

MINUTES
SENATE FINANCE COMMITTEE
May 10, 2003
9:05 AM

TAPES

SFC-03 # 86, Side A
SFC 03 # 86, Side B
SFC 03 # 87, Side A

CALL TO ORDER

Co-Chair Gary Wilken convened the meeting at approximately 9:05 AM.

PRESENT

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

Also Attending: SENATOR GARY STEVENS; SENATOR FRED DYSON; REPRESENTATIVE TOM ANDERSON; MIKE BARTON, Commissioner, Department of Transportation and Public Facilities; TOM WRIGHT, Staff to Representative John Harris; JACQUELINE TUPOU, Staff to Senator Lyda Green; DOUGLAS BRUCE, Director, Division of Public Health, Department of Health and Social Services; WES KELLER, Staff to Senator Fred Dyson; ANNE CARPENETTI, Assistant Attorney General, Legal Services Section-Juneau, Criminal Division, Department of Law; JUANITA HENSLEY, Special Assistant, Office of the Commissioner, Department of Public Safety; LINDA SYLVESTER, Staff to Representative Bruce Weyhrauch; KATHLEEN STRASBAUGH, Assistant Attorney General, Governmental Affairs Section, Civil Division, Department of Law

Attending via Teleconference: From Offnet Sites: DR. JOHN ROBERTSON, Medical Director, Department of Corrections; DR. BETH FUNK, Epidemiology Section, Division of Public Health, Department of Health and Social Services; CHRIS BEHEIM, Director, Scientific Crime Detection Laboratory and Manager, DNA Database, Department of Public Safety; LINDA WILSON, Deputy Director, Public Defender Agency, Department of Administration

SUMMARY INFORMATION

SB 185-ROYALTY REDUCTION ON CERTAIN OIL

This bill was scheduled but not heard.

HB 229-PAROLE FOR MEDICAL/COGNITIVE DISABILITY

The Committee heard from the bill's sponsors, the Department of Corrections, and the Department of Health and Social Services. One amendment was presented but withdrawn from consideration, and the bill was held in Committee.

HB 105-COMMERCIAL FISHING LOANS

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

SCR 10-CHARTER SCHOOL TASK FORCE

The Committee heard from the sponsor, considered two amendments and adopted one, and reported the bill from Committee.

HB 49-EXPAND DNA DATABASE

The Committee heard from the bill's sponsor, the Department of Law, and the Department of Public Safety. The bill reported from Committee.

HB 109-TREASURY WARRANTS/LAPSED APPROPRIATIONS

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

SB 213-KNIK ARM BRIDGE AND TOLL AUTHORITY

The Committee heard from the Department of Transportation and Public Facilities and the Department of Law. The bill was held in Committee.

#hb229

CS FOR HOUSE BILL NO. 229(FIN)

"An Act relating to special medical parole and to prisoners who are severely medically or cognitively disabled."

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

Co-chair Wilken stated that this legislation would provide the Alaska Board of Parole the flexibility to deny or approve medical parole.

TOM WRIGHT, Staff to Representative John Harris, Co-Chair of the House Finance Committee, stated that Senator Lyda Green's staff would present testimony on the behalf of the House Finance Committee, the bill's sponsor.

JACQUELINE TUPOU, Staff to Senator Lyda Green, commented that this bill would allow the Parole Board to grant parole to severely disabled or ill prisoners. As a testament to the Parole Board's "proven track record" regarding discretionary parole decisions, she informed that prisoners who are released on mandatory parole have a 77-percent recidivism rate as compared to a one-percent recidivism rate for those prisoners awarded discretionary parole by the Parole Board.

Ms. Tupou stated that the State's inmate population is comprised of 430 individuals 50 years of age or older and that 23 percent of the 430 are more than 60 years of age. She expressed that the aging prison population is incurring great medical expense to the State, as she informed that people in State custody are exempt from Medicaid or Medicare programs and Veterans or Native American benefits. Therefore, she communicated that this legislation would enable the Department to formulate a release plan for qualifying, critically ill prisoners provided that such things as where they would live and who their caregivers would be are addressed. She assured the Committee that the release plan must be developed before a prisoner's name would be advanced to the Parole Board.

Ms. Tupou stated that even though some of these prisoners are currently in a hospital or other care facility, because they are in State custody, the State is required to post a guard with them 24-hours a day, regardless of the patient's physical situation. Were these prisoners granted a medical parole, she stated that the cost of the individual's care would be provided by federal matching monies or by family resources. She reiterated that, under current conditions, these funding options are not available.

Ms. Tupou declared that, were the medical parole option being considered, the prisoner's victim would be notified and allowed to comment. She further attested that were the action "to diminish the seriousness of the crime," the medical parole would not be granted.

Ms. Tupou reiterated that this legislation would grant the Parole Board the flexibility to make these discretionary parole decisions.

Senator Bunde asked whether a prisoner must be diagnosed with a terminal medical condition before being considered for medical parole.

Ms. Tupou replied yes, the prisoner should be experiencing a life-threatening illness from which recovery is not expected.

Senator Bunde asked whether the illness must have "a time certain" death element.

DR. JOHN ROBERTSON, Medical Director, Department of Corrections, testified via teleconference from an offnet site to explain that the general guidelines of this legislation specify that "the vast majority" of people who would be considered for medical parole status would have three to six months to live "with a year at the outside." He expressed that this bill addresses the lack of flexibility the Parole Board currently experiences regarding medical paroles.

Senator Bunde voiced support for the bill.

Dr. Robertson commented that safeguards, based on other states' experiences, are incorporated into the process, and that he is confident that the Parole Board would take all factors such as the crime, the medical condition, the prognosis, and the release plan into consideration during its medical parole determination. He stated that one of the prime considerations in the release plan is that an appropriate care environment would be in available for the person.

