MINUTES
SENATE FINANCE COMMITTEE
April 05, 2004
9:04 AM

TAPES

SFC-04 # 69, Side A
SFC 04 # 69, Side B
SFC 04 # 70, Side A

CALL TO ORDER

Co-Chair Gary Wilken convened the meeting at approximately 9:04 AM.

PRESENT

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

Also Attending: JOEL GILBERTSON, Commissioner, Department of Health and Social Services; DORIS ROBBINS, Volunteer, Juneau Clean Air and Tobacco Free Kids; CHERYL FRESCA, Director, Office of Management and Budget, Office of the Governor; BRUCE TANGEMAN, Fiscal Analyst, Legislative Finance Division; LUCKY SCHULTZ, Staff to Senator Fred Dyson

Attending via Teleconference: From an Offnet Sites: JOHANNA BALES, Program Manager, Cigarette and Tobacco Excise Tax, Department of Revenue; JENNFIER APP, Advocacy Director, American Heart Association; From Fairbanks: RUTHAMAE KARR, Chair, Alaska Tobacco Control Alliance; From Anchorage: PAT LUBY, AARP Alaska; MICHELLE TOOHEY, Director of Public Advocacy, American Lung Association of Alaska; EMILY NENON, Alaska Advocacy Manager, American Cancer Society; PATRICIA SENNER, Family Nurse Practitioner; JOELLE HALL, Parent; KATTARYNA STILES, Representative, Alaska Native Health Board

SUMMARY INFORMATION

SB 368-TOBACCO TAX; LICENSING; PENALTIES

The Committee heard from the Department of Health and Social Services, the Department of Revenue, and took public testimony. The bill was held in Committee.

SJR 3-CONST AM: APPROPRIATION/SPENDING LIMIT

The Committee heard from the bill's sponsor, the Office of Management and Budget, the Division of Legislative Finance, adopted two conceptual amendments, and reported the bill from Committee.

SB 351-APOC REPORTS BY NONELECTRONIC MEANS

This bill was scheduled but not heard.

HB 357-RESTITUTION

This bill was scheduled but not heard.

HB 513-CSED NAME CHANGE/DRIVER'S LIC.SUSPENSION

This bill was scheduled but not heard.

#sb368

SENATE BILL NO. 368
"An Act relating to taxes on cigarettes and tobacco products; relating to tax stamps on cigarettes; relating to forfeiture of cigarettes and of property used in the manufacture, transportation, or sale of unstamped cigarettes; relating to licenses and licensees under the Cigarette Tax Act; and providing for an effective date."

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

Co-Chair Wilken informed the Committee that this legislation would increase the cigarette tax from the current one-dollar per 20-cigarette pack to two dollars per pack and would increase the

Other Tobacco Products tax from 75-percent to 100-percent of the wholesale cost. Furthermore, he specified that the legislation would allow the Department of Public Safety "to seize and dispose of assets used in cigarette smuggling and tax evasion activities." Co-Chair Wilken identified the bill version before the Committee as SB 368, Version 23-GS2116\A.

JOEL GILBERTSON, Commissioner, Department of Health and Social Services, stated that this legislation would increase the cigarette tax from one dollar to two dollars per pack. He explained that this legislation is being introduced "because tobacco is the number one public health threat" for the State in that it is the State's "leading cause of death, disability and chronic illness."

Commissioner Gilbertson avowed that increasing the tax levy would continue to produce health benefits to Alaskans, as he noted, that since 1997 when the current one dollar tax went into effect, tobacco consumption in the State has declined 30-percent. He informed that increasing this user tax would have the most dramatic impact on young Alaskans, as increasing the unit price on tobacco "is one of the most effective ways of preventing that population from ever beginning a lifelong addiction to smoking." He stated therefore that a substantial increase in the tax would insure that Alaskans, particularly young Alaskans, with limited resources would choose a more healthy avenue in which to spend their money.

Commissioner Gilbertson declared that anti-smoking efforts have been successful, as, he disclosed that statistics developed from a recent youth behavior survey [copy not provided] indicate that there has been a 50-percent decline in tobacco use in young people. He declared that increasing the tax, as proposed in this bill, would continue that trend.

Commissioner Gilbertson remarked that the State's tobacco enforcement efforts have successfully lowered the number of underage Alaskans illegally purchasing tobacco products in retail establishments from 30.2 percent to ten percent in the last year. This action, he shared, has brought the State into compliance with federal mandates. He asserted that were tobacco use to further decline by 15 percent as result of the proposed tax, "1,800 lives would be saved from premature death due to smoking."

Commissioner Gilbertson declared that, in addition to lowering tobacco use in young Alaskans, the increased tax would be an effective tool in changing behavioral patterns and improving the health of adults in the State. He estimated that a tax increase "would be the direct catalyst" in encouraging 3,500 Alaskan adults to stop smoking, which he shared would save approximately 800 lives. He noted that in conjunction with other entities, the Department provides opportunities for people to participate in tobacco cessation programs.

Commissioner Gilbertson pointed out that included in the number of individuals who would cease to smoke would be expectant mothers. He stated that this would equate to assisting 850 babies from maternal tobacco exposure within the next five years.

Commissioner Gilbertson reported that the Alaskan group having the highest number of smokers, 44-percent verses the norm of 22-percent, is Alaska Natives. He commented that while the number of Alaska Natives who smoke continues, "to be disproportionately higher" than other groups, there has been a decrease in the number smoking since the one-dollar tobacco tax was implemented. He additionally noted that Alaska Native high school youth are four times more likely to smoke that the general youth population.

Commissioner Gilbertson informed that the Campaign for Tobacco Free Kids compiled an analysis of health costs that indicates that an increased tobacco tax would assist in reducing smoking related health expenses by $1.6 million over the next five years as a result of fewer smoking related heart attacks and $1.8 million would be saved from expenses associated with stokes. He shared that information garnered from a [unspecified] 1998 comprehensive study denoted that smoking related medical expenses amounted to $133 million in the State with $137 million in lost productivity due to tobacco related deaths. Additional expenses, he shared, were incurred by smoking related work absences and such things as smoking breaks. He stated that smoking related expenses have an "unfortunate" and "huge economic impact on this State."

