

MINUTES
SENATE FINANCE COMMITTEE
March 31, 2004
9:05 AM

TAPES

SFC-04 # 64, Side A
SFC 04 # 64, Side B

CALL TO ORDER

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

PRESENT

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

Also Attending: LINDA HALL, Director, Division of Insurance, Department of Community and Economic Development; JANET SIETZ, Staff to Representative Norm Rokeberg; LUCKY SCHULTZ, Staff to Senator Dyson; BRUCE TANGEMAN, Fiscal Analyst, Division of Legislative Finance; CHERYL FRASCA, Director, Office of Management and Budget, Office of the Governor

Attending via Teleconference: There were no teleconference participants.

SUMMARY INFORMATION

SB 357-INSURANCE

The Committee heard from the sponsor, another legislator, and the Department of Community and Economic Development. An amendment was adopted and the bill was held in Committee.

SJR 3-CONST AM: APPROPRIATION/SPENDING LIMIT

The Committee heard from the sponsor, the Division of Legislative Finance, and the Office of Management and Budget. Six amendments

were considered and five were adopted. The bill was held in Committee.

SB 366-STATE SALES TAX

This bill was scheduled but not heard. Senator B. Stevens informed that an updated fiscal note was received, which he would review.

#SB357

CS FOR SENATE BILL NO. 357(L&C)

"An Act relating to the regulation of insurance, insurance licenses, qualifications of insurance producers, surplus lines, fraud investigations, electronic transactions, and compliance with federal law and national standards; and providing for an effective date."

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

Co-Chair Wilken stated this bill, sponsored by the Senate Labor and Commerce Committee, "is known as the insurance omnibus bill and contains numerous provisions to insure that State statutes are consistent with federal law, model act standards and guidelines."

LINDA HALL, Director, Division of Insurance, Department of Community and Economic Development, deferred to Senator Bunde to introduce the bill.

Senator Bunde testified that the Senate Labor and Commerce Committee sponsored this bill at the request of the Murkowski Administration. He also characterized this legislation as an insurance omnibus bill and a "technical clean-up" bill that proposes numerous changes to Title 21 of Alaska Statutes. He explained this bill would insure that the State is consistent with federal law and the National Association of Insurance Commissioners model act standards and guidelines. He noted this legislation would update procedures and transactions within the Division of Insurance.

Senator Bunde listed six key elements of the bill as follows.

1. provides for electronic communication
2. provides for changes in the reinsurance capabilities in Alaska
3. implements recommendations for licensing revisions as suggested by National Association of Insurance Commissioners

4. makes changes in the liability for civil damages when filing a report concerning fraudulent acts
5. contains provisions that clarify that a guarantee fund deposit is required for title insurance companies
6. makes changes to taxes and late penalties to be more consistent with Department of Revenue statutes.

Senator Bunde summarized this bill would "promote consistency between Alaska and other states, should promote more efficient operation."

Amendment #1: This amendment inserts a new bill section on page 2, following line 11 to read as follows.

Sec. 2. AS 21.07.010(b) is amended to read:

(b) A contract between a participating health care provider and a managed care entity that offers a group managed care plan may not contain a provision that

(1) has as its predominant purpose the creation of direct financial incentives to the health care provider for withholding covered health care services that are medically necessary; nothing in this paragraph shall be construed to prohibit a contract between a participating health care provider and a managed care entity from containing incentives for efficient management of the utilization and cost of covered health care services;

(2) requires the provider to contract for all products that are currently offered or that may be offered in the future by the managed care entity; or [AND]

(3) requires the health care provider to be compensated for health care services performed at the same rate as the health care provider has contracted with another managed care entity.

New Text Underlined [DELETED TEXT BRACKETED]

Co-Chair Wilken moved for adoption. He announced that this bill would not be reported from Committee at this hearing.

Senator Dyson relayed his understanding that significant cost shifting occurs by health care providers. He exemplified that hospitals are unable to recover expenses incurred from surgery procedures and subsequently charges higher amounts for other services, which are ultimately shifted to third-party payers. He asked if the State has a responsibility to ensure that insurers are only paying for costs actually incurred and not for providers' unrecoverable debts from other services.