Amendment #1: This amendment changes the bill's title by inserting new language on page 1, line 2, following the word "disabled" to read as follows.

"An Act relating to special medical parole and to prisoners who are severely medically or cognitively disabled; relating to a severe acute respiratory syndrome control program; and providing for an effective date."

Additionally, two new sections are inserted on page 1, following line 3. The new sections read as follow.

Section 1. The uncodified law of the State of Alaska is amended by adding a new section to read:

PURPOSE. (a) The purposed of sec. 2 of this Act is to

clarify the law and expressly establish a comprehensive program for health care decisions to control severe acute respiratory syndrome (SARS) in this state, including reporting, examinations, orders, and detention to protect the public health.

(b) The purpose of secs. 3 - 7 of this Act is to clarify standards for special medical parole and to address prisoners who are severely medically or cognitively disabled.

Sec. 2 AS 18.15 is amended by adding a new section to read:

Article 1A. Severe Acute Respiratory Syndrome (SARS).

Sec. 18.15.112. SARS control program authorization. (a) A severe acute respiratory syndrome (SARS) control program is authorized in the department. The SARS control program shall be administered in the same manner and has the same powers, authority, obligations, and limited immunities as does the program for the control of tuberculosis under AS 18.15.120 - 18.15.149, except for the following:

(1) the provisions of the control program described in AS 18.15.120(1) and (7);

(2) reports to state medical officers under AS 18.15.131;

(3) examinations of persons under AS 18.15.133;

(4) title to and inventory of equipment allotted to private institutions under AS 18.15.140;

(5) the screening of school employees under AS 18.15.145.

(b) In this section, "SARS" or "severe acute respiratory syndrome" means the infectious disease caused by the SARS-CoV or the SARS coronavirus and the mutations of that disease."

Furthermore, a new bill section is inserted on page 4, line 12 that reads as follows.

Sec. 8. Sections 1 and 2 of this Act take effect immediately under AS 01.10.070(c).

Senator Bunde moved for adoption of Amendment #1.

Co-Chair Wilken objected to discuss the status of the amendment with Co-chair Green, the Chair of the Committee's subcommittees for the Department of Health and Social Services and the Department of Corrections.

Co-chair Green asked that the motion be temporarily tabled.

Co-Chair Wilken requested that the motion be withdrawn.

Senator Bunde WITHDREW the motion to adopt Amendment #2; however, he asked that the amendment be discussed.

DOUGLAS BRUCE, Director, Division of Public Health, Department of Health and Social Services stated that this amendment would allow the Department to develop a program, similar to its tuberculosis program, to address a possible outbreak of Sudden Acute Respiratory Syndrome (SARS) or other issues that might require quarantines. He stated that the amendment would additionally provide the Department with the authority to address the particulars of the disease as they differ from those of tuberculosis.

Co-Chair Wilken clarified that this amendment would affect a different section of the bill than the medical parole issue does, and in addition, he stated, it would require a title change.

Senator Hoffman asked the potential for a SARS outbreak in the State.

DR. BETH FUNK, Epidemiology Section, Division of Public Health, Department of Health and Social Services, testified via teleconference from an offnet site in Anchorage and specified that this amendment would provide the State with the ability to develop a program to specifically address the particulars of SARS. She noted that the State has observed the various international reactions to SARS outbreaks and has determined that the regions that moved quickly to test and quarantine suspected outbreaks have been the most successful in disease control. She stated that while most people voluntarily comply with quarantine requests, the State's lack of enforcement capability might hinder disease control.

Dr. Funk informed that the incubation period for SARS is approximately two to ten days. She stated that this timeframe could provide the opportunity for SARS to be introduced to the State due to the fact that Alaskans travel so much and that national and international travel is so "rapid."

Senator Taylor questioned why one specific infectious illness is addressed in this amendment, as he suggested that a more generic approach should be presented to allow the Department to address infectious illnesses as deemed necessary.

Dr. Bruce agreed "that more general powers" would be welcome; however, he stated that this is the initial step of a long process.

Senator Taylor voiced support for the overall Department objective. However; he stated that previous legislative attempts to change regulations to address a medical outbreak, specifically acquired immunodeficiency syndrome (AIDS), were unsuccessful; partly he

noted, due to a lack of cooperation from the medical field. He avowed that he has "no problem with this amendment," but he voiced "strong concern ... with the inability of the Department to react" to medical emergencies because of "political sensibilities," rather than "the appropriate medical response."

Co-Chair Green questioned whether this concern could be addressed in current Public Health regulations, as specified on page 267 of the Alaska Statutes, Year 2002, Volume 5, that read as follow.

Section 18.05.040 Regulations (a) The commissioner shall adopt regulations consistent with existing law for (1) the definition, reporting, and control of diseases of public health significance" should provide the Commissioner with the authority to address major health issues.

Mr. Bruce responded that this amendment would address the concern that this regulation does not provide the Department with sufficient ability to quarantine individuals.

Co-chair Green suggested that the language could be amended to include SARS under the tuberculosis program authority.

Mr. Bruce voiced support for the establishment of a separate SARS program, similar to that specified for tuberculosis, as he stressed that the program must contain language and procedures specific to SARS.

Mr. Bruce asserted that this amendment would provide an interim approach to providing the more generic authority that would be required.

Co-Chair Green asked whether existing State statutes, specifically Title 26. Military Affairs and Veterans. would provide the State with the authority to make decisions regarding State disasters such as an epidemic situation.

Mr. Bruce commented that "the Department of Law has indicated that they would be much more comfortable" were this clarification provided.