Commissioner Gilbertson stated that "17 large econometric studies" have been utilized by the Department in order to determine how pricing would affect the consumption of tobacco products. He shared that all 17 studies reflect that there is "a direct correlation between increase in tobacco price and a decline in smoking." He stated that he would provide the Committee with a copy of a recently completed Department's Division of Public Health report titled "Tobacco in the Great Land: A Portrait of Alaska's Leading Cause of Death" [copy not provided] which substantiates the Department's position that "tobacco is the number one public health threat facing the State" as it is, he reiterated, the leading cause of death, disability and chronic illness in the State. He concluded that increasing the tobacco tax by one dollar per pack would be a "prudent" thing to do, as it would prevent people from starting to smoke and would assist in getting other to stop.

JOHANNA BALES, Program Manager, Cigarette and Tobacco Products Excise Tax, Department of Revenue, testified via teleconference from an offnet site and presented a technical overview of the legislation in that it, in addition to increasing the current cigarette tax from one dollar per pack to two dollars, would increase the Other Tobacco Products tax from 75 percent to 100 percent of the wholesale cost. She informed that New Jersey currently has the highest cigarette tax in the nation at $2.05 per pack, and that Rhode Island would soon implement a $2.45 cent per pack tax. In addition, she communicated that the state of Washington has the highest Other Tobacco Products tax at 129 percent of the wholesale cost.

Ms. Bales noted that other provisions in the bill would increase the annual direct buying retail license fee from $25 to $50 in order to align these license fees with those currently paid by distributors, as, she contended, these two entities more often than not, "operate in the same business." She also noted that the bill includes technical corrections that would eliminate the double-taxation issue that might arise were in-State dealers to purchase from out-of-state dealers who are licensed by the State.

Ms. Bales continued that the bill would also allow distributors dealing with recent manufacturers' returned goods policy changes to possess unstamped cigarettes and it would also provide them with credits for stamped cigarettes sold out-of-State. She clarified, however, that the distributor must prove they "are properly licensed in the other state where the cigarettes were sold" before the credit would be issued.

Ms. Bales noted that, as reviewed by Commissioner Gilbertson, the seizure section in the bill would allow the State to seize assets that are in violation of the State's cigarette stamp tax laws. She stated that this enforcement tool would assist in promoting compliance.

Ms. Bales noted that the bill also includes "a floor stock tax provision" which would require all entities selling cigarettes in the State to conduct an inventory upon the enactment of the new tax, and remit the difference between the old and new stamp tax rate to the State within 30 days. She informed the Members that approximately 200-million cigarettes were stockpiled, primarily by retailers and distributors, prior to the State's last cigarette tax increase. She estimated that scenario to have resulted in approximately $7 million dollars in lost revenue to the State. She also noted that the State received numerous consumer complaints stating that they were charged the new tax rate on the first day it was enacted, "when in fact, none of the distributors or retailers had actually paid that increase."

Ms. Bales shared that the federal government and other states commonly institute similar floor stock taxes.

Co-Chair Wilken noted that Ms. Bales' written testimony [copy provided] is in the Members' packets.

Senator Bunde asked the Departments' positions on including tobacco products such as smokeless tobacco in this bill.

Ms. Bales reminded that the tax on Other Tobacco Products was increased in 1997 from 25 percent to 75 percent of the wholesale cost. She noted that this bill would increase that level to 100 percent. However, she continued, when the Department conducted a study specifically addressing chewing tobacco products such as Copenhagen, for the Department of Health and Social Services, it was determined that despite the tax increase implemented in 1997, there has been "a fairly significant increase in the use of that product in the State." One of the problems, she pointed out, is that, currently, Other Tobacco Products are not subject to tax if an individual imports that product for personal consumption. She stated that, even with the tax increase as proposed in this legislation, individuals purchasing and importing other tobacco products into the State through such avenues as the Internet or other out-of-State purchases "would not be subject to any of the tax, period."

Senator Bunde ascertained that this is good reason to include those who import for personal consumption into this bill, as he contended, not including them "would drive business out of Alaska and puts retailers at a disadvantage."

Ms. Bales stated that the Department of Revenue would support Senator Bunde's suggestion for two reasons: one, it would support local business; and two, an increase in price might curtail use of the product.

Senator Dyson understood that "the demonstrable health risks" of non-smoked products "are significantly less" than the risks associated with those that are inhaled.

Commissioner Gilbertson responded that, "it would be correct to say that the health risks are not identical"; however, he stated that, "the Department would not support a statement that the health risks are so reduced as to be one that is diminished." He shared that the Department could provide material attesting to the health risks associated with both smokeless and smoked tobacco products.

Senator Dyson agreed; however, he commented that smokeless products pose "no risk to others from secondhand smoke and no risk to a fetus from oxygen deprivation that happens with a smoking mother." In addition to stating that its addiction rate might be similar to that of cigarettes, he acknowledged that chewing tobacco products does incur such things as gum and throat cancer. However, he continued, its contribution to lung cancer is minimal.

Senator Dyson asked how the legislation would affect those who roll their own product from loose tobacco. He also noted that a Surgeon General report, issued approximately 15 years earlier, stated that pipe tobacco health risks are significantly less than manufactured cigarettes. He pointed out that not all tobacco products have the same cost impact and health risk and, therefore, he attested they should not be treated the same.

Commissioner Gilbertson declared that, "varying tobacco products have varying risks." He reiterated that the Department could provide scientific study information to the Members. He noted that, while he was unfamiliar with the pipe tobacco research referred to, studies support the position that all tobacco products "carry some health risks." Furthermore, he voiced that the Department views all those health risks as negative health risks, of which the State should discourage.

Senator Dyson asked whether the aforementioned impacts of the tobacco tax increase on such things as mortality rates, were annual projections.

Commissioner Gilbertson clarified that the aforementioned results would be the accumulative affect of this tax increase.

Senator Dyson asked whether information could be provided regarding annual death rates and usage effects of the tax.

Commissioner Gilbertson replied that the most noticeable long-term health benefit that would result from the tax increase would be a reduction in the number of young Alaskans who would choose not to smoke. He informed the Committee that the majority of long-term tobacco addicts partake of their first tobacco product before the age of 18.

