

MINUTES
SENATE FINANCE COMMITTEE
May 08, 2003
8:56 AM

TAPES

SFC-03 # 82, Side A
SFC 03 # 82, Side B
SFC 03 # 83, Side A

CALL TO ORDER

Co-Chair Gary Wilken convened the meeting at approximately 8:56 AM.

PRESENT

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

Also Attending: SENATOR FRED DYSON; SENATOR KIM ELTON; SENATOR HOLLIS FRENCH; REPRESENTATIVE MIKE HAWKER; MIKE BARRY, Chair, Board of Directors, Alaska Industrial Development and Export Authority; SARA FISHER-GOAD, Alaska Industrial Development and Export Authority; PORTIA PARKER, Assistant Commissioner, Department of Corrections; LAURIE HUGONIN, Alaska Network on Domestic Violence and Sexual Assault;

Attending via Teleconference: From off net locations: DON JOHNSON; BARBARA BRINK, Director, Public Defender Agency, Department of Administration; From Ketchikan: JULIE BENSON;

SUMMARY INFORMATION

HB 11-DEPOSITS TO THE PERMANENT FUND

The bill was reported from Committee.

SB 73-AIDEA: BONDS & MUNICIPAL TAX EXEMPTION

The Committee heard from the Alaska Industrial Development and

Export Authority. A committee substitute was adopted and a motion to adopt an amendment was placed on the table. The bill was held in Committee.

HB 203-AIDEA DIVIDENDS TO STATE

The Committee heard from the sponsor and the Alaska Industrial Development and Export Authority. The bill moved from Committee.

SB 56-SPORT FISHING FEES FOR YUKON RESIDENTS

The Committee heard from the sponsor and a member of the public. An amendment was adopted and the bill moved from Committee.

SB 26-STATE EMPLOYEES CALLED TO MILITARY DUTY

The Committee heard from the sponsor and a member of the public. The bill was held in Committee.

SB 85-REPEAT SERIOUS SEX OFFENSES/VICTIM COMP.

The Committee heard from the sponsor, the Department of Corrections, the Public Defenders Agency and the Alaska Network of Domestic Violence and Sexual Assault. The bill moved from Committee.

#HB11

HOUSE BILL NO. 11

"An Act relating to deposits to the Alaska permanent fund from mineral lease rentals, royalties, royalty sale proceeds, net profit shares under AS 38.05.180(f) and (g), federal mineral revenue sharing payments received by the state from mineral leases, and bonuses received by the state from mineral leases, and limiting deposits from those sources to the 25 percent required under art. IX, sec. 15, Constitution of the State of Alaska; and providing for an effective date."

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

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

There was no objection and HB 11 MOVED from Committee with accompanying Department of Revenue fiscal notes: #1 for the Permanent Fund Dividend component, #2 for the Permanent Fund

Corporation component, and #3 for the Tax Division component.

#SB73

SENATE BILL NO. 73

"An Act relating to the authority of the Alaska Industrial Development and Export Authority to issue bonds; and providing for an effective date."

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

Co-Chair Wilken referenced a letter to himself dated May 1, 2003 from Mike Barry, Chairman of the Board and Ron Miller, Executive Director of the Alaska Industrial Development and Export Authority (AIDEA)/Alaska Energy Authority (AEA). [Copy on file.] Co-Chair Wilken this letter provides answers to questions posed at the previous hearing on the issue of AIDEA bonds.

Co-Chair Wilken stated that this bill "makes several changes to the AIDEA loan participation program and secondly, authorizes the Alaska Energy Authority to acquire the Healy Clean Coal project from AIDEA." He reminded the Members that AIDEA brought additional matters to his attention, which is reflected in a proposed committee substitute.

Senator Bunde moved for adoption of CS SB 73, 23-GS1018\D, as a working draft.

Senator Olson objected for an explanation.

Co-Chair Wilken pointed out that page 2 lines 23 through 28 of the committee substitute contain the language of the original bill. The remaining language, he stated, is new.

AT EASE 9:00 AM \ 9:01 AM

MIKE BARRY, Chair, Board of Directors, Alaska Industrial Development and Export Authority, testified that this legislation is "for the good of the State." He reported that interest rates are lower than they have been in approximately 50 years, and because AIDEA holds a significant portion of its assets in government securities, as interest rates begin to increase, a "minus earnings" could occur for a period of time. He learned that loan participation with banks has historically provided the largest earnings for AIDEA and also directly relates to the AIDEA mission to diversify the State's economy and providing employment. He

remarked that the loan participation program affects every region of the State and involves all financial institutions in the State. As a result of this situation, he expressed intent to expand the loan participation program and create more earning assets in the program. To accomplish this he offered suggestions, which he cited from the May 1, 2003 letter as follows.

