

**MINUTES**  
**SENATE FINANCE COMMITTEE**  
**April 30, 2004**  
**9:12 AM**

**TAPES**

SFC-04 # 101, Side A  
SFC 04 # 101, Side B  
SFC 04 # 102, Side A

**CALL TO ORDER**

Co-Chair Gary Wilken convened the meeting at approximately 9:12 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:** SENATOR GARY STEVENS; ANSELM STAAK, Chief Financial Officer, Division of Retirement and Benefits, Department of Administration; MELANIE MILLHORN, Director, Division of Retirement and Benefits, Department of Administration; TIM BENINTENDI, Staff to Representative Carl Moses; PETE KELLY, Director, Government Relations, University of Alaska; TOM WRIGHT, Staff to Representative John Harris; MICHAEL BARNHILL, Assistant Attorney General, Commercial/Fair Business Section, Civil Division, Department of Law; JASON HOOLEY, Staff to Senator Dyson; JEFF OTTESON, Director, Division of Program Development, Department of Transportation and Public Facilities;

**Attending via Teleconference:** From offnet locations: JANELLE VANASSE, Yuut Elitnaurviat, Inc. People's Learning Center; ANNETTE KREITZER, Chief of Staff, Office of the Lieutenant Governor; From Anchorage: TONY LOMBARDO, Director, Division of Public Assistance, Department of Health and Social Services; JAY MARLEY, Program Manager, Fraud Control Unit, Division of Public Assistance, Department of Health and Social Services; JEFF PARKER, Attorney; SCOTT CLARK, Notary Commission Administrator, Office of the Lieutenant Governor

**SUMMARY INFORMATION**

[Note: Computer malfunction occurred and original notes were destroyed. Minutes compiled strictly from audio recording.]

SB 232-RETIREMENT: TEACHERS/JUDGES/PUB EMPLOYEES

The Committee heard from the Department of Administration. A committee substitute was adopted and the bill was reported from Committee.

HB 123-ALASKA WORKFORCE INVESTMENT BOARD

The Committee heard from the sponsor, the University of Alaska, and a proposed vocational technical education center. An amendment was adopted and the bill was held in Committee.

HB 503-TOBACCO MASTER SETTLEMENT AGREEMENT

The Committee heard from the sponsor and the Department of Law. The bill was held in Committee.

SB 376-SUBPOENA POWER: PUB ASS'TNCE & PERM FUND

The Committee heard from the sponsor and the Department of Health and Social Services. The bill was reported from Committee.

SB 371-POWERS/DUTIES DOTPF

The Committee heard from the sponsor, the Department of Transportation and Public Facilities and an attorney representing litigants against the Department. The bill was reported from Committee.

SB 302-OATHS; NOTARIES PUBLIC; STATE SEAL

The Committee heard from the sponsor. Two amendments were adopted and the bill was reported from Committee.

#SB232

CS FOR SENATE BILL NO. 232(STA)

"An Act relating to federal tax requirements for and other provisions of the teachers' retirement system, the public employees' retirement system, and the judicial retirement system; removing village public safety officers from the public employees' retirement system; requiring the public employees' retirement system to refund contributions under

\$1,000 to inactive employees; limiting service credit for village public safety officer service in the public employees' retirement system to five years; 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 Rules Committee by request of the Governor, "amends current statutes pertaining to the State's retirement systems to comply with IRS standards. These changes impact the TRS, PERS and Judicial retirement systems."

Co-Chair Green moved for adoption of CS SB 232, 23-GS1009\I, as a working document.

Co-Chair Wilken objected for an explanation.

ANSELM STAAK, Chief Financial Officer, Division of Retirement and Benefits, Department of Administration, testified that the primary difference between the Senate State Affairs Committee substitute and the Version "I" committee substitute pertains to the "specific wording that have been negotiated with the IRS [federal Internal Revenue Service]."