Co-Chair Green agreed with Senator Taylor's comment that the amendment's language should be generic as opposed to being crafted to address one specific virus. She stated that she would revisit the language of the amendment to provide a more generic approach.

Co-chair Wilken commented that the amendment would be further revised.

The bill was HELD in Committee.

#hb105

CS FOR HOUSE BILL NO. 105(FIN)

"An Act relating to loans to satisfy past due federal tax obligations of commercial fishermen and to the commercial fishing loan program."

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

Co-chair Wilken announced that this legislation would allow commercial fisherman to secure loans to satisfy federal Internal Revenue Service (IRS) debt retirement.

SENATOR GARY STEVENS, the bill's sponsor, expressed that this legislation results from the State's Salmon Task Force efforts to assist the "in crisis" fishing industry. He stated that the bill proposes changes to the Commercial Fishing Revolving Loan Fund that is funded by its participants and administered by the Division of Investments, Department of Community and Economic Development, by reinstating a previous loan program that allowed commercial fishermen "to access these funds to satisfy past due federal tax obligations."

Senator G. Stevens voiced that the Salmon Task Force supports this legislation in order to protect and retain in-state resident limited-entry salmon permits and continue providing jobs in regions of the State with limited job opportunities. He emphasized that these loans would be "secured" and have a maximum \$40,000 limit. He stated that in addition to loan requirements, applicants must prove that they are a current resident of the State, must have been a resident for the two previous years; must be current on their federal tax filings; and must have a payment agreement with the IRS. He stated that this legislation would incur a \$30,000 detriment in FY 04 and a detriment of \$13,000 thereafter through FY 09.

Senator G. Stevens noted that the removal of the word "promptly" in Section 3, subsection (b), line 31 on page 4, would allow the Department flexibility regarding the timeline required for advertising the sale of repossessed permits in order to entertain "quality offers." This language reads as follows.

Sec. 3. AS 16.10.337(b) is amended to read:

(b) If the commission does not exercise its right of first refusal within 30 days after it receives the offer, or if the permit is not subject to a buy-back program under AS 16.43.290-16.43.330, the department shall [PROMPTLY] advertise and sell the permit.

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Senator Bunde asked whether the bill's two-year residency requirement might incur a legal challenge.

Senator G. Stevens stated that the two-year residency requirement is not a new provision in the bill, and he stated that, to date, no legal challenge has been introduced. He clarified that in addition to the two-year residency requirement, the applicant must be a current resident of the State.

Senator Taylor clarified that federal law does not allow for more than a two-year residency requirement.

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

There being no objections, HB 105 was REPORTED from Committee with previous negative \$30,000 fiscal note #1 from the Department of Community and Economic Development.

#scr10

CS FOR SENATE CONCURRENT RESOLUTION NO. 10 (HES)
Establishing the Joint Legislative Charter School Task Force.

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

Co-Chair Wilken explained that this bill would create an eight-member charter school task force to review Alaska statutes pertaining to charter schools.

WES KELLER, Staff to the bill's sponsor Senator Fred Dyson, voiced that this resolution would establish a charter school task force to review existing laws for compliance with such issues as the federal No Child Left Behind Act of 2001 (NCLB) and present a report to the Legislature. He noted that, in addition, the task force would be required "to propose alternative governing of a school" were it to fail to meet requirements.

Senator Taylor voiced support for the bill as he agreed that it is wise to review charter school regulations and provide the Legislature with policy directives.

Senator Bunde asked whether the omission of language specifying whether the Legislative representation on the review panel task force, as referenced on page two, line 21, would be members of the majority or minority party was intentional.

Mr. Keller responded that the intent would be to appoint a member of the majority and a member of the minority from each house. He noted that the Senate President and the Speaker of the House support this language.

Amendment #1: This amendment inserts clarifying language into the resolution on page two, lines 21 - 23, to specify that a minority and majority member from each house would comprise the four-member Legislative presentation.

Senator Bunde moved for adoption of Amendment #1.

Co-chair Wilken clarified that the amendment would provide for the inclusion of a total of four members: one member of the majority and one member of the minority parties in the Senate and one member of the majority and one member of the minority parties in the House of Representatives.

Senator Taylor understood the amendment to provide equal representation.

Co-Chair Wilken objected to the amendment. He voiced being "very comfortable with having the President of the Senate and the Speaker of the House appoint whomever, regardless of party."

Senator Bunde asserted that while the language might be appropriate under the current leadership, this situation might differ over time; therefore, he supported the clarifying language.

A roll call was taken on the motion.

IN FAVOR: Senator Bunde and Senator Hoffman

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

ABSENT: Senator Olson

The motion FAILED (2-4-1)
Amendment #1 FAILED to be adopted.

Co-Chair Green characterized the bill's accompanying \$20,000 fiscal notes as "excessive," as she declared that existing staff could provide support to the short-term task force. She noted that the amount of the bill's fiscal notes raised concern during the Senate HES Committee discussions.

Co-Chair Wilken observed that a school administrator, principal or superintendent should be involved in the review process.

Amendment #2: This amendment inserts language into the resolution on page 2, line 27 as follows.

(5) that the ninth member of the body be a school administrator, superintendent, or principal."

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

Senator Taylor objected.

SENATOR FRED DYSON expressed that more than five groups have requested representation on the review panel. He stated that in response to this, the decision was made to address the make-up of the panel in a broad manner so that the policy group could solicit input from special interest groups such as bargaining units, school administrators, and school financial administrators. He noted that the two groups specified in the bill have the authority to enter into agreements as opposed to other groups.

Discussion ensued amongst Committee members, during which Co-Chair Green suggested that the language of the amendment specify that the Governor would be the appointing authority for these persons; Senator Hoffman suggested that the amendment language could be addressed as a component of Number (2) in that section; and Senator Taylor suggested that the amendment should specify a "retired" principal, superintendent or administrator.