Senator Dyson voiced that there is public discontentment regarding how the money raised from this tax has been allocated, as there is general perception that it should be used to promote cessation and prevention programs. He asked for a recap of how the current tobacco tax revenue is allocated; specifically the amount spent on cessation and prevention programs, and whether this legislation would alter the current scenario.

Commissioner Gilbertson stated that this legislation would not dedicate its revenues for tobacco control programs. Continuing, he informed that the Department, individually and in conjunction with the Tobacco Control Alliance partners, manages a tobacco control program. Furthermore, he explained that the majority of the monetary support for these programs is supported by Tobacco Master Settlement money with additional funding generated from licensure fees. He noted that approximately $5 million would be spent on these programs in FY 05.

Ms. Bales disclosed that currently 76-percent of the revenue generated from the tobacco tax is distributed to the State's School Fund and 24 percent is deposited into the general fund. She explained that increasing the per pack tobacco tax from one dollar to two dollars would generate double the revenue; and, she attested that even though this legislation would reduce the percentage allocation for the School Fund to 38 percent, the money generated would remain constant. Continuing, she stated that the amount allocated to the general fund would increase to 62 percent.

Ms. Bales noted that 100 percent of the revenue generated from the tax on Other Tobacco Products is currently, and would continue to be, deposited into the general fund.

Ms. Bales clarified that there is no language in the Master Tobacco Settlement agreement specifying that it be used to fund such things as tobacco cessation and education programs. She voiced the understanding that the money could be used to reimburse the State's general fund for such things as Medicaid expenses. She concluded that it is the Legislature's decision as to how to spend that money.

Senator Olson asked for assurance that language in the bill pertaining to the seizure of assets as specified on page five, line three and page six, line eight would not jeopardize such things as aircraft and vehicles owned by common carriers who might unknowingly transport cigarettes.

Ms. Bales understood that the forfeiture provisions which were drafted by the Department of Law, would provide "innocent person relief" in the case that their property were unknowingly used by a cigarette tax violator. She assured that provisions are also included to address situations, for example, in a village wherein "a family's sole source of transportation would be protected from seizure."

Ms. Bales reminded that violations of the tobacco tax would not apply to personal cigarette consumption.

Senator Olson asked regarding the scenario in which a common carrier who, as a means of business, transports cigarettes.

Ms. Bales clarified that a violation would not occur unless the common carrier knowingly transported illegal cigarettes. She noted that she would confirm this interpretation of the language with the Department of Law.

Co-Chair Wilken asked Ms. Bales to review comments included in an April 4, 2004 letter [copy on file] he had received from wholesale distributor, Mike Elerding of Northern Sales, as well as two proposed amendments that pertain to comments in that letter.

Ms. Bales stated that she would review that information and provide a response at the next hearing on this bill.

Senator Hoffman asked whether a portion of the revenue generated from this tax increase would be used to support anti-smoking advertising campaigns.

Commissioner Gilbertson responded that this bill specifies that the revenue generated by this legislation would be deposited into the general fund. He reiterated that the Department operates a tobacco cessation and education program in conjunction with the Tobacco Alliance.

Senator Hoffman reminded that the previous tobacco tax legislation required funds to be spent on anti-smoking advertisements, and he attested that that effort was responsible for a downturn in cigarette consumption. Therefore, he questioned the reason that a similar effort is not included in this legislation.

Commissioner Gilbertson replied that a price increase is a "tremendous deterrent" in that studies indicate that for every ten percent price increase in the cost of a cigarette product, there is a corresponding three-point-seven (3.7) percent decrease in consumption. He concurred that the media campaign was successful and would continue to be effective in reducing general tobacco consumption; however, he stated that this legislation does not allocate funds toward that effort. He stated that the Governor could propose and the Legislature could fund those efforts.

Senator Hoffman, referring to the high number of Native smokers, asked what efforts would be exerted to reduce tobacco usage in this group.

Commissioner Gilbertson responded that while there is a large variety of health disparities in this State, the disparity between cigarette consumption between Native and non-Native populations is an important issue. He specified that the Tobacco Control program has dedicated funds to target tobacco usage in Natives via outreach efforts in conjunction with such groups as the Alaska Native Tribal Health Consortium. Furthermore, he stated, the Native Health Board, the Alaska Native Tribal Health Consortium and other public health consortiums have been supportive of this legislation and have agreed that increasing the cost of tobacco products would be an effective public health tool. He also noted that they have testified in support of this legislation. He declared that while stronger efforts could be exerted, efforts have been made in this regard.

Senator Hoffman understood therefore that this legislation does not contain specific measures to address the Native tobacco use issue.

Co-Chair Green communicated that dedicated funds should not be an issue "at this table." On another note, she asked regarding the success of "sting operation" efforts in urban and rural areas.

Commissioner Gilbertson stated that tobacco enforcement efforts have been successful throughout the State. He explained that each state receives federal alcohol and mental health block grant funds, the amount of which is contingent on the State's successful implementation of a tobacco enforcement program. He defined success "as a lower than 20 percent sales rate to underage minors who attempt to purchase tobacco products." Were this level of enforcement not obtained, he continued, the State could loose up to 40-percent of its block grant funding. He shared that the State has been non-compliant for last five years in that its compliant rate has exceeded 30 percent per year. He stated that this is unacceptably high and that as a result the State has had to dedicate funds in the form of a cumulative penalty, reaching approximately one million dollars in recent years, so as not to loose the block grants in their entirety. In the meantime, he communicated, the Department has worked with retailers and others to raise awareness, improve training, and improve enforcement efforts in this regard. He noted that, as a result of these efforts, the illegal sales rate has recently declined to ten percent.

Senator Olson noted that the graph titled "Cigarette Importations FY 1996 - FY 2002 and Cigarette Stockpiling in FY 1998" [copy on file] reflects a dramatic decease in 1997 when the cigarette tax was increased to one dollar per pack. However, he noted that since 1997, the volume of cigarettes being purchased has continued to increase. He questioned whether the slope of the increase would indicate that over time, any positive impact of the proposed two-dollar a pack tax would diminish.