The proposed changes will enhance the loan program, bring a greater benefit to Alaskan businesses, increase AIDEA revenues, and increase the AIDEA dividend paid to the state. Specifically, the amendment proposes the following changes to the program.

1. Increases the percentage in loan participants by AIDEA from 80% to 90%. This provides a greater benefit for the borrower by allowing a larger portion of the loan to be amortized over a longer term than provided by the banks, thereby reducing debt service.
2. Increases the maximum dollar amount AIDEA can purchase per loan transaction from \$10 million to \$20 million, allowing AIDEA the opportunity to participate in larger financial transactions to the benefit of Alaska banks and businesses.
3. Allows for equity extractions to finance other business activities in Alaska that are not necessarily connected to the financed project. Many Alaskan entrepreneurs are involved in multiple businesses. Allowing a person to refinance an established business and extract equity for use in a new business will benefit the state economy immensely.
4. In order to resolve lending limit problems of financial institutions, the amendment allows AIDEA to purchase participations in existing qualified loans held by financial institutions. This change will provide an in-state solution for Alaska banks to resolve lending limit problems. Effectively, this frees up lending capacity so the banks can continue to extend short-term loans and lines of credit to their customers.
5. Allows for the establishment of a minimum interest rate regardless of AIDEA's funding source for loan participation, which is either bond proceeds or AIDEA funds. Currently, the funding source dictates the method of establishing an interest rate on the loan participation. If bond proceeds are used the interest rate is set in statute as AIDEA's cost to borrow plus an additional percentage to cover the loan servicing costs. If AIDEA uses its own funds the interest rate is determined by adopting the regulations and may be no less than the interest rate used if AIDEA were to issue bonds.

Mr. Barry pointed out that the provision outlined in the first paragraph of the letter would be a reversion to the original statutes and initial method of operation. He informed that AIDEA performs independent underwriting investigation on all loans it purchases in addition to the underwriting performed by the issuing bank and therefore, AIDEA does not "simply rubber stamp" the loans. Because of these assurances, he stated that AIDEA should acquire a larger portion of those loans identified as "good credit", and beneficial to the AIDEA portfolio. He qualified that banks do not always offer a greater portion of the loans, although changes to statute would allow borrowers to request the more favorable terms that AIDEA is able to offer. He emphasized this would not change the loan to value, but rather the maximum allocation between the bank and AIDEA.

Mr. Barry stated that the \$10 million limitation has been in place for several years and he assured the increased limit would not be "used widely". He exemplified the history of the loan participation program in which only two credits were acquired in the amount of \$10 million.

Senator Bunde asked if any pending projects would be impacted by this change.

Mr. Barry knew of none.

Mr. Barry continued with the third item listed in the letter and qualified that the loan extractions should be allowed so long as the investment is made into another Alaska business. He found in many smaller communities a "lack" on entrepreneurs and that one or two entrepreneurs could be operating several businesses.

Senator Olson asked about any negative experiences with loan extractions.

Mr. Barry responded that banks have informed AIDEA of "serious problems" without the loan extraction option, in attempting to service customers who own more than one business.

Mr. Barry explained the fourth item, which proposes to allow AIDEA to purchase loans from a financial institution in the event that institution reaches a limit in the amount of lending it could provide. He gave an example of a business with an existing loan from a bank plus an application for additional financing, which would exceed the credit amount the bank has established for each customer. He stated that in this instance the bank could "sell" a portion of the existing loan to either AIDEA or another lending

institution, and that this usually occurs with "the very best customers" with good credit ratings and is called an "override". However, he informed that AIDEA is not getting many of these overrides to banks outside Alaska because current statute requires the banks to rewrite the loan before it could be sold to AIDEA. He stated that refinancing these loans is expensive for the Alaskan business and involve payment of fees, an appraisal, title insurance and other costs. This statutory change, he said, would allow AIDEA to purchase existing loans in addition to new loans. He relayed opposition to this proposal was voiced by one bank concerned that this change would allow its smaller competitors to be more competitive with them. He noted this is the only proposed change to AIDEA that has received opposition from a bank and that other banks have either abstained from commenting or fully support the changes.

Mr. Barry explained the fifth item listed in the overview relates to changing the interest rate criteria. Currently, he stated that AIDEA prices its loans "on a very simple basis" for either a variable rate or a fixed rate, and the term of that fixed rate. He proposed to allow "risk based pricing" and described that AIDEA could charge a "slightly higher" rate for a loan offered at a 90 percent participation than a loan offered at an 80 percent participation because AIDEA would be involved in that loan for a longer term than the financial institution and subsequently increase the risk to AIDEA. He stressed that this proposal is different than the method that banks apply risk based pricing in grading an applicant's credit against another's credit. He predicted this would be discriminatory against residents of rural communities.

Co-Chair Wilken pointed out the provision proposed in item two is also contained in Section 1 of SB 112; however, that legislation also includes language relating to the Red Dog Mine.

