

MINUTES
SENATE FINANCE COMMITTEE
May 19, 2003
8:46 AM

TAPES

SFC-03 # 104, Side A
SFC 03 # 104, Side B
SFC 03 # 105, Side A

CALL TO ORDER

Co-Chair Gary Wilken convened the meeting at approximately 8:46 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: REPRESENTATIVE VIC KOHRING; WILLIAM TANDESKE, Commissioner, Department of Public Safety; SARA FISHER GOAD, Financial Analyst, Alaska Industrial Development & Export Authority, Department of Community and Economic Development; REX SHATTUCK, Staff to Representative Nancy Dahlstrom, KATE TESAR, Representative, Alaska Yacht Services and Provisioning; SCOTT NORDSTRAND, Deputy Attorney General, Civil Division, Department of Law; PAUL FUHS, Representative, Yukon Pacific Corporation; HEATH HILYARD, Staff to Representative Lesil McGuire; RICK URION, Director, Division of Occupational Licensing, Department of Community and Economic Development; NICO BUS, Administrative Services Manager, Division of Support Services, Department of Natural Resources; PATRICK LUBA, Legislative Representative, AARP; DANIEL PATRICK O'TIERNEY, Senior Assistant Attorney General, Regulatory Affairs Section, Department of Law

Attending via Teleconference: From Offnet Sites: BILL O'LEARY, Chief Financial Officer, Alaska Railroad Corporation, Department of Community and Economic Development; DOUG GRIFFIN, Director, Alcoholic Beverage Control Board, Department of Revenue

SUMMARY INFORMATION

HB 216-MUNI TAXATION OF REFINED FUEL PRODUCTS

The Committee heard testimony from the Department of Community and Economic Development and reported the bill from Committee.

HB 251-MARINE PILOT FOR FOREIGN PLEASURE CRAFT

The Committee heard from the sponsor and the industry. One amendment was adopted, and the bill reported from Committee.

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

The Committee heard testimony from the Department of Law and the Department of Public Safety. A committee substitute was considered, but failed to be adopted. The bill reported from Committee.

HB 267-AK RAILROAD BONDS FOR NAT.GAS TRANSPORT

The Committee heard testimony from the sponsor, the industry, and the Alaska Railroad. The bill reported from Committee.

HB 234-BREW PUBS; ABC BOARD

The Committee heard testimony from the sponsor, and the Department of Public Safety and the Department of Revenue. Two amendments and a committee substitute were considered but were withdrawn from consideration. The bill reported from Committee.

HB 162-FEES: BUSINESS LICENSE & NATURAL RESOURCE

The Committee heard from the Department of Community and Economic Development and the Department of Natural Resources. The bill reported from Committee.

HB 111-RCA EXTENSION & POLICIES

The Committee heard from the Department of Law and the industry. The bill reported from Committee.

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

Co-Chair Wilken explained that this legislation "clarifies local municipality's taxing authority for refined fuel sold within and outside of the local jurisdiction." In addition, he noted that the maximum amount that could be loaned, on an annual basis, from the Bulk Fuel Revolving Loan Fund would be increased from \$200,000 to \$300,000. He informed the Committee that, in response to a question from Senator Hoffman during the first hearing on this bill, he has provided a handout [copy on file] titled "HB216: Municipal Taxation of Refined Fuel Products."

Senator Hoffman and Senator B. Stevens acknowledged the information provided in the handout.

Senator B. Stevens inquired whether the Revolving Loan Fund's entire \$6.3 million balance would be available for loans or whether the loan level would be limited to the earnings on the balance.

SARA FISHER GOAD, Financial Analyst, Alaska Industrial Development & Export Authority, Department of Community and Economic Development, responded that the cash balance of the Bulk Fuel Revolving Loan fund as of March 31, 2003 was \$6.04 million. She specified that of that amount, the uncommitted cash balance of \$5.6 million would be available for loans.

Senator B. Stevens observed that only five of the twenty-four FY 03 loan applicants requested loans at the \$200,000 maximum loan level. Therefore, he concluded that, that five loans might be expected at the proposed \$300,000 level.

Ms. Goad responded that because the maximum loan amount was raised to \$200,000 as recently as FY 03, she is unsure how many requests would be at the \$300,000 level.

Senator B. Stevens stated, for the record, "that the rapid rate of increase" in the maximum loan level in an eighteen-month period is significant.

Co-Chair Wilken reminded that a rapid increase in fuel costs parallels the increase in the loan limit amounts. However, he noted that fuel rates are currently "rapidly decreasing."

Senator Hoffman pointed out "that while fuel costs might be rapidly

decreasing in Fairbanks," they are not decreasing in rural areas.

Senator B. Stevens voiced concern that increasing the maximum loan level might jeopardize the integrity of the Fund. In addition, he worried that it might have the potential to reduce the number of loans that could be awarded. He noted that, while he would not be opposing this legislation, the Fund should be monitored to ensure that its integrity is maintained.

Co-Chair Wilken agreed that the fund should be monitored, as the maximum loan award levels have, in a short period of time, increased from \$100,000 in FY 02 to \$200,000 in FY 03, and would, were this legislation adopted, increase to \$300,000 in FY 04.

Senator Hoffman informed that many communities have been able to increase their bulk fuel storage capabilities and, in addition, are considering regionalizing storage capabilities in order to purchase larger quantities of fuel. He noted that being able to purchase larger quantities of fuel could enable communities to negotiate lower fuel prices.

Co-Chair Wilken reiterated that the Fund's integrity must be considered.

Senator Taylor suggested that in order to monitor the integrity of the Fund, the Committee Co-Chairs could send a letter requesting that a Bulk Fuel Revolving Loan Fund financial report be provided to the Committee the following year.

There being no spoken opposition to this suggestion, Co-Chair Wilken stated that a letter would be drafted.

Co-Chair Green agreed with Senator Hoffman's assessment that increasing storage capacities could allow communities to negotiate lower fuel prices. She asked whether different groups could consolidate into one loan request.

Senator Hoffman reiterated that larger fuel volume purchases could provide the communities with lower fuel prices. Furthermore, he stated that a larger loan limit would be required to enable this situation to occur.

Co-Chair Wilken commented that the point was valid. He stated that the aforementioned letter would result in a report being supplied to the Committee.

Senator Olson asked whether there are any delinquent loans or defaults.

Ms. Goad responded that one FY 03 loan is more than 90 days delinquent and four FY 02 loans are delinquent. She assured the Committee that large loan requests are not automatically granted, and she stressed that were an applicant's ability to repay the loan a concern, collateral would be required.

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

Without objection, CS HB 216 (FIN) was REPORTED from Committee with zero fiscal note #2 from the Department of Revenue, zero fiscal note #3 from the Division of Community and Business Development, Department of Community and Economic Development, and zero fiscal note #4 from the Alaska Energy Authority, Department of Community and Economic Development.

#hb251

SENATE CS FOR CS FOR HOUSE BILL NO. 251(TRA)

"An Act relating to exemption of certain foreign pleasure craft from the mandatory pilotage requirement and to civil fines imposed on the owner or operator of a pleasure craft of foreign registry; and providing for an effective date."

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

Co-Chair Wilken explained that this legislation would exempt foreign pleasure craft, measuring 65 feet or less, from the State's mandatory marine pilotage requirements. In addition, he specified that foreign pleasure craft measuring 66 feet to 175 feet could apply for an exemption from the requirement.

