

MINUTES
SENATE FINANCE COMMITTEE
May 18, 2003
1:03 PM

TAPES

SFC-03 # 102, Side A
SFC 03 # 102, Side B
SFC 03 # 103, Side A

CALL TO ORDER

Co-Chair Gary Wilken convened the meeting at approximately 1:03 PM.

PRESENT

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

Also Attending: REPRESENTATIVE PAUL SEATON; REPRESENTATIVE TOM ANDERSON; LORALI CARTER, Staff to Representative Kevin Meyer; DAN SPENCER, Director, Division of Administrative Services, Department of Administration; MIKE BARRY, Chair, Board of Directors, Alaska Industrial Development and Export Authority; KEVIN JARDELL, Assistant Commissioner, Department of Administration; JOSH APPLEBEE, Staff to Representative Anderson;

Attending via Teleconference: From and off net location: GAIL VOIGHTLANDER, Assistant Attorney General, Department of Law; DEAN BROWN, Deputy Director, Division of Forestry, Department of Natural Resources; JEFF COOK, Vice President, External Affairs, Williams Alaska Petroleum

SUMMARY INFORMATION

HJR 27-FEDERAL \$ FOR ANCHORAGE JAIL EXPANSION

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

HB 232-HOMER MERCURY CLASSIC/ GAMING PRIZE LIMIT

The Committee heard from the sponsor and adopted an amendment. The bill moved from Committee.

HB 248-SALARY OF CHIEF PROCUREMENT OFFICER

The Committee heard from the Department of Administration and the bill moved from Committee.

HB 165-REPEAL COMMUNITY SCHOOLS GRANT PROGRAM

The bill moved from Committee.

SB 73-AIDEA: LOAN PARTICIPATION & REGULATIONS

The Committee heard from AIDEA. A committee substitute was adopted and the bill moved from Committee.

HB 112-AIDEA: BONDS & MUNICIPAL TAX EXEMPTION

The Committee adopted a committee substitute and the bill moved from Committee.

SB 112-MOTOR FUEL TAX: GOVT AGENCY REFUNDS

The Committee heard from the Department of Administration and adopted a committee substitute. The bill moved from Committee.

HB 245-SUITS & CLAIMS: MILITARY/FIRE/DEFENSE

The Committee heard from the Department of Law and the Department of Natural Resources. A committee substitute was considered but failed to be adopted. The bill was held in Committee.

HB 216-FUEL FUND/MUNI TAX: REFINED FUEL PRODUCTS

The Committee heard from the sponsor and a representative from an oil and gas producer. The bill was held in Committee.

#HJR27

CS FOR HOUSE JOINT RESOLUTION NO. 27(STA)
Relating to support for a federal appropriation for expansion
of the Anchorage Jail.

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

Committee.

Co-Chair Wilken stated that this bill "encourages the United States Congress to appropriate \$30 million for a 200-bed expansion at the Anchorage Jail to house additional federal prisoners."

LORALI CARTER, Staff to Representative Kevin Meyer testified to reiterate Co-Chair Wilken's explanation of the bill.

Co-Chair Green offered a motion to move the bill from Committee with individual recommendations and accompanying fiscal note.

There was no objection and CS HJR 27 (STA) MOVED from Committee with zero fiscal note # 1 from the Department of Corrections.

#HB232

HOUSE BILL NO. 232

"An Act relating to mercury classics; 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 the Homer chapter of the Kenai Peninsula Boys and Girls Club to operate and implement the Homer Mercury Classic."

REPRESENTATIVE PAUL SEATON, sponsor, testified this bill would establish the Homer Mercury Classic, which would operate similarly to other classics including the Nenana Ice Classic. He stated this bill would allow the Boys and Girls Club to offer \$2 tickets, of which 50 percent would be paid out in prizes. He told of past mercury classics held in Fairbanks in 1987 and 1988, noting these were the only authorized mercury classics. He informed of a computerized weather station located on the roof of the Boys and Girls Club building that would allow for temperature monitoring. He explained the weather station would be used to determine the first instance in the spring when the temperature rises to 55 degrees and the first instance in the fall when the temperature lowers to 15 degrees.

Amendment #1: This amendment inserts "relating to contests of skill under the charitable gaming laws;" into the title of the bill. The amended title reads as follows.

"An Act relating to contests of skill under the charitable

gaming laws; relating to mercury classics; and providing for an effective date."

This amendment also inserts a new bill section on page 1, line 3 to read as follows.

Section 1. AS 05.15.180(g) is amended to read:

(g) A municipality or a qualified organization may award a maximum of \$1,000,000 in prizes each year in activities authorized under this chapter; however, if a municipality or a qualified organization contracts with an operator to conduct on its behalf activities authorized under this chapter, the municipality or qualified organization may award a maximum of \$500,000 in prizes each year. A municipality or a qualified organization that conducts a contest of skill and awards more than \$500,000 in prizes to the participants in that contest of skill, may exclude \$500,000 in prizes awarded to those participants from the \$1,000,000 maximum allowed in this subsection. The holders of a multiple-beneficiary permit under AS 05.15.100(d) may award a maximum in prizes each year of \$1,000,000 times the number of holders of the permit for activities authorized under this chapter. In this subsection "activities authorized under this chapter" means all activities subject to this chapter other than bingo.