Ms. Hall replied this is a philosophical question she was not currently prepared to answer. She assured she would discuss the matter with Division staff responsible for primary oversight of the health insurers and undertake additional research.

Senator Dyson commented this would be a wise choice.

Senator Dyson remarked on the "unfortunate" circumstances whereby third party payers, large insurance carriers and self insured negotiate with providers for lower rates, while requiring uninsured patients to pay 100 percent. He also stated that some patients must pay the cost recovery of other services offered by the provider. He wanted to ensure that self-payers get same discount as third party payers.

Ms. Hall responded that she would further discuss this matter with Senator Dyson.

Ms. Hall testified on the bill as follows.

The purpose of the bill is to make some changes that are required in the accreditation process that the Division of Insurance goes through with the National Association of Insurance Commissioners. It also makes some changes to correspond with some of the national producer licensing requirements.

There's six major areas of change. One, as Senator Bunde has pointed out is electronic communication; the ability to allow various communications for the services we provide to be performed electronically. We have financial forms that are filed electronically and we're trying to gradually increase the ability to communicate with our public in that manner.

Second area is late tax payments. Currently we have some fairly high penalties that are mandatory for late payments. There are four sections in the bill that revise the penalties to make them more consistent with the Department of Revenue. We also add a new section that is up to \$10,000 penalties for willful late payments of taxes.

The reinsurance piece of the bill is probably the most complex. It is the only area of the bill that I've received any comments from industry on. There are two sections. One is reflected in Version "H", it is a c.s. Originally, the bill proposed that the Division of Insurance must approve reinsurance treaties that insurance companies entered into with reinsurance insurers. We have changed that merely to

require that they file their signed agreements with us. In some financial examinations, we've had difficulty getting signed reinsurance agreements and we want to be sure we have those available for our review when we're reviewing our domestic insurance companies.

The fourth area of the bill makes some changes in licensing to be consistent with the Producer License Model Act and federal law. We've eliminated some training licensing; we've added crop insurty licenses. We have removed some language on limited lines that made it more difficult - they made barriers for Alaskans to have licenses. We have required that surplus lines brokers also be licensed as producers. These license agreements don't have any particularly strong impact on our current group of agents but they do bring us more into compliance with federal national areas.

The fifth area that I'd like to address briefly is the surplus lines area. There are several sections dealing with the surplus lines and without going into a lot of technical discussion, I would like to point out that these are based on a task force that met over the summer. We had a group of surplus lines brokers, both from Alaska and from out of state, come in and work with the Division staff and each other to streamline the process of surplus lines. Basically a surplus lines company is a company that is not under a requirement to file their forms and taxes. We talked about document coverage, what types of documents needed to be given to the consumer. We placed some additional responsibility on brokers to make sure the consumer receives notice of their responsibility. There are certain-what we call disclosures, given in the surplus lines arena, which require surplus lines brokers to make sure the consumer understands the nature of a surplus lines placement that is not subject to form and rate filing, it also is not covered by the guarantee association. And that is a requirement in current statute that we want to make sure stays there and we've added another layer to that.

The last major section I'd like to address deals with fraudulent activity. Section 40 of the bill provides that a person involved in the prevention and detection of fraudulent acts would not be subject to civil liability when filing a report or furnishing information to others also involved in prevention and detection of insurance fraud. This addition to the current statute would allow fraud investigators from insurance companies to communicate with each other. Currently, fraud investigators from one insurance company can't communicate with fraud investigators from a second insurance

company without fear of some kind of prosecution. They end up doing that through our office. Company "A" comes to us, thinks that there's fraud involved in a policy, [and] asks that we get information from Company "B". We'd like to facilitate communication to help prevent fraud in insurance in Alaska.

Those are the six major areas. As I said, I won't go through all 28 pages. I would be happy to entertain questions. But the general overview of the entire bill is to bring Alaska more in line with the NAIC requirements and model regulations.

Senator Olson questioned, if this is "cleanup" legislation, why it was not submitted prior to the current gubernatorial administration.

Ms. Hall clarified the bill is "cleanup" in that it is intended to conform to national changes. She was unable to speak to actions of the prior administration, although she noted that changes to the NAIC reinsurance language were recent, as well as new areas identified that need additional oversight. She also stated that changes to federal regulations must be complied with. She informed that this legislation would provide "a more stable, stronger oversight ability."