Senator Olson asked if the third proposal could be implemented to subsequently allow Cominco to secure funding for some of its "less than profitable" ventures.

Mr. Berry clarified this statutory change applies to the loan participation program of loans originated by banks, and that the equity would be extracted on behalf of the borrower, i.e. the bank's customer. He stated that AIDEA has no mechanism through the loan participation program to extract any equity from a borrower.

Co-Chair Wilken referenced a letter dated April 24, 2003 from Marc Langland, President of Northrim Bank addressed to AIDEA [copy on file] requesting that AIDEA increase approval authority of the in-house credit committee from \$3 million to \$6 million. He asked if

this matter was considered and whether it is addressed in the aforementioned five items.

Mr. Barry clarified this is a regulatory issue, not requiring statutory changes, and that the board of directors would address the matter.

Co-Chair Wilken relayed concern expressed by Wells Fargo in a letter dated April 25, 2003 from Executive Vice President James L. Cloud to AIDEA [copy on file] relating to item five and the need for an understanding of the proposal's intent.

Mr. Barry reiterated that another bank opposed this proposal and that Wells Fargo "chose to take no stand" on the matter.

Senator Olson removed his objection to the motion and the committee substitute Version "D" was ADOPTED.

Senator Taylor requested the record reflect that he joined the meeting at 9:04 am.

Co-Chair Wilken noted this legislation also addressed the Healy Clean Coal project.

Mr. Barry explained the committee substitute would provide statutory authority for the Alaska Energy Authority (AEA) to acquire the Healy Clean Coal asset. He informed that the transfer of AEA to AIDEA did not include authority for AEA to initiate new projects without legislative consent. He stated that the AIDEA Board of Directors also acts as the board of directors for AEA, although AIDEA and AEA are separate companies with separated accounting. He stated that AIDEA owns Healy Clean Coal, a generating asset located along the Railbelt, and that AEA owns another generating asset, called Bradley Lake, and a transmission asset, called the Alaska Intertie, both also located on the Railbelt. He expressed intent to transfer Healy Clean Coal from AIDEA to AEA in the future so all State-owned energy assets located along the Railbelt would be in the same company. He indicated a potential conflict of interest of the board of directors in addressing these assets separately and noted possible "flexibility" in locating all the assets within one company. He assured that if the transfer were arranged, AIDEA would present the proposal to the Legislature for approval and that the change in this legislation would provide advanced notice of intent.

Co-Chair Wilken asked the extent of the "distress" of the Healy Clean Coal project in the intent to transfer the asset to AEA.

Mr. Barry replied that as a new chair of AIDEA, he would not have perceived a conflict with the board of directors if the Healy Clean Coal project were not in distress. He qualified that no conflict has been identified to date; however, precautions should be taken against future conflict.

Co-Chair Wilken announced intent to hold the bill in Committee at this hearing.

SARA FISHER-GOAD, AIDEA, testified that Brenda Applegate, Controller, AIDEA and Sue Weimer of the AIDEA Credit Department were available on teleconference to answer questions.

Senator Olson asked if any implications resulted from the transfer of AEA to AIDEA. He recalled a letter of intent drafted by parties involved in the Healy Clean Coal Project [copy not provided].

Mr. Barry stressed that some "serious issues" must be resolved before a transfer of the Clean Coal project could occur. He listed permits issued to AIDEA for operation of the project that may or may not be transferable, and an outstanding agreement with Golden Valley Electric Association. He remarked that no transfer would be attempted without input from the Association and noted a meeting was planned between the boards of both organizations.

Senator Olson asked the relationship between Golden Valley Electric Association and the Healy Clean Coal project.

Mr. Barry told of a power sales agreement reached in 1991, which was terminated in April 2003 by the Golden Valley Electric Association; however, a settlement agreement resulting from litigation filed in 1999 is still valid. He assured that neither AIDEA nor the Golden Valley Electric Association is attempting to avoid their obligations.

Senator Hoffman commented that the language of Section 2 appears "broad and open ended" and asserted he would not support this provision unless he knew specifically if a purchase or lease were under consideration and the conditions of that proposal. The language of Section 2 reads as follows.

Sec. 2. AS 44.83.080 is amended by adding a new paragraph to read:

(16) to acquire, by purchase or lease, a coal-fired electric generation project owned by the Alaska Industrial Development and Export Authority that qualified for federal financial participation under P.L. 99-190, as amended.

Senator Hoffman understood that the Healy Clean Coal project was not earning a profit, in part because of high operating costs. He expressed the need to know of the conditions of an AIDEA purchase to identify the State's obligation and whether further debt would be incurred. He wanted to know if AIDEA would "cut it's losses" if the project were unprofitable and subsequently write down those losses. He also informed that federal legislation related to the project is unresolved.