NEW TEXT UNDERLINED [DELETED TEXT BRACKETED]

Senator Olson moved for adoption.

Co-Chair Wilken objected for an explanation.

Senator Olson noted this amendment specifically pertains to the Iditarod Trail sled dog race and would allow an organization to award over \$1 million in total prize payouts for a game of skill. He expressed that the Iditarod has been a popular activity for Western Alaska in the winter months.

Co-Chair Wilken asked if the Iditarod game or any other game of chance has reached the \$1 million payout limit.

Co-Chair Green referenced a letter dated May 17, 2003 to Senator Olson from Stan Hooley, Executive Director, The Iditarod Trail Committee, Inc., [copy on file] predicting that the total payout would exceed \$1 million in the year 2004.

Co-Chair Wilken therefore deemed this amendment necessary.

Co-Chair Wilken noted earlier questions were raised relating to the

legality of this provision and asked if the issues have been resolved.

Senator Olson assured this amendment is legal.

Senator Taylor suggested that without the amendment, the bill would be subject to criticism in that it specifies only one charity and one community.

Co-Chair Wilken removed his objection and the amendment was ADOPTED.

Co-Chair Green offered a motion to report HB 232, as amended, from Committee with individual recommendations and accompanying fiscal note.

Senator Taylor objected to rhetorically ask whether the sponsor would object to an amendment to include video gaming.

Senator Taylor withdrew his objection.

Without objection, SCS HB 232 (FIN) MOVED from Committee with zero fiscal note #1 from the Department of Revenue.

AT EASE 1:11 PM / 1:11 PM

#HB248

HOUSE BILL NO. 248

"An Act relating to the annual salary of the chief procurement officer; and providing for an effective date."

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

Co-Chair Wilken stated that this bill, sponsored by the House Rules Committee by request of the Governor, "changes the salary of the State's Chief Procurement Officer from Range 23 to Range 24. By statute the Chief Procurement Officer is appointed to a six-year term and may be removed only for cause."

Senator Taylor offered a motion to move HB 248 from Committee with individual recommendations and accompanying fiscal note. He then objected to the motion to comment that this bill could be considered as addressing a specific interest because it only involves one person and one salary range. He opined this provision should have been included in other broader legislation.

Senator Taylor removed his objection.

Senator Olson objected to ask the date the salary range for this position was last changed.

DAN SPENCER, Director, Division of Administrative Services, Department of Administration, was unsure, surmising the pay range has been unchanged since the enabling statute was first adopted.

Senator Bunde commented this legislation would decrease State expenditures the deputy position is eliminated.

Without objection HB 248 with zero fiscal note #2 from the Department of Administration, was MOVED from Committee.

#HB165

CS FOR HOUSE BILL NO. 165 (HES) (efd fld)
"An Act relating to community schools."

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

Co-Chair Wilken stated that this bill "eliminates the community schools grant program. The \$500,000 for this program has been deleted in both the House and Senate operating budgets. The House bill includes intent language regarding the community schools."

Senator Taylor offered a motion to report HB 165 from Committee with individual recommendations and accompanying fiscal note.

Without objection, CS HB 165 (HES) (edf fld) MOVED from Committee with zero fiscal note #2 from the Department of Education and Early Development.

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

Co-Chair Wilken reminded this bill relates to the Alaska Industrial Development and Export Authority (AIDEA) loan participation. He spoke to a proposed committee substitute Version "I", which only contains language addressing the AIDEA loan participation. He pointed out that the original bill includes language pertaining to the purchase of the Healy Clean Coal project by the Alaska Energy Authority (AEA), to an extension of AIDEA general bonding authority, and to the Red Dog Mine.

Co-Chair Green moved for adoption of CS SB 73, 23-GS1018\I, as a working document.

Co-Chair Wilken objected for further explanation.

MIKE BARRY, Chair, Board of Directors, Alaska Industrial Development and Export Authority, testified to affirm Co-Chair Wilken's explanation of the committee substitute. He expressed intent that the House of Representatives would consider this "clean" committee substitute, pointing out that House committees have held hearings on each of the issues included in the original bill.

Co-Chair Wilken furthered that the utility in which he is a member had concerns with other items in the original legislation that could be alleviated with additional discussion. He indicated those issues would be addressed the following session.

Co-Chair Wilken removed his objection to the adoption of the committee substitute and it was ADOPTED.

Senator Taylor offered a motion to report SB 73, as amended, from Committee with individual recommendations and accompanying fiscal note.