REX SHATTUCK, Staff to Representative Nancy Dahlstrom, the bill's sponsor, explained that this legislation would allow for the imposition of civil fines for violation of the Marine Pilotage Act; would exempt foreign pleasure craft of 65 feet or less from the pilotage requirements; would institute an application fee structure for vessels measuring between 66 and 175 feet applying for an exemption from the pilotage requirements; would mandate the use of an Alaskan licensed marine pilot for yachts exceeding 125 feet but less than 175 feet in overall length on their initial voyage in State waters; and would establish a process whereby foreign pleasure craft vessels measuring between 66 feet to 125 feet could hire a licensed Alaskan agent. In addition, he stated that

provisions are included that specifically address the definition of "for hire" and "pleasure craft." He stated that this legislation was prompted by a recommendation from the Legislative Budget and Audit Committee audit (#08-20015-02 November 1, 2002)[copy not provided].

Senator Taylor asked for clarification that existing law is based on gross tonnage as opposed to overall vessel length as specified in this legislation.

Mr. Shattuck concurred that the change "is a shift" from gross tonnage to overall length "as length is an easier measure to understand."

Co-Chair Wilken clarified that the version of the bill being considered by the Committee is SCS CS HB 251(TRA), Version 23-LS0865\Z.

Senator Taylor understood that a foreign vessel measuring 65 feet or less would be exempt from the requirement to have a licensed Alaska marine pilot onboard in Alaskan waters.

Mr. Shattuck concurred.

Senator Taylor asked for details pertaining to the vessel pilotage waiver application for vessels exceeding 65 feet.

Mr. Shattuck explained that vessels exceeding 65 feet but measuring less than 125 feet in overall length could apply for a waiver to be exempted from the marine pilot requirement. He specified that were an exemption granted, the vessel would be required to hire an Alaskan licensed agent to provide information as determined by the Board of Marine Pilots. He continued that, in addition to acquiring a waiver and hiring an agent, vessels exceeding 125 feet but being less than 175 feet in overall length would be required to hire an Alaskan licensed marine pilot to initially enter Alaskan waters.

Senator Hoffman asked for an explanation regarding the inclusion of language in Sec. 4, on page 3, lines 17 - 21. This language reads as follows.

The exemption must remain on the vessel while the vessel is in state water. An exemption issued under this subsection does not exempt a vessel for the requirement to employ a pilot licensed under this chapter while the vessel is in Wrangell Narrows or in the water between Chatham Strait and Sitka via Peril Strait.

Mr. Shattuck replied that these areas have been identified as areas wherein a marine pilot would still be required, regardless of any provisions that might be implemented in the bill.

Co-Chair Wilken clarified that vessels larger than 65 feet would be required to hire a Marine pilot to transverse those specific areas.

Mr. Shattuck concurred.

Senator B. Stevens stated that, were this legislation adopted, transitional language would be necessary to provide vessels sufficient time to apply for the waiver this year. He specified that an amendment would be required to address the timeline as specified in Section 4 on page 3, lines 7 through 12 that reads as follows.

The application for an exemption must be submitted to the board at least 30 days before the vessel enters the state. The Board shall approve or deny an application for the exemption within 10 working days after the application is received by the Board.

Mr. Shattuck stated that he must confer with the bill's sponsor before he could not comment on an amendment. However, he acknowledged Senator B. Stevens' concern that implementation might be problematic this year.

Senator Taylor asked how existing law would be affected were the effective date of the legislation postponed.

Senator B. Stevens clarified that existing law specifies that vessels exceeding 300 gross tons, or approximately 65 feet, would be required to have a marine pilot onboard while in Alaskan waters.

Senator Taylor understood that a pilot would be required until this legislation went into affect.

Senator B. Stevens argued that, were transitional language not provided in this legislation, vessels would be required to abide by status quo regulations for the entire summer season of 2003.

Senator Taylor asked the entities that would be affected by this legislation.

Senator B. Stevens stated that in addition to large yachts, vessel

provision suppliers would be affected.

Senator Taylor declared that pilots are required on vessels to ensure that vessel transit is safe. He assumed that the majority of these vessels are private pleasure craft and are not for hire, and therefore, he questioned the necessity of this legislation, as he noted, separate legislation has been adopted that exempts private vessels from liability for its passengers. He asserted therefore, that this legislation is not necessary.

Co-Chair Wilken asked regarding the United States Coast Guard's (USCG) position on this legislation.

Mr. Shattuck stated that currently the USCG is issuing "no opinion" regarding this legislation.

Co-Chair Wilken mentioned that the legislation is modeled after current State of Washington regulations.

Mr. Shattuck concurred, although he mentioned that one difference is that the State of Washington has a traffic control system in place in the Puget Sound area, whereas, none are currently specified for Alaskan waterways. He continued that an area of concern that has been discussed but is not addressed in the legislation is how the State would monitor vessel location and determine the number of vessels that might be in State waters. He stated that estimates in the legislation regarding the number of vessels that might transit Alaskan waters are based on vessel numbers in the State of Washington as well as on inquiries from vessels that the State has received.

Co-Chair Wilken asked for further information regarding the requirement that a vessel measuring between 65 feet and 125 feet or 175 feet must have a marine pilot on board from its entry into Alaskan waters to its first port of call.

Mr. Shattuck clarified that vessels ranging from 65 feet to 125 feet in overall length must hire an Alaskan agent to arrange the particulars of their trip and that a vessel measuring 126 feet to 175 feet must hire a marine pilot.

Co-Chair Wilken asked the marine pilotage requirement for vessels ranging from 65 feet to 125 feet.

Mr. Shattuck responded that rather than being required to hire a marine pilot, those vessels would be required to hire an Alaskan agent who would arrange for obtaining their waiver and would provide the vessel with information established for entry into

Alaskan waters.

Co-Chair Wilken asked whether the agent would be retained until the vessel's first port of call.

Mr. Shattuck clarified that the agent would be retained for the vessel's complete journey.

Amendment #1: This amendment inserts a new section into the bill on page 4, line 11 as follows.

The requirement in AS 08.62.180(b), enacted in Section 4 of this Act, that an application for exemption be filed at least 30 days before the vessel enters the state does not apply to a vessel entering the state less than 30 days after the effective date of this Act.

Senator B. Stevens moved to adopt Amendment #1. He stated that this transitional language would be identified as Section 5.

Co-Chair Wilken objected for discussion.

Senator B. Stevens explained that, were this legislation adopted, this language would provide a 30-day transition period to allow vessels that are traveling to or in Alaska for the summer season to apply for the waiver.

Co-Chair Wilken expressed that this amendment would be limited to the initial stage of the legislation.

Senator B. Stevens concurred. He reminded the Committee that the original marine pilotage legislation was enacted numerous years earlier to specifically require a marine pilot to be onboard the Greenpeace vessel, the Rainbow Warrior, during its transit in Alaskan waters. He noted that in response to the increase in large, private yacht traffic in the State, this legislation is an attempt to update the original requirements. He stated that this is a good "compromise" to address the concerns of the pilots, the USCG, and other affected parties. He urged members to support his amendment.

Senator Taylor asked whether the amendment would require vessels to abide by existing regulations or would exempt vessels from all requirements during the 30-day transition period.

KATE TESAR, Representative, Alaska Yacht Services and Provisioning, commented that the amendment would allow those vessels in transit

at the time the legislation takes effect to be exempt from the 30-day prior-to-trip waiver application requirement. She stated that the inclusion of language in the bill that specifies that vessels transiting certain waterways, such as the Wrangell Narrows, must have a licensed marine pilot onboard, addresses marine pilots' concerns regarding the easing of pilotage requirements.