Amendment-to-Amendment #2: This friendly amendment to the amendment would read as follows:

(2) two members, appointed by the Governor, one of which should be a principal, administrator or superintendent.

Co-chair Wilken moved for the adoption of the friendly amendment-to-Amendment #2.

Senator Dyson noted that the Department of Education and Early Development's representative, appointed by the Governor, could

possess a school administrator's background.

There being no objection, Amendment #2, as amended, was ADOPTED.

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

There being no objection, CS SCR 10 (FIN) was REPORTED from Committee with previous \$10,000 fiscal note #1 from the Senate HES Committee and previous \$10,000 fiscal note #2 from Department of Education and Early Development.

#hb49

SENATE CS FOR CS FOR HOUSE BILL NO. 49(JUD)

"An Act relating to the deoxyribonucleic acid (DNA) identification registration system and testing; 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 bill would expand the State's deoxyribonucleic acid (DNA) database "registry to include samples from all persons who are convicted of a felony or a misdemeanor sex offense."

REPRESENTATIVE TOM ANDERSON, the bill's sponsor, explained that the collection of DNA "is the next step in the advancement in the science of crime investigation," and has been instrumental in providing evidence in convictions that, otherwise, "would have previously been impossible." He stated that DNA evidence, in addition to assisting in convictions, has also aided in clearing persons wrongfully accused of a crime. He stated that this legislation would provide law enforcement efficiencies, assist with furthering unsolved crimes, and expand the State's DNA database. Furthermore, he noted that DNA samples would be acquired from those juveniles adjudicated as a delinquent for felony or misdemeanor sex offenses, would allow for voluntary and anonymous DNA donors, and would require that sex offenders or child kidnappers register as such. He stated that DNA sampling is a nationwide trend.

Senator Bunde voiced support for the bill.

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Senator Bunde understood that parents might voluntarily desire to have their children's DNA sampled in order to provide identification verification; however, he asked the value of anonymous DNA donations.

ANNE CARPENETI, Assistant Attorney General, Legal Services Section-Juneau, Criminal Division, Department of Law responded that anonymous DNA donations could be valuable in identifying missing person remains.

Senator Taylor asked for further clarification regarding "the scope" of individuals who would be affected by this DNA sampling legislation.

Ms. Carpeneti stated that individuals "convicted of felonies under Title 11 and Title 28, Chapter 35 felonies which is felony drunk driving, felony refusal and felony leaving the scene of an accident" would be subject to the legislation. Additionally, she noted it would affect persons convicted of crimes against persons under AS 1141 that would include "a few misdemeanor sex offenses and assaults."

Senator Taylor asked how the legislation would affect juveniles.

Ms. Carpeneti responded that it would affect "juveniles adjudicated as delinquents" who are convicted for these offenses.

Senator Taylor asked the legislation's fiscal impact.

Co-chair Wilken stated that an indeterminate Department of Law fiscal note accompanies the bill.

Senator Taylor asked whether federal funding might be forthcoming.

Ms. Carpeneti voiced the understanding that federal funding would be available to provide for the additional testing expenses.

JUANITA HENSLEY, Special Assistant, Office of the Commissioner, Department of Public Safety, noted that this federal funding is unique in that the federal government would establish direct contracts with certified laboratories to which the State would send the samples for testing. She noted that this indirect funding is anticipated to be available for a minimum of five years.

Senator Hoffman asked what provisions are included in the bill to guarantee that the DNA samples would not be used for other purposes such as health information or cloning. Additionally, he asked

regarding the State's liability regarding the protection of this information.

Representative Anderson responded that Section 11.56.762 located on page 2, lines 20 - 26 of the bill addresses this concern.

Sec. 11.56.762. Unlawful use of DNA samples. (a) A person commits the crime of unlawful use of DNA samples if the person knowingly, without authorization under AS 44.41.035, possesses or allows another person access to (1) a blood, oral, or tissue sample collected for inclusion in the deoxyribonucleic identification registration system under AS 44.41.035, or (2) identification data or records derived from those samples.

(b) Unlawful use of DNA samples is a class C felony.

Ms. Carpeneti qualified that the DNA testing would be limited to 13 specific criteria and would not include medical DNA testing which determines health history. She stressed that, while the State crime laboratory would retain the DNA sample in a secured facility, the legislation prohibits a wider range of testing from being conducted.

Senator Hoffman clarified that the testing would be limited to 13 elements.

Ms. Carpeneti stated that the 13 DNA molecule-sampling tests would provide sufficient information to the Department of Public Safety. She continued that the sample would be securely retained in case the DNA results require double-checking.

Senator Olson asked how this legislation provides protection against DNA being used for commercial purposes.

Representative Anderson stated that protection is provided in language on page 3, line 23 through page 4, line 1 that reads as follows.

Sec. 7. AS 44.41.035(f) is amended to read:

(f) The DNA identification registration system is confidential, is not a public record under AS 40.25.110 - 40.25.140, and may be used only for

(1) providing DNA or other blood grouping tests for identification analysis;

(2) [LAW ENFORCEMENT PURPOSES INCLUDING] criminal investigations; [AND] prosecutions, and identification of human remains;

(3) statistical blind analysis; [OR]

(4) improving the operation of the system; or

(5) exoneration of the innocent.

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Representative Anderson asserted "that parameters" pertaining to sampling use are provided in the legislation.