Senator Olson asked whether any opposition has been voiced to this legislation.

Ms. Hall told of the two hearings this bill received in the Senate Labor and Commerce Committee in which no one appeared to testify and noted the absence of any testifiers at the present hearing. She relayed she has received two "areas" of comments, one which resulted in the committee substitute and the other matter, which she determined should remain in the legislation as it would strengthen the Division's oversight and ability to ensure solvency in reinsurance agreements.

Senator Olson clarified that industry is not in opposition to this bill.

Ms. Hall qualified that parties have not "jumped up and down" in support of the legislation, but none have objected or testified against it or contacted her to voice concern.

Senator Olson referenced concerns with insurance companies discontinuing operations in Alaska and asked if any provision of this bill would give incentive to insurance companies to do business in Alaska.

Ms. Hall replied she was unaware of any. She stressed the need to attract more insurance companies to do business in Alaska.

Senator Dyson asked the extent of insurance fraud committed in Alaska. He assumed most fraudulent activity is committed by providers rather than insurance companies.

Ms. Hall informed that the Division receives three to four new reports of activities each month. She told of the fraud investigators operating within the Division. She stated that most cases involve consumers, and exemplified claims for damage to a vehicle that occurred prior to the purchase of a policy. She asserted that fraud affects the rates charged to other consumers.

Senator Dyson asked if the Division therefore does not experience many fraud cases involving providers.

Ms. Hall affirmed, noting that it is a small percentage.

Co-Chair Green commented on the timeliness of this bill. She extolled Ms. Hall's many years of experience in the insurance industry stating she is likely the most qualified Division director to serve in the position.

Co-Chair Green told of expanded fraud investigation efforts of the past several years at the national level involving a consortium of huge corporations and the Federal Bureau of Investigations. She predicted these efforts could impact Alaska, although not directed at this State.

Co-Chair Wilken objected to adoption of Amendment #1 for clarification. He noted it is drafted to the original legislation and asked if it is applicable to the Senate Labor and Commerce committee substitute.

JANET SIETZ, Staff to Representative Norm Rokeberg, testified the amendment applies to the committee substitute. She stated that the change of "and" to "or" in the existing statutory language of AS 21.07.010(b) would clarify that none of the three provisions are allowable. She noted that current language could be construed to imply that so long as all three provisions are not present, one or two would be allowed.

Co-Chair Green asked the definition "participating health care provider" and "managed care entity" stated in the amendment.

Ms. Sietz exemplified that a doctor or dentist would qualify as a provider and stated that managed care entity would include the

organization that provides vision care services to the State of Alaska.

Co-Chair Green asked what other parties are managed care entities.

Ms. Sietz replied that insurance contracts where the provider is signing up to participate in program that offers patients certain benefits. This, she said, prevents the provider from being forced by the managed care entity to accept all the products offered by the provider. She stated this gives health care providers a choice in what services it would provide.

Co-Chair Green asked if this relates to the preferred provider organization (PPO).

Senator Olson asked if the language would pertain to health management organizations (HMO).

Ms. Sietz replied that no HMOs operate in Alaska.

Senator Olson asked if this would change in the future and HMOs would begin to operate in the State.

Ms. Sietz characterized "managed care entity" as a "term of art" utilized in the language of this bill.

Co-Chair Green asked if "managed care entity" is defined in statute.

Ms. Hall relayed that as she discussed Amendment #1 with the Division's lead life and health actuary staff, it was agreed that the intent was to attempt to stipulate that the contracts would not be required of providers. She noted the specific instance that prompted this amendment related to a vision plan. She stressed the Division does not support requiring a provider to provide all available services in order to have a contract with an insurer.

Co-Chair Wilken asked if the Division supports or opposes the amendment.

Ms. Hall answered that she supports the amendment.

Ms. Sietz cited the definition of managed care in AS 21.07.090(10) as "...includes insurer, hospital, medical service organization, health maintenance organization, employer or employee health care organization, managed care contractor that operates a managed care plan, or a person who has a financial health care services provided to an individual."