Mr. Shattuck opined that the amendment would address the concern regarding the effective date of the bill.

Co-Chair Wilken removed his objection.

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

Co-Chair Green asked whether the committee substitute being considered would reduce the revenue estimates in the Department of Revenue's accompanying fiscal note.

Mr. Shattuck responded that the Department's revenue estimation would not be significantly impacted because the exact number of vessels that would be affected by this legislation is unknown. He communicated that more reliable numbers would be provided following the bill's first year of enactment.

Co-Chair Wilken noted that numerous communities have expressed an interest in this legislation. He stated that, provided the outcome of this legislation proves to be safe and environmentally sound, it would be interesting to receive feedback from communities as to whether this legislation provided a benefit to them as opposed to the State "taking this risk with no benefit." Additionally, he noted that ship provisioners should benefit from the legislation. He encouraged the bill's sponsor to develop methodology to monitor the outcome of the legislation.

Mr. Shattuck communicated that Representative Dahlstrom has expressed an interest in developing methodology to study the affects of the legislation. He attested that a major goal of this legislation would be to provide economic benefits to communities in Southeast Alaska.

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

There being no objection, SCS CS HB 251(FIN) was REPORTED from Committee with a new zero fiscal note, dated May 19, 2003 from the Department of Community and Economic Development.

#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."

AT EASE 9:15 AM / 9:15 AM

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

Co-Chair Wilken stated that this legislation would limit civil action of suits and claims filed against the State by military, search and rescue, and firefighter personnel. He reviewed that, during the previous hearing on this bill, Committee Members raised questions regarding the State's immunity from suits and claims as well as to how a few provisions of the bill would apply. He noted that one area of concern regards proposed language in Section 2, located on page 2, lines 16 - 20 of CS HB 245(JUD)(efd fld), Version 23-GH1025\H.A that Senator Taylor interprets would exempt State employees from liability due to their negligence. This language reads as follows.

Sec. 2. AS 18.60 is amended by adding a new section to read:

Sec. 18.60.125. Civil immunity. A person may not bring a civil action for damages against the state, a political subdivision of the state, or the officers, agents, or employees of the state or a political subdivision of the state for a death, personal injury, or property damage that results from an act or omission in performing or failing to perform activities or duties authorized under AS 18.60.120-18.60.175.

SCOTT NORDSTRAND, Deputy Attorney General, Civil Division, Department of Law, stated that this section of the bill addresses search and rescue matters and simply restates "what Alaska law was two-years ago" by re-clarifying that the State and its search and rescue employees "would not be civilly liable for their actions" in a similar fashion as that of the Alaska Supreme Court upholding the decision that police investigations are immune. He pointed out that "this is a matter of [the State] taking scare resources that are engaged in the practice of search and rescue" activities and

attempting to use them in the "best" manner possible with the recognition that the State has a moral and statutory obligation to assist people who require these efforts. He stated "that all four issues" in this bill are "turning back the clock to the year 2000, before the Alaska Supreme Court, in several different decisions, changed Alaska law." He declared that this is the goal of the legislation, and he stressed that, "if we don't turn back the clock, the State faces potentially calamitous liability with limited ability to fund those expenses."

Co-Chair Wilken stated that the bill's language mirrors what was in effect three years prior.

Mr. Nordstrand clarified that the language has been updated to reflect today's search and rescue scenarios, and with that consideration, he asserted, that the bill would reflect the approach to immunity that had previously been commonplace and reasonable under that previous mode of operation.

WILLIAM TANDESKE, Commissioner, Department of Public Safety, stated that search and rescue missions are conducted "on the totality of the circumstance." He stated that initial search and rescue information is often times secondhand or encrypted in that the individuals being searched for either do not follow the plan they told people or neglect to file a flight plan. He shared details of some situations to which the Department recently responded. He continued that a recurring situation in Rural Alaska is that people are routinely overdue and decisions must be made as to how and when to respond. He stated that the Department routinely relies on volunteers and residents of the area to address these situations, and he communicated that these people "do an outstanding job" for the Department.

Commissioner Tandeske exemplified a situation wherein ten snowmachiners might be lost and eventually nine of the ten reappear. He stated that the area to be searched might be large and "a measured response" might be appropriate, as consideration must be given to things such as how much danger to expose the response team to. He stated that these are difficult decisions to make. Oftentimes, he shared, response decisions are misunderstood by the public who are unaware of the complexity of a situation.

Commissioner Tandeske stressed that the public perception that action is not being taken in some cases "is inaccurate." He stated that the question of whether the State should be civilly liable when people put themselves in harms way and "it doesn't turn out as everyone would like" is an important issue.

Co-Chair Wilken asked Senator Taylor to restate his concerns regarding the aforementioned Sections 2, and Section 11 of the bill. Section 11 reads as follows.

Sec. 11. AS 41.15 is amended by adding a new section to read:

Sec.41.15.045. Civil immunity. Notwithstanding other provisions of law, a person may not bring a civil action for damages for death, personal injury, or property damage that results from an act or omission in performing or failing to perform activities or duties arising out of prevention, monitoring, control, or suppression of fires authorized to be performed under AS 41.15.010-41.15.170 against

1) the state or its officers, agents, and employees;
2) a political subdivision of the state or its officers, agents, and employees;

3) any organization authorized to prevent, control, or suppress fires;

or

4) others assisting in the control or suppression of fires at the request of an officer or employee of the United States or the state.

Senator Taylor stated that his concern regards the determination that this legislation would provide "total blanket immunity" and that "no civil remedy would be allowed," regardless of whether gross negligence or recklessness or intentional misconduct on the part of dispatchers or the people in charge of the rescue was an issue. He asserted that this is the basis for his questioning the legislation. He understood that a recent State Superior Court decision that found the State liable for fire damages is being appealed before the State Supreme Court. He mentioned a separate fire case wherein the State had to defend itself and was found not liable; however, he attested that it might be possible for the State to be found liable were gross conduct or intentional negligence proven. He continued that the State has recently settled a case out-of-court rather than go to court and "probably lose a larger amount." He voiced that recent court cases have prompted this legislation, and he is concerned about the State being granted blanket immunity.

Co-Chair Wilken referred the Committee to a new committee substitute, Version 23-GH1025\I that has been presented by Senator Taylor. He stated that the single difference between Version 23-GH1025\H.A and Version "I" is that a new subsection is inserted in at least four different locations in Version I. That proposed language reads as follows.

This section does not apply to a civil action for damages as a result of gross negligence or reckless or intentional misconduct.

Senator Taylor concurred. He stated that the language would be inserted in sections of the bill in which the safeguard has not already been provided.

Co-Chair Wilken characterized the language as an amendment to the bill.

Mr. Nordstrand voiced that the inclusion of this language would "recreate the standard of gross negligence or reckless or intentional misconduct as a basis" for a lawsuit in these circumstances. He stated that "the distinction between gross negligence and negligence is something only a lawyer could love." He assured the Committee that the adoption of Senator Taylor's language would not prevent "a lawyer from suing the State for anything" that could be sued in court currently. He declared that this language "would change nothing in the effect of the law" except that the State would be forced to defend itself at a great deal of expense. He furthered that the Court's instruction to the jury regarding the difference between negligence and gross negligence "would be meaningless at that point" because the State would have spent a large amount of money to defend itself, and the jury "operates just as much from emotion as facts..." He stated that "from a trial lawyer's point of view," the proposed language in Version I would "ratify what the Alaska Supreme Court has done" that the State "is trying to undo."