Mr. Staak stated that this bill is the "second installment" of the changes required by the IRS in the "plan documents" of the Public Employees Retirement System (PERS), the Teachers Retirement System (TRS), and the Judicial retirement system. Because these are "qualified tax plans" these changes must contain an appropriate plan document. The plan documents for each of these plans is the governing State statute. Therefore, State statute must comply with the IRS code. This legislation would also repeal the provisions adopted in the year 2001 by SB 145 relating to inclusion of Village Public Safety Officers (VPSO) in the PERS program.

Mr. Staak informed that the State Affairs committee substitute consists of the exact language requested by the IRS, although differs from the formats utilized by the Division of Legal and Research Services for statute. The committee substitute, Version "I" conforms the language to the IRS code requirements and also meets the standards required for State statute. The IRS approved the committee substitute language.

Co-Chair Green referenced Section 8 of Version "I" on page 4, lines 6 - 26, which amends AS 14.25.075(b)(2) to, in part, insert

"irrevocable" in the provision allowing a member to purchase credited services. She asked if "irrevocable" is a term employed in IRS rules.

Mr. Staak affirmed and reiterated that every change included in this legislation conforms to IRS code. He furthered that the issue of irrevocable election to purchase credited service involved six months of negotiation between the Division and the IRS. The Division preferred the exclusion of the "irrevocable" stipulation.

Co-Chair Green asked for an explanation of the stipulation.

Mr. Staak explained that once the employee makes the election to purchase the credited service, the employee could not change that decision. He exemplified that employees could opt to pay off an indebtedness with pre-taxed income; however, once the agreement is made, the payments must continue, regardless of reduced salary or other circumstances. Payments could stop only upon termination of employment. This stipulation is required to obtain a "very favorable method to pay off an indebtedness."

Co-Chair Green next cited Section 24, on page 12, lines 17 - 25 of the committee substitute, which reads as follows

Sec. 24. AS 39.35.200(b) is amended to read:

(b) [IF, UPON TERMINATION OF EMPLOYMENT, AN EMPLOYEE HAS CREDITED SERVICE OF LESS THAN FIVE YEARS AND HAS LESS THAN \$1,000 IN THE EMPLOYEE CONTRIBUTION ACCOUNT, A REFUND OF THE EMPLOYEE CONTRIBUTION ACCOUNT MUST BE MADE UNLESS THE EMPLOYEE INDICATES IN WRITING THAT FUTURE RETIREMENT IS INTENDED AND CONTRIBUTIONS SHOULD NOT BE REFUNDED.] An employee who is reemployed with an employer and whose contributions have not been refunded before reemployment is not eligible for a refund.

[DELETED TEXT BRACKETED]

Co-Chair Green asked if the deletion of this language from statute would result in a discontinuation of refunds of less than \$1,000.

Mr. Staak responded that originally a "forced cash out" was made to those employees who would be "deferred vested". The aforementioned language is the result of an amendment to statute that removed the cash out requirement. The IRS code allows an employer to cash out an account of a small amount to simplify administrative expenses for the employer. However, this language had been inserted in statute to accommodate those employees who work for short periods of time, including legislative employees, to allow them to retain

their contribution account.

Co-Chair Green understood that the funds in the contribution account would remain and continue to increase if the employee returns to service.

Mr. Staak affirmed and added that the employee would not need to repurchase the service as indebtedness and pay additional interest. The account would also earn interest while the employee was not in service.

Co-Chair Green then asked about the term "actuarial adjustment" included in Sections 13, 19 and 28 of the committee substitute, and whether the amended language would be an improvement over current practice.

Mr. Staak replied that the State is required, under the IRS code, to place a description of any reduced benefit in the plan document. He exemplified a 50 percent joint survivor option for those members eligible for a full benefit. He informed that the Division unsuccessfully argued with the IRS to relent this position, which would have required approximately 40 pages of additional statutory language. Instead, the agencies agreed to allow the descriptions to be provided for in regulations, given that regulations have potentially the force of law in Alaska.

Senator Hoffman asked if the TRS and Judicial system require changes as a result of the inclusion of VPSO employees in the PERS program.

Mr. Staak answered that all the changes in this legislation are required to comply with the IRS code.

