenario would be a local issue.

Co-Chair Wilken ordered the bill HELD in Committee.

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#sb125

CS FOR SENATE BILL NO. 125 (TRA)

"An Act relating to protests of state contract awards, to claims on state contracts, to the arbitration of certain state construction contract claims, and to hearings and appeals under the State Procurement Code; making conforming amendments in the State Procurement Code; and providing for an effective date."

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

Co-Chair Wilken informed that this legislation would reform the method through which construction claims against the State are

addressed. He relayed that, approximately a year prior at a Senate Transportation committee meeting in Anchorage, the committee heard testimony regarding the construction industry's frustration on this issue. He continued that, as a result of that meeting, representatives from the Department of Transportation and Public Facilities and the Associated General Contractors of Alaska (AGC) worked together to develop a consensus on how the construction claims process against the State could be revised.

RICHARD SCHMIDZ, Staff to Senator John Cowdery, the bill's sponsor, informed the Committee that the Department of Transportation and Public Facilities and the AGC would present this legislation.

MARK O'BRIEN, Chief Contracts Officer, Division of Contracting, Procurement and Appeals, Office of the Commissioner, Department of Transportation and Public Facilities, informed the Committee that the Department has been working with AGC to improve the construction claims process. He stated that AGC originally presented three suggestions toward making the claims process "faster, fairer, and less expensive," and he contended that this legislation would adequately address their concerns. He explained that in order to quicken the claims process, specific timeframes "where none existed and shortened timelines where ones did exist" as well as implementation of an arbitration process as opposed to the current hearing officer process have been incorporated into the proposal. He stated that specific timelines for resolution would be identified in the arbitration process. These timelines, he noted, "would serve to speed up the process and reduce costs" as compared to the costs resulting from attorney and consultant fees in the current litigation process.

Mr. O'Brien specified that the arbitration decision would be final. He noted that with the exception of appeals based on charges of fraud, misapplication of the law, and a few other narrow issues, there would be no lengthy court appeal process.

Mr. O'Brien communicated that the arbitration process would include regulations regarding the selection of an arbitrator who would be acceptable and fair to both parties. He stated that implementation of an arbitration system would reduce costs as it would shorten the process and limit appeals.

Mr. O'Brien acknowledged that the award of costs and fees is the lone point of dissention remaining between the Department and AGC. He noted that Rules 79 and 82, as referenced in the Department's fiscal note #1, require payment of attorney fees and claims costs. He commented that these provisions would incur costs at "a baseline average" of \$145,000 per year based on an eleven-year average in

which expenses ranged from a high of \$340,000 to a low of \$7,000. He explained that this expense would be subject to such factors as the complexity of the case and the length of litigation. Furthermore, he explained that in addition to these expenses, the cost of additional attorney fees associated with litigating these awards is estimated to be approximately \$6,000 per year or 20 hours per claim. He specified that another factor is the Rule 68 provision that allows for an "offer of judgment." He stated that this factor is considered to be "a driver" in settling a claim.

Mr. O'Brien informed that while most construction claims are associated with federally funded projects, no federal funding support exists for expenses associated with Rules 79 and 82. Therefore, he stated that an award of costs and fees would require general fund dollars.

Senator Hoffman asked the dollar amount of claims currently being processed.

Mr. O'Brien responded that he is unsure of the current outstanding claims amount.

DICK CATTANACH, Executive Director, Associated General Contractors of Alaska, spoke in support of this "fair and balanced" bill. He stated that while he appreciates the concern regarding the potential level of the fiscal note, he asserted that the proposed process would speed things up and would be less expensive. He noted that AGC worked diligently with the Department of Transportation and Public Facilities, the Department of Law, and other affected parties to address this issue.

Co-Chair Wilken asked whether the industry is satisfied with the results of those discussions.

Mr. Cattanach confirmed.

Amendment #1: This amendment inserts a new section on page 1, following line 5 as follows.

Section 1. AS 36.30.005 is amended by adding a new subsection to read:

(d) Notwithstanding the provisions of AS 36.30.627, the University of Alaska is not required to arbitrate construction contract claims unless the university specifically agrees to the arbitration.

Co-Chair Wilken offered Amendment #1 and objected for explanation.