Mr. Barry responded that the provision in Section 2 does not actually request the transfer, but rather notifying "the world" that such an acquisition could occur. He assured that legislative authority would be required for such a purchase. He furthered that feasibility studies to determine such matters as whether the permits could be transferred, have not been conducted to date.

Mr. Barry asserted that the fact that the Healy coal project is not a profitable operation is not in dispute. During the previous year and in 1999, he stated that AIDEA "took a very significant write down on impairment of assets" to account for the losses. He emphasized the board of directors' intent to make every effort to determine whether this resource generating capability could be utilized for the benefit of the State of Alaska.

Senator Hoffman asked the amounts of the two write-downs.

Mr. Barry replied that he joined the Board in January and was not familiar with the details. He estimated the first write down was \$131 million and the second was approximately \$66 million.

Senator Hoffman opined that a decision must be made quickly and that conducting studies would be "prolonging the agony". He stressed the need for AIDEA and the Legislature to act as "prudent business people", noting that Golden Valley Electric Association is "already cutting their losses" and that the State should do the same.

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

Amendment #1: This amendment inserts "and to a municipal tax exemption for certain assets and projects of the Alaska Industrial Development and Export Authority" to the title of the bill. The amended language reads as follows.

"An Act relating to powers of the Alaska Energy Authority to acquire a coal-fired electric generation project from the Alaska Industrial Development and Export Authority, to exemption from the State Procurement Code for contracts

related to a coal-fired electric generation project that the Alaska Energy Authority acquires from the Alaska Industrial Development and Export Authority, to regulations of the Alaska Industrial Development and Export Authority, to the authority of the Alaska Industrial Development and Export Authority to issue bonds, and to a municipal tax exemption for certain assets and projects of the Alaska Industrial Development and Export Authority; and providing for an effective date."

This amendment also inserts a new bill section on page 6, line 5 to read as follows.

Sec. 11. Section 19, ch. 117 SLA 2000, is amended to read:
Section 19. Section 3 of this act takes effect July 1, 2012 [2004].

New Text Underlined [DELETED TEXT BRACKETED]

Senator B. Stevens moved for adoption.

Co-Chair Wilken objected for clarification.

Senator B. Stevens explained this amendment relates to changes made to the companion bill, HB 112, which imposed a repeal of the sunset date. He stated this amendment represents a compromise in that it would not repeal the exemption of the DeLong Mountain transportation system, but rather extend the exemption to the year 2012. He noted this date also marks the end of the pilot agreement between the Northwest Arctic Borough and Cominco in which payments are made to the Borough in lieu of taxes. He expressed that he disagrees with the State tax assessor's position that the transportation system is not a State-owned asset, held by AIDEA.

Co-Chair Wilken objected to this amendment on the grounds that it "brings before this Committee, some significant policy calls and we can deal with those in House Bill 112. If we bring it into this bill, it adds nothing to the bill; in fact detracts from the bill and detracts from the discussion and the benefit that this bill provides." He assured he was committed to addressing HB 112.

Senator Taylor thanked the sponsor of the amendment, expressing that he shares the concerns. He recalled the Legislature reaching the initial agreement and remarked that a "deal was a deal," whether or not he supported it at the time.

Senator Hoffman supported the amendment as well. He shared that AIDEA reports the single largest revenue producer of this project is Cominco Alaska Red Dog Mine and that Cominco has a nonexclusive

priority right to use the DeLong Mountain transportation system. He commented that the Legislature must consider how its actions affect the corporation and the bond ratings.

A roll call was taken on the motion.

IN FAVOR: Senator Olson, Senator B. Stevens, Senator Taylor, and Senator Hoffman

OPPOSED: Senator Bunde, Co-Chair Green, and Co-Chair Wilken

The motion PASSED (4-3)

The amendment was ADOPTED.

Senator Taylor stated that the extension of the exemption date reflects only one portion of the provisions in HB 112. The definition of a roadway and the purposes of a transportation corridor, he noted are not addressed in the committee substitute to SB 73.

Co-Chair Wilken announced the matter would be addressed at a later date.

Co-Chair Wilken ordered the bill HELD in Committee.

#HB203

HOUSE BILL NO. 203

"An Act relating to the definitions of 'net income' and 'unrestricted net income' for purposes of calculating the dividends to be paid to the state by the Alaska Industrial Development and Export Authority; and providing for an effective date."

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

Co-Chair Wilken reminded that questions were posed at the previous hearing and answers were provided in a letter dated May 7, 2003 from Ron Miller, Executive Director, AIDEA.

REPRESENTATIVE MIKE HAWKER, sponsor of the bill, deferred to AIDEA to expound on the information.

SARA FISHER-GOAD, AIDEA, testified she was available to provide further detail if necessary.