Senator Olson commented that because the matters relating to Tech Cominco, Inc. and the Red Dog Mine have been addressed in HB 112, he therefore had no objection to this bill.

There was no objection and CS SB 73 (FIN) MOVED from Committee with zero fiscal note #1 from the Department of Community and Economic Development.

#HB112

CS FOR HOUSE BILL NO. 112 (FIN)

"An Act relating to the authority of the Alaska Industrial Development and Export Authority to issue bonds and to a municipal tax exemption for certain assets and projects of the

Alaska Industrial Development and Export Authority; and providing for an effective date."

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

Senator Taylor moved for adoption of HB 112, 23-GH1010\U, as a working draft.

Co-Chair Wilken objected to give an explanation that this committee substitute extends AIDEA bonding authority up to \$10 million to July 1, 2007, as requested by AIDEA representatives. He added that the committee substitute extends the municipal tax exemption for the Delong Mountain Transportation System to July 1, 2007. He relayed the intent of the Murkowski Administration to draft legislation with the assistance of the State Tax Assessor that "sets forth these decisions" for legislative consideration the following session. He told of assurances he has received that this committee substitute would not affect other proposed projects.

Senator Olson indicated that Tech Cominco, Inc. does not oppose this committee substitute.

Co-Chair Wilken removed his objection to the adoption of the committee substitute and it was ADOPTED without objection.

Senator Taylor offered a motion to report CS HB 112, Version "U" from Committee with individual recommendations and accompanying fiscal note.

There was no objection and SCS CS HB 112 (FIN) MOVED from Committee with zero fiscal note #1 from the Department of Community and Economic Development.

AT EASE 1:12 PM / 1:22 PM

#SB112

CS FOR SENATE BILL NO. 112(TRA)

"An Act increasing the motor fuel tax; repealing the special tax rates on blended fuels; removing the motor fuel tax exemption of the Alaska Railroad; relating to tax refunds for government agency purchases of fuel; and providing for an effective date."

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

Committee.

Co-Chair Wilken stated that this bill would "increase the motor fuel tax." He indicated a proposed committee substitute, Version "W".

Co-Chair Green moved for adoption of CS SB 112, 23-GS1118\W, as a working draft.

Co-Chair Wilken objected for an explanation.

KEVIN JARDELL, Assistant Commissioner, Department of Administration, testified to the changes in the committee substitute. He stated that the "uncontroversial portions have been removed". He spoke to the request for proposals (rfp) the Division of Finance issued for credit cards and the provision that those credit cards must be authorized for use in purchasing fuel. He indicated he had elaborated on this subject at a previous hearing and stated that this bill was chosen as the "vehicle" for implementing the intended policy. He remarked that because this legislation was not progressing through the Legislature, it was determined that the motor fuel tax provisions would be deleted to allow consideration of the credit card provision. He clarified that only language pertaining to credit cards is contained in the committee substitute.

Senator Hoffman opined that the committee substitute is, "a major move in the right direction."

There was no objection and the committee substitute Version "W" was ADOPTED as a working draft.

Senator Taylor offered a motion to report the CS SB 112, Version "W" from Committee with individual recommendations and forthcoming fiscal notes.

Without objection CS SB 112 (FIN) MOVED from Committee with zero fiscal notes dated 5/18/03 from the Department of Administration and the Department of Revenue.

AT EASE 1:26 PM / 6:58 PM

#HB245

CS FOR HOUSE BILL NO. 245(JUD) (efd fld)

"An Act relating to certain suits and claims by members of the military services; relating to certain suits and claims regarding acts or omissions of the organized militia; relating

to workers' compensation and death benefits for members of the organized militia; relating to liability arising out of certain search and rescue, civil defense, fire management, and fire fighting activities."

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

Co-Chair Wilken stated that this bill, sponsored by the House Rules Committee at the request of the Governor, "limits civil actions arising out of claims and suits by members of the military service, organized militia and firefighters. The State's self-insurance program for tort liability exposures will be favorably affected by this legislation."

GAIL VOIGHTLANDER, Assistant Attorney General, Department of Law, testified via teleconference from an off net location in Anchorage that this bill addresses liability for State and local governments and State and local government employees and volunteers who provide "important emergency services."

Ms. Voightlander noted that State and local governments provide four different areas of emergency response, one being search and rescue. She informed that the Alaska State Troopers perform approximately 400 search and rescue operations annually. She emphasized this bill would provide immunity to the Troopers and other State and local employees and volunteers involved in these activities.

Ms. Voightlander assured this legislation and the immunity it would provide, is consistent with Alaska Supreme Court case law regarding liability of public safety workers, and she listed examples. She stated this bill extends the provisions of public safety workers to include search and rescue operations in granting immunity against civil liabilities for negligent actions during an investigation.