Senator Hoffman voiced appreciation for Senator Taylor's efforts in addressing this concern. He stated that the Department appears to be focusing on preventing lawsuits in order to save the State money. He voiced concern regarding this position as he attested that some lawsuits might have merit.

Mr. Nordstrand responded that, "right and wrong is a function of the policies ... we choose." He stated that part of the choice today "is whether we are going to buy fire trucks or pay lawyers" to sue the State. He informed that federal firefighters, municipal firefighters and municipalities have complete immunity from lawsuits such as the recent fire-related lawsuit, Millers Reach vs. State of Alaska. He continued that were the State to retain municipal firefighters, they would be immune. Continuing, he declared, "the only" ones not immune are State firefighters and the State. He noted that while the Legislature "has no power" to change the immunity status of federal firefighters, it could address the municipality immunity status. However, he declared "those two

policies reflect sound policy thinking." He listed numerous states that have adopted immunity policies, and he suggested that this policy stance reflects the reality of limited resources and the limited number of firefighters. He declared that these limited resources are an issue that the State, with its vast size, must consider. He noted that the Millers Reach lawsuit argued that the State should have used its resources differently. He stated that the adoption of the Version I committee substitute would allow lawyers to continue to argue this point.

SFC 03 # 104, Side B 09:34 AM

Mr. Nordstrand specified that the policy being addressed in this legislation is how the State should be spending its money. He urged the Committee to spend it on firefighters rather than lawyers and lawsuits.

Senator Hoffman asked whether Mr. Nordstrand would view the Department of Public Safety's search and rescue missions in the same manner.

Mr. Nordstrand responded that it would be "the same premise." He continued that were a state the size of Alaska to invest heavily in its search and rescue efforts by strategically placing teams throughout the State, and guarantee that its response "would be absolutely perfect every time, it would serve "to eliminate the liability." He theorized that were the State a private contractor who was hired to prevent, but did not prevent, a building from burning down, there would be liability. However, he argued that the State is not a private contractor, but "is charged with this duty." He stressed that the State would "always fight fires" and conduct search and rescue missions even though it is not an obligation mandated by State statute.

Senator Hoffman commented that while the State has won lawsuits involving firefighting efforts, it lost the search and rescue lawsuit of Nancy Kiokun and Cynthia Olrund vs. State of Alaska Department of Public Safety (S09044, April 5, 1999). He asked whether the law should be changed in order to reverse judgments such as this one and prevent such lawsuits from being presented.

Mr. Nordstrand responded that he is unaware of the particulars of that case; however, he mentioned that its Alaska Superior Court decision is currently under review by the Alaska Supreme Court. He stated that it would be inappropriate to judge the State of Alaska's laws on the basis on one lawsuit.

Senator Hoffman asked whether action on this legislation could be delayed until the Supreme Court has made its decision on the aforementioned case, as he expressed that, were the Supreme Court to rule in favor of the State, action on this legislation might "be irrelevant."

Mr. Nordstrand opined, "that it is the Legislature's role to define the policy of sovereign immunity." Furthermore, he stated, "it is the Legislature's role rather than the Alaska Supreme Court's role to say what the State could and could not be sued for."

Senator Hoffman pointed out that it is the Legislature's role to decide how far the State should go "in trying to protect some of our citizens."

Mr. Nordstrand agreed.

Senator Taylor asserted that, "we're all aware of the distinction and the need for sovereign immunity." Otherwise, he declared, Legislators "could be sued for decisions that are made in the Legislature." However, he avowed that "historically, this has been reserved for discretionary decisions" such as how a highway would be designed. Furthermore, he continued that once the highway is built, the State is responsible for maintaining it and keeping it safe for travel when road conditions are treacherous. He declared that, were individuals harmed because of State employee negligence, "there is a right of suit today."

Mr. Nordstrand concurred and stated that his Division is handling "a number of cases just like that."

Senator Taylor commented that a former Legislator brought suit against the State and won the case after his wife was killed on a poorly-maintained-for-conditions State road. He argued that while the State road system is a very valuable resource, the State has limited highway maintenance resources. Therefore, he argued that, "every State highway should be immune from suit." He declared that, "the public would react terribly" to this decision. He stated that the public has a right to sue the State as well as the federal government for the negligence of their employees. He opined that were State employees to act with gross negligence in a fire fighting scenario or a search and rescue mission due to being on drugs or being despondent about a personal matter, then the State should be held liable. He noted that even "good Samaritans" are held to standards that they conduct themselves in a non-reckless manner. Therefore, he questioned "the legal justification" for not holding the State to that same standard.

Mr. Nordstrand voiced that these unique activities are wrought with danger and "with enormous consequences." He stressed that individuals participating in fire fighting, search and rescue, and civil defense activities must be committed to the activity rather than being concerned that their action or involvement might result in a lawsuit. He stated that were this the case, people might choose not to respond to these "very dangerous activities that involve enormous judgment," and "enormous allocation of limited resources." He asserted that, "in these particular areas, the State should not absorb the liability because the risks to the treasury as opposed to the risks of not, are too great." He reiterated that in response to the question of whether someone could commit gross negligence, he reiterated that it would be difficult to distinguish the difference between being negligent or grossly negligent would accomplish as a State policy matter because, he declared, the question is whether it would be good State policy to fund lawsuit defense rather than to provide such things as equipment.

Senator Taylor commented that he would prefer to maintain the standard of simple negligence; however, he determined that it would be too difficult for the State to avoid damages caused by summary judgment actions. He characterized this legislation "as a sales pitch on the utilization of State resources," rather than having anything to do with the State's liability for injury, death, or property damage that might occur as the result of "someone's stupid mistake." He asked what monitoring system is in place to hold employees accountable for their actions. Continuing, he questioned the reasoning for labeling the activities addressed in the legislation as "so precious" that they could not be held to any standard at all.

Senator Taylor asked what would be unique about a situation wherein a pilot committed an act of gross negligence that caused people to die. He voiced that the State has approximately 50 aircraft in its fleet and that, were something to happen to an employee involved with those aircraft, they would be covered by the State's worker's compensation schedule; however, he noted that, currently, the State would be liable were a non-State employee injured while traveling with a State pilot who might commit pilot error or negligence. He declared that the reason that this legislation is addressing this issue now is because the State "got sued," and he asserted that a standard should be established to address a situation wherein gross negligence is an issue. He concluded that no argument has been presented to satisfy his concern regarding "this level of immunity."

Co-Chair Wilken commented that the language included in Version "I"

of the bill as opposed to that of Version "A" addresses the point that Senator Taylor is making.

Senator Olson voiced concern regarding State efforts to ensure that adequate oversight in search and rescue operations exists. Furthermore, he asked whether search and rescue operations, in light of resource shortages, should be transferred from the Department of Public Safety to another authority.

Mr. Nordstrand responded that the Department is not advocating for search and rescue operations to be moved to another authority. He stated that the Civil Air Patrol and the National Guard conduct a large amount of these operations. Furthermore, he noted that although Department aircraft might be involved in a search, limited manpower resources are provided to the endeavor, particularly, he noted, in rural areas. He stressed that the primary role of the Department is to coordinate activities.

Senator Olson opined that contrary to Mr. Nordstrand's comments, non-Department aircraft are primarily used in search and rescue operations in his district.

Senator Taylor stated that, in light of the fact "that the State is not constitutionally mandated to" provide these services, the State could contract with the private sector to conduct search and rescue, firefighting, and air transportation efforts. He questioned whether these entities could therefore be "granted total, absolute immunity no matter what they did or how they did it."