AT EASE

Senator Dyson supported the creation of a Tier IV level of State employment, and asked if this would not occur at this time.

MELANIE MILLHORN, Director, Division of Retirement and Benefits, Department of Administration, affirmed such action is not included in this legislation.

Senator Dyson asked when the Division anticipated a Tier IV would be established.

Ms. Millhorn replied that recommendations would be presented to the legislature in February 2005.

Co-Chair Wilken removed his objection to the adoption of the committee substitute.

The committee substitute, Version "I" was ADOPTED without objection.

Senator Bunde requested discussion on the situation, which resulted in the need for an appropriation of funds to the PERS and TRS programs. He commented on the magnitude of the problem.

Co-Chair Wilken stated that the matter would be discussed, although not in conjunction with debate on this legislation.

Senator Bunde offered a motion to report CS SB 232, 23-GS1009\I, from Committee with individual recommendations and accompanying fiscal note.

There was no objection and CS SB 232 (FIN) MOVED from Committee with zero fiscal note #1 for "Various" departments.

Co-Chair Wilken spoke to media reports of earlier in the day regarding the rates for PERS and TRS contributions, as referenced by Senator Bunde. Co-Chair Wilken requested Ms. Millhorn provide a brief outline of the situation.

Ms. Millhorn reported that on April 19, 2004, the PERS and TRS boards of directors met in Anchorage and the PERS Board adopted a five-percent rate increase, which would increase the average employer contribution rate to 16.77 percent for FY 06. The TRS Board recommended a five-percent increase, which would increase the rate from 16 percent for FY 05 to 21 percent for FY 06. She stated the Division has calculated the costs to the State for FY 06 for all PERS and TRS employees.

Mr. Staak furthered that the cost of the five percent increases for both PERS and TRS would total an additional \$109 million in contributions: approximately \$79 million for PERS and \$30 for TRS employees. This is in addition to the \$100 million cost for FY 05. He indicated a spreadsheet would be made available to detail this information.

Senator B. Stevens noted this amount reflects the mandatory contribution rate and asked the amount suggested as the contribution rate.

Ms. Millhorn replied that the amount for PERS was 26 percent and TRS was 38 percent.

Mr. Staak pointed out the rate for TRS increased three-percent from the recommended rate. The rate for PERS decreased "slightly".

Senator Bunde clarified that once an employee is included in the retirement system, the courts have ruled their contributions could not be changed. Therefore the entire amount of the increase must be borne by the State.

Mr. Staak affirmed this provision is established in the Alaska Constitution and the employers essentially must assume all of the risk.

Senator Bunde calculated the State must contribute approximately \$100 million this year and another \$100 million the following year. He asked the number of years the increased contributions would be required.

Mr. Staak responded that because the current rate is 16.77 percent and the rates could increase to as high as 25 percent, another two to three years of increases would occur until the highest percentage was reached. This would also occur for the TRS program for five to six years.

Senator Bunde asked the impact of early retirement programs and whether these would expand the State's debt.

Mr. Staak affirmed.

Senator B. Stevens asked the percentage of the TRS contributions made for State employees versus municipal employees.

Mr. Staak responded that approximately \$22 million of PERS contributions would be municipality obligations. He included TRS employees and stated the total amount would be approximately \$38 million.

#HB123

CS FOR HOUSE BILL NO. 123(FIN)

"An Act relating to the allocation of money appropriated to the Alaska Workforce Investment Board; 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 Representative Carl

Moses "adds the Southwest Alaska Vocational and Education Center in King Salmon to the roster of entities eligible to receive money under the technical vocational education program."

TIM BENINTENDI, Staff to Representative Carl Moses, noted three changes were made to the original version of the bill. One reflects the name change from the Alaska Human Resources Investment Council to the Alaska Workforce Investment Board. The second change makes the effective date July 1, 2004, and the third change eliminated the inclusion of the Bethel People's Learning Center contained in the original version of the bill.