Senator Olson asked if any input has been received from health care providers on this amendment, as he perceived this to offer protection to health care providers.

Ms. Sietz replied this amendment was submitted at the request of some health care providers. She referenced a letter from Dr. Faulkner [copy not provided,] indicating that the current language is onerous.

Senator Olson wanted a more specific example of organizations such as the dental society, Alaska State Medical Association, nurse practitioner group, etc.

Ms. Sietz informed that Dr. Falkner is Executive Director of the Alaska Optometric Association.

Co-Chair Wilken withdrew his objection to the adoption of the amendment and it was ADOPTED.

Co-Chair Wilken ordered the bill HELD in Committee.

#SJR3

CS FOR SENATE JOINT RESOLUTION NO. 3(JUD)

Proposing an amendment to the Constitution of the State of Alaska relating to an appropriation limit and a spending limit.

This was the seventh hearing for this resolution in the Senate Finance Committee.

Senator Dyson outlined Amendment #5 and Amendment #6. He explained that Amendment #5 would repeal the appropriation limit constitutional amendment in four years and that legislative action and voter approval would be required to reenact the provisions. By contrast, he stated that Amendment #6 would also repeal the language adopted by this resolution, but provides that in four years the Constitution would revert to the current language providing for an appropriation limit, which he noted is no longer valid, and that the existing stipulation that one-third of all appropriations must be for capital projects, would be reenacted.

Amendment #5: This amendment deletes "Reconsideration" and inserts "Repeal" on page 3, line 7, deletes "and applies thereafter" on line 9, and replaces the language of Section 30(b) in Section 3 on lines 12-17 of the committee substitute, Version "B". The amended

language reads as follows.

Sec. 3. Article XV, Constitution of the State of Alaska, is amended by adding a new section to read:

Section 30. Application and Repeal. The 2004 amendment relating to an appropriation limit (art. IX, sec. 16) first applies to appropriations made for fiscal year 2006. The 2004 amendment relating to deposits to the budget reserve fund (art. IX, sec. 17(d)) first applies at the end of the fiscal year 2005 and applies thereafter.

(b) Section 16 of Article IX (appropriation limit) is repealed on July 1, 2009.

Senator Dyson moved for adoption.

Co-Chair Wilken objected to allow the Committee an opportunity to comment. There were no comments and he removed his objection.

The amendment was ADOPTED without objection.

Amendment #6: This amendment deletes "Reconsideration" and inserts "Repeal" on page 3, line 7, deletes "and applies thereafter" on line 9, and replaces the language of Section 30(b) in Section 3 on lines 12-17 of the committee substitute, Version "B". The amended language reads as follows.

Sec. 3. Article XV, Constitution of the State of Alaska, is amended by adding a new section to read:

Section 30. Application and Repeal. The 2004 amendment relating to an appropriation limit (art. IX, sec. 16) first applies to appropriations made for fiscal year 2006. The 2004 amendment relating to deposits to the budget reserve fund (art. IX, sec. 17(d)) first applies at the end of the fiscal year 2005 and applies thereafter.

(b) On July 1, 2009, Section 16 of Article IX (appropriation limit) is repealed and readopted as it read on January 1, 2003.

This amendment was NOT OFFERED.

AT EASE 9:39 AM / 9:40 AM

Amendment #7: This amendment adds "and except as provided in (d), (e), and (f) of this section" to subsection (a) of Article IX, Section 16 of the Constitution of the State of Alaska, repealed and readopted by Section 1 of the committee substitute Version "B". The

amended language on page 1, lines 6 - 9 read as follows.

Section 16. Appropriation Limit. (a) Subject to (b) of this section, and except as provided in (d), (e), and (f) of this section, appropriations made for a current fiscal year shall not exceed the average amount appropriated for the earliest three of the four fiscal years immediately preceding that current fiscal year by more than the sum of the following:

...

This amendment also replaces subsection (d) with new language, on page 2, lines 23 - 29 to read as follows.

(d) An appropriation that exceeds the appropriation limit under this section may be made for any public purpose identified in a declaration of emergency that is issued by the governor as prescribed by law.