Mr. Nordstrand responded that he is unsure of how this would be addressed, although he noted that this legislation would provide immunity to agents of the State as well as volunteers engaged in search and rescue efforts. Furthermore, he noted that liability language would be specified in the contract between the State and the contractor.

Senator Taylor stated that "of course," the State would write a contract specifying that the for-profit contractor would be responsible for the entirety of their actions. The contract, he attested, along with legislation providing the State with absolute immunity, would guarantee that the State could not be held liable. Therefore, he continued, rather than the issue being whether the State would be protected from legal action, the issue would be whether the State would grant the for-profit private contractor total immunity from lawsuit for actions conducted on behalf of the State. Continuing, he pointed out that he knows a private fire service contractor who operated in Ketchikan for twenty-five years "who knew full well" that he would be held liable for his actions.

Senator Olson asked regarding the liability of the contracted-for search and rescue operations that are conducted in the Norton Sound Borough.

Senator Taylor interjected that the question is whether the private contractor operating on behalf of the State would be held to a quality standard or would be granted, "total blanket immunity."

Mr. Nordstrand replied that, regardless of the means being used for fire suppression, search and rescue operations, or for civil defense, "the policy at issue would be the same: that with the absence of complete resources" to have "all the ability to pay" or "to be everywhere with unlimited resources" and "to be absolutely positively certain" that no mistakes would be made, there should be limits on liability to the entity providing these services.

Senator Taylor moved to adopt the Version "I" committee substitute as the working document.

Co-Chair Wilken and Co-Chair Green objected.

Co-Chair Wilken stated that the aforementioned language regarding gross negligence or misconduct is included in at least six different places in the Version "I" committee substitute. He asked for confirmation that the addition of this language would be the only change from Version "A" of the bill.

Senator Taylor confirmed.

Co-Chair Green commented that were the Version "I" committee substitute adopted, she would be "very interested" in de-activating fire fighting service, search and rescue service, and any other service that is offered in the State wherein the State is "the only entity that is liable." She stated that the federal government and municipalities would not be liable in these situations; and therefore, she stressed that it would be unacceptable for the State to be liable.

Senator Taylor declared therefore, that the State should not be held liable for any of the functions provided by the State such as the road system. He asserted that the State has the right to exempt itself from liability for its road system as well as to any negligence committed by employees of the Department of Transportation and Public Facilities.

Co-Chair Green asserted that granting total immunity to the State for the entirety of its services is not the issue, as she declared

that the routine operations of the State are "a totally different forum of decision making" than the ones being addressed in this legislation.

A roll call was taken on the motion to adopt the Version "I" committee substitute.

IN FAVOR: Senator Hoffman, Senator Olson, and Senator Taylor

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

The motion FAILED (3-4)

The committee substitute Version "I" failed to be adopted.

Senator Taylor moved to report the bill from Committee.

Senator Taylor objected to his motion. He stated that it is "ludicrous" for the State to resolve litigation against the State by addressing it with yet another immunity bill. He declared that some of these bills "are introduced in the middle of the litigation" process. He voiced discomfort with telling the citizens of the State that the State has awarded itself blanket immunity for its actions.

Senator Olson shared that in his personal experience of participation on search and rescue missions, while some of the operations have been directed "very well," others "certainly had room for improvement."

A roll call was taken on the motion.

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

OPPOSED: Senator Hoffman, Senator Olson, and Senator Taylor

The motion PASSED (4-3).

CS HB 245 (JUD)(efd fld) was REPORTED from Committee with zero fiscal note #1 from the Department of Law, zero fiscal note #2 from the Department of Natural Resources, and indeterminate fiscal note #3 from the Department of Administration.

AT EASE 10:00 AM / 10:00 AM

#hb267

CS FOR HOUSE BILL NO. 267(FIN)

"An Act authorizing the Alaska Railroad Corporation to provide financing for the acquisition, construction, improvement, maintenance, equipping, and operation of a natural gas pipeline and related facilities for the transportation of natural gas recovered from the North Slope of this state; authorizing the Alaska Railroad Corporation to issue bonds to finance those facilities; 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 authorize the Alaska Railroad Corporation to issue bonds not to exceed \$17 billion for the construction of an Alaska natural gas pipeline.

REPRESENTATIVE VIC KOHRING, the bill's sponsor, informed that this bill would authorize the Railroad to issue bonds to provide financing for the construction of a natural gas pipeline. He stated that in addition to this bill, additional pieces of legislation such as the Stranded Gas Act bill and bills to streamline State-permitting regulations are being addressed by the Legislature to enable this project to proceed.

Representative Kohring stated that this bill would allow for the issuance of up to \$17 billion in tax-exempt bonds, and he noted that the low interest rates that are currently available would benefit the State. He communicated that the sale of these bonds would generate capital that the State would then use to provide low interest rate loans to private developers. He informed that these private developers, rather than the State of Alaska, would be responsible for building the pipeline. Furthermore, he specified that these bonds would be classified as "non-recourse debt," meaning that the developers rather than the State or the Alaska Railroad would be responsible for the bond debt. Additionally, he clarified that this type of bond program specifies that no liens could be placed upon State or Railroad assets. He shared that the cost of building the pipeline is estimated to range between \$12 billion and \$30 billion.

Representative Kohring furthered that the bonds would not be issued without guarantees that the contractor could pay back the money, and he specified that the legislation would additionally require

that reserves must be maintained for the payments on those bonds.

Representative Kohring referenced a letter from a Seattle-based bonding company, George K Baum & Company, addressed to Representative John Harris, the Co-Chair of the House Finance Committee, dated January 30, 2003 (copy on file) that determined, upon evaluation, that the viability of these bonds could be maintained. Furthermore, he stated that a letter he had received from Conoco Phillips Alaska, dated May 6, 2003 (copy on file) is indicative of industry support for this mode of funding option for the pipeline project.

Representative Kohring reminded the Committee that the authority to issue tax-exempt bonds was granted by the federal government in 1983 when it transferred the ownership of the Alaska Railroad to the State. He declared that this legislation would incur no cost to the State, although he noted that the accompanying Department of Community and Economic Development fiscal note specifies that in FY 06 there would be an expense of \$163 million. He specified, however, that this would not be an expense to the State as, "this amount would be rolled into the entire financing package." He reiterated that this non-recourse debt would not incur any liability on the State.

Representative Kohring informed the Committee that the Alaska Railroad Corporation supports this bill.

Senator Bunde asked for further information regarding the bill's fiscal note, as he stated that it is unusual that no liability or financial obligation would be incurred by the State or, in this situation, the Railroad.

BILL O'LEARY, Chief Financial Officer, Alaska Railroad Corporation, Department of Community and Economic Development, testified via teleconference from an offnet site in Anchorage and explained that although the Railroad would be the issuer of the non-recourse revenue bond financing, or what he referred to as conduit financing, the underlying credit for the transaction would be that of the producers or pipeline investors. He specified that the investors would purchase the bonds after reviewing the project and determining that it would support the repayment of the debt.

Senator Bunde asked how allowing the Railroad to issue these bonds would benefit the bond purchasers; specifically whether a lower interest rate could be offered to the purchasers.

Mr. O'Leary noted that the Railroad's issuance of these bonds would provide tax-exempt financing for the project. He continued that

this type of funding "has historically been significantly cheaper financing than going out in the taxable debt market." Furthermore, he stated that furthering the gas pipeline endeavor meshes with the Railroad's mission of furthering economic development in the State.