Co-chair Wilken explained that this amendment would exempt the University of Alaska from the binding arbitration requirement for claims valued at less than \$250,000 unless the claim was mutually approved by both the University and the contractor. He noted that no other provisions of the bill would be affected by this proposed change.

WENDY REDMAN, Vice President of University Relations, University of Alaska stated that the University was not involved in the aforementioned discussions due to the understanding that the University would not be impacted by the legislation. However, she advised that the University is seeking the exemption for the small claims section, and she noted that there is no opposition to this exemption request. In addition, she expressed that the University has a good working relationship with AGC. Continuing, she stated that the University would be involved in the implementation of procedures pertaining to this legislation.

Co-Chair Wilken removed his objection.

Senator B. Stevens asked whether the University utilizes a State procurement officer.

Ms. Redman responded that the University has an in-house procurement officer.

Senator B. Stevens asked the University's total annual construction budget.

Ms Redman specified that the amendment addresses small claims valued at \$250,000 or less. She continued that the University's construction budget ranges between \$20 million to \$40 million annually.

Senator B. Stevens asked the importance of excluding this level of contractor claims.

Ms. Redman explained that the bill specifies that small claim arbitration could be initiated "solely at the discretion of the contractor," without the approval of the University. She stated that because the majority of University construction projects fall into the small claim category, its attorneys have determined that the bill's current language is not in the University's best interest.

Senator B. Stevens ascertained therefore, that the basis of the amendment would be to address the concern that the University would be negatively impacted because of the multitude of small

contractors it deals with.

Ms. Redman affirmed that the majority of University projects would be classified as small projects. She reiterated that the University's legal council has determined that this bill might influence small contractors to pursue arbitration measures.

Senator B. Stevens asked what the University's alternative to arbitration would be.

Ms. Redman responded that the alternative would be the current settlement process through which hearings are conducted. She noted that the University's attorneys have determined that the proposed arbitration process might remove the incentive to settle.

Senator Hoffman surmised therefore, that contrary to testimony stating that the arbitration process would shorten the time involved in settling claims, the University has determined that the arbitration process would lengthen its time required to settle disputes.

Ms. Redman clarified that this legislation would introduce binding arbitration as a method to settle small contractor disputes. She stated that while the State has experience with this issue, the University has not. She acknowledged that University attorneys might eventually conclude that it might be an acceptable alternative. However, she stated that because the University was not involved in the aforementioned discussions, the concern is that the small claim arbitration mandate might increase its number of arbitrations and litigations.

Senator Bunde voiced being nervous "that a State agency would escape the full impact of this law." He attested that this would set a poor precedent unless the University already has an arbitration process in place that would be duplicated by this mandate. He asked whether the University currently has in place a system to adjudicate these small claims.

Ms. Redman replied that the University must adhere to and abide by the State procurement code that has established provisions pertaining to hearings and the appeal process.

Senator Bunde stated everything "except for this exemption."

Ms. Redman concurred.

Senator Olson agreed with Senator Bunde's comments.

Senator Olson asked AGC's position on the amendment.

Mr. Cattanach commented that the \$250,000 small claims category limit was agreed upon after six months of discussion between the AGC and the Department of Transportation and Public Facilities that determined that a binding arbitration determination would be a fair method of addressing a claim. He asserted that arbitration is very expensive and that it would not be unusual to spend a quarter of a million dollars when prosecuting a claim. He shared that after a hearing is conducted, a contractor might determine that an independent arbitrator could levy a fair opinion without incurring further expense. He stated that claims below \$250,000 could be handled quicker and cheaper via the arbitration process. He specified that claims in excess of that amount would be better managed through the routine claims process.

Mr. Cattanach stated that AGC agrees with the University's position on this amendment because the University was not involved in the process. Additionally, he commented that the University has committed to work with AGC to determine whether the binding arbitration process would work with University projects. He voiced confidence that it would work. Therefore, Mr. Cattanach replied that AGC supports the amendment.

Co-chair Wilken removed his objection to the amendment.

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

Amendment #2: This conceptual amendment addresses a technical error in the bill whereby Sections 1 and 15 of the bill specify two differing effective dates pertaining to the applicability of the bill. The clarifying language being inserted into the bill reads as follows.

Sec. 16. The uncodified law of the State of Alaska is amended by adding a new section to read:

APPLICABILITY. Sections 1-16 and 18 of this Act apply to a contract if the contract is entered into on or after the effective dates of secs. 1-16 and 18 of this Act.