Ms. Voightlander furthered that this bill also addresses "intra-military tort" and would clarify "what was muddled in an Alaska Supreme Court case in 2001" called Himsel versus the State of Alaska. She expressed that confusion had long existed as to the "various hats ... the Alaska National Guard might wear in any given occasion," and opined that this case further "blurred the distinction" as well created uncertainty regarding the responsible party defending against claims made arising from National Guard activities. She stated that this legislation provides that members of the Alaska National Guard, if injured while operating under State orders, would be covered under the State's workers

compensation program, and if injured while operating under federal orders, would be provided workers compensation and other benefits by the federal government. She pointed out that members of the Alaska National Guard mostly operate under federal orders.

Ms. Voightlander continued that the Himsel vs. State decision also resulting in the allowance of the military to "sue one another" for civil damages. She reported that all but two other jurisdictions in the U.S. follow the Feres Doctrine, which determines that it is poor public policy to allow members of the military to sue officers, fellow military members and employers for military activities. She remarked that to allow an individual to give an order, yet hold that individual liable for civil actions as a result of giving that order is detrimental to the military command structure. She also remarked that public policy should not allow civilian courts to interject with military operations and orders. She stated this legislation would reestablish the Feres Doctrine in Alaska.

Ms. Voightlander stressed this portion of the legislation is not a "change", but rather is in response of the Himsel vs. State ruling. She informed that the Feres Doctrine had been the "long standing rule" and that no lawsuits had been filed against the State due to the awareness of the Doctrine and the understanding that it applied to Alaska. She pointed out that the National Guard is comprised of both State and federal employees "providing services under a variety of orders".

Ms. Voightlander listed the third subject of this legislation as civil defense. She referenced Title 26. Immunity for Civil Defense Activities., in Alaska State Statute, and stated this bill would "continue" that immunity, although it provides "slightly higher standards for the one exception when lawsuits are allowed in the area of civil defense. She noted that civil defense activities in Alaska are primarily responses to natural disasters, including earthquakes and floods. She said these events normally involve State and local governments and employees and volunteers. She stated that this provision of the bill would "immunize" not only the governments, but also the employees and volunteers providing "vital emergency services."

Ms. Voightlander concluded with the provisions for firefighting activities contained in this legislation. She informed that it had been understood that the State could not be sued for these activities; however, the Alaska Supreme Court in 2001 ruled in two cases relating to the Miller's Reach Fire, that the State could be sued for "certain aspects of firefighting activities". This bill, she stressed, would provide immunity to State and local

"responders" and to volunteers, "all who conduct firefighting operations in the State of Alaska", to allow them to perform emergency responses. She surmised this would permit those personnel to make emergency decisions without the threat of lawsuits filed against themselves individually or their employers.

Ms. Voightlander pointed out that workers and volunteers defending themselves against a lawsuit are subsequently unavailable for public safety activities during times of court appearances, and related appointments.

Ms. Voightlander informed that the State and federal employees and volunteers, are covered by workers' compensation insurance in the event they are injured during the performance of their duties. She noted workers' compensation is a "no-fault system" in which attorneys are not necessary for an injured employee to assert rights and to receive compensation.

Ms. Voightlander stated this legislation would bring Alaska into compliance with other Western states and the U.S. Ninth Circuit Court of Appeals rulings that holds that firefighting activities are immune.

Senator Taylor asked about the plaintiff in Himsel vs. State why the suit was brought.

Ms. Voightlander shared that Major General Kenneth Himsel served in the Indiana National Guard and was stationed in Alaska. She said the lawsuit arose from a plane crash near Juneau of a federal plane piloted by a member of the federal National Guard transporting several members of the Alaska National Guard who were in Active Guard Reserve (AGR) status, in which there were no survivors. She explained this status was categorized as a federal status in which members received federal benefits and in this instance the spouses and dependent children did receive benefits from the federal government following the crash. This lawsuit, she stated, argued whether the mission was State or federal, and the Alaska Supreme Court, in rejecting the Feres Doctrine of whether injuries arose as a result of military service, substituted a "new test" the "uniquely military test." She updated that this lawsuit was settled for \$7.5 million with the State portion of that amount \$2.75 million and the remainder paid by insurance the State no longer carries.

Senator Taylor asked about the other passengers on that flight.

Ms. Voightlander indicated that General Carrol [spelling not specified] was on that plane and was the only individual involved

who was "clearly a State employee" and therefore his estate was not included in the lawsuit. She was unaware whether the General's spouse wanted to participate in the suit, but noted that the acceptance of State workers compensation benefits precluded such actions.

Senator Taylor asked if the other passengers were members of the military.

Ms. Voightlander affirmed and reiterated that Major General Kenneth Himsel was a member of the Indiana National Guard, the pilot was considered a federal employee and the co-pilot and other passengers, excluding General Carrol, were members of the Alaska National Guard in AGR status. She stated that receipt of federal benefits prohibited the estates from recovering from the federal government, although it did not bar them from pursuing remedy against the State of Alaska. She noted such attempts would be barred under the Feres Doctrine.