(e) If the governor declares that an extraordinary circumstance exists, upon the affirmation vote of at least two-thirds of the members of each house, the legislature may pass an appropriation that exceeds the appropriation limit under this section to address the extraordinary circumstance. The declaration shall identify the specific extraordinary circumstance, specify the amount of each appropriation the governor requests, and identify the time period during which expenditures under each appropriation will be made.

(f) If the legislature, by law, declares that an extraordinary circumstance exists, upon the affirmative vote of at least two-thirds of the members of each house, the legislature may pass an appropriation that exceeds the appropriation limit under this section to address the extraordinary circumstance. Notwithstanding Section 17 of Article II, a bill declaring an extraordinary circumstance passed by the legislature may not become law unless signed by the governor.

Senator Dyson moved for adoption.

Co-Chair Wilken objected for an explanation.

LUCKY SCHULTZ, Staff to Senator Dyson, testified that contrary to the provisions in the original version of this resolution, this amendment would provide a legislature to declare an extraordinary circumstance.

Co-Chair Wilken gave an example of \$100 million Medicaid expenditures as an extraordinary circumstance and asked the process

to exceed the spending limit and appropriate funding for unusual expenses.

Mr. Schultz explained that a two-thirds majority of both houses must approve such a declaration in the form of an appropriations bill. He noted that unlike regular legislation, the governor must either veto a declaration of extraordinary circumstances bill or sign it into law, as it could not become law without gubernatorial action.

Senator Hoffman furthered that if the governor vetoed the appropriation bill or utilized line-item veto authority to reduce expenditures, a three-quarters vote of both house would be required to override the governor's action.

Co-Chair Wilken stated that the legislation would be addressed as a normal appropriation bill with the exception of the three-quarters, or super majority, vote requirement.

Co-Chair Green cautioned that this legislation would create a new "class" that would subsequently allow the legislature to declare an extraordinary circumstance and is therefore "treading on dangerous ground". She relayed five or six examples have been posed as situations that could be constituted as extraordinary circumstances. She did not consider Medicaid expenditures extraordinary. She was reminded of the legislature's difficulty in changing the definition of "disaster" in legislation considered in a previous session. She warned against not clearly defining "extraordinary circumstances".

Senator Dyson appreciated Co-Chair Green remarks, sharing that he has "struggled" to anticipate the situations that could arise necessitating additional funding than stipulated by the spending limit. He decided against changing the definition of "emergency", opting instead that the governor should address disaster declarations as currently provided. He noted this is the reason to require a super majority legislative vote to increase appropriations. He informed that the state of Connecticut has this provision in its spending limit constitutional amendment. He qualified that he inadvertently gave incorrect information relating to the system implemented in Connecticut.

Mr. Schultz corrected comments made at the previous hearing that the extraordinary circumstances provision has not been invoked in the state of Connecticut. He stated that the governor has invoked the provision four times when excess revenues were appropriated to pay off debt incurred in previous years.

Senator Hoffman asked if extraordinary expenses could be contained in the normal operating budget legislation with some sections of the bill requiring a three-quarter vote, similar to the current system in which a three-quarter vote is required for some sections of the operation budget legislation to authorize appropriations from the Constitutional Budget Reserve (CBR) fund.

Senator Bunde commented that Co-Chair Green's concerns were valid. He reminded that the "genius" of the Alaska Constitution is that it did not stipulate specifics, but instead provided flexibility for future legislatures. Although he opposed a "loophole" he was assured that the powers provided in this amendment would be limited, and stressed that future legislatures should be granted at least as much confidence as current legislatures are provided.

Co-Chair Green wanted the Committee to avoid unintentionally defining extraordinary circumstances in the various examples given during these discussions.

Co-Chair Wilken shared this concern, and questioned whether the stipulation of a two-thirds majority vote itself could provide a threshold of an extraordinary circumstance.

Senator Bunde agreed with Co-Chair Green that the record should reflect that the examples used in discussions on this resolution are not indications that the current Senate Finance Committee considers them to be extraordinary circumstances. He explained that the use of certain examples should not establish a precedence of factors constituting an extraordinary circumstance.

Senator Dyson surmised that the provisions of an extraordinary circumstance could be defined in statute by either the current or a future legislature.