Co-Chair Wilken moved for the adoption of Amendment #2.

There being no objection, Amendment #2 was ADOPTED.

Senator Taylor asked whether this legislation would alleviate other [unspecified] issues that have been discussed over the years.

Mr. Cattanach responded that by implementing a fair and quicker

process, the legislation would address other [unspecified] issues.

Senator Taylor voiced support of the legislation if it would result in improving "the Department's reluctance to adjust claims in a good faith and meaningful manner that has literally bankrupted" numerous businesses. In addition, he noted that a contractor's bonding ability is jeopardized when a timely determination is not forthcoming.

Senator Taylor moved to report the bill, as amended, from Committee with individual recommendations and accompanying fiscal note.

There being no objection, CS SB 125 (FIN) was REPORTED from Committee with indeterminate fiscal note #1 from the Department of Transportation and Public Facilities.

#sb112

CS FOR SENATE BILL NO. 112 (TRA)

"An Act increasing the motor fuel tax; repealing the special tax rates on blended fuels; removing the motor fuel tax exemption of the Alaska Railroad; relating to tax refunds for government agency purchases of fuel; 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 Department of Revenue would be presenting testimony on this legislation on behalf of the Governor. He communicated that this legislation would increase the State's highway motor fuel tax from eight cents a gallon to twenty cents a gallon and would eliminate the motor fuel tax currently charged for gasohol. He explained that the version before the Committee, CS SB 112 (TRA), Version 23-GS1118\, contains the language submitted by the Governor as well as additional language pertaining to the Alaska Railroad.

LANDA BAILY, Special Assistant and Legislative Liaison, Office of the Commissioner, Department of Revenue verified that Version "U" includes language that would exempt the Alaska Railroad from the motor fuel tax. She communicated that Governor Frank Murkowski and Commissioner Bill Corbus of the Department of Revenue support this legislation.

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Ms. Baily explained that this legislation would increase the motor fuel tax from the current eight cents per gallon to 20-cents per gallon. She continued that, even with this increase, Alaska would rank below the national average of 23-cents for excise tax rates on highway motor fuel. She stated that twenty-two states have tax rates exceeding this amount and that thirty-five states have combined state and local tax rates that range from 21 to 38.70 cents per gallon. She shared that the Governor urges the Committee "to agree with him" that this tax increase "would be a viable method of generating critically needed, re-occurring revenue." She commented that the Department of Revenue estimates that this legislation would provide \$41.16 million in additional State revenue per fiscal year. She clarified that rather than \$41.16 million, it is estimated that the additional revenue collected in FY 04 would be approximately \$37.7 million "because taxes are paid one month after sales." She further explained that although the tax might be effective as of July 1, 2003, the tax collected in July would be for the status quo tax rate on June 2003 sales.

Ms. Baily continued that the off-highway motor fuel tax would increase from six-cents to 18-cents per gallon. She reminded the Committee that this is the first adjustment to this tax rate since it was enacted in 1970. She stressed that the Department of Revenue could efficiently administer the increased motor fuel tax. On behalf of the Governor and the Department of Revenue, she urged the Committee to adopt this legislation.

Senator Bunde stated that there has been discussion regarding a phased implementation of this tax. Other than a reduction in the estimated level of additional revenue, he asked what ramifications a phased-in tax increase might incur.

Ms. Baily replied that a phased in program would create a problem in that the Governor has requested the enactment of this legislation in order to assist the State in addressing its fiscal gap.

Senator Hoffman asked when the aviation fuel tax was last adjusted.

Ms. Baily stated that this information would be supplied to the Committee.

JOHN MACKINNON, Deputy Commissioner of Highways & Public Facilities, Department of Transportation and Public Facilities conveyed that the Department "is in full support" of this legislation. He shared that, currently, the Department spends

approximately \$60 million in general funds to address statewide highway and airport maintenance needs. He specified that the current tax generates \$28 million annually toward highway maintenance and that the 12-cents per gallon increase would generate an additional \$41 million annually. He noted that, while the total exceeds the current maintenance expenditures, the amount in excess of current expenditures would be used to address "the long list of deferred maintenance projects" that currently amounts to \$50 million.