CHRIS BEHEIM, Director, Scientific Crime Detection Laboratory and Manager, DNA Database, Department of Public Safety testified via teleconference from an offnet site to share that in the previous 16 months, the State's DNA database entertained 30 searches resulting in 15 instances where the DNA database "actually connected crime scene evidence to convicted offenders." He stated that the remaining 15 "hits linked together unsolved crimes" whereby law enforcement officials have been notified that "the same perpetrator committed these seemingly unrelated offenses." He shared successes that other states have experienced by the expansion of their DNA programs.

Mr. Beheim communicated that while the current program is "very, very successful," an expanded program would be beneficial as it would provide identification information for children; incur cost savings by reducing the time involved in crime scene investigations; update evidence information on older, unsolved crimes; and exonerate some individuals considered suspects in a crime. He continued that this legislation would align the State with other states' programs by allowing DNA samples to be retroactively acquired from individuals who are in jail or under probation or parole. He noted that current policy limits the collection of DNA sampling to those convicted since the bill was initially enacted in 1996.

Mr. Beheim informed that the state of Virginia, which has the largest criminal "DNA database in the country," has determined that were their DNA database limited to only violent offenders, a high percentage of crimes would not have been solved as "there is a very strong correlation between individuals who might not have been convicted of violent crimes but are still involved in criminal activity." Therefore, he anticipated that the State of Alaska would experience a similar increase in its ability to match perpetrators to crime scenes. He continued that this program would allow the State's DNA database to be uploaded into the National DNA Index System (NDIS) to allow unsolved crime profiles to be reciprocally matched against other states' convicted offender databases.

Mr. Beheim assured that the testing of the "DNA markers" would be limited to law enforcement identification purposes, and he

furthered that, rather than being identified by name, DNA samples are identified by a laboratory coding system that is known only to that particular crime laboratory.

Senator Bunde asked Mr. Beheim to comment on whether the coding system would provide adequate security measures against computer hackers who might seek access to the information to sell, for instance, to an insurance company.

Mr. Beheim assured that the coding system would prevent a sample from being traced to an individual. Additionally, he emphasized that medical testing information would be unavailable, as those types of tests would not be conducted.

LINDA WILSON, Deputy Director, Public Defender Agency, Department of Administration testified via teleconference from an offnet site to express that the adoption of this legislation would "significantly expand" the offenses upon which DNA sampling is conducted. She expressed that the 80 offenses that would be added to the qualifying list would range from misdemeanor convictions for indecent exposure and assaultive behavior to felony convictions for such non-violent crimes as shoplifting and refusal to submit to a Breathalyzer test and failure to stop at the direction of a police officer. In addition, she stated that the retroactive language in the bill is going "to widen" the number of individuals who would be required to give a sample.

Ms Wilson anticipated that the department would experience an increase in its caseload due to being appointed to represent those individuals refusing to adhere to the DNA requirements. She continued that this expected increase in caseloads is the reason that the department has submitted an indeterminate fiscal note. She criticized that the bill does not include a mechanism to re-evaluate a crime wherein a convicted person maintains their innocence. She asserted that a mechanism to retest old evidence, which was processed using less sophisticated methods than are available today, should be included in the bill.

Senator Olson asked whether the Department of Administration supported the legislation.

Ms. Wilson announced that the department was not in favor of the legislation.

Senator Bunde asked for further information regarding testimony citing that individuals who commit "petty crimes or relatively minor felony offenses" commit more serious offenses.

Ms. Hensley shared that when the state of Virginia expanded its DNA sampling database to include individuals who were convicted of a "white collar crime" such as forgery, the inclusion of these "non-violent crime" offenders in the DNA data base enabled the State to solve 63-percent of its property crimes, 21-percent of sex offense crimes, 14-percent of homicide crimes, and one-percent of murder crimes. She asserted that this is evidence that individuals, who commit non-violent crimes such as shoplifting, do commit other crimes including violent crimes.

Senator Stevens asked how this legislation would expand the State's DNA qualifying offenses as specified in the "State DNA Database Laws Qualifying Offenses (As of October 2002)" chart in the October 15, 2002 National Conference of State Legislatures (NCSL) LegisBrief [copy on file]. He voiced the understanding that it would provide for the inclusion of all felony offenses.

Ms. Carpeneti agreed that all felony offenses listed in the State's Title 11 and Title 28.35 would qualify, including Felony Driving While Intoxicated (DWI) and refusal to submit to an alcohol Breathalyzer test, as well as "juveniles found to be delinquent based on similar acts." Additionally, she stated, "it would include some misdemeanors that are crimes against a person;" as well as arrestees or suspects "if there's a search warrant to gather DNA from the suspect;" however, she clarified that their DNA would not be included in the databank were they cleared of the offense. Continuing, she stated that the DNA sampling expansion would include individuals currently on probation or parole were the crimes they committed offenses that are being added.

Senator Stevens assumed, therefore, that other states listed on the chart might "have limited versions" of offenses as well.

Ms. Carpeneti concurred.

Ms. Carpeneti clarified that the bill would not include individuals on unsupervised probation or parole.

Senator B. Stevens assumed that the four states that are using DNA sampling to its "fullest advantage" require DNA samples from arrestees and suspects.

Ms. Carpeneti noted that Louisiana does require suspects and arrestees to give DNA samples. However, she noted that it does not require all violent crime offenders to provide DNA samples.

Senator B. Stevens surmised that because Louisiana requires DNA samples from arrestees and suspects, there is no need to require it

from the violent crime offenders as they might have previously been sampled.

Ms. Carpeneti replied that in some states, including Alaska, a DNA sample taken from an arrestee or suspect who is not convicted or whose conviction is overruled, would be purged from the databank.

Senator Stevens stated that because all crime scene evidence is retained indefinitely, a convicted offender's DNA could be matched against the entire field. Therefore, he asserted that all the various offense qualifications could be eliminated, were the bill simplified to require "all jailed offenders" to be tested.