Commissioner Gilbertson responded that he could not adequately provide a statistical answer; however, he noted that while the number of cigarettes being imported into the State is increasing, overall it is a minor issue as 95 percent of the tobacco products consumed in the State are bought through local licensed retailers in the State.

DORIS ROBBINS, Volunteer, Juneau Clean Air and Alaskans for Tobacco Free Kids, noted that the Governor has requested that 20 percent of the Master Tobacco Settlement fund be spent on education and cessation efforts in FY 05. On behalf of the organizations she represents, she voiced support for the proposed tobacco tax increase, as, she declared, it would assist in stopping a large number of people, primarily youth, from smoking. Were the legislation passed, she approximated that 9,100 kids would not start smoking. She stated that the majority of smokers begin to smoke when they were children, and she continued, were the price to deter youth from smoking, it would serve to reduce the number of "next generation smokers." She stated that other benefits would include a reduction in smoking affected births; would save lives of numerous adults who currently smoke; and would result in lowering long term medical expenses. She noted that in order to adequately cover today's medical expenses, the tax level should be $6.38 per pack, as she shared that $60 million is required annually by Medicaid to provide for tobacco related illness care. She stated that efforts are being developed to educate children at an early age of the health dangers associated with tobacco use. She also stated that it is "a myth" that crewing tobacco would not affect a baby. She recounted Doctor Robert Urata's testimony to a House of Representatives committee in which he declared that tobacco products are "so poisonous" that were they would fail to receive federal Food and Drug Administration approval were they to apply for authorization today. She stated that 82 percent of Alaskan voters are very concerned about the use of tobacco products by young people. She urged the Committee to pass this legislation and also consider supporting the Governor's proposal to spend 20 percent of the Tobacco Settlement money on tobacco education programs. In summary, she noted that the state of Mississippi spends more on tobacco prevention that the State of Alaska does.

JENNFIER APP, Advocacy Director, American Heart Association, testified via teleconference from an offnet site, and shared that the American Heart Association's mission is to reduce disabilities, cardiovascular disease and stokes. She reiterated that tobacco use is the number one preventable cause of death in the State, and she stated that it is also the number one preventable cause of cardiovascular disease in the State. She stated that the Association is in "very strong support" of an increase in the tobacco tax because, she attested, as the price increases, more adults attempt to quit.

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Ms. App continued that most smokers begin smoking between the ages of ten and twenty, and she noted that the average smoker in Alaska began at the age of 14.5 years. She attested that "this is also the age group that is most sensitive to price increases." Therefore, she stated that this price increase would result, over the long-term, in a decline in smokers in the State. Furthermore, she attested that the tax would also assist in reducing the approximate $130 million a year the State spends on direct costs associated with smoking, including approximately $60 million the State pays in support of the Medicaid program. She affirmed that Alaskan businesses are losing approximately $130 million annually in lost productivity related to smoking. She calculated that to cover these expenses, the tax should be $6.38 per pack; therefore, she concluded that even with the implementation of a two-dollar per pack tax, the State would continue "to be subsidizing these costs." However, she stressed that the proposed tax would be an improvement over the current situation and would result "in a win/win situation" as it would assist in saving lives by deterring youth from smoking and the State would also save money through the reduction of smoking related expenses.

RUTHAMAE KARR, Chair, Alaska Tobacco Control Alliance (ATCA), testified via teleconference from Fairbanks and shared that while more funding would be appreciated, the ATCA has experienced success in the State in its efforts, via a good media campaign, to publicize the negative affects of smoking such as second hand smoke. She affirmed that Alaska is ranked "very high" in its number of tobacco users, and she voiced additional concern that even with the educational efforts, smokeless tobacco rates are increasing because people believe smokeless alternatives are safer than cigarettes. She agreed that an increase in the Other Tobacco Products prices would also result in a decrease in young smoker use and would assist people's efforts to quit smoking. She also stated that this would result in a win/win situation, as it would assist the State in reducing smoking related health expenses and increase revenues for the State. She expressed support for the legislation.

PAT LUBY, AARP Alaska, testified via teleconference from Anchorage and stated that this legislation is favored by AARP. He shared that research supports the position that a higher tax would assist in curbing youth from smoking and would encourage existing smokers to stop. He shared that grandparents love, support, and enjoy their grandchildren and are saddened to see them smoke. Therefore, he stressed that any program that would assist in preventing kids from smoking would be supported by AARP. He voiced concern regarding the information in the Governor's transmittal letter that denotes that Alaska Natives, and particularly Alaska Native youth, are smoking in numbers higher than the State's norm, and he urged that some of the anticipated revenue from this tax be used to address this issue. He shared that a recent Medicare Trustees annual report stated that the State's health care costs rose "significantly beyond expectations," primarily as a result of smoking related illnesses. Therefore, he surmised, that were fewer kids to smoke, the long-term affect on lowering Medicare and Medicaid expenses "would be significant." He stated that this legislation is both "good economic policy and good health policy, it makes sense and it's fair." On behalf of AARP, he urged passage of the bill.

Co-Chair Wilken noted that the April 4, 2004 letter [copy on file] from AARP is included in Members' packets.

MICHELLE TOOHEY, Director of Public Advocacy, American Lung Association of Alaska, testified via teleconference from Anchorage and addressed Ms. Bales' comments regarding the Tobacco Master Settlement Agreement (MSA) by stating that "it is true" that the agreement does not require that money be allocated toward tobacco prevention "because Attorneys General have no power of appropriation; however, there was absolutely an intent in the settlement for these dollars to go to programs to prevent kids from smoking and to help adults quit." Furthermore, she attested that "this commitment was stated publicly when Alaska settled, in fact, Alaska's Attorney General was successful in negotiating an extra $200 million for our State in consideration of the vastness of Alaska and the logistic complications associated with administering tobacco prevention programs in Rural Alaska. Further, in 2001, the Legislature created the Tobacco Use Education and Cessation Fund to set aside the remaining non-securitized 20-percent of the MSA funds to provide a source to finance comprehensive smoking education, tobacco use prevention, and tobacco control programs." Therefore, she concluded that while the agreement does not specify a requirement to fund prevention programs, "public commitment has been made from the beginning to use these funds in this manner."