Senator Bunde asked the amount of funds that would be specifically designated for highway maintenance needs as opposed to the total projected amount that includes both highway and airport maintenance.

Mr. MacKinnon specified that the amount that would be spent on airport maintenance would be: four million dollars in the Northern Region; three million dollars in the Central Region; and approximately one million dollars in the Southeast Region. He noted that these amounts do not include international airport funding.

Co-Chair Wilken noted that the Alaska Railroad taxation issue is addressed in Sec. 4, subsection (a) on page 4, lines 19-21 and in Sec 7, subsection (G) on page 5, lines 25 and 26. He referred the Committee to accompanying information provided by the Alaska Railroad Corporation titled "Reasons Against Taxing Alaska's State Railroad," [copy on file] as well as a Memorandum dated May 6, 2003 from Kathryn Kurtz, Legislative Counsel to Senator John Cowdery [copy on file].

JOHN BINKLEY, Chairman of the Board, Alaska Railroad Corporation, Department of Community and Economic Development, testified via teleconference from an offnet site in Fairbanks, to voice concern regarding a provision in the Senate Transportation Committee committee substitute that would include "the Alaska Railroad into the same category as the highway motor fuel users" by implementing the twenty cent per gallon fuel tax "on all of the rolling stock of the Alaska Railroad." He voiced concern about the resulting legal and policy issues that might result.

Mr. Binkley stated that language in this bill could invoke a legal challenge by violating the federal Railroad Revitalization and Regulatory Reform Act, referred to as the 4-R Act that was established in 1976. He explained that this Act prohibits a state from imposing a tax relating to competitive fuel taxes "that discriminates against a railroad." In addition, he stated that a federal provision in the Alaska Railroad Transfer Act, that was enacted when the federally owned railroad was transferred to the

State, mandates that the State maintain a viable railroad transportation system to ensure that it would be available for military and other uses. He stated that this provision prohibits the State from taking money away from the railroad as opposed to allowing the railroad to utilize its revenues for railroad operations.

Mr. Binkley furthered that "on the policy standpoint, the State should not tax itself," as he attested the railroad is owned by the people of the State. He voiced that "the lifeblood of the Alaska Railroad" is to utilize railroad capital to expand its lines. He stated that the source of the railroad's capital is its net earnings, and he advised, "if you don't invest capital back into the asset, you don't exist."

Mr. Binkley referred to separate legislation being considered that would provide for expansion of the railroad. He attested that, while the Alaska Railroad supports expansion of its service areas, it would be "extremely costly." He asserted that, were the Alaska Railroad's net earnings to lower, the railroad would not be able to expand. He noted that the Fairbanks North Star Borough Assembly is on record in opposition to the taxation language in the bill regarding the Alaska Railroad.

Senator Bunde voiced understanding of the Railroad's concern about taxation on its rolling stock. He asked for further information regarding the Alaska Railroad's motor fleet, specifically whether the motor fleet fuel is purchased from a private entity and is subject to the highway motor fuel tax.

Mr. Binkley replied that the Alaska Railroad does pay the motor fuel tax for its vehicles using the State's highway system. Furthermore, he noted that while the Alaska Railroad could request a refund of that current highway motor fuel tax that it pays, it has declined to do so.

Co-Chair Wilken voiced the intent to hold this bill in order to entertain a committee substitute that would exclude the Railroad from taxation. However, he voiced support for the establishment of a dividend program whereby the Alaska Railroad would contribute funding to the State to support its expansion plans. He voiced the belief that this could be implemented without damaging the Alaska Railroad. He suggested that implementation of a ten-dollar user fee could fund the contribution, which he calculated could amount to approximately four million dollars based on current ridership numbers. He encouraged the Alaska Railroad to address instituting a dividend program, as he asserted, "it is the right thing to do and it could be done without damaging our Railroad."

Mr. Binkley voiced that this is a legitimate public policy issue, and he asked that the legislature provide the Railroad "with the forum" to address the Dividend issue.

Co-Chair Green asked whether the original bill, SB 112, Version 23-GS1118\A, would adequately address some of the concerns raised by the Version 23-GS1118\U committee substitute.

KEVIN JARDELL, Assistant Commissioner, Department of Administration, communicated that, in addition to eliminating the motor fuel tax exemption for the Alaska Railroad, the Version "U" committee substitute would authorize the "recouplement of fees" through the use of a State credit card system.