Senator Taylor asked how the State was ruled liable for an event involving a federal plane piloted by a federal employee.

Ms. Voightlander replied that the Alaska Supreme Court ruled on the question as to whether the mission was federal or State and whether the pilot was a "borrowed servant" from the federal government, necessitating that the State be liable for the pilot's actions.

Senator Taylor and Ms. Voightlander continued to discuss the merits of this case with Ms. Voightlander summarizing that the State decided to settle the case following the initial trial court ruling and after analyzing the strengths and weaknesses and the probable cost of extended litigation. She addressed Senator Taylor's concern that the matter was never decided by the Alaska Supreme Court, by emphasizing that because the Feres Doctrine was dismissed, its provisions were invalid and subsequently the State was not immune.

Senator Taylor next addressed Section 2 relating to civil immunity, which stipulates that "a person may not bring a civil action for damages against the State political subdivision...[for the] results of an action or a mission for performing or failing to perform activities or duties authorized" under AS 18.60.120 through 175. He asked for a summary of these statutes.

Ms. Voightlander responded that these statutes relate to search and rescue operations, and stipulate the funding and authorized participation in those activities.

Senator Taylor asked if this provision would grant immunity to

Alaska State Troopers, and other State and local government employees.

Ms. Voightlander affirmed this would apply to all parties participating in search and rescue operations including volunteers and agents.

Senator Taylor clarified this legislation would provide blanket immunity for all related activities regardless of recklessness or gross negligence.

Ms. Voightlander affirmed there would be no exemptions.

Senator Taylor asked if this portion of the legislation was precipitated as a result of the lawsuit relating to the death of an elderly couple and their grandchild, and the Alaska State Troopers failure to conduct a search and rescue operation for those stranded travelers.

Ms. Voightlander answered that a couple of lawsuits have been filed against the State on this matter, including the situation Senator Taylor indicated that involved a family traveling on the Denali Highway after it had been closed for the winter. She stated this trial resulted in a judgment against the State. She qualified that family members reported that the travelers were located in the Kenai area and search and rescue operations were conducted in that area. She said it was only later learned that the travelers could be on the Denali Highway, at which time weather conditions were 45 degrees below zero.

Senator Taylor asked the judgment rendered against the State.

Ms. Voightlander told of the rulings and appeals process of this case.

SFC 03 # 102, Side B 07:23 PM

Ms. Voightlander continued that if the State does not ultimately prevail, the total judgment would be over \$7 million incorporating the findings that the State shared 50 percent of fault and the travelers' negligence contributed 49 percent of fault.

Senator Taylor surmised that as a result of this lawsuit, blanket immunity would be granted, regardless of whether State employees act negligently, recklessly, grossly negligently or intentionally.

Ms. Voightlander again affirmed. She noted that in addition to this case, another lawsuit was filed against the State that involved decisions about whether to instigate a search and rescue operation from one village or another village, and in which manner the operation should proceed.

Senator Taylor asked the result of that suit.

Ms. Voightlander responded that a settlement was reached in this case.

Senator Taylor asked if therefore the State admitted wrongdoing.

Ms. Voightlander explained that in any civil litigation, weight is given to possible verdicts, potential damages that could be awarded and appeal costs. She stressed that settlements do not include admission of liability.

Senator Taylor asked the settlement amount.

Ms. Voightlander answered approximately \$250,000.

Senator Taylor again spoke to negligence or gross misconduct of a State employee resulting in damage to another party that would not be subject to civil actions.

Ms. Voightlander emphasized this legislation "represents an enunciation of public policy" that allows parties involved in search and rescue operations to make the best decisions at the time for the safety of workers and those being rescued, without concern for possible civil liability actions.

Senator Taylor noted the absence of language in this Section specifying immunity would apply to volunteers. He identified "public employees who are salaried and paid by the State or a political subdivision" and therefore argued, "it's a nice emotional argument" to suggest "some poor volunteer might get sued"; however, the provisions only applies to "our employees doing negligent acts that cause damage or death."

Ms. Voightlander corrected that volunteers "covered under the agents principal" and are considered agents of the State.

Senator Taylor asked if volunteers were sued in the two aforementioned cases.

Ms. Voightlander answered no.

Senator Taylor directed attention to Section 7, which specifies employees and authorized volunteers and includes an exception from immunity for malicious actions or reckless indifference to the rights of others or safety of others. He asked why this language is not included in Section 2.

Ms. Voightlander replied that this section amends existing statutes and adds a "clear and convincing" standard. She informed that the exceptions are not included in other sections of the bill due to the high cost of defense against lawsuits. She emphasized the intent of this bill is to not distract from search and rescue activities.

Senator Taylor next surmised that the language relating to civil defense in Sections 8 and 9 mirrors federal language relating to homeland security, specifically in granting civil immunity to those administering vaccinations.

Ms. Voightlander replied that Section 9 provides immunity for the activity of administering vaccinations; however she pointed out that existing programs provide funds for people injured as a result of adverse reactions to vaccinations.