Senator Hoffman commented that while there might have been "public commitment to spend those dollars," the Commissioner of the Department of Health and Social Services has communicated that, "there are no additional dollars in the budget for that effort." Continuing, he calculated that 20-percent of $40 million would amount to $8 million in additional funding that should be specified for cessation efforts.

EMILY NENON, Alaska Advocacy Manager, American Cancer Society, testified via teleconference from Anchorage that the American Cancer Society (ACS) "recognizes tobacco taxes as one of the most effective ways to reduce youth smoking and save lives." She stressed that both State and national studies support this claim. She stated that the mission of ACS "is to eliminate cancer as the major health problem by preventing cancers, saving lives, and diminishing suffering from cancer." She noted that cancer is the second leading cause of death for Alaskans and the leading cause of death for Alaska Natives, and she attested that one-third of all cancers are tobacco related. She affirmed that the majority of tobacco users become addicted as children. Therefore, she supported testimony that increased taxes would discourage youth from smoking. She stressed that this bill is unique in that, in addition to having a tremendous health impact, it has large public support throughout the State. She urged the Committee to support this bill.

PATRICIA SENNER, Family Nurse Practitioner, testified via teleconference from Anchorage in support of increasing the tobacco tax in order to discourage youth from smoking. She agreed with Senator Hoffman's comments that money be specified for an anti-smoking advertising campaign as she attested that a "two-pronged approach" must be taken to address the issue. Furthermore, she informed that Committee that one of the most common requests she experiences when working with homeless youth is the request for assistance in stopping smoking. She noted that Medicaid does not provide funding to assist people with such cessation aides as nicotine patches. Therefore, she voiced that access to such things would be helpful in this endeavor. She also encouraged the Committee to address the illegal bootlegging and importation of tobacco products.

JOELLE HALL, Parent, testified via teleconference from Anchorage in support of the tax. She stressed that no one has more need for this bill than "our children." She charged that parents' role is to teach their children the dangers of smoking and that the Legislature's role is to promote legislation such as this tobacco tax increase in order to assist efforts to halting youth from smoking. She voiced that while she is glad to have smokers contribute via paying a tax toward the expenses incurred from tobacco related expenses, her primary reason for support was to discourage use. She urged the Committee to report the bill from Committee.

KATTARYNA STILES, Representative, Alaska Native Health Board, testified via teleconference from Anchorage in support of the bill, as she attested, it "would save lives by reducing and preventing tobacco use." Echoing Senator Hoffman's concerns, she stated that the high percent of Native youth who smoke is unacceptable. She stated that raising the price of tobacco products would assist in the endeavor of discouraging youth to smoke. She noted Commissioner Gilbertson's comments that the tax would also alter smoking behaviors of adults. She stressed that efforts to discourage pregnant women from smoking would be important, as she noted that in western Alaska, there is an "unacceptable" smoking rate of up to 67-percent among pregnant women. She stated that by using Tobacco Master Settlement Agreement Funds, grants, and other funds, a multitude of agencies are working together to educate Native Alaskans to the dangers of smoking. She stated that adoption of this legislation would only increase the success of the efforts that are currently in place to prevent use of tobacco in Native Youth.

Senator Hoffman asked whether the Alaska Native Health Board could utilize additional dollars to assist in prevention efforts.

Ms. Stiles replied in the affirmative; however, she clarified that the purpose of her testimony today is to support this bill, "not for the money, its because the goal of the tobacco tax itself is to prevent use."

Senator Bunde questioned whether any polls have been conducted to gauge public support for this tobacco tax; and if so, he asked whether a one-dollar or a $1.50 tax increase was preferred.

Ms. Nenon responded that the American Cancer Society conducted a poll with the result being equal support for either a $1.00 or $1.50 increase.

Senator Bunde asked the level of support favoring an increase.

Ms. Nenon relied that 67-percent of those polled supported a tax increase.

Senator Bunde reiterated that an amendment should be considered to incorporate all tobacco products into the bill.

Co-Chair Wilken suggested that Senator Bunde develop an amendment and present it at the bill's next Committee hearing.

There being no further testimony, Co-Chair Wilken ordered the bill HELD in Committee.

AT EASE 10:14 AM / 10:16 AM

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

Co-Chair Wilken specified that this legislation would implement a Constitutional spending limit.

Senator Dyson moved to adopt the committee substitute, Version 23-LS0296\Z as the working document.

Senator Hoffman asked for confirmation that the Version "Z" committee substitute encompasses previously adopted amendments.

Senator Dyson responded affirmatively.

There being no objection, the Version "Z" committee substitute was adopted as the working document.

Senator Dyson, the bill's sponsor, noted that the Administration has explained that due to four years of "budget restraints," there is "an artificial distortion in the application of the formula in the out years." Therefore, he continued, the Administration had requested that the base years' numbers be adjusted "in order to make the formulas smooth and work for the expected and reasonable expansion of the budget." He attested that this had been done. Subsequent to that, he continued, the adoption of Amendment #12 at the previous meeting, "distorted how the formula works" in that it exempted all University receipts from the appropriations calculation.

CHERYL FRASCA, Director, Office of Management and Budget, Office of the Governor, noted that the action of "amending out the University of Alaska's receipts had the affect of removing" $150 million of spending from the total amounts available for appropriation for FY 04 and FY 05. Therefore, she recommended that $150 million be removed from the appropriation calculation formula base years of FY 2004 and FY 2005 as specified in Sec. 2, subsection Section 30 (1) and (2) on page three, lines 21 and 22 in Version "Z". She specified that this would reduce these numbers to $3,150,000,000 and $3,250,000,000, respectfully.

Ms. Frasca also noted that a grammatical correction should occur in Section 1, subsections Section 16 (1) on page one, lines 13 and 15, and Section 16 (2) on page two, line 3, in which the words "second" and "third" should be replaced with the word "two." This language currently 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 preceding the calendar year during which the immediately preceding fiscal year began compiled by a State department.

Co-Chair Green asked whether changing this language would have an affect on the calculation formula.

Ms. Frasca responded that it would not.

Amendment #13: As a result of exempting University of Alaska receipts from the appropriations calculation, this amendment reduces the total FY 04 and FY 05 appropriation amounts reflected on page three, lines 21 and 22 from $3,300,000,000 to $3,150,000,000 and from $3,400,000,000 to $3,250,000,000, respectfully.