Senator Taylor asked whether use of the State credit card would be limited to the Department of Transportation and Public Facilities.

Mr. Jardell clarified that primarily the Department of Transportation and Public Facilities employees would use the credit card for fuel purchases. He explained that the credit card would enable a State employee to purchase fuel, including the motor fuel tax, from a retailer. He continued that the credit card company would compute the amount paid toward fuel tax fees and request the State to reimburse them that amount.

Mr. Jardell qualified that currently a fuel retailer is required to pay the motor fuel tax to the wholesaler at the time of purchase, and in turn, the wholesaler pays the State. He continued that one of two things currently occurs at the time a State employee purchases fuel from the retailer: one, they can pay the motor fuel tax; or, two, if a contract is in effect with the retailer, no tax is collected. In that latter case, he explained, the retailer must submit a statement to the Department of Revenue asking that the tax paid to the wholesaler be returned. He stated that current statute designates that a retailer could only recoup the paid tax. He stated that the amendment adopted in the Senate Transportation committee substitute, Version "U" would allow the credit card company to be able to recoup the sales tax paid for the fuel, but for which the State would not pay them.

Senator Taylor stated therefore that the amendment would allow the State to reimburse either a retailer or the credit card company for the motor fuel tax paid.

Mr. Jardell concurred. He stated that the credit card could be used at any retailer.

Co-chair Wilken ordered the bill to be HELD in Committee.

#sb31

CS FOR SENATE BILL NO. 31(RES)

"An Act relating to a transportation corridor for extension of the Alaska Railroad to Canada and to extension of the Alaska Railroad to connect with the North American railroad system."

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

Co-Chair Wilken informed that this legislation "would authorize the Alaska Railroad Corporation to delineate a transportation and utility corridor from the Eielson Air Force Base near Fairbanks to the Alaska/Canada border." In addition, he noted that authorization would be provided to the Alaska Railroad to investigate an extension of the Railroad from the border to connect with the North American railway system. He specified that CS SB 31 (RES), Version 23-LS0336\U is before the Committee.

RICHARD SCHMITZ, Staff to the bill's sponsor, Senator John Cowdery, reviewed the history of the Railroad and professed that "the dream" of connecting the Alaska Railroad to the rest of the North American rail system has existed since the 1870s. He stated that, while the majority of the bill addresses the extension of the railway system to the Canadian border, the bill would additionally allow the Alaska Railroad to investigate a rail connection to, for instance, Fort Nelson in British Columbia, Canada which would enable the Railroad to connect to the rest to the North American rail system.

Mr. Schmitz informed that, as the bill progressed through the various legislative committees, language "was added to strengthen and qualify the bill to make certain that no natural gas pipeline or other use" of the delineated corridor would impact "Senator Cowdery's vision" of the bill. He specified that the transportation of materials on the extended rail line would allow the proposed gas pipeline to be more easily and less expensively constructed. He stated that the Alaska Railroad, the Department of Natural Resources, representatives of the oil and gas industry, representatives of Governor Murkowski's Administration, and Senator Cowdery have worked together to develop bill language that would accomplish the goal of the bill. He referred the Committee to a Sectional Analysis of CS SB 31 (RES) that has been provided by Senator Cowdery [copy on file] that further defines the bill.

Co-Chair Wilken concluded that the bill would provide for a 500-

foot corridor would be identified to run from the Eielson Air Force Base to the Canadian border. This corridor, he clarified, would be controlled by the Department of Natural Resources until such time as the Railroad begins to construct a railbed on a dedicated 200-foot swath within the 500-foot corridor. He stated that the question is whether the Alaska Railroad should be granted title to that 200-foot swath.

Mr. Schmitz concurred.

Co-chair Wilken reiterated that the primary issue before the Committee is whether or not to grant the Alaska Railroad title to the 200-foot corridor. He asked the Committee to voice other concerns that might result from the legislation.

Senator Taylor stated that the legislation contains numerous issues such as the railroad funding mechanisms and Railroad sales to third parties. He asked that the term "railroad land" be further defined as the "language is very genetic." He furthered that, in addition to the 200-foot swath in the corridor, a 200-foot right-of-way might be required for areas around all selected railroad land including terminals, stations, maintenance yards, and switchyards. He specified that the railroad land issue is his biggest concern. He continued that the question is whether the State wishes to control access to the 500-foot right-of-way in order to consider its usage for such things as a fiber optic cable corridor. He voiced opposition to awarding a fee-simple title.