Co-Chair Wilken suggested this could be considered as a conceptual amendment.

Senator Dyson affirmed this is an option, but he preferred the Committee adopt the current language proposed in the amendment.

Co-Chair Wilken removed his objection to the adoption of the amendment and Amendment #7 was ADOPTED.

SFC 04 # 64, Side B 09:52 AM

Amendment #8: This amendment adds a new subsection to Article IX,

Section 16 (c) in Section 1 of the committee substitute on page 2, following line 21 to read as follows.

(9) of money previously appropriated for a different purpose or to a different recipient; and

Senator Dyson moved for adoption.

Co-Chair Wilken objected for discussion purposes.

Senator Dyson informed that this amendment is offered at the request of the Murkowski Administration and would clarify language relating to duplicate payments.

BRUCE TANGEMAN, Fiscal Analyst, Division of Legislative Finance, testified that the current language refers to interagency receipts, and defined this as general funds appropriated to one agency and authority to receive those funds from that agency is authorized to another agency. He stated the intent is that these transactions should not be counted twice. The amendment, he noted, would incorporate interagency receipts as well as other funding sources.

Senator Dyson characterized these transactions as almost intergovernmental transfers that therefore should not be counted twice.

Mr. Tangeman affirmed.

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

Amendment #9: This amendment inserts "Transition" in the title of Section 30 of Article XV of the Alaska Constitution, in Section 3 of the committee substitute. This amendment also inserts language in subsection (a) of Section 30 on page 3, line 9, following "thereafter", and places the remaining language of subsection (a) into a new subsection. The amended language of Section 30, on page 3, following line 6 reads as follows.

Section 30. Application, Transition, and Reconsideration.
(a) The 2004 amendment relating to an appropriation limit (art. IX, sec. 16) first applies to appropriations made for fiscal year 2006 and applies thereafter. However, for purposes of making calculations under the appropriation limit for fiscal years 2006 through 2008 it shall be assumed that, excluding appropriations listed under Section 16 (c) of Article IX, the amount appropriated for

(1) fiscal year 2004 equals \$3,300,000,000; and

(2) fiscal year 2005 equals \$3,400,000,000.

(b) The 2004 amendment relating to deposits to the budget reserve fund (art. IX, sec. 17(d)) first applies at the end of fiscal year 2005 and applies thereafter.

(c) If the 2004 amendment relating to an appropriation limit (art. IX, sec. 16) is adopted, the lieutenant governor shall place the same 2004 proposition for amendment on the ballot every four years. However, notwithstanding Section 1 of Article XIII, if the voters reject the proposition, Section 16 of Article IX shall be readopted as it read on January 1, 2003, and the lieutenant governor shall not again place the 2004 proposition on the ballot under this subsection.

Senator Dyson moved for adoption.

Co-Chair Wilken objected for discussion purposes.

Senator Dyson remarked this amendment would address "what I inappropriately" termed as "fiddling with the base numbers in order to get the results we wanted." He predicted that the final budget for FY 04 and the amount approved would likely reduce the amount of adjustments necessary. He explained this amendment would "smooth the curve and eliminate the flat first two or three years because of the budget reductions that were done." He relayed this amendment is the request of the Murkowski Administration to allow flexibility for the first years this spending limit is in place and to allow for reasonable growth from inflation and population.

Mr. Schultz furthered that the other states with tax and spending limits, that have allowed "the number to go negative" have experienced economic distress. Therefore, the advice has been to never allow the "numbers to go negative" as it would adversely impact the economy of the State. Instead, he relayed the recommendation that in years that would otherwise be "negative" the "numbers" should be held at the same level as the previous year. He predicted that Alaska would incur several years of level spending. He referenced the graph accompanying the amendment [copy on file] to demonstrate this point.

Co-Chair Wilken asked for clarification of the information on the graph.

Mr. Schultz further detailed and explained the spreadsheet and graph.

Senator Hoffman understood from discussions at the previous hearing on this resolution that the spending limit would include a two-year transition period.

Mr. Schultz replied that the purpose of this amendment is to adjust the base year and is in response to a request by the Administration citing that \$50 million would not be sufficient.

Co-Chair Wilken asked how the provisions of Amendment #10 are reflected in the data shown on the graph.