Ms. Hensley puzzled as to the reason that all violent crime offenders are not tested in some states.

Senator B Stevens asserted that DNA testing of all offenders was originally the intent of presenting this legislation.

Representative Anderson could not verify that assertion.

Senator B. Stevens stated that he would not be offering an amendment to this affect because it would experience much opposition. However, he pointed out that were all offenders to provide DNA samples, they would either be exonerated of a crime and their DNA sample would be destroyed or they would be convicted and would be a jailed offender.

Representative Anderson agreed; however, he voiced that there would not be support for such a blanket approach.

Senator Stevens asserted that an all-inclusive approach would solve more crimes.

Senator Taylor voiced concern regarding the security of the DNA databanks and urged that safeguards be instituted to warrant a high level of confidence.

Ms. Carpeneti responded that the Department of Law has confidence that adequate safeguards would be in place. She noted that the inclusion of language specifying that anyone found guilty of misuse of the sample and the data would be charged with a Class C felony would be a deterrent.

Senator Olson voiced concern that a DNA match might reflect "a false positive" and therefore convict an innocent person.

Mr. Beheim responded that DNA profiles are essentially unique and

that it would be virtually impossible, with the exception of identical twins, for two individuals to have the same DNA profile. He alerted that a sample mix-up could occur, however, he qualified that samples are retained and are re-analysed for "positive assurance" whenever a positive "hit" is found.

Senator Olson asked how often a mix-up in the collection of the data and a DNA sample might occur.

Mr. Beheim responded that no mix-ups were found in the re-analysis conducted on the 15 positive hits that have been experienced. He continued that in addition to the re-testing of the crime scene evidence, a new DNA sample from the suspect is also acquired and tested previous to any criminal proceedings being undertaken.

Senator Olson asked what is done with DNA samples of an unsolved crime.

Mr. Beheim responded that all crime scene evidence is permanently retained in the laboratory. He stated that all unsolved crime DNA profiles, which are referred to as a forensic index, are entered into a national database and "are searched against other unsolved cases" on a State and national level.

AT EASE 10:26 AM / 10:26 AM

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

Without objection, SCS HB 49(JUD) was REPORTED from Committee with previous zero fiscal note # 1 from the Department of Public Safety, previous zero fiscal note #2 from Department of Law; and previous indeterminate fiscal note #3 from the Department of Administration.

#hb109

CS FOR HOUSE BILL NO. 109(FIN)

"An Act relating to the limitation on payment of state treasury warrants and to the payment of a claim for which the appropriation has lapsed; and providing for an effective date."

LINDA SYLVESTER, Staff to Representative Bruce Weyhrauch, informed the Committee that this bill would streamline the accounting functions for two items: stale-dated warrants and Miscellaneous Claims. She stated that rather than the current process in which the funds designated for warrants are transferred to the general

fund if they are not cashed within two years of issuance, this legislation would designate that the funds for warrants not cashed within six months of issuance would be transferred to the Department of Revenue's "Unclaimed Property Section." She explained that this action would allow delinquent claims to be paid when the warrants are submitted, without requiring the originating department to request funds to be re-appropriated from the general fund via the Fast Track Supplemental bill.

Senator Olson asked whether there is any opposition to this bill.

Ms. Sylvester stated there is none.

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

There being no objections, CS HB 109 (FIN) was REPORTED from Committee with zero fiscal note #1 from the Department of Administration.

#sb213

SENATE BILL NO. 213

"An Act establishing the Knik Arm Bridge and Toll Authority and relating to that authority; and providing for an effective date."

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

Co-chair Wilken stated that this legislation would provide for the establishment of an independent authority to build and operate a Knik Arm Bridge.

MIKE BARTON, Commissioner, Department of Transportation and Public Facilities, expressed that this bill would establish a separate and independent authority, which would function in a similar manner as the Alaska Housing Finance Corporation, to build and operate a bridge across Knik Arm. In addition, he stated that it would provide for the creation of a three-person board, which would be comprised of the commissioners of the Department of Revenue and the Department of Transportation and Public Facilities, and a public member appointed by the Governor. He specified that each of these persons would serve a five-year term with the option of an additional five-year term.

Mr. Barton declared that the majority of the language in the bill

pertains to the Authority's ability to: issue revenue bonds; accept and receive federal government funding; provide for Legislative oversight of bonds; and manage the construction and operation of the bridge.

Co-chair Wilken announced that the purpose of this hearing is to entertain issues regarding the bill.

Senator Olson asked whether a change in administration would "automatically change" the Board's membership.

Commissioner Barton replied that even though the commissioners of the two departments might change as the result of a new administration, this situation would not immediately affect the members of the Board as they are appointed for five-year terms.

Senator Olson asked the reactions to this legislation by the affected communities, particularly the reaction of the Municipality of Anchorage which would be most impacted by this legislation.

Commissioner Barton responded that "there is an amazing amount of support" for the construction of a bridge. He stated that at a recent meeting in Palmer in the Matanuska-Susitna Borough, no opposition to the bridge was experienced.

Senator Taylor noted that the distance across Knik Arm is short. Therefore, he suggested that a fast ferry and/or a hovercraft might be viable alternatives to a bridge.

Commissioner Barton acknowledged the suggestion.

Senator Hoffman, referring to the three-person administrative staff as outlined in the accompanying May 5, 2003 Department of Transportation and Public Facilities fiscal note, asked whether it is imperative that staff be hired immediately upon the establishment of the Authority. Additionally, he asked at what point the tolls generated from the bridge would support the bridge's administrative costs.