Senator Bunde stated that while numerous separate discussions have addressed the issue of selling State land, this legislation "gives away" State land, albeit to the Alaska Railroad. He characterized the Railroad as "a quasi-State agency," rather than a State agency because he asserted that the State does not receive any dividends from it. He pointed out that "unless things have changed substantially recently," the money that the Alaska Railroad has made from its land holdings has allowed the Railroad to lose money in its "rolling stock operations by running lost leaders" in order to unfairly compete with private enterprise.

Co-chair Wilken stated that this concern would be addressed.

PHYLLIS JOHNSON, Vice President and General Counsel, Alaska Railroad Corporation, Department of Community and Economic Development, testified via teleconference from an offnet site in Anchorage to address Senator Taylor's concerns.

Co-Chair Wilken interjected to inform that Senator Taylor has suggested changes to Version "U" to address his concerns. He asked

that Ms. Johnson provide an opinion to those changes as they are presented.

Ms. Johnson agreed. However, she reiterated that the bill was cooperatively developed by the aforementioned entities.

Co-chair Wilken pointed out that discussions with the bill's sponsor would occur prior to changing the legislation and developing a new committee substitute.

Senator Taylor communicated that while he "very strongly supports" the extension of the Railroad, regrettably, he has concerns that the Alaska Railroad's "push" is to get land on which to construct a railway but in order to also control "its use for other purposes." He stated that during other committees' discussions on this legislation, numerous questions arose about future uses of the corridor, such as who would control the land were "a pipeline to go down it, are fiber optics a concern," and who would control such things as subsurface mineral rights to the land were other considerations beyond building a railroad on the land identified. Other concerns, he voiced include whether to grant the Railroad the right of way to the land for free.

Senator Taylor opined that were the Alaska Railroad a State agency and thereby abiding by such things as the State procurement code, his concern would be limited. However, he declared that, "they are not a State agency," and their independent actions "shock and surprise [the Legislature] by discovering that railroad terminals and tracks are being built places." Furthermore, he attested that "the only profit" the Alaska Railroad is making "is off their land." He stated that the Railroad "should operate as a railroad rather than a real estate operation."

Senator Taylor reviewed that his drafting changes to the bill [copy on file] include; foremost, language specifying that rather than granting the Alaska Railroad right-of-way to the land, the language should specify that the Department of Natural Resources would lease the land to the Alaska Railroad Corporation. Furthermore, he specified that land selection and obligation provisions should be included, as well as language specifying that were a gas pipeline to use the corridor, "it would be within the province of the Department and the State of Alaska."

Senator Taylor continued that clarifying language should be inserted in Section 1, subsection (c)(2) on page 3, line 1 to specify that the Department of Natural Resources shall "retain unfettered discretion regarding the use of these lands," rather than being "subservient to the railroad on all land use within the

corridor" as "the land is developed and conveyance sought." He stated that these changes "would be a plus to the State's interest" as opposed to being "the only State interest remaining." He stated that the proposed language would read as follows.

(2) the department shall continue to manage the land reserved under (1) if this subsection; the department shall retain unfettered discretion regarding the use of these lands, but will consult with the corporation before disposing of an interest in land within the transportation corridor and associated rail land; the department may condition authorization for activities on the reserved land to encourage the corporation to construct the railroad or other specific railroad uses identified for the land;

Co-Chair Wilken clarified that Senator Taylor's suggestions apply to the Version "U" committee substitute.

Senator Taylor reiterated that all references to the word "land" in Version "U" beginning with Section 1, subsection (e)(2) on page 4 should be changed to read "right-of-way or easements" in order to retain the State's interest in the land as opposed to conveying the land to the Alaska Railroad Corporation. Furthermore, he advised that Section 1, subsections (e)(3), (4), and (5) that read as follows, should be deleted.