Senator Hoffman recalled two-year growth as adjusted base years. He had understood that the amounts were "ratcheting down", although the amendment shows that amounts are the same.

Mr. Schultz clarified the earlier discussion regarding the two-year growth period would be addressed in Amendment #10. Amendment #9 he stated, adjusts the base year amount.

Senator Dyson appreciated Senator Hoffman's observation. Senator Dyson stated that this adjustment to the base year amount would provide the Administration with the flexibility for "what they believe to be reasonable budget growth". He informed the two amendments would accomplish the Administration's goals.

Co-Chair Wilken withdrew his objection to the adoption of the amendment and Amendment #9 was ADOPTED.

Amendment #10: This amendment deletes language and inserts new language in subsections (1) and (2) of Article IX, Section 16(a) in Section 1 of the committee substitute. Deleted language is as follows: page 1, line 10, "average annual"; line 12, "for the second, third and fourth"; line 14, "average percentage of the change in the average personal income of State residents for"; line 15, "third, and fourth"; page 2, line 1, "average annual"; line 2, "for the second, third, and fourth". The amended language on page 1, following line 5, reads as follows.

(1) the percentage rate of change in the Consumer Price Index for all urban consumers for the Anchorage metropolitan area compiled by a federal agency during the second and third calendar years preceding the calendar year during which the immediately preceding fiscal year began, but not to exceed the percentage change in personal income of State residents during the second and third calendar years preceding the calendar year during which the immediately preceding fiscal year begins; plus

(2) the percentage rate of change in the State population during the second and third calendar years during which the immediately preceding fiscal year began compiled by a State department.

Senator Dyson moved for adoption.

Co-Chair Wilken objected for discussion purposes.

Senator Dyson explained this amendment would change the averaging based on population and inflation from three years to two years and would provide more rational results.

CHERYL FRASCA, Director, Office of Management and Budget, Office of the Governor, deferred to Mr. Tangeman to detail this amendment.

Mr. Tangeman explained that the bill as is currently written would use an average annual growth for population and inflation calculated for three of last four years. This applied to the base, he stated, gives a substantially lower growth than expected. He gave an example of population and inflation growth of four percent each year over three years, the average would be four percent, which would calculate at 1.3 percent each year applied to the base year of FY 03 to determine the base amount for FY 06. He stated this would total approximately \$50 million each year, which he determined is too low. The proposed amendment, he explained would provide for two years cumulative growth. He assured this would still be added to the base year of FY 03, but would add 8 percent growth, or 2.6 percent, resulting in approximately \$100 million each year.

Senator Hoffman remarked the intent of the amendment would be correct provided that inflation increases each year. He cautioned that if inflation were to decrease one year, the growth rate would be slower over a two-year average than a three-year average would allow.

Mr. Tangeman responded that as the committee substitute is currently drafted, the growth rate would be even lower.

Senator Hoffman surmised that growth rate would be higher utilizing a three-year average if the rate of inflation declined during one year.

Mr. Tangeman qualified that the average growth rate could be lower, but the average would be applied to a base year of three years ago, so growth rate would be even lower. He stated he would research this. He pointed out the language in the bill that would not allow a decrease in the amount of appropriated from year to year, which could address this concern.

Co-Chair Wilken requested a timeline graph to demonstrate the look-

back portion.

Ms. Frasca relayed an explanation Mr. Tangeman provided her earlier. This added the cumulative average of the last two fiscal years to the spending amount of three years ago.

Co-Chair Wilken asked for an example assuming the plan were in place currently.

Mr. Tangeman, Senator Hoffman and Mr. Schultz determined that population and inflation for the years FY 02 and FY 03 would be applied to an average of FY 01, FY 02 and FY 03 for the base year.

Senator Hoffman asked about the stipulation of calendar year.

Mr. Schultz pointed out that language on page 1 line 10 the bill pertains to the use of the fiscal year calendar to determine inflation and language on line 12 stipulates that population data would be calculated using the calendar year.

Co-Chair Wilken asked how the spending limit amount for FY 05 would be calculated.

Mr. Tangeman replied that federal data on population and inflation for calendar years 2002 and 2003 would be added and applied to the base year average of FY 01, FY 02 and FY 03.