AT EASE 9:35 AM / 9:37 AM

Senator Taylor offered a motion to report HB 203 from Committee with individual recommendations and accompanying fiscal note. [Note: although the motion indicated a Senate committee substitute existed, no committee substitute was presented for this bill.]

There was no objection and HB 203, with zero fiscal note #1 from the Department of Community and Economic Development, MOVED from Committee.

#SB56

CS FOR SENATE BILL NO. 56(FIN)

"An Act relating to sport fishing license fees and anadromous king salmon tag fees for residents of Yukon, Canada; and providing for an effective date."

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

Co-Chair Wilken stated that this bill would "allow residents of the Yukon Territory to purchase fishing licenses at the in-State rate."

SENATOR FRED DYSON, sponsor, recalled similar efforts were made several years prior. He stated that the Yukon Territory "has a lot in common" with Alaska, particularly the interior regions of the State and that the Territory has been experiencing significant financial reverses and declining population. He opined that Yukon Territory residents "are amongst our very best friends" and that efforts such as extension of the Alaska Railroad, a gas pipeline, "circle tourism routes" and import-export activities, are occurring between the State and the Territory.

Senator Dyson assured that Yukon residents would not be considered Alaskan resident fishers under the provisions of this bill and therefore their activities would be regulated in the manner of other nonresident participants.

Senator Dyson remarked that the fiscal note should be in an indeterminate amount, as the number of Yukon Territory residents that would participate is unknown. He suggested the loss of revenue could be insignificant if more Yukon Territory residents purchase licenses and participate in Alaskan fisheries. He furthered that several coastal Alaskan communities generate revenue from visiting fishers.

Senator Dyson indicated a letter of endorsement for this bill from the Alaska State Chamber of Commerce [copy on file.]

Senator Taylor offered a motion to move SB 56 from Committee with individual recommendations and accompanying fiscal note.

Co-Chair Wilken indicated further discussion was necessary.

Senator Bunde objected to the motion and commented he "was not interested in doing anything to help any Canadian at this point." He questioned how the State could allow only certain foreign nationals access to Alaska resources.

DON JOHNSON testified via teleconference from an off net location in Soldotna, that if the State would going to provide lower license fees to Canadians, United States residents from the Lower 48 should receive the same benefits. He disagreed with giving rights to aliens that are denied to U.S. citizens.

Co-Chair Wilken asked whether the sponsor would prefer an effective date to allow this legislation to be in effect for the upcoming summer fishing season.

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Senator Dyson affirmed.

Senator Taylor WITHDREW his motion to report the bill from Committee without objection.

Amendment #1: This conceptual amendment would add a new Section 2 to the bill to make the provisions of this Act effective immediately.

Co-Chair Wilken moved for adoption.

The amendment was ADOPTED without objection.

Senator Taylor requested the sponsor respond to the witness' comments.

Senator Dyson appreciated the point and spoke to the close proximity of the Yukon Territory and the cooperative management of shared resources, including fisheries. He stressed that building a relationship is important.

Senator Dyson pointed out that the language of the bill is "permissive" in that it allows the commissioner of the Department of Fish and Game to determine whether to extend the resident rate.

Senator Olson furthered that although he has opposed the Canadian government on various issues, this legislation would encourage Yukon fishers to catch fish on the Alaskan side of the border, rather than waiting until the salmon migrated upstream, and thus capitalize on their efforts.

Co-Chair Green commented that her children were born in Alaska; however, when they visit the State, they must pay the higher nonresident license fees. She stated that extending resident license fees to Canadians and not to former Alaskan residents "is not right".

Senator Bunde asserted that Canadians should amend their laws relating to guns to be "friendlier" to Alaskans.

Senator Dyson commented that Yukon residents feel as alienated from their national government as Alaskan residents do with relation to gun laws. He relayed that at a conference he and Senator Olson attended, he learned that the residents of the Yukon Territory are "diametrically in opposition" to their federal government's position on this and other matters.

Senator Bunde told of an opportunity he had to attend a conference in Canada and that he refused based on that nation's policies.

Senator Dyson opined that while it is "appropriate to punish the guilty," it would be "immoral and unethical" to punish the innocent.

Senator Taylor offered a motion to move SB 56, as amended, from Committee with individual recommendations and accompanying fiscal note.

A roll call was taken on the motion.

IN FAVOR: Senator Olson, Senator B. Stevens, Senator Taylor, Co-Chair Green and Co-Chair Wilken

OPPOSED: Senator Hoffman and Senator Bunde

The motion PASSED (5-2)

CS SB 56 (FIN) with zero fiscal note #1 from the Department of Fish

and Game was REPORTED from Committee.

#SB26

CS FOR SENATE BILL NO. 26(STA)

"An Act relating to state employees who are called to active duty as reserve or auxiliary members of the armed forces of the United States; and providing for an effective date."