Senator Taylor understood such programs exist to provide relief from adverse reactions resulting from specific vaccinations, although this legislation would apply to all vaccinations. He opined that statistically all vaccination programs would result in an adverse reaction to some recipients.

Co-Chair Green referenced the definition of "civil defense" provided in Section 9 amending AS 26.20.200(1) on page 4, line 31, through page 5, lines 1 - 9 as follows.

(1) "civil defense" means the protection and defense of the civilian population by the organized efforts of the residents of the state other than those in the military service, and includes without limitation, fire fighting, policing, rescue, air raid warning, security, communications, medical service, vaccination and other actions to protect public health, transportation, evacuation of persons, welfare aid, guard duty, anti-espionage and anti-sabotage service, construction of temporary housing and bomb proof shelters, [AND] any other service necessary for the protection of and aid to the public not normally furnished by the military services, and training, preparation, travel, and other activities necessary for the provision of the services described in this paragraph;

New Text Underlined [DELETED TEXT BRACKETED]

Co-Chair Green understood this language clarifies that the immunity would not apply to all vaccinations, but rather those administered for the purpose of civil defense.

Senator Taylor surmised Co-Chair Green's assertion to be correct, although the language is "quite broad" in the parties included.

Senator Taylor then asked if this legislation would prevent parties from filing suit against the State for incidences similar to those arising from the Millers Reach fire. He opined that the system operated correctly in this instance, as well as all such instances, in that the case was brought and the court ruled that the State was not at fault. He asked the reason to amend the existing provisions.

Ms. Voightlander indicated this legislation addresses the matter in Sections 11 and 12 related to firefighting activities. She asserted this legislation is necessary to affirm public policy factors. She informed that the cost of this litigation is high, in that these activities remove employees from their regular jobs to defend against civil litigation, in addition to defense costs. She listed the legal expenses of the Millers Reach Fire litigation at \$2.5 million to date. She reiterated that this legislation would hold Alaska consistent with other Western states and with case law that holds firefighters immune. She expressed that response to emergency situation requires discretion and judgment decisions.

Senator Taylor asked whether property owner could seek damages in the event of a disaster when gross negligence of State employees could be demonstrated.

Ms. Voightlander responded that property owners would be unable to sue for damages.

Senator Taylor clarified that no exceptions would be allowed for instances of gross negligence, reckless disregard of human life, and intentional conduct.

Ms. Voightlander affirmed. She qualified that if an employee or agent's actions "rise to the level of violating a federally guaranteed constitutional right" the individual has the "remedy of filing either in federal or State court under 42 USC Section 1983".

Senator Taylor noted the aforementioned federal statute pertains to civil rights. He asked if the intent of Sections 11 and 12 is to allow parties to seek damages under civil rights laws.

Ms. Voightlander responded that these sections would immunize the State and local governments and employees in fire fighting activities. She pointed out that the existing AS 09.65.070 provides immunity to local firefighters.

Senator Taylor asked if any conditions or exceptions are provided in the aforementioned statute relating to local firefighters.

Ms. Voightlander answered no.

Co-Chair Wilken asked if the witness recognizes a need for qualifiers in event of gross negligence, such as exemplified by Senator Taylor.

Ms. Voightlander responded that providing exceptions and qualifiers, requires the State to incur defense expenses even if successful against lawsuits. She informed that Alaska law provides that a civil trial could be decided summarily without a trial only if "no genuine issues of material fact" are demonstrated. She stated that the standards for summary judgment are set "very high in Alaska" and that cases are increasingly "having to go to trial". She furthered that case law provides that "even when people agree that there is not a fact issue," different jurors "may have different views as to the inferences to derive from those facts."

DEAN BROWN, Deputy Director, Division of Forestry, Department of Natural Resources testified via teleconference from an off net location about the impact this legislation would have on forestry operations. She pointed out the major function of the Division relates to wildland fire fighting. She spoke to increasing wildland urban interface concerns as more people move into wooded areas, and she noted that during a fire season, approximately 86 percent of fires are human caused. During the spring season, she furthered, virtually 100 percent are human caused and are located primarily in the main roaded area of the State and remarked that the number of springtime fires is increasing and occurring earlier in the year.

Ms. Brown expressed concern over the impact that litigation has on firefighters, who are typically seasonal workers for three to five months annually and are trained to national standards. She stated these firefighters make critical life and death decisions involving fires varying from minor campfires to major fires. She stressed the importance that "their mind be 100 percent on that job" without concern for the consequences of actions taken in the performance of duties.

Ms. Brown told of employees fighting fires in the Mat-Su area that occurred during windstorms in February 2003. She informed that many

of these firefighters fought fires in the evenings and until 5:30 am and then appeared in court at 8:00 am for daylong proceedings related to the Millers Reach Fire lawsuit.