Co-Chair Green moved for the adoption of Amendment #13 and objected for discussion.

Co-Chair Green asked for a review of the calculation formula from which the original FY 04 and FY 05 base year levels of $3,300,000,000 and $3,400,000,000 were derived.

BRUCE TANGEMAN, Fiscal Analyst, Legislative Finance Division, informed the Committee that these amounts were determined by reviewing the appropriation amounts for several years prior to FY 2004, as he informed, the FY 2004 and FY 2005 amounts were unavailable. He stated that the resulting calculation provided a base to which a growth factor was applied. Therefore, he concluded that the formula provided "a safe, fairly known calculation for what's going to happen in 06."

Co-Chair Green understood therefore, that this methodology provided a "floor" from which to determine future calculations.

Senator Dyson stated that Co-Chair Green's comment is correct. Continuing, he clarified that this legislation would establish a "floor on the spending limit, not on our spending."

LUCKY SCHULTZ, Staff to Senator Fred Dyson, noted that another consideration in the "adjusted base year" calculation was to determine an amount that would provide adequate growth, respectful of the funding reductions that occurred over the past several fiscal years and of how the "no ratchet down provision is written." He continued that were these adjustments not incorporated, the end result would have been a "no-growth limit" for the first several years after the legislation's enactment, which, he attested, would have resulted in a difficult situation under which to operate.

Co-Chair Green ascertained therefore, that, rather than incorporating two formulas, the calculation was adjusted to provide for FY 04 and FY 05.

Senator Dyson agreed and noted that this is addressed in the bill via the term "transition."

Senator Hoffman asked whether a chart has been provided to reflect the funding reductions proposed in this amendment.

Mr. Tangeman responded that a corresponding chart has not, of yet, been provided.

Senator Dyson pointed out that the slope of line would be the identical to that depicted in the CS SJR 3 chart [copy on file] except that the line would be positioned approximately $150 million lower on the graph. He noted that an updated chart would be provided.

Senator B. Stevens asked what constitutes the $150 million in University receipts.

Ms. Frasca responded that, originally, the University receipts category amounted to approximately $200 million. She reminded that earlier Committee action exempted the University's tuition revenue, amounting to approximately $50 million, from the calculation. Therefore, she stated, Amendment #12 served to exclude the remaining $150 million balance.

Senator Hoffman inquired whether inflation-proofing and population projections attributed to the decision to exempt University receipts from the calculation.

Ms. Frasca responded that she could not provide an answer, as rather than being an amendment proposed by the Administration, the amendment was proposed by a Committee member.

Co-Chair Green asked for confirmation that the University's previous years' receipt revenues had been excluded from the calculation used to determine the adjusted base year levels.

Mr. Tangeman assured that they had been.

Senator Dyson, responding to Senator Hoffman's question, characterized the University receipts being excluded as "enterprise activity" receipts generated from such things as ticket proceeds from hockey programs or book sales. He viewed these activities as having "no impact on the general fund," and furthermore, he stated, were the University's economic analysis to reflect that they should or could charge more for activities, the Legislature should not restrict them from doing so.

Co-Chair Green asked whether other State entities might request similar exemptions.

Ms. Frasca responded that no others had opted to make a request of this nature to the Administration. Furthermore, she stated that the Administration's "challenge" is to provide sufficient "general fund dollars to support core responsibilities of government." Continuing, she noted that several State programs, such as the Division of Motor Vehicles, generate receipts in excess of "what it costs to perform their functions." Therefore, she continued, it would be expected that were excess receipts generated by a program, that program would not be entitled to spending the excess funds as some contribution to core government services, such as the Department of Corrections which does not generate receipts, should be expected. She stated that a program's ability to generate revenues does not signify that the program has "first claim," to spending them. Therefore, she concluded that every program "should compete to the degree that's appropriate" for general fund dollars.

Co-Chair Green commented that general fund monies are annually distributed based on competing needs via the appropriation and priority process.

Ms. Frasca agreed and stated that a "scrutiny" process evolves from which a determination of expenditures is made. She noted that other legislation is pending that proposes to reclassify designated funds and deposit them into the general fund column.

Co-Chair Wilken reviewed the effects of the amendment on the amounts detailed in the FY 04 D-24 component, the FY 05 E-24 component, the FY 06 F-24 component, and the FY 07 G-24 component of the "SJR 3" chart [copy on file] that was provided by Legislative Finance.

Mr. Tangeman replied that the FY 04 D-24 component and the FY 05 E-24 component on the aforementioned chart would each be reduced $150 million, to $3,150,000,000 and $3,250,000,000, respectfully; the FY 06 F-24 component would be reduced to approximately $3,330,000,000; and the FY 07 G-24 component would change to an undetermined amount.

Co-Chair Green removed her objection.

There being no further objection, Amendment #13 was ADOPTED.

Conceptual Amendment #14: This amendment changes language in Section 1, subsections Section 16 (1) on page one, lines 13 and 15, and Section 16 (2) on page two, line three, in that the words "second" and "third" would be replaced with the word "two." This language would read 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 two 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 two 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 two calendar years preceding the calendar year during which the immediately preceding fiscal year began compiled by a State department.

Co-Chair Wilken moved to adopt Amendment #14.

There being no objection, Amendment #14 was ADOPTED.

Co-Chair Wilken asked for further information regarding the Fund Code language that is included as depicted in the handout titled "Fund Codes Included in Limit" [copy on file]; specifically whether the reference to such things as the Alaska Marine Highway (AMH), code 1076, would signify that an increase in the passenger fares or ridership would be subject to the spending limit.

Mr. Tangeman confirmed that they would be.

Co-Chair Wilken questioned the rationale for this provision.

Ms. Frasca theorized that an increase in AMH revenue as a result of increased fares or ridership might result in AMH requiring fewer general fund dollars as those monies would be deposited into the AMH fund to fund AMH operation expenses. She additionally noted that this legislation is a limit on spending as opposed to limiting fund sources.

Co-Chair Wilken asked whether the $91 million denoted for the International Airport Fund, Code 1027, is an enterprise fund comprised of such things as landing fees.