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

Co-Chair Wilken stated that this bill "allows State employees who are members of a reserve military unit and who are called to active duty, to receive their previous salary and some or all of their State benefits. This provision in law is triggered only by an order of the Governor and is retroactive to September 11, 2001."

SENATOR KIM ELTON, co-sponsor of the bill with Senator Taylor, gave two examples of the benefits of this legislation. First, he told of Master Sergeant Steve Fernandez who was called from reserve status to serve in the Persian Gulf. Senator Elton informed that Master Sergeant Fernandez received backfill pay and benefits from his civilian employer Williams Petroleum in North Pole, Alaska. Senator Elton then described the situation of an Alaska State Trooper stationed in Ketchikan, who was also called from reserve status, and the inability for the State to provide salary compensation and benefits for this employee.

Senator Elton pointed out this legislation would not require the State to pay these salaries and benefits, but rather would authorize the governor to do so through the issuance of an administrative order. He also indicated that the Governor could determine the extent of the backfill pay and benefits provided.

Senator Elton listed 43 State employees enlisted in the Army National Guard, 83 enlisted in the Air National Guard, and 12 enlisted in the State Defense Force.

Senator Elton noted the Committee considered SB 177, sponsored by Senator B. Stevens that extended similar benefits to State retirees.

Senator Elton also informed that if this legislation were in effect during the previous year and the Governor had issued a pertinent administrative order, the maximum cost to the State would have been approximately \$80,000 for the eight State employees called to

active military duty.

Senator Taylor clarified "backfill" pay as the difference in the State employee's regular salary and the military salary paid to that employee while called to active duty. He remarked that the State would incur a savings, as only a portion of the employee's regular salary would be paid.

Co-Chair Wilken expressed his only concern relates to the fiscal impact of this legislation and that more effort is necessary.

Co-Chair Green clarified that the Governor may implement this option and asked if a provision exists that would allow the Governor to rescind or modify the administrative order in the event that a conflict continued for an extended period of time.

Senator Elton assured such action would be authorized through the issuance of another administrative order.

Senator Olson wanted to ensure no "double dipping" would occur with State employees collecting a salary from both the military and the State.

Senator Elton assured this would not occur and furthered that some State employees called to active military duty actually earn a higher salary for their military service. He stated that the backfill pay portion of this legislation would therefore not apply to these employees.

Senator Bunde requested a listing of those State employees who actually earn a higher salary in military service.

Co-Chair Wilken suspected pilots, colonels, and other military positions pay wages higher than those paid for many State positions.

Senator Elton gave an example of a custodian working in the State Capitol Building, who was called to active military duty and paid a higher salary. Senator Elton emphasized that although a cost would be incurred from this legislation, another value must be considered. He intended some State employees would be encouraged to join the military reserves and "serve their country".

Co-Chair Wilken noted a letter in support of this legislation from Julie Benson [copy on file].

JULIE BENSON testified via teleconference from Ketchikan about the importance of this legislation to herself and her husband, an

Alaska State Trooper and military reservist called to active duty in 2002 for six months. She informed that once called for military service, her husband's State benefits were immediately discontinued, resulting in a loss of retirement contributions as well as salary increases he would have received if he remained employed by the State. She furthered that when her husband returned to State service, his annual salary increase was denied on that basis that he "failed to demonstrate a greater value to the State." She challenged that this failure was due to his deployment to the Middle East to support for Operation Enduring Freedom. She pointed out that her husband's military salary is not comparable to his salary as an Alaska State Trooper and qualified that they understood this when he enlisted. However, she stated they were unaware that he would not receive State salary advancements during his absence.

Ms. Benson remarked that State employees serving in the military reserves should not be penalized in this manner, particularly during a time of "significant national crisis." She commented that under current policy, those State employees "almost feel punished", adding to the difficulties of being separated from family.

Senator Taylor thanked the witness for her efforts in bringing this matter to the Legislature's attention.

Co-Chair Wilken thanked the witness and her husband for their service to the nation.

Co-Chair Wilken announced he has requested further detail from the Division of Personnel, Department of Administration regarding the fiscal impacts of this legislation.

Senator B. Stevens reminded the Committee of similar legislation relating to benefits for retired State employees. He also supported this bill.

Co-Chair Wilken also supported the legislation, but stressed a need to understand the fiscal implications.

Co-Chair Green referenced an article dated February 23, 2003 from the Associated Press regarding the State of Tennessee extending similar backfill pay benefits for its State employees called to active military service [copy on file]. She noted the provision in this program limiting the amount of payments to \$1,000 per month for each affected employee. She suggested this provision could be implemented in Alaska as well if necessary.

Co-Chair Wilken told of a married couple, both of whom are State

employees called to active military service, and the impacts of this deployment on the family.

Senator Bunde informed he has family members who serve in the reserves, one of whom has been called to active duty. Senator Bunde remarked that for 20 years, this relative has also received a salary for his military service and therefore, the temporary loss of State salary is compensated.