(3) the Department of Natural Resources shall assign any existing contracts within that segment of the transportation corridor and associated rail land to the corporation; the corporation may thereafter retain the revenue from the conveyed land; the department shall prorate revenue from contracts affecting both conveyed and un-conveyed land;

(4) the remaining state land in a segment of the transportation corridor in which the corporation has received a conveyance under this section shall be managed by the Department of Natural Resources as a transportation corridor unless the department determines the land is no longer needed for that purpose; and

(5) the remaining segments of the transportation corridor in which the corporation has not completed construction and any associated state land designated as rail land shall continue to be managed by the Department of Natural Resources as a transportation corridor and associated rail land under (c) and (d) of this section.

Furthermore, Senator Taylor advised that language in Section 1, subsection (g) beginning on line 12, page 5 be omitted as "this is a totally different standard than is currently in effect" on any of

the State's highways. He stated that "the inclusion of this language has no purpose in this legislation whatsoever" as actions by the Railroad for such things as a spill are currently categorized as "negligence." This language reads as follows.

Neither the corporation nor the state is liable for claims arising from public use of the transportation corridor and associated rail land, except to the extent the claims arise from the gross negligence of the state, the corporation, their employees, or their contractors, respectively.

In addition, Senator Taylor suggested that Section 1, subsection (j) on page 6, beginning on line 5 should be deleted as this language is not required "if the Department has already retained the land" and is only granting easements or right-of-ways in the corridor. This language reads as follows.

(j) The Department of Natural Resources shall retain the classifications and reservations of land identified for use as a proposed utility corridor and railroad right-of-way under former AS 19.02.122 until the corporation informs the department in writing that the land is not needed by the corporation for a utility corridor. If, under (a) of this section, the corporation includes land identified under former AS 19.05.122 as part of the proposed transportation corridor, the department shall manage that land under provisions of this section.

Senator Taylor voiced the desire to assist the Alaska Railroad in its endeavor to extend the rail line; and he attested that he has personally met with Canadians to further that end. He opined that the Canadians also support this effort. However, he professed that he could not support a fee simple conveyance of the land to the Alaska Railroad, as it could be detrimental to furthering other State projects in the corridor.

Co-Chair Wilken asked Ms. Johnson to review Senator Taylor's suggestions. Additionally, he voiced that the proposed changes should be discussed with the bill's sponsor. Furthermore, he asked Railroad's representative whether a delay in action on this legislation would be acceptable.

JOHN BINKLEY, Chairman of the Board, Alaska Railroad Corporation, Department of Community and Economic Development responded that addressing the issue further would be acceptable. He commented that Senator Taylor presents "some compelling arguments and observations." Furthermore, he suggested that because the land belongs to the State, the Department of Natural Resources rather

than the Railroad should conduct the delineation work on the transportation corridor in order to avoid a perceived conflict of interest.

Senator Taylor opined that the Alaska Railroad has "a monopoly" on the knowledge regarding how to lie out a transportation corridor for a rail line because of the longevity and institutional knowledge of the Alaska Railroad leadership. Therefore, he favored the Alaska Railroad maintaining the lead authority in the endeavor.

Mr. Binkley informed the Committee that the prior year's Alaska Railroad net income was nine million dollars, with five million dollars resulting from real estate operations and four million resulting from railroad operations. He stated that it is a misconception to say that Railroad operations are unprofitable, and he stated that every year, with the exception of one, the Railroad operations "have made money."

Senator Taylor clarified that he is "not totally married to the idea that the Alaska Railroad should receive no land out of this," but rather that the arrangement should be less extensive. He stated that the focus of the discussion should address how to further the building of the railroad as opposed to dwelling on how much land would be divvied out to various entities.

Ms. Johnson voiced support of Mr. Binkley's comments. Additionally, she agreed that further clarifying language would be beneficial as she noted that it is understood that the remaining land within the 500-foot corridor could be used for other purposes. She corrected that the 200-foot Alaska Railroad corridor would not require any additional buffer zone; however, she verified that additional terminal and maintenance land would be required.

Co-Chair Wilken voiced that Senator Taylor's suggestions would be used to develop another committee substitute.

Senator B. Stevens asked the reason that Senator Taylor suggests deleting language in Sec. 1, subsection (j) on page six of the bill.

Senator Taylor stated that the suggestion was made based on the termination that the State would be retaining the right to the land. He stated that he would provide further analysis to the Committee.

Co-Chair Wilken ordered the bill HELD in Committee in order to develop a new committee substitute.

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ADJOURNMENT

Co-Chair Gary Wilken adjourned the meeting at 06:57 PM.