Mr. Benintendi reiterated Co-Chair Wilken's statement. Mr. Benintendi added this would provide the Southwest Alaska Vocational and Education Center (SWAVC) a four percent share of available funds through the workforce development program, thus reducing the amount available to the University of Alaska to 59 percent. The University of Alaska does not oppose this legislation, which would provide \$183,000 to SWAVC for operating expenses.

Mr. Benintendi informed this funding is generated from the one-tenth of one percent assessment collected from each employee's contribution to the unemployment insurance fund for the technical vocational education program within the Department of Labor and Workforce Development.

Mr. Benintendi assured this legislation would not require additional general funds. The SWAVC would join the Galena Project Education Vocational Center, the Kotzebue Technical Center, the Alaska Vocational Technical Center and the University, in eligible recipients of these funds.

Mr. Benintendi stated the SWAVC is located in a region in which economic fisheries disasters have been declared in three of the last eight years. An emphasis has been placed on retraining workers from fisheries related activities to other occupations that would enhance employment. In the two-year operation of the Center, SWAVC has provided services to over 900 area residents. The region is "ripe with potential" for new oil and gas development as manifested by the recent passage of SB 265 and SB 266. Mining opportunities also exist and demonstrate a need for skilled workers.

Senator Dyson asked about training for commercial operators licenses as referenced in the sponsor statement. He asked if this pertains to truck drivers or vessel operators.

Mr. Benintendi replied the training is for truck drivers.

Senator Dyson then referenced computer hardware training and asked if software training would be available.

Mr. Benintendi understood the intent is to expand into the entire information technology field.

Senator Dyson asked the training programs currently offered.

Co-Chair Wilken directed Senator Dyson's attention to a report listing the Center's mission statement and highlighting the current activities and goals of the program [copy on file.]

Amendment #1: This amendment would restore language in the original version of the bill and would include the Bethel Yuut Elitnaurviat, Inc. People's Learning Center as an eligible recipient of four percent of the funding available through the technical vocational education program.

Senator Hoffman moved for adoption and deferred to Ms. Vanasse to speak to the motion.

Co-Chair Wilken objected for an explanation.

JANELLE VANASSE, Yuut Elitnaurviat, Inc. People's Learning Center, testified via teleconference from an offnet location in Bethel to "discuss the value of the amendment". She informed that the Yukon-Kuskokwim region has been identified as the poorest in the State; yet has great opportunity for workforce development. Despite high poverty rates, jobs are available in the region, up to 300 positions at any time. The issue is that the local residents do not have the education and training to fill the higher wage jobs. To address this, nine agencies, including the Alaska National Guard and the largest school district in the region, the City of Bethel, the University of Alaska, and the Yukon-Kuskokwim Health Corporation, and the Native corporations, have joined efforts to provide training to the local workforce. This is important not only for the quality of life of workers, but also for the economic development of the region.

Ms. Vanasse assured that the training to be provided is in fields identified as high priority and because jobs are available within the region. She listed education and early childhood development, construction trade, health care, and aviation. Local employers who are willing to invest in the training of local workers drive this project. This project would be sustainable and would utilize a variety of funding sources. Once the facility is fully operational, nine funding sources would sustain operations.

Ms. Vanasse stated the purpose of this legislation and this amendment is "investing in this as a model of the State." The commissioners of the Department of Labor and Workforce Development, the Department of Education and Early Development and the Department of Community and Economic Development have characterized the Center as a valuable pilot project that should be invested in.

Ms. Vanasse reported that although the intent is to construct a new facility, services are being provided currently. Programs are being developed and delivered utilizing any available locations. Because of this ability, the Center is currently serving over 300 local residents.

Ms. Vanasse stressed that including the Center in the programs eligible for funding through the technical vocational education program would be a "solid investment in the State".

Senator Bunde congratulated the witness on the efforts made with this project. Many community colleges utilized the practice of "storefront education" whereby classes were held at various available locations near the people in need of the training. He asked if the facility were constructed whether the practice of locating classes near the students would discontinue.

Ms. Vanasse replied that the opportunity to "mobilize training" would remain. However, only inadequately equipped facilities are currently available for some training such as nursing courses. The new facility would have a nursing laboratory equipped with gurneys and other necessary equipment. Construction trades also require "hands on" training that is not available in the classrooms currently used. She predicted that distance training would continue with travel to the Center required only for those courses requiring the equipped facilities.