Co-Chair Wilken ordered the bill HELD in Committee.

#SB85

CS FOR SENATE BILL NO. 85(STA)

"An Act relating to sentencing and to the earning of good time deductions for certain sexual offenses."

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

Co-Chair Wilken stated this bill "increases the penalties for repeat sex offenders. In addition repeat sex offenders are not eligible to reduce their prison time for good time behavior."

Co-Chair Wilken noted new fiscal notes were submitted for this legislation.

SENATOR HOLLIS FRENCH, sponsor, testified that Alaska has "long held the unfortunate position as leading the nation in per capita reported rapes." He asserted that a small portion of the population create a majority of this problem and therefore, this legislation addresses repeat sex offenders.

Senator French explained that upon conviction of a second sex offense, this bill imposes a separate and more stringent category of presumptive sentencing and removes the "good time". He remarked that this bill is punitive and designed to treat repeat offenders in a "more serious manner" by sentencing them to longer terms and keeping them in prison longer. He noted the provisions would affect unclassified, A, B and C felony classification.

Senator French qualified that this bill would result in increased costs to the State; however, he asserted that these repeat sex offenders "cycle through the system" at a significant rate. He exemplified that of the over 700 sex offenders currently incarcerated, over half have been incarcerated ten or more times. He suggested that some savings could therefore occur in the "transaction costs"

of releasing and the reincarceration of these offenders.

Senator Bunde noted he was involved in a previous effort of drafting Alaska's "three strikes" statutes. He asked if the sponsor had reviewed these statutes and whether they could be applied to repeat sex offenders.

Senator French replied that the statutes would address the more serious cases of sexual assault; however, the qualifying previous conviction criterion is stringent and therefore difficult to apply. He stated that the proposed legislation specifically relating to sexual offenders would avoid the sentencing other offenders to a 40-year term upon conviction of a C felony.

Senator Bunde wanted to work with the sponsor to readdress this issue.

Senator French assured the Committee of his willingness to do so.

BARBARA BRINK, Director, Public Defender Agency, Department of Administration, testified via teleconference from an off net location in Anchorage, in favor of efforts to reduce repeat sex offences. However, she expressed concerns with the bill, particularly with the elimination of the good time credit. She questioned the rationalization of holding certain offenders in prison for longer terms because of concern of future crimes they might commit. She suggested that this could be in violation of equal protection rights because it singles out a particular offense rather than a class of offenses.

Ms. Brink cautioned that although the Public Defender Agency (PDA) fiscal note is in an indeterminate amount, she stressed that costs would be incurred. She predicted increased litigation would result due to the more serious consequences and the removal of discretion for the prosecution to negotiate sentencing. She pointed out that many clients of the PDA are rural indigent Natives, and that many of the offenses include serious substance abuse issues that are not addressed in this legislation.

Senator French acquiesced that the prospect of additional trials is possible; however by increasing the severity of all classifications of repeat sex offenses, the bill would allow the prosecution to negotiate a lesser offense. He informed that sexual abuse of a minor cases are "notoriously" difficult to prosecute because typically the only witness is a child who usually has some type of relationship with the accused. In such cases with other convincing evidence, he stated that the offender could be convicted of an unclassified felony and receive a maximum sentence of 30 years.

However, he continued that in cases with an incentive to avoid trial, such as extensive trauma to the child, or difficulty with other witnesses or evidence, the prosecutor could negotiate a lesser charge. He stated that although the offender would receive "an enormous break" with regard to the potential prison sentence, the actual sentence would still be significant. He therefore predicted more cases would be settled.

Senator Bunde commented that similar arguments of increased trials were made in opposition to the three strikes legislation; however the court system has not been overloaded.

Senator Taylor clarified that the standards of the three strikes statutes is high and subsequently difficult for prosecutors to invoke.

Senator French agreed and detailed that to invoke this provision, an offender must be convicted of three unclassified or Class A felonies in separate cases. He noted that upon a second conviction, an offender would receive a significant jail term and probably not be out of prison to commit a third major crime. He pointed out that this provision is normally reserved for the most serious offenders, those who commit homicide, first-degree rape, etc.

Senator Taylor commented that Alaska historically imposes longer sentences than most other states for comparable crimes and therefore the three strikes statute is not often invoked.

PORTIA PARKER, Assistant Commissioner, Department of Corrections, described the Department fiscal note, which was calculated based on the high recidivism rate of sex offenders. She listed that of the 727 sex offenders currently interned, 581 or 80 percent have been "through the State system" at least once before, with an average recidivism rate of 6.24 times. Of the 80 percent, she furthered, 52 percent of the inmates have been previously incarcerated ten or more times. She informed that bookings, inmate transfers and other costs related to processing inmates in and out of custody are the highest costs to the Department. She pointed out this does not include other costs to the judicial system, including arrests, court time, prosecutors and public defenders. Therefore, she stated this legislation would reduce those expenses and result in minimal increases.