Senator Bunde asked whether this conduit financing would impact the Railroad's ability to fund future projects.

Mr. O'Leary specified that this process would not impact the railroad's ability to borrow money as it is considered a project-based, stand-alone situation, and as such, he continued, it would not negatively impact the Railroad's funding of other projects or other stand-alone projects.

Senator Bunde surmised that this endeavor would generate additional work for the Railroad.

Mr. O'Leary voiced that the Railroad "hopes to see a significant portion of benefit" from the project in terms of increased workloads such as freight hauls. Furthermore, he stated that the Railroad would benefit from being required to upgrade rails and existing infrastructure in order to accommodate the project's needs. He stated that transporting the heavy pipe that would be used for the pipeline would place extra demands on the existing railroad.

Senator Bunde puzzled as to how the expense of being required to upgrade the railroad would be a benefit. He stated that he has never felt comfortable with "a free lunch."

Senator Taylor interjected that he does not believe this is a free lunch scenario. He asked whether the railroad would be allowed to charge a fee for the service of issuing these unique tax-free bonds.

Mr. O'Leary responded that the Railroad considers it appropriate to charge an administrative fee. He furthered that the proceeds from this fee would be used to help finance the upgrades to the system.

Senator Taylor acknowledged. He declared that this should negate the earlier concern regarding the cost of upgrading the system. He suggested that one-half or three-quarters of one percent on a \$17 billion issue would generate significant income. He asserted that the railroad should be well paid for financing this project and that this would be "a wonderful income stream for the railroad" to use to upgrade and extend its system which would provide the State with further development opportunities.

Co-Chair Green clarified that the Railroad did not originate this legislation, but "was told to do this." She noted that a recent report in the Alaska Oil and Gas Reporter (copy not provided) noted that the Railroad has never used its tax-exempt bond authority. Furthermore, she shared that the Report specified, "that a favorable ruling from the US IRS (United States Internal Revenue Service) would be required" in order for the bonds to be granted the tax-exempt status.

Representative Kohring concurred and responded that the letter from the IRS has not yet arrived.

Co-Chair Green asked whether the letter has been requested.

PAUL FUHS, Representative, Yukon Pacific Corporation, explained to the Committee that the tax-exempt bond authority language in this legislation is purposefully "very specific to the natural gas pipeline project." He explained that the letter to the IRS has not yet been submitted, because he attested "that you really don't want to trigger that discussion until you apply to do it."

Co-Chair Green understood, therefore that were a favorable ruling not forthcoming, the tax-exempt bond authority status would be limited to approximately a quarter of the full loan amount.

Mr. Fuhs confirmed. However, he shared that after discussing the issue with Alaska's Congressional delegation and other individuals "who wrote the law," this proposal would be viewed as a legal tax-exempt situation. He shared that the Bonneville Dam Authority is the only other entity in the nation that has "this very rare tax provision." He stated therefore, that when the provision is used, it is imperative that it be used for a substantial project that would not garner attention and prompt "someone to come in and change the law."

Co-Chair Green asked whether there is contingency language or whether the project would be stopped were a favorable IRS ruling not forthcoming.

Mr. Fuhs responded that, "it's all or nothing."

Co-Chair Green asked whether, in addition to the Alaska Railroad, the Alaska Pipeline Authority has the power to issue bonds.

Mr. Fuhs responded that the Alaska Pipeline Authority has the ability to issue non-recourse bonds; however, he clarified that "they do not have the federal tax loophole that the Railroad has." He stressed that the Railroad has "a very rare provision."

Mr. Fuhs pointed out that the Railroad has "the federal tax loophole, but it does not have the authority in statute to issue these bonds." Providing that authority, he stated, is another important provision in this bill.

Senator Bunde stated that testimony specifying, "that this is a one-shot deal," appears to contradict earlier testimony that the Railroad could issue these types of bonds for other projects. He asserted that were this to be a one-time opportunity, it could be argued that it would negatively "impact the Railroad's ability" to fund other large projects in the future.

Co-Chair Green understood that were another large project identified, the Railroad could again seek US IRS approval to use these types of bonds for that project.

Mr. Fuhs clarified that rather than being a one-time bonding opportunity, this legislation specifically identifies that the bonds being requested would be used to fund a gas pipeline project. He continued that were the Legislature to determine that the Railroad's unique bonding ability could be used to fund another project, that project could be authorized, and the IRS could be petitioned to grant approval specific to that project.

Senator Bunde surmised that while the Legislature could grant authority to the Railroad for a future project, the IRS might not approve it.

Senator Taylor asked for clarification that the Legislature must grant specific authority before the Railroad could issue these bonds.

Mr. Fuhs clarified that "very specific authority" from the Legislature must be granted in order for the Railroad to issue these bonds.

Senator Taylor pointed out that were this funding mechanism desired to fund another project, specific authority would again have to be granted by the Legislature for that unique project.

Mr. Fuhs confirmed that Legislative authority would again be required.

Mr. O'Leary concurred. He specified that the Railroad must acquire Legislative approval before it could issue any bonds.

Senator Taylor stated that in addition to Legislative approval, the

IRS must agree that this bonding authority is the "appropriate mechanism" with which to fund the project.

Representative Kohring pointed out that the availability of these tax-exempt low interest bonds would serve as an incentive to the industry to build the pipeline, as it is projected to save the industry one billion dollars.

Senator Taylor asked whether a specific gas pipeline route is identified in the legislation.

Representative Kohring communicated that the routing is open.

Senator Bunde asked whether the one billion dollars that the industry is projected to save from the availability of these low interest, tax-exempt bonds is factored into the fiscal note analysis.

Mr. Fuhs informed that the administrative fee is not specified; however, he stated that the savings to the project, as estimated in the aforementioned George K. Baum financial analysis, "are projected to be approximately two percent overall" on the return on investment. He continued that, whereas Senator Taylor suggested that a one-half or three-quarters percent interest be imposed as an administrative fee, the Railroad estimates that an administrative fee of one-tenth of a percent would generate sufficient funding to conduct the "legitimate" system upgrades the project would require.

Senator Bunde opined that were the total cost to upgrade the rails a known number, it should be reflected in the bill. He asserted that the Railroad should be "upfront" on the amount, and he suggested that the administrative fee should be just below the maximum taxable bond level allowed.

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

There being no objection, CS HB 267 (FIN) was REPORTED from Committee with zero fiscal note #1 from the Department of Community and Economic Development.

#hb234

SENATE CS FOR CS FOR HOUSE BILL NO. 234(L&C)

"An Act relocating the Alcoholic Beverage Control Board from the Department of Revenue to the Department of Public Safety; extending the termination date of the Alcoholic Beverage

Control Board; relating to the sale of beer manufactured at a brewpub; and providing for an effective date."

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

Co-Chair Wilken informed that Representative Lesil McGuire sponsors this legislation. He noted that the Committee would be entertaining a committee substitute that would allow brewpubs to brew their beer off-site and to sell their beer in quantities of not more than five gallons a day. In addition, he specified that the forthcoming committee substitute would extend the Alcoholic Beverage Control (ABC) Board for one year, and would address other issues raised in the "Department of Revenue Alcoholic Beverage Control Board Sunset Review" audit (copy on file), dated November 29, 2002 that was conducted by the Division of Legislative Audit.

Co-Chair Green moved to adopt the committee substitute for HB 234, Version 23-LS0862\E as the working document.

Senator Taylor objected for explanation.