Senator Bunde understood the need for equipped facilities, but cautioned that with the establishment of a centralized location, it becomes more convenient for the instructors to remain at that location rather than "reach out" to students.

Senator Dyson surmised that allocating funds to one or both of the vocational technical education centers would result in less funding available for the University.

Mr. Benintendi responded that the funding would be received from the University portion of the technical vocational education program.

Senator Dyson asked the activities of the University that would not

be funded if this legislation were adopted.

Mr. Benintendi deferred to the University of Alaska.

PETE KELLY, Director, Government Relations, University of Alaska, testified in support of this bill and the amendment. The University would accommodate the reductions to its budget. The University supports the workforce development efforts in those areas affected by this legislation, and the University supports delivery of services to residents of those regions. This legislation is a viable method to accomplish this.

Co-Chair Green qualified she did not support this legislation. She asked the status of the People's Learning Center and questioned the ability for students to achieve certification without the establishment of the Center.

Senator Hoffman replied that no structure currently exists and deferred to Ms. Vanasse.

Ms. Vanasse responded that many organizations were already attempting to fill the "workforce development gap", but the results would be limited. It was agreed that existing successful programs would be combined into a new system. The existing programs are continuing and expanding, regardless that the new facility has yet to be constructed.

Co-Chair Green wanted to know how the funding would be expended. She pointed out that in many areas of the State, nursing assistance and other vocational training is provided by the high schools as part of the regular curriculum. These programs do not require a new learning center and those communities are not requesting additional funding from the legislature to provide the same services. She also was unsure why funding should be appropriated for a Center that does not exist. She also wanted to know why the request is only for FY 05 and FY 06.

Mr. Benintendi replied this is the cycle in which the allocations are made, once the appropriation has been granted. The appropriation is made annually.

Co-Chair Green asked if the provisions of this legislation are passed every two years.

Senator Kelly responded that this legislation corresponds to the lapse date of the original program established approximately four years prior.

Ms. Vanasse stressed the potential of the Bethel center to serve as a model, particularly before the construction of a new facility.

SFC 04 # 101, Side B

Co-Chair Wilken removed his objection to the adoption of the amendment with the understanding that the bill would not be reported from Committee at this hearing. He expressed the University should review the impacts of the reduced funding.

Without further objection Amendment #1 was ADOPTED.

Mr. Benintendi commented that the sponsor supports the amendment.

Co-Chair Wilken ordered the bill HELD in Committee.

#HB503

HOUSE BILL NO. 503

"An Act relating to the tobacco product Master Settlement Agreement; 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 House Finance Committee, "was drafted by the National Association of Attorneys General and was unanimously supported by its membership. It closes a loophole that benefits tobacco manufacturers that are not covered under the Master Settlement Agreement."

TOM WRIGHT, Staff to Representative John Harris, reiterated Co-Chair Wilken's statement. Mr. Wright noted that currently AS 45.53 requires all non-participating manufacturers to deposit a certain amount of money into an escrow account with the intent to "level the playing field". The amount this year is two cents per cigarette and every manufacturer of a cigarette deposits that amount into an escrow account.

Mr. Wright stated that the loophole allows those who did not participate in the Master Settlement Agreement, to withdraw from this escrow account, anything above their eligible share. Alaska's allocable share is about .34 percent. He referenced a spreadsheet prepared by the Department of Law titled, "NPM Escrow Release Calculations for hypothetical non participating manufacturer Cheap

Smokes, Inc." [copy on file] detailing the consequences of this loophole. He demonstrated that regardless of the number of cigarettes a non-participating manufacturer sells in Alaska, the manufacturer could maintain a balance in the escrow account of only the amount of Alaska's allocable share, thus permitting the manufacturer to pay significantly less than the participating manufacturers.

Mr. Wright informed that this legislation would provide that participating and non-participating manufacturers would both be required to contribute the same amount to the escrow account.