Senator Taylor noted the significant recidivism rates of sex offenders. He asked if data was available to predict the number of offenders who would be impacted by this legislation within a given period of time.

Ms. Parker replied that upon further research, an estimate could be produced. She noted that many current inmates serving sentences for sex offenses had committed different crimes resulting in their previous convictions. She stated that 15 percent of the 727 inmates serving time for a sex offense have a prior sex offense conviction.

Senator Taylor clarified that 15 percent is serving a second sentence for a sexual crime.

Ms. Parker affirmed.

Senator Taylor asked the length of sentence these inmates received for their second sex offense.

Ms. Parker did not have this information.

Senator Taylor requested this information, commenting that before changes are made to the current process, it should be determined whether changes are necessary. He suggested that these offenders could already be receiving comparable sentencing.

Senator Taylor did not oppose the legislation and did not want it delayed, however he expressed concern with the argument that this could result in violations of equal protection.

Senator French noted similar legislation has been adopted in six other states and is under consideration in additional states. He opined that the equal protection challenge would be "thwarted" because other provisions are directed at repeat drunken driving offenders. He explained that these provisions do not treat a specific class unfairly, but rather demonstrate a rational basis for the State's actions, that being high recidivism and significant harm caused by these crimes.

Senator Taylor directed the record must reflect Senator French's comments in the event this legislation is challenged in court. He furthered that the provisions identify specific violations as well as a unique character and personality type. He remarked that these offenders could be treated as a "definable and a separate group" without violating the equal protection clause of either the Alaska or the US Constitution.

LAURIE HUGONIN, Alaska Network on Domestic Violence and Sexual Assault, testified in Juneau that during fiscal year 2002 approximately 2,000 victims of sexual assault sought assistance from various programs in Alaska. She cited the Child Welfare League data that one in four girls and one in six boys would be sexually

assaulted before the age of 18. She furthered that sex offenders, particularly child abusers, usually commit multiple violations before entering the judicial system. While treatment is beneficial to reduce recidivism, she stressed that the safest course of action to prevent repeated sexual assaults is to keep offenders out of the community. She referenced studies showing that treatment does not completely change an offender's behavior, but rather delays the amount of time before re-offending occurs.

Ms. Hugonin understood the benefits of encouraging inmates to behave while serving their sentences; however, the safety of the community is more important and repeat sex offenders should be incarcerated for as long as possible.

Ms. Hugonin noted that other states that do not allow for good time for sexual offenders despite extending good time provisions to other classifications of prisoners. She listed Arizona, which utilizes this provision for sex offenders; Tennessee requires offenders convicted of child rapists and multiple rapists to serve the entire sentence imposed by the court "undiminished by any sentence reduction credits"; Oregon does not allow "earned time" for a class of crimes including sexual assault and sexual assault of a minor; and Illinois reduces the amount of "good time" available for sex offenders. She also informed that this legislation would not impose the strictest provisions, as the State of Iowa requires offenders convicted more than once of a felony sexual predatory offense to serve twice the maximum period of incarceration.

Senator Taylor expressed that although he supports the concept of this legislation, DNA evidence and other events have occurred resulting in exoneration of convicts. He told of a case in the State of Washington in which a group of people who operated a day care center were, "persecuted by a zealous district attorney who attempted to show a valid case of child sexual abuse." Senator Taylor stated this situation, in which the defendants were cleared, should be avoided in Alaska.

Senator Taylor charged that legislation relating to sex offender registers and increased penalties for "sex oriented crimes", "and to be blunt, it's a sexy thing to do for a Legislator because it carries a lot of political hammer out there with the public." He qualified that the public intends the Legislature to make every effort to punish and reduce sexual offense, which he supported. However, he cautioned that "responsibility and integrity" must be invested in district attorneys and prosecutors.

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Senator Taylor continued that each time he has requested data on child sexual abuse cases investigated by the Department of Health and Social Services, the annual statistics indicate an average of 70 percent of all investigations found no "basis in fact". He contended that during these investigations, children are removed from families and "arrests are made." He was therefore concerned with increased penalties and sex offender registration lists.

Senator Taylor offered a motion to report CS SB 85 (STA) from Committee with individual recommendations and accompanying fiscal notes.

Without objections CS SB 85 (STA) REPORTED from Committee with a zero fiscal note #1 from the Department of Law, a zero fiscal note, dated 4/29/03 from the Department of Corrections, and an indeterminate fiscal note dated 4/29/03 from the Department of Administration.

Co-Chair Wilken comment on need to keep tomorrows debate focused.

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ADJOURNMENT

Co-Chair Gary Wilken adjourned the meeting at 10:37 AM