Ms. Brown also pointed out that federally employed fire fighters are immune from civil litigation and that in many instances State, federal and locally employed fire fighters are involved in the same operations. She reiterated the U.S. Ninth Circuit Court of Appeals verdict upholding the immunity of government public safety employees.

Co-Chair Wilken gave a hypothetical situation of firefighter under the influence of drugs, responding to an emergency call and hitting a child with a fire truck, killing the child. He asked if that firefighter would not be held liable in this instance based on the decision to use drugs "on the job."

Mr. Brown informed that the Department has a "strict" policy against alcohol and drug use and employment of the hypothetical firefighter would be "terminated immediately."

Co-Chair Wilken commented this would not "bring the child back".

Senator Taylor noted that Sections 11 and 12 relating to "fires authorized to be preformed" cite different statutes: AS 41.15.010 and AS 41.17.080. He asked why two "identical immunity provisions" are necessary.

Ms. Voightlander replied that AS 41.15, cited in Section 11, relates to forests and provides to firefighting activities, and AS 41.17, cited in Section 12, relates to administration and management. She explained that under both chapters, the Division of Forestry is authorized to conduct firefighting activities.

Senator Taylor understood general State policy on liability, exemplifying that the Legislature could not be sued for its decisions, and the Department of Transportation and Public Facilities could not be sued for decisions made regarding the location of a highway, as those decisions are considered discretionary. However, he noted that the Department of Transportation and Public Facilities could be held liable for administrative actions, such as failure to safely maintain roadways or otherwise warn the public of the dangers. He surmised that a threshold exists in which the State becomes liable for its actions. He asked for clarification of the activities for which the State could be sued.

Ms. Voightlander agreed with Senator Taylor's assertion that AS 950.250 stipulates that discretionary decisions are not subject to

liable, although once decisions are made the State could be sued for the manner in which activities are conducted.

Senator Taylor indicated he has many other questions.

Co-Chair Wilken asked the witness to reply to the scenario he earlier posed involving a firefighter under the influence of drugs.

Ms. Voightlander responded that under existing law AS 965.070, "an action for damages could not be made against an employee or member a fire department if the claim is for a tort and is based upon the act or admission of the member of the fire department in the execution of a function for which the department is established." Therefore, she stated that an injured party would be barred from filing suit in the aforementioned instance.

Senator Olson asked, as a matter of public policy, how the State provides adequate oversight to ensure quality search and rescue operations.

Co-Chair Wilken requested the question be held.

Co-Chair Wilken ordered the bill HELD in Committee.

AT EASE 7:56 PM / 7:57 PM

#HB216

CS FOR HOUSE BILL NO. 216(FIN)

"An Act relating to and limiting municipal taxation of refined fuel and wholesale sales of fuel, and to the bulk fuel revolving loan fund."

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

Co-Chair Wilken said this bill "is a municipal taxation on refined fuel products sponsored by [the] House Labor and Commerce Committee, chaired by Representative Tom Anderson. HB 216 clarifies local municipalities taxing authority for refined fuels sold both within and outside the local jurisdiction."

REPRESENTATIVE TOM ANDERSON testified that this bill clarifies local taxing authority for refined fuels sold both within and outside of a local jurisdiction. He recalled an initiative petition in the Fairbanks North Star Borough to implement a two-cent per gallon transfer tax. He expressed that "fortunately" the voters

"overwhelmingly" defeated the proposed tax by a margin of 62 percent to 38 percent. Afterwards, he stated, the industry and businesses recognized that clarification is necessary to limit the number of municipalities that could tax the same fuel.

Representative Anderson exemplified refined fuel shipped via the Alaska Railroad from Interior Alaska to Anchorage for use in Southcentral and Southeast markets. Before reaching Anchorage, he counted eight different governmental taxing entities this fuel travels through. He pointed out that conceivably, each jurisdiction could impose a tax on this fuel. He opined that the "exorbitance to the consumer" would be such that the fuel would not be purchased. He predicted that this type of taxation would result in Alaska residents paying local government costs for municipalities in which they do not reside.

Representative Anderson gave a hypothetical example of a transfer tax implemented by the Port of Anchorage on all freight landed at the Port. He remarked that the cost of products traveling through the Port would increase and residents of other communities would pay Municipality of Anchorage expenses.

Representative Anderson stated that this bill clarifies local government's rights to tax any fuel consumed within their government boundaries, although prohibits taxation of value added products refined and shipped outside the jurisdiction.

Representative Anderson noted an agreement reached with the Municipal League of Alaska, which is reflected in the House Finance committee substitute. He assured this legislation would not affect those small communities that currently impose transfer taxes.

Representative Anderson also pointed out the committee substitute contains an amendment sponsored by Representative Carl Morgan that would increase the loan amount for the bulk fuel revolving loan fund to one borrower in any fiscal year from \$200,000 to \$300,000. Representative Anderson relayed Representative Morgan's intent to provide adequate funding to meet the increasing costs associated with construction and replacement of bulk fuel facilities, particularly in Rural Alaska.