Co-Chair Wilken asked how the population changes during FY 03 would be determined.

Mr. Schultz responded that population estimates for each calendar year are published in July of that year.

Mr. Tangeman informed that the Department of Labor and Workforce Development provides this information.

Co-Chair Wilken asked if an annual population estimate is therefore established then confirmed with the US census every ten years.

Co-Chair Wilken asked if the inflation consumer price index utilized in the calculations would also be an estimate.

Mr. Schultz replied this information is provided at end of each calendar year for that year.

Co-Chair Wilken understood this information is delayed.

Ms. Frasca clarified that the figures are finalized in April for

the previous calendar year.

Co-Chair Wilken asked how the legislature would we be able to begin drafting a budget in January of each year.

Mr. Schultz responded that the look-back is two years for this reason.

Co-Chair Wilken understood the population statistics of two years prior and the inflation rates of one-year prior would be utilized. He asked how a budget would be drafted before the inflation rates are known.

Ms. Frasca corrected her earlier statement and listed inflation rates are determined in February, population rates in March, and personal income data is available in April.

Mr. Tangeman furthered that data is compiled quarterly, therefore estimates would be available.

Co-Chair Wilken pointed out that the administration is required to complete a budget proposal by December 15 and that valid data would not be available at that time.

Ms. Frasca agreed. She stated that a budget would be prepared utilizing the estimates. She noted this is currently done with budgets prepared using projections from the Department of Revenue and other sources.

Senator Dyson clarified that if the amendment is adopted Co-Chair Wilken is requesting a graph demonstrating when the data on population and inflation would be available. Senator Dyson expressed the execution of this spending limit should be based on the needs of Alaska, and that spending limits should serve as guidelines rather than determining public policy. He also stressed that available revenue should not determine the "upper limits" of the budget.

Mr. Tangeman clarified that the information utilized for calculations would be "compiled by a federal agency during the second and third calendar years preceding the calendar year during which the immediately preceding fiscal year began." Therefore, he concluded that the appropriation limit for FY 05 would be determined using population and inflation data from FY 01 and FY 02. He stated that the data would be finalized rather than estimated.

Co-Chair Green indicated she would share information compiled by

staff demonstrating that this amendment would clarify the provision.

Co-Chair Wilken understood this amendment would provide clarification.

Mr. Tangeman concurred.

Senator Hoffman noted the spending limit would be partially based on the capital appropriation of FY 05, pointing out that this appropriation would likely be significantly less than the average \$100 million general funds appropriated in previous years. He predicted this would create a scenario in which would not allow expenditure of available funds. He asked if capital expenditures would qualify as extraordinary circumstances and if not, how such appropriations would be made.

Senator Bunde responded this resolution would implement "sideboards" to provide guidance. He hoped that future legislators would view this as such, but remarked that past experience has demonstrated that the spending limit would be the base. He pointed out that the price of oil is currently high and that \$200 million would not need to be transferred from the Constitutional Budget Reserve Fund to balance the budget. However, he noted that others consider the \$200 million to be new revenue that could be appropriated to fund education.

Co-Chair Wilken withdrew his objection and Amendment #10 was ADOPTED.

Senator Dyson indicated that a new committee substitute would be drafted to reflect the changes in the amendments adopted at this hearing.

Co-Chair Wilken recalled that Senator Bert Stedman had prepared a sensitivity analysis on the original resolution showing the impacts from population and inflation changes. He suggested requesting Senator Stedman conduct a similar analysis on this amended version.

Co-Chair Wilken asked if comparison of this resolution and the proposal under consideration by the House of Representatives has been done.

Ms. Frasca replied the Office of Management and Budget is preparing to do this. Mr. Gorman

Senator Dyson informed that although the House of Representatives is considering a spending limit proposal, the Senate is further

into the process and that Representatives are observing the Senate process.

Co-Chair Wilken expressed an interest in how bond-rating agencies such as Standard and Poor would view the impact of a constitutional spending limit.

Co-Chair Wilken ordered the bill HELD in Committee.

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ADJOURNMENT

Co-Chair Gary Wilken adjourned the meeting at 10:28 AM