Mr. Wright noted the bill is comprised of three sections, with the provision that if the first section were found to be unconstitutional, the language of Section 2 would be implemented. If the court determines that neither section is valid, statute would revert to existing language.

MICHAEL BARNHILL, Assistant Attorney General, Commercial/Fair Business Section, Civil Division, Department of Law, added that similar legislation has been enacted in at least 29 states. The purpose is to close the loophole unintentionally created when the statute was first adopted in 1999. The loophole was the result of an assumption that non-participating manufacturers' sales would be in all states and therefore the relative percentage of sales in all states would mimic the allocable share. This has not proved true and non-participating manufacturers are selling to "niche markets" in a few states and thus the market share in each state is significantly higher than the allocable share.

Senator Dyson understood from the sponsor statement that this legislation would only apply to cigarette. He asked if it would apply to other tobacco products as well.

Mr. Barnhill responded that the Master Settlement Agreement applies only to cigarettes.

Co-Chair Wilken ordered the bill HELD in Committee.

#SB376

CS FOR SENATE BILL NO. 376(HES)

"An Act relating to public assistance and subpoena powers; and relating to the permanent fund dividend and subpoena powers."

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

Co-Chair Wilken stated this bill, sponsored by the Senate Health, Education and Social Services Committee, "authorizes the commissioners of the Department of Health and Social Services and the Department of Revenue to issue subpoenas to compel the production of records needed to investigate cases of suspected fraud."

JASON HOOLEY, Staff to Senator Dyson, stated this legislation would assist the Department of Health and Social Services and the Department of Revenue to "combat fraud". Currently when public assistance fraud or permanent fund dividend fraud is suspected, the departments typically request additional documentation or information from the applicants. However, these requests are often unheeded or ignored. The departments must then engage the judicial system to acquire subpoenas to obtain the information from the applicants to determine eligibility. Engaging the judicial system is time consuming and expensive in the use of State resources. Allowing these departments to acquire subpoenas would enable the State to more efficiently combat fraud and subsequently serve the people of Alaska.

Senator Olson asked the number of cases of suspected fraud of public assistance benefits occur annually.

Mr. Hooley deferred to the Department of Health and Social Services.

TONY LOMBARDO, Director, Division of Public Assistance, Department of Health and Social Services, testified via teleconference from Anchorage to introduce Mr. Marley.

JAY MARLEY, Program Manager, Fraud Control Unit, Division of Public Assistance, Department of Health and Social Services, testified via teleconference from Anchorage told of two types of cases the Division tracks: applicant fraud and recipient fraud. The Division attempts to stop applicant fraud before benefits are distributed. Last year, the Division investigated 595 applicant fraud cases and 698 recipient fraud cases.

Senator Olson asked the number of these investigations would require subpoena power.

Mr. Marley replied the number varies and averages one-quarter of the number of investigations. The subpoenas are not necessarily issued to recipients or applicants, but rather to employers, banks, and other institutions that would have information regarding the applicants and recipients' employment and financial status.

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

There was no objection and CS SB 376 (HES) MOVED from Committee with fiscal note #1 for \$5,500 and fiscal note #2 for -\$25,100 from the Department of Health and Social Services and a new zero fiscal note dated 4/21/04 from the Department of Revenue.

#SB371

CS FOR SENATE BILL NO. 371(TRA)

"An Act relating to the powers and duties of the Department of Transportation and Public Facilities; relating to a long-range program for highway construction and maintenance; 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 State Affairs Committee, "relates to the powers and duties of the Department of Transportation and Public Facilities. It affirms the validity of the current Department's planning process." He noted the provisions of the legislation would be retroactive to 1977.

AT EASE

JEFF OTTESON, Director, Division of Program Development, Department of Transportation and Public Facilities, testified this legislation is "vitally important to both the Department and to the State." It has been discovered through a lawsuit, that the Department must undertake a consideration of costs and benefits at the time of project selection for the capital budget in the Statewide Transportation Improvement Program (STIP). This has not been done for a significant number of projects and all such projects currently underway are at risk.