HEATH HILYARD, Staff to Representative Lesil McGuire, the bill's sponsor, explained that the Version "E" committee substitute would transfer the ABC Board from the Department of Revenue to the Department of Public Safety.

SFC 03 # 105, Side A 10:23 AM

Mr. Hiyard furthered that, in addition to shifting the ABC Board to the Department of Public Safety, Version "E" also eliminates accompanying language beginning on line eight of Section 1. The revised language in Version "E" reads as follows.

Section 1. AS04.06.010 is amended to read:
Sec. 04.06.010. Establishment of board. There is established in the Department of Public Safety the [THE] Alcoholic Beverage Control Board [IS ESTABLISHED] as a regulatory and quasi-judicial agency. The Board is in the Department of Public Safety [REVENUE, BUT FOR ADMINISTRATIVW PURPOSES ONLY].

New Text Underlined [DELETED TEXT BRACKETED]

Mr. Hiyard stated that "but for Administrative purposes only."

would be deleted in order to provide the Commissioner and the Department with expanded discretionary ability regarding the oversight of the activities and investigations of the ABC Board. He noted that [unspecified] changes in Section 2 of the bill have been discussed in other committee hearings and are acceptable to the sponsor. He expressed that Representative McGuire would defer to the judgment of the Committee, her position on the committee substitute and any proposed amendments. He stated that the sponsor supports the reauthorization of the ABC Board and correcting the disparities between brewpubs.

Co-Chair Wilken understood that, with the exception of one item in the bill that "is not important at this time," the Version "E" committee substitute would return the bill's language regarding the ABC Board to that as originally proposed by Governor Frank Murkowski.

WILLIAM TANDESKE, Commissioner, Department of Public Safety, stated that this is correct. He noted that the Commissioner of the Department of Revenue initiated the proposal by inquiring as to whether the Department of Public Safety could assume responsibility of the ABC Board as part of the new Administration's endeavor to realign functions within State departments. He stated that he had responded affirmatively to the request as, he stated, in his 26-years of experience as an Alaska State Trooper, he understood the Department of Public Safety's involvement in alcohol and Title IV issues. He stated that during discussions regarding how to make the transfer of the ABC Board to his Department as productive as possible, concerns arose regarding language in Title IV.

Mr. Tandeske referenced concerns and recommendations of the Alaska Criminal Justice Assessment Commission in a May 2000 report [not provided] are identified on page 22 of the Audit. The Commission, he noted, recommended that the criminal investigation function of the Board be transferred to the Department of Public Safety and, in addition, suggested that the Board membership be increased from five members to seven as a result of the Commission's concern that "historically ... at least one other member of the board has created a majority for alcohol dispenser interest because of past experience in the industry" as the result of two industry members sitting on the Board as required by the AS 04.06.020 mandate that two board members must be actively engaged in the alcoholic beverage industry. He stated that the Commission suggested that the two new members be non-industry members: one of which should represent the public health or medical community and the other to represent the law enforcement community in order to "better protect the public interest."

Commissioner Tandeske communicated that it is the "Administration's desire to instill two State cabinet members on the Board by specifying that the Commissioners of the Department of Public Safety and the Department of Revenue be members of the Board "as well."

Commissioner Tandeske agreed with findings on pages nine and nineteen of the Audit, that criminal investigations regarding such things as prostitution and gambling, are best served by the law enforcement agency rather than "a four-person team of alcohol law investigators."

Commissioner Tandeske continued that the third issue addressed in this legislation pertains to the nine State classified employees who support the ABC Board. He stated that by clarifying that these employees, who would be members of the Department of Public Safety and thereby obligated to adhere to Department policy standards, would enhance these employees' ability to properly function within the Department and assure that they would be able to access such things as important and pertinent Department case management and tracking records.

Co-Chair Wilken asked regarding the omission of language in the committee substitute specifying that the Commissioners of the Department of Public Safety and the Department of Revenue could appoint a designee to represent them on the ABC Board.

Commissioner Tandeske voiced that incorporating language regarding the ability to appoint a designee would be "a good idea." He informed that the Commissioner of the Department of Revenue requested this language.

Co-Chair Wilken clarified however, that this language is not included in Version E.

Amendment #1: This conceptual amendment inserts "or the Commissioner's designee" into Section 2, line 13 of the Version "E" committee substitute. The revised language would read as follows.

Sec. 2. AS 04.06.020 is amended to read:

Sec. 04.06.020. Appointment and qualifications. The board consists of seven [FIVE] members. Five members shall be appointed by the governor, one member shall be the commissioner of public safety or commissioner's designee, and one member shall be the commissioner of revenue or commissioner's designee...

New Text Underlined [DELETED TEXT BRACKETED]

Co-Chair Wilken moved for the adoption of Amendment #1.

Senator Taylor objected. He voiced that while he supports the concept of transferring the ABC Board to the Department of Public Safety and addressing the issue of brewpubs, he disagreed with the language specifying that the two members being added to the ABC Board would be the Commissioners of the Department of Public Safety and the Department of Revenue. He declared that this is not an Audit recommendation and "appears to be just a takeover by the two Commissioners or their designees of the five-member Board"...and then shifting it to a four-member majority and "totaling changing policy and regulation."

Co-Chair Wilken moved and asked unanimous consent to withdraw Amendment #1 in order to further discuss the point raised by Senator Taylor regarding the ABC Board. He noted that the proposed changes to the Board are included in Sections 2 through 5 of the Version "E" committee substitute.

There being no objection, Amendment #1 was WITHDRAWN.

Commissioner Tandeske declared that this is not an attempt by the Commissioners to "take over the Board any more than having a mandatory two-industry members self-regulating their industry is any more of an option for a takeover of policy and industry." He continued that rather it "could be characterized as a check and balance" measure.

Senator Taylor asked whether this proposal has been discussed with the industry or organizations that are being regulated.

DOUG GRIFFIN, Director, Alcoholic Beverage Control Board, Department of Revenue, testified via teleconference from an offnet site and informed the Committee that the addition of the Commissioners of Department of Public Safety and Department of Revenue has not been discussed with the Board.

Senator Taylor reiterated his concern. He argued that a bill of this nature, being presented toward the end of this Legislative session, is disconcerting.

Amendment #2: This amendment deletes Sections 2 through 5 of the Version "E" committee substitute, beginning on page 1, line 10 and continuing through page 2, line 27. This language reads as follows.

Sec. 2. AS 04.06.020 is amended to read:

Sec. 04.06.020. Appointment and qualifications. The board

consists of seven [FIVE] members. Five members shall be appointed by the governor, one member shall be the commissioner of public safety, and one member shall be the commissioner of revenue. All members except for the commissioner of public safety and the commissioner of revenue shall be [AND] confirmed by a majority of the members of the legislature in joint session. Except for the commissioner of public safety and the commissioner of revenue, a [A] member of the board may not hold any other state or federal office, either elective or appointive. Two members of the board shall be persons actively engaged in the alcoholic beverage industry, except that no member may hold a wholesale license or be an officer, agent, or employee of a wholesale alcoholic beverage enterprise. No three members of the board may be engaged in the same business, occupation, or profession. At least three members of the board shall represent the general public. A board member representing the general public or an immediate family member of a board member representing the general public may not have any financial interest in the alcoholic beverage industry. In this section, "immediate family member" means a spouse, child, or parent.

Sec. 3. AS 04.06.030(a) is amended to read:

(a) Except for the commissioners of public safety and revenue, members [MEMBERS] of the board shall be appointed for overlapping terms of three years.