Ms. Frasca affirmed.

Co-Chair Wilken asked the rationale for its inclusion, as he likened it to "discretionary funding on behalf of the Legislature."

Ms. Frasca noted that the proceeds from bonds that were sold, and whose the debt service was paid by the International Airport Fund, are excluded in the Capital Budget. Continuing, she pointed out that the Fund Code list includes several fund sources that would continue into the future. Furthermore, she stated that the question is how much would they increase from one year to the next. She exampled that were a new terminal to open within the next four years and result in a significant increase in revenue, it might "cause some concern."

Co-Chair Wilken asked regarding the Alaska Aeronautical Development Corporation (AADC), Fund Code 1101, whose "budget is characterized by feast or famine" in that it might receive ten million dollars one year and zero the next.

Ms. Frasca responded that AADC funding primarily consists of federal receipts, which are exempt from the limit. She noted that revenue from such things as contracts with private firms for certain services would also be exempt.

Mr. Tangeman also noted that these fund sources reflect current funding conditions. He noted that were this legislation to be adopted, more in-depth analysis would be conducted on the components of each fund source as he exampled that included in the AADC Fund Code 1101 might be a combination of revenues such as private contract revenue.

Co-Chair Wilken asked whether the sale of State land, specifically Fund Code 1153, would count against the general fund spending limitation.

Ms. Frasca responded that currently it would. However, she noted that the proceeds from those sales would normally support functions within the Department of Natural Resources. Continuing she noted that general fund dollars have been supplanted with the State land proceeds. She reiterated that this legislation addresses how funds are spent rather than how funds are generated.

Ms. Frasca further noted that the International Airport Fund Code might consist of contractual relationship between the airlines and the airport, which she reiterated would be exempt from the limit.

Senator Dyson commented that this is an informative list as it "really is the delta between the numbers that we see and what we generally think of as general fund."

Co-Chair Wilken asked the identity of the Fund Cod 1180 A/D P&T Fd as listed on the list.

Ms. Frasca identified it as the Alcohol and Drug Prevention and Treatment Fund.

Co-Chair Wilken asked regarding Fund Code 1168 Tob ED/CES and Fund Code 1170 SBED RLF.

Ms. Frasca, Mr. Schultz, and Committee Members identified those Fund Codes as the Tobacco Education and Cessation Fund and the Small Business Economic Development Revolving Loan Fund.

Senator B. Stevens asked whether any Fund codes were excluded from the list.

Mr. Tangeman replied that the Fund codes not included in the list would be those of the university; those that are federally funded; trust funds; and approximately 15 dedicated fund codes.

Ms. Frasca stated that approximately 20 fund codes not are included.

Senator B. Stevens asked for confirmation that the fund code identified as 1179 PFC is the Permanent Fund Corporation.

Ms. Frasca replied that this Fund code pertains to the operation of the Corporation itself.

Senator B. Stevens asked for further information, such as whether this Code pertains to billable amounts or is the result of a formula distribution.

Ms. Frasca responded that it is based on the budget.

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Senator B. Stevens asked for specific information regarding how the amount was determined.

Ms. Frasca responded that in terms of the Corporation itself, the number is based on the budget approved by the Legislature. Continuing, she noted that this item might be related to management fees of the Permanent Fund. She noted that were a large amount being invested, "there is the potential for it to be extraordinary." This situation, she stated might require Legislative action.

Co-Chair Wilken stated that staff has informed him that rather than Fund Code 1179 pertaining to the Permanent Fund Corporation it pertains to Passenger Facility Charges.

Mr. Tangeman concurred that Fund Code 1179 is, in fact, Passenger Facility Charges [PFC] and that Fund Codes 1041 and

1105, which are not included on the list, pertain to the Permanent Fund Corporation.

Senator B. Stevens asked whether the Passenger Facility Charges Fund Code is a component of the Alaska Marine Highway System or the Department of Transportation and Public Facilities.

TRACI CARPENTER, Staff to Senator Green, responded that the Passenger Facility Charges are airport fees.

Senator B. Stevens questioned therefore, whether the inclusion of this Fund in the Appropriation Limit would negatively affect the spending limit were an increase in international or tourism travel to occur as a result "of success in a non-government entity."

Ms. Frasca responded that that could occur.

Senator B. Stevens asked, therefore, that the PFC component's inclusion in the Limit be further reviewed. Continuing, he asked whether "encouraging non-government enterprise to utilize renewable resources," such as the Timber Receipts Fund Code 1155, for example, could have the same result as the PFC component.

Mr. Tangeman concurred that it would.

Senator B. Stevens voiced the understanding that this legislation is a limit on spending as opposed to a limit on revenue. However, he voiced concern regarding the process were an increase in revenue to occur. He asked for verification that the revenues generated from various Fund Codes would be deposited into the general fund.

Ms. Frasca responded that while the revenue would be deposited into the general fund, it would be allocated to these designated Receipt Funds, which have been established by the Legislature.

Senator B. Stevens surmised therefore that these Fund Source Codes are established to fund such things as the Department of Natural Resources "or some other mechanism."

Ms. Frasca affirmed. She stressed that the challenge is how to place a limit on how much the State could spend regardless of where the funds generated. She attested that "this is the spending side of the equation."

Senator Dyson reminded that, in the State's "foreseeable future," what would be diminished were a spending limit in place, would be the amount spent from the Constitutional Budget Reserve (CBR). Continuing, he stated that rather than "limiting new business and new enterprises and growth" in the future this legislation would limit the amount of money that the State would have "to borrow … while significantly increasing our financial stability and our wealth."

Co-Chair Wilken asked, for clarification, whether an "available annual growth" increase of one million dollars from the FY 05 level of $12.4 million to an FY 06 level of $13.4 million in Fund Code 1179 PFC would decrease the overall FY 06 amount available for appropriation by the same amount.

Mr. Tangeman responded that this scenario might not be accurate as he noted that while the FY 05 base is $3.25 billion, it does not mean that the entire amount would be appropriated. He stated that were the actual appropriation to be less and were the FY 06 appropriation to be to the limit, then the affect would be an increase above the FY 05 limit of $86 million. He reminded that the FY 06 amount is based on estimates for FY 04 and FY 05. Therefore, he declared that the FY 06 number would be affected by how much was actually appropriated in FY 04 and FY 05.