Senator Hoffman asked if any local governments that presently implement a transfer tax would be impacted by this legislation.

Representative Anderson listed three, one of which is Cold Bay, and he assured these communities would not be affected.

Senator Hoffman asked if other communities implementing a transfer

tax that have not been identified would remain unaffected as well.

Representative Anderson answered they would not because this bill contains a grandfather clause and would only apply to future situation.

Senator Bunde asked if it is "bad public policy" to allow future transfer taxation, why local governments that currently impose these taxes should be allowed to continue the practice.

Representative Anderson responded the intent is to be proactive as a result of the aforementioned ballot initiative in the Fairbanks North Star Borough. He suggested that the existing taxing authority could be repealed but requested it be considered in separate legislation.

Senator B. Stevens referenced Section 8 on page three of the committee substitute, noting that the previous session the authorized loan amounts from of the bulk fuel revolving loan fund was increased from \$100,000 to \$200,000 and questioned the proposed increase one year later. He understood the sponsor's argument that the increased amounts are necessary for construction expenses, but informed that use of the funds is only allowed "for the purchase of fuel" and for "communities with populations of less than 2,000 people." He asked how the integrity of the loan fund would be protected with an ability to draw from that fund increased by 300 percent in less than one year.

Senator B. Stevens he also asked the number of communities with populations of less than 2,000 have the ability to purchase sufficient quantities of fuel to repay a \$300,000 loan.

Representative Anderson admitted this provision was inserted in the bill after the House Labor and Commerce Committee considered the bill and he was therefore unfamiliar with all the details.

Senator B. Stevens asked the status of the loan fund.

JOSH APPLEBEE, Staff to Representative Anderson, testified that Representative Morgan sponsored Section 8 as a result of rising fuel prices.

Senator Hoffman listed two other factors: upgrades of facilities that are holding larger capacities, and attempts for communities to establish regionalized facilities to allow for bulk purchases at lower costs.

Senator B. Stevens expressed concern of the balance of the fund and

the impact of the increase from \$100,000 to \$300,000 loan amounts. He cautioned that a few communities could exhaust the loan capacity in a given year.

Co-Chair Wilken requested staff to research the balance of the fund and indicated the matter would be revisited.

JEFF COOK, Vice President, External Affairs, Williams Alaska Petroleum, testified via teleconference from an off net location, that the company owns the largest oil refinery, which refines approximately 70,000 barrels per day. He informed that about 90 percent of the finished product is shipped via rail to Anchorage traveling through a number of municipalities. He expressed that multiple taxes would hamper continued expansions necessary to meet the demands of the entire State. He indicated that the company considered proposing this legislation the previous session, however decided to wait until residents of the Fairbanks North Star Borough voted on the issue. He told of support for this legislation from the Alaska Municipal League of Alaska, the Alaska Oil and Gas Association and the three refineries operating in the State: Williams Alaska Petroleum, Petrostar Corporation and Tesoro Petroleum Corporation. He emphasized the need for these refiners to maintain a competitive position and to provide Alaskans with competitively priced fuel.

Mr. Cook commented on the provisions of Section 8 relating to the Storage Tank Assistance Revolving Loan fund, stating that repayment has historically been good. He explained this is because the program allows loan amounts of 90 percent of the value of fuel, and because many communities purchase fuel once per year and draw repayment funds from the sale of that fuel over the course of that year.

Senator Bunde understood the problem of multiple taxation, and asked whether the continuation of the transfer tax imposed by the three communities would cause hardship.

Mr. Cook replied that the original version of the bill contained a blanket restriction; however it was learned that repealing the tax would cause hardship for the three communities and it was therefore determined that passage of the overall bill was more important than the loss incurred in these communities.

Representative Anderson expressed he had no opinion on the provisions of Section 8 of the committee substitute, reiterating that the increased loan amount was the request of Representative Morgan.

Senator Bunde asked the names of the two communities other than Cold Bay that would have a transfer tax grandfathered by the passage of this legislation.

Mr. Cook was unsure.

Co-Chair Wilken asked if Senate committees have made any changes to the bill.

Representative Anderson answered no.

Co-Chair Wilken requested further information regarding the communities that currently impose a transfer tax, as well as a profile of the Storage Tank Assistance Revolving Loan Fund.

Senator Taylor recalled testimony before the Committee regarding a proposed fuel tax, attesting that the community of Unalaska transferred over 60 percent of all the fuel sold in the State.

SFC 03 # 103, Side A 08:12 PM

Senator Taylor suggested Unalaska could be one of the communities that currently impose a transfer tax.

Co-Chair Wilken requested additional information.

Co-Chair Wilken ordered the bill HELD in Committee.

#

AT EASE 8:13 PM / 8:13 PM

AT EASE 8:14 PM / 9:59 PM

ADJOURNMENT

Co-Chair Gary Wilken adjourned the meeting at 09:59 PM