Commissioner Barton voiced the need for early hire of the administrative staff, as they would be able to assist the Authority in securing adequate funding and design determinations for the bridge. He noted that the construction of the bridge is anticipated to occur in the 2007 to 2009 timeframe, depending upon the bridge design.

Senator Hoffman asked when the bridge design requests for proposals should be conducted in order to start construction in the 2007 to

2009 timeframe.

Commissioner Barton responded that it would depend on the bridge option selected. He stated that bridge design work should be conducted in 2005 and 2006.

Senator Olson voiced surprise that there is no opposition to this legislation as, he stated, this is not typically the norm when a project could negatively affect property values in an area.

Commissioner Barton reiterated that, while there might be some concern, no opposition has been expressed.

Co-Chair Wilken voiced concern regarding the Department's fiscal note and the subsequent impact on the FY 04 budget.

Co-Chair Wilken opined that communities, specifically the Municipality of Anchorage and the Mat-Su Borough, should be able to participate in discussions with the Bridge Authority. Therefore, he questioned whether the word "confer," as denoted in the bill in Article 2. Powers and Duties, Subsection (a)(17) on page 4, line 27, is "strong enough."

(17) confer with municipal and other governments, metropolitan planning organizations, and the department, concerning the Knik Arm bridge;

Commissioner Barton referred the Committee to language in Subsection (b)(5), on page 5, line 18 that specifies that the Authority must coordinate activities with these communities.

(5) coordinate the exercise of its powers to plan, design, construct, operate, and maintain the Knik Arm Bridge with the department, and with the mayors of the Municipality of Anchorage and the Matanuska-Susitna Borough.

Co-Chair Wilken acknowledged this language; however, he opined that the word "coordinate is a soft word."

Co-Chair Green testified to the Mat-Su Borough's long-term support of this project. She responded to Senator Olson's remarks pertaining to the project's adverse effect on Anchorage property values by asserting that the Mat-Su Borough would similarly be affected by a loss of traffic in its core area. However, she noted that allowing traffic to be expedited from the area toward Anchorage would relieve congestion and provide other communities more direct access to Anchorage.

Co-chair Green voiced, however, that the Mat-Su Borough is concerned about the primacy of the Department. Furthermore, she noted that while the Mat-Su Borough and the Municipality of Anchorage might not always agree on an issue, both communities support improvements in the regional transportation system. She voiced support of Co-Chair Wilken's concern about "soft language," and she expressed further concern regarding the Department's "higher level of control;" particularly the Department's control on project funding.

SFC 03 # 87, Side A 10:41 AM

Commissioner Barton responded that this legislation would establish "a separate legal authority that would be able to raise revenue through the sale of bonds." He assured that the bonds would not be an obligation of the State, as the Authority would issue them. Furthermore, he noted that it would be Authority, rather than the Department that would be working with the various municipalities

Co-Chair Green asked how the situation would be resolved, were the two communities "to totally disagree" on the project.

Senator Taylor declared that the Bridge Authority must be created as an autonomous entity in order to issue bonds. Furthermore, he voiced that while it might be desired for the public to have greater input and that the affected communities should consult with the Authority regarding the project, he attested that the action of providing communities with a "primacy" control could jeopardize the asset that the bonds are pledged to "payoff." He voiced that stronger language might negatively affect the Authority's ability to sell bonds.

Co-Chair Wilken asked the Department to address these concerns and report back to the Committee. Additionally, he asked the Department how a delay in action on this legislation might impact the project.

Commissioner Barton responded that even if no action were taken on the bill this Legislative session, the Department would continue to "proceed on the course we're on." However, he asserted that it would be beneficial to pass the legislation this year, as the establishment of the Bridge Authority would assist in focusing efforts and developing methods to secure funding that would contribute to getting the bridge built.

Senator B. Stevens voiced concern regarding "the extent of the power of the authority" and how it would affect the communities of

Anchorage and the Mat-Su Borough. To that end, he asked for an explanation of the term "appurtenant facilities" as referenced in Article 2. Powers and Duties. Section 44.90.111 subsections (1), (7), and (16) on page three and four that read as follows.

Article 2. Powers and Duties.

Sec. 44.90.111. Powers and duties of the authority. (a) In furtherance of its purposes, the authority may

(1) own, acquire, construct, develop create, reconstruct, equip, operate, maintain, extend, and improve the Knik Arm bridge and its appurtenant facilities;

(7) issue bonds and otherwise incur indebtedness, in accordance with AS 44.90.211, in order to pay the cost of the Knik Arm bridge and its appurtenant facilities; the authority may also secure payment of the bonds or other indebtedness as provided in AS 44.90.221;

(16) exercise powers of eminent domain or file a declaration of taking as necessary for the Knik Arm bridge and appurtenant facilities under AS 09.55.240 - 09.55.460 to acquire land or an interest in land;

Senator B. Stevens opined that this language seemingly specifies that the Authority is the entity that is responsible "for paying the cost of the bridge and its associated facilities," as well as "defining in terms of land and facilities," what is required by the Authority in order to build the bridge. He surmised therefore, that the Authority would be responsible for the bridge section of the transportation corridor between the two municipalities, and would issue bonds to enable the bridge to be built as well as levying fees to pay for those bonds.

Commissioner Barton stated that is correct.

Senator B Stevens voiced that the mechanism for including communities in the events leading up to the construction of the bridge is provided; however, he questioned how communities would be involved after the bridge is built.

Commissioner Barton concurred that this language "addresses the crossing itself and its immediate environs." He stated that the federal highway program would be involved because the north and south side approaches to the bridge would affect the federally funded road network to such place as Houston and Talkeetna in addition to the Mat-Su Borough and the Municipality of Anchorage. He reminded Committee Members that the federally mandated Regional Transportation Planning Organization is charged with addressing

conflicts that a transportation project such as this one, "might incur to a great part of the State."