Mr. Otteson furthered that undertaking cost and benefit analyses at the time a project is under consideration for inclusion in the capital budget would not always be useful. This would not be meaningful information to decision makers for several classes of projects, or would incur such costs as to be overwhelming to the project.

Mr. Otteson outlined Section 1 reflects language recommended by the Department of Law as necessary to instruct the court that the

current project involved in litigation should be allowed to proceed. Section 4 has been the most widely discussed substance of the bill and pertains to the consideration of cost and benefits for new transportation projects and facilities. The language in statute was codified from administrative code in 1977 and has never undergone the legislative process. Section 6 stipulates the new provisions would be retroactive to 1977. This would allow any project underway to be covered by the amended statute, some of which actually are 30 years old, including the Cooper River Project on the Sterling Highway.

Mr. Otteson stressed the importance of this legislation to the Illiamna/Nondalton project, which has been underway since 1975 and is nearly complete. The key portion of the project is the construction of a bridge across the Newhalen River. This legislation is important to address other projects that could be similarly litigated. Environmental organizations have indicated using the existing statute to halt other projects. He warned that this would be easily accomplished for these groups were the statute not changed.

Mr. Otteson compared the stoppage of the project at the Pogo Mine to the potential existing for projects with the existing statute. The Pogo Mine project obtained all permits and was underway, until the project was halted due to complications in federal law. State statute could not address the Pogo Mine issues, but this legislation could prevent such occurrences for State projects.

SENATOR GARY STEVENS informed that Governor Walter Hickel signed an executive order in 1977 establishing the Alaska Transportation Council and stipulated that no project could be undertaken without review and approval by the Council. However, the Governor never appointed members to this Council and adherence to the approval requirement was overlooked. The existing statute should be amended to avoid future lawsuits and to prevent further delays with the Illiamna/Nondalton project.

JEFF PARKER, Attorney, testified via teleconference from Anchorage and indicated he is the attorney to the plaintiffs of the Illiamna/Nondalton litigation, Bob Gilliam [spelling not verified] and Trout Unlimited. Mr. Parker recommended the bill be held in Committee. The requirement of cost benefit analyses relate directly to fiscal issues. If the ability to undertake cost benefit analyses for new transportation modes and facilities is undermined, the legislature would "put fiscal resources of this State at risk" because projects would be constructed that are not cost effective and would therefore not be maintained. The cost benefit requirement does not apply to improvements or repairs to existing

transportation projects and facilities. Cost benefit analyses allow the legislature to make reasonable decisions about the most effective use of fiscal resources. Absent this requirement, projects become "political horse trading" because no other objective criterion is imposed in statute to facilitate decisions. Existing statute does not prohibit the undertaking of certain projects that do not have a favorable cost benefit ratio.

Mr. Parker informed that the litigation over the Illiamna/Nondalton project arose because it was one of two projects included in the Southwest Regional Transportation Plan in which the Department decided "on the record" to not conduct a cost benefit analysis. Although Mr. Otteson warns that all transportation projects are at risk without the adoption of this legislation, Mr. Parker countered that cost benefit analyses were conducted for all other projects and are therefore not subject to the provisions of current statute.

Co-Chair Wilken asked Mr. Otteson the threat to the Illinois/Barnett Street Connector bridge project located in Fairbanks if this legislation were not adopted.

Mr. Otteson surmised it would be, along with many of the projects included in the bond package approved by voters in the last statewide general election. He listed the North Pole interchange, C Street extension, Donlin Creek Mine project, as examples. Cost benefit analyses could be conducted for each of these projects, although only at significant expense. A cost benefit analysis was recently completed for a Naknek River bridge project at a cost of \$185,000 and six months of time. An analysis is underway for the Illiamna/Nondalton project with a projected cost of \$55,000 for the consultants alone. In both instances, the analysis confirmed the Department's assessment that the projects are legitimate.