Sec. 4. AS 04.06.040 is amended to read:

Sec. 04.06.040. Per diem and expenses. Members of the board do not receive a salary, but are entitled to per diem and travel expenses authorized by law for other boards and commissions. This section does not apply to a member of the board who is the commissioner of public safety or the commissioner of revenue.

Sec. 5. AS 04.06.060 is amended to read:

Sec.04.06.060. Quorum and majority. Four [THREE] members of the board constitute a quorum for the conduct of business, except that a majority of the whole membership of the board must approve all applications for new licenses, and all renewals, transfers, suspensions, and revocations of existing licenses. If a majority of the board is present, and voting, the director, with the consent of the members present, may cast a tie-breaking vote.

New Text Underlined [DELETED TEXT BRACKETED]

Senator Taylor moved Amendment #2. He objected to his motion for purposes of discussion

Co-Chair Wilken also objected.

Senator Taylor avowed that the Version "E" committee substitute "is a major policy change." He opined that increasing the Board from five to seven members and changing the quorum requirements from three members to four members would serve to "stack the Board." He noted that the ABC Board has served the State well for 42-years. He questioned whether this "major policy shift" was the intent of the sponsor, as he asserted that, were it the intent, an "extensive" discussion would have transpired. Continuing, he declared that were the Commissioners appointed to the Board as non-voting members he could accept the language; however, he continued that appointing the Commissioners to the Board as voting members whose terms do not expire as opposed to the three-year rotation required of other members, is "a big policy call" to which, he continued, the industry should be able to respond. He suggested that the bill be held for further consideration during the following year's Legislative session, rather than being addressed during this Legislative session, "at the last minute."

Mr. Griffin commented that, in addition to the issues that have been discussed, the bill would provide a one-year extension of the Board. This, he noted, would allow the Board to "get back to work," and "address some of the issues raised in the Audit" as well as providing "a short window" of time for the Board to adjust being transitioned from the Department of Revenue to the Department of Public Safety. He qualified that the Board would prefer a longer extension period; however, he noted that the Board would abide by the will of the Legislature and Governor Murkowski's Administration.

Co-Chair Wilken noted that an Amendment is on the table, and he ordered the bill SET ASIDE.

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

RECESS TO THE CALL OF THE CHAIR: 10:39 AM / 12:45 PM

#HB234

SENATE CS FOR CS FOR HOUSE BILL NO. 234(L&C)

"An Act relocating the Alcoholic Beverage Control Board from the Department of Revenue to the Department of Public Safety; extending the termination date of the Alcoholic Beverage Control Board; relating to the sale of beer manufactured at a brewpub; and providing for an effective date."

The bill was again before the Committee.

Co-Chair Wilken moved to withdraw the motion to adopt the Version "E" committee substitute.

There being no objection, the motion was withdrawn.

Senator Bunde moved to report the Senate Labor and Commerce committee substitute for HB 234, Version 23-LS0862\C from Committee with individual recommendations and accompanying fiscal notes.

There being no objection, SCS CS HB 234(L&C) was REPORTED from Committee with zero fiscal note #1 from the Department of Revenue and indeterminate fiscal note #2 from the Department of Public Safety.

RECESS TO THE CALL OF THE CHAIR: 12:47 PM / 7:49 PM

#hb162

CS FOR HOUSE BILL NO. 162(RLS) am
"An Act relating to fees adopted by the Department of Natural Resources under AS 44.37.025 or 44.37.027 and to business license fees; and providing for an effective date."

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

Co-Chair Wilken explained that the House Rules Committee at the request of the Governor presents this bill. He stated that the bill would establish a \$100 annual license fee for all business categories and a \$50 annual license fee for business whose sole proprietor is 65 years of age or older within one year of the license application. In addition, he stated that the bill would allow the Recorder's Office in the Department of Natural Resources to charge fees in excess of the average cost of operation.

RICK URION, Director, Division of Occupational Licensing, Department of Community and Economic Development informed the Committee that the annual business license fee has been \$25 since 1949. He communicated that the Administration has determined that this legislation is a legitimate means of raising State revenue and would be easier to administer than basing a fee on the number of employees or the type of business. He noted that consideration is

provided for sole proprietor businesses owned by senior citizens, aged 65 or older. He stated that the bill is "reasonable," and he urged passage of the legislation.

Senator Bunde asked for further information regarding language in Section 1 pertaining to the Recorders fees in the Department of Natural Resources.

NICO BUS, Administrative Services Manager, Division of Support Services, Department of Natural Resources communicated that during the past several years, the Recorder's Office has experienced an increase in the number of documents being received as well as an increase in the size of documents being requested. He shared that this has resulted in a "significant" increase in Department expenses. He stated that this proposal would allow the Department to apply fees in excess of the cost, and thereby enable the Department to study the situation and further align fees with the cost of the service as well as establishing a fee structure would encourage entities to address document size.

Senator Bunde pointed out that the Senate Labor & Commerce Committee version of the bill would have generated more money for the State. In addition, he questioned the provision that allows senior citizens to pay a lower business license fee, as he understands that there are a lot of "wealthy" Alaskan seniors who buy business licenses.

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

There being no objection, CS HB 162(RLS) am was REPORTED from Committee with zero fiscal note #2 from the Department of Natural Resources and fiscal note #4 in the amount of \$193,400 from the Department of Community and Economic Development.

#hb111

CSHB 111(JUD) AM

"An Act relating to policies in telecommunications regulations; extending the termination date of the Regulatory Commission of Alaska; 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 extend the

Regulatory Commission of Alaska (RCA) to June 30, 2007 and require the RCA to review regulations pertaining to telecommunications regulations and present proposed regulations on the matter no later than November 15, 2003. In addition, he removed himself from the discussion on this bill due to the fact that there is a conflict of interest because he is "a minority shareholder in a utility that is regulated by the RCA."

AT EASE 7:54 PM / 7:54 PM

[NOTE: Vice-Chair Bunde chaired this portion of the meeting.]

Senator Taylor moved to report the bill from Committee with individual recommendations and attached fiscal notes. He objected to allow for testimony.

PATRICK LUBA, Legislative Representative, AARP, testified that AARP supports the four-year extension of the RCA. He asserted that the RCA is an "essential" entity because it is the only place where consumers could go to present concerns regarding a public utility. He asserted that the consumers need the Commission.

Senator Bunde voiced the understanding that the Administration supports the original version of this bill as opposed to the House Judiciary committee substitute. He asked for an explanation regarding the Administration's preference.

DANIEL PATRICK O'TIERNEY, Senior Assistant Attorney General, Regulatory Affairs Section, Department of Law stated that the original bill "simply sought a four-year extension of the RCA." He noted that the committee substitute before the Committee additionally "tasks the RCA with other interim duties." He noted that the Administration objects because these other duties are perceived to be "one-sided and over-reaching" in that they give "one of the market players an advantage." He stated that the Administration considers this to be "problematic."

Senator Bunde clarified that a new fiscal note accompanies the bill.

Senator Taylor removed his objection. He clarified that his motion to move the bill specified, "attached fiscal notes."

There being no further objection, CS HS 111(JUD) am was REPORTED from Committee with a new \$6,039,200 fiscal note, dated May 19, 2003, from the Department of Community and Economic Development.

AT EASE 7:59 PM / 7:59 PM

[Co-Chair Wilken resumed chairmanship of the meeting.]
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ADJOURNMENT

Co-Chair Gary Wilken adjourned the meeting at 08:00 PM.