Senator B. Stevens asked whether the Knik Arm Bridge Authority "would be a participant in the Regional Transportation Planning Organization."

Commissioner Barton responded that while the Authority "would have a lot of involvement" with the Organization, he is unsure as to whether the Authority would be a member of it.

Senator B. Stevens interjected that boroughs, cities, and the State are members of that organization.

Commissioner Barton agreed.

Senator Bunde pointed out that this project would require the State to expend "\$2.5 million of scare dollars" to access the "free" federal highway fund money. Therefore, he stated that while it might be nice to have this bridge, he deemed it "unnecessary at this time."

Senator Hoffman stated that this legislation appears to provide the Knik Arm Bridge Authority with the power to operate outside of the Executive Budget Act. He asked the justification for providing the Authority with this ability as opposed to the State providing funds and maintaining control of such things as the Municipality of Anchorage International Airport improvements.

Commissioner Barton responded that the Executive Budget Act does not apply to the Authority's ability to issue revenue bonds.

KATHLEEN STRASBAUGH, Assistant Attorney General, Governmental Affairs Section, Civil Division, Department of Law, clarified that the Authority would be required to comply with the Executive Budget Act with the exception that the revenues generated by the sale of the bonds would be obligated to pay off those bonds. She noted that this provision is mirrored after the Alaska Housing Finance Corporation (AHFC) that operates in this manner and has the duty to repay its bonds.

Ms. Strasbaugh noted, however, that the money appropriated by the State for operating expenses does not qualify for exemption, as is specified in Article 2. Powers and Duties. Sec. 44.90.111. Subsection (b)(2) that reads as follows.

(2) comply with the provisions of AS 37.07 (Executive Budget Act), except that AS 37.07 does not apply to the activities of

the authority that relate to the authority's borrowing of money as provided in this chapter, including the issuing of its obligations or evidence of that borrowing and the repayment of the debt obligation;

Commissioner Barton noted that this exemption might be unnecessary; however, he suggested that a person with bond experience should advise on the matter.

Senator Hoffman noted that AHFC has collateral comprised of housing and other properties that are readily marketable as opposed to the Knik Arm Bridge Authority. Therefore, he stated that were the Authority not granted this exemption, the State could be liable for the repayment of the bond debt.

Commissioner Barton voiced that the intent of the legislation is to separate the State from the sale of revenue bonds in order to not obligate the State. He noted that an insurance company as opposed to the State would be responsible were the aforementioned airport bonds defaulted upon.

Co-Chair Wilken opined that while language in the bill specifies that the State would not be obligated for these bonds, he questioned what is referred by the phrase "other monies" as referenced in Sec. 44.90.241 Nonliability on Bonds. Subsection (b) on page nine, lines 20-23 that reads as follows.

(b) The bonds issued by the authority do not constitute an indebtedness or other liability of the state or of a political subdivision of the state other than the authority, but shall be payable solely from the income, receipts, or other money or property of the authority.

Co-chair Wilken further inquired regarding language in Sec. 44.90.221. Trust indentures and trust agreements. that provides for the establishment of a capital reserve fund. He worried that because the State would be "recognizing the bridge and the debt" that the "other monies" specified might be the State's "saving account," and that in future years, the State might be allocating "money to pay that debt and/or the operation of a bridge that people aren't using."

Commissioner Barton replied that, "it is not the intent to obligate the State."

Co-Chair Wilken asked whether there are other State programs modeled in this fashion.

Commissioner Barton responded that such programs would include AHFC, the Alaska Industrial Development and Export Authority (AIDEA), some portions of the Alaska Railroad Corporation, and the Alaska Aerospace Development Corporation.

Co-Chair Wilken asked whether any of the State's international airports have a similar authority.

Commissioner Barton responded no.

Co-Chair Wilken asked whether the Authority could be terminated and its responsibilities assumed by the Department of Transportation and Public Facilities once its financial obligations are retired, as specified in Sec. 44.90.021. Establishment of authority. Subsection (b) on page two, lines four and five that reads as follows.

(b) The authority may not be terminated as long as it has bonds, notes, or other obligations outstanding. Upon termination of the authority, its rights and property pass to the state.

Commissioner Barton stated that the toll revenues generated from the bridge would fund the operational costs of the bridge.

Co-Chair Wilken asked the role of the Authority upon completion of the bridge, specifically, he asked why the Department of Transportation and Public Facilities could not operate the bridge.

Commissioner Barton stated that the autonomy of the Authority must be maintained until the bond obligation is fulfilled or another mechanism of paying off the bonds is established.

Co-Chair Wilken opined that the three-person Authority could be maintained; however, the Department could oversee the bridge operations.

Commissioner Barton conveyed that this might be possible.

Senator Bunde pointed out that the Department's fiscal note could be considered "seed money" as the bridge's administrative expenses would be paid by toll revenue rather than by State money once the bridge was operational.

Senator Hoffman asked whether other State boards include Governor appointees with no specific background or "ties" to the program.

Commissioner Barton responded that the Governor also appoints

individuals to the Boards of the Alaska Railroad Corporation, AHFC, and AIDEA.

Senator Hoffman expressed that he would be sponsoring amendments that would address the composition of the Authority's Board to provide for a higher level of involvement by the Municipality of Anchorage and the Mat-Su Borough as well as the inclusion of non-voting State legislators, one from the Senate and one from the House of Representatives, on the Board.

Co-chair Wilken summarized that these issues would be addressed at a follow-up meeting. He ordered the bill HELD in Committee.

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ADJOURNMENT

Co-Chair Gary Wilken adjourned the meeting at 11:02 AM