Co-Chair Wilken advanced, therefore, to the FY 09 fiscal year limit specified on the aforementioned CS SJR 3 chart, and noted that the information depicts that $95 million would be available in FY 09. Continuing, he asked whether a one million dollar increase in the PFD Fund Code in FY 09 would serve to reduce the $95 million to $94 million.

Mr. Tangeman asked that the question be further clarified.

Co-Chair Wilken clarified that it has been experienced in the past, that when the State received a grant or when the State "increased the cost of providing government service directly to the provider," a problem arose in "that that counted as State spending" with the result being that the State was required to reduce State spending "somewhere else in the budget an equal amount." Therefore, he restated his question by asking whether a one million dollar increase in the PFC Fund would require a one million dollar reduction somewhere else in the budget such as in K-12 education.

Mr. Tangeman responded that were the State's spending to be at the appropriation limit, yes.

Co-Chair Wilken understood, therefore, that were any of the Fund Code components that are included in the Limit to increase, a dollar for dollar decrease in the amount available to spend in that fiscal year would be required.

Ms. Frasca responded that the assumption is that were another dollar raised, another dollar could be spent by a program. However, she continued, "the challenge is to say that these activities don't necessarily have first claim on every dollar that they bring in. It could be that they also have a general fund subsidy that is supporting the program." Therefore, she stated, that general fund subsidy dollar could be replaced with the excess money raised by the Fund, and the general fund subsidy could be used, for instance, to support another program such as K-12 education. That, she attested, is the balance that could be applied.

Senator Hoffman stated, "therein lies the problem," as he exampled that were a Legislature's majority party to not support a certain department's budget, rather than supporting one of the department's program with excess money the aforementioned scenario might produce, whatever is determined by the majority "to be a priority area" would be the area that would receive that additional funding. This he declared "is a key problem."

Senator Dyson reiterated that for the four-years this legislation would be in effect, the money that would be reduced is the money that would be withdrawn from the CBR, and in addition, he stressed, State debt would be reduced. He declared that both he and Senator B. Stevens desire that the money that has been withdrawn from the CBR should be repaid in order "to rebuild that bridge to the future, and be promise keepers." He stressed that "the focus" should be that any additional revenues from these Fund Code sources should "be going to build fiscal stability, reduce our borrowing, and repay our Rainy Day accounts. " He declared that, "this is very, very important to a State that depends so much on the sale of natural resources that are sold on a world commodity market."

Senator Bunde announced that this legislation "would not result in a problem that does not already exist," as a Legislative majority could increase or "attempt to control spending" regardless of whether a spending limit were in effect. He stated that were the CBR unavailable then more control might be exerted, based on "philosophical points of view."

Senator Hoffman responded that "therein lays the argument for having a spending limit."

Senator Hoffman asked how a one-time emergency or extraordinary circumstance would be addressed were this legislation enacted, as he remarked that it is unclear whether the appropriation language pertaining to emergencies and extraordinary circumstances, as identified in Section 16, subsection (2)(d) and (e) located on page two, line 27 through page three, line five, would be considered a component of the base.

Mr. Shultz pointed out that language in Section 16, on page one, lines six through ten "is meant to indicate" that emergencies and extraordinary circumstances would be exempt from the establishment of a base, and that the base would be the amount appropriated the previous year.

Senator Hoffman asked whether "the substantial changes" being made this year to the education budget to address the Public Employees Retirement System (PERS) /Teachers Retirement System (TRS) and the student base foundation funding formula would be considered a component of the base or would, on an annual basis, be addressed as an extraordinary circumstance.

Mr. Shultz responded that were the expenditure to exceed the appropriation limit, then it would be required to be considered as an extraordinary circumstance.

Co-Chair Wilken referred to the aforementioned chart and asked whether an approximate $50 million dollar PERS/TRS obligation is included in the FY 06 appropriation limit of approximately $86 million, as identified in Cell (f) (25) of the chart.

Mr. Shultz responded that the base year numbers would allow some "headroom" for the PERS/TRS obligation for FY 06 and FY 07.

Co-Chair Wilken noted that a $50 million TRS obligation would be expected for several forthcoming fiscal years. He asked whether this has been accounted for in the chart.

Mr. Shultz responded in the affirmative. He noted, however, that the FY 06 number, rather than being the actual number, is elevated as it is based on an adjusted base year.

Senator Bunde moved to report the committee substitute for SJR 3, Version "Z," as amended, from Committee with individual recommendations and accompanying fiscal notes.

Co-Chair Wilken objected for discussion.

Senator Hoffman objected. He characterized the Legislature as being fugal, as it has not budgeted to an established spending limit in the past. Furthermore, he stated that as priorities are determined, the Legislature would budget accordingly. While he understood that this legislation would establish a four-year spending limit that would be reviewed; he declared, "that the current system is working quite well." He removed his objection.

Co-Chair Wilken stated that an updated chart and a population change analysis would be forthcoming to accompany the bill as it progresses.

Senator Dyson voiced that it would be useful to have "a general graph" developed to reflect how current spending would be portrayed were a spending limit in place. He voiced that the graph should start in the early 1970's in order to reflect the boom years the State underwent with its oil wealth. However, he noted that this suggestion has been characterized as being difficult to produce.

Co-Chair Green asserted that this chart would be "woefully difficult" to develop as every piece of legislation that affected the budget would require analysis. She, therefore, remarked that the current information is adequate.

Co-Chair Wilken remarked that this request would be considered by Legislative Finance staff.

Senator Hoffman recalled that when the State had a large quantity of "extraordinary income," and a tremendous amount of money was available, most votes to use discretionary funds for such things, as capital projects were unanimous.

Co-Chair Wilken removed his objection.

There being no further objection, CS SJR 3 (FIN) was REPORTED from Committee with a new $1,500 fiscal note from the Division of Elections, dated January 28, 2004.

[NOTE: SJR 3 was referred back to the Finance Committee on April 13, 2004. No further hearing on it was conducted.]
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ADJOURNMENT

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