Mr. Parker countered that this legislation "creates a greater likelihood of projects getting into the ten year time track". He defined the "ten-year time track" as a provision of federal law that stipulates that if federal funds are expended on a project for planning, design or other activities, and the project does not reach construction within ten years, the State is potentially liable to refund the federal funds. The STIP includes approximately 60 projects within the ten-year time track and involve hundreds of millions of dollars of federal funding.

Mr. Parker contended that the more options to facilitate making better-informed decisions that are eliminated, the greater the likelihood that "mere politics" would move a project forward. As "more reasoned" decision-making is implemented later, these projects are "put on the back burner". This is the situation that

occurred with the Illiamna/Nondalton project. He stated that project is not near completion, as attested to by Mr. Otteson and he spoke of the high cost and political motivation behind the project.

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

There was no objection and CS SB 371 (TRA) MOVED from Committee with zero fiscal note #1 from the Department of Transportation and Public Facilities.

#SB302

CS FOR SENATE BILL NO. 302(JUD)

"An Act relating to the authority to take oaths, affirmations, and acknowledgments in the state, to notarizations, to verifications, to acknowledgments, to fees for issuing certificates with the seal of the state affixed, and to notaries public; 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 Rules Committee by request of the Governor, "comprehensively updates AS 44.50, the chapter that governs notary publics. The last time we did this was in 1961."

SCOTT CLARK, Notary Commission Administrator, Office of the Lieutenant Governor, deferred to Ms. Kreitzer to present the bill.

ANNETTE KREITZER, Chief of Staff, Office of the Lieutenant Governor, testified via teleconference from an off net location in Anchorage, and referenced a table titled, "Notary Statute Comparison - CS SB 302 (JUD)" [copy on file], which demonstrates the current requirements and the proposed changes. Upon review of the current procedures, potential improvements were identified.

Ms. Kreitzer noted the change of the minimum age requirement from 19 years to 18 years. This is to accommodate the significant number of banking clerks who are 18 years of age and require notary authority.

Mr. Kreitzer stated that the residency requirement would change to be consistent with the general residency statute AS 01.10.055. It was also discovered that felons are not currently restricted from

becoming notaries and this legislation would stipulate that applicants may not be convicted or incarcerated felons within ten years of application. The original version of the bill would have imposed a zero tolerance and would have prohibited all felons from obtaining notary authorization. However, statistics demonstrate that most felons who have not re-offended within ten years are likely to remain lawful citizens, and the bill was amended to allow for those felons to become notary publics.

Ms. Kreitzer noted the terms would remain unchanged with the exception of Limited Governmental Notaries Public, which would remain active until termination of employment in the governmental capacity that necessitates the notary authority.

Ms. Kreitzer told of the proposed increase in the price from \$2 to \$5 for each notary public certificate issued by the Office of the Lieutenant Governor to reflect increased postage and printing expenses. The Notary Bond requirement would remain unchanged at \$1,000, although Limited Governmental Notaries would no longer require the bond because the governmental entities are self-insured.

Ms. Kreitzer explained that Limited Governmental Notaries Public are currently restricted to providing notary services only in the capacity of their employment unless they purchase a separate public commission. This legislation would allow the Limited Governmental Notaries Public to perform notary services independently as well.

Ms. Kreitzer informed that currently the Administrative Procedure Act must be invoked to review all complaints against notaries, regardless of the seriousness of the allegations. The House Finance Committee is considering legislation that would consolidate the appeals processes of many State agencies to a centralized hearing officer. A proposed amendment to SB 302 would include notary public activities in the centralized appeals process.

Ms. Kreitzer reported that improvements would be made to the web site detailing the locations of notary publics available to provide notary services. Additional information would be gathered from notary publics, including e-mail addresses and phone numbers that would not be made public but would assist the Office of the Lieutenant Governor in maintaining current contact information.

Senator Dyson asked if this legislation only pertains to notary publics.

Ms. Kreitzer responded that Section 1 of the bill provides that the presiding officers of the House of Representative and the Senate

would become notary publics upon appointment to those positions. This is necessary because an official must be a notary public to administer an oath of office, which is done to swear in persons appointed to fill vacant legislative seats.

Senator Dyson told of allegations that seated legislatures were not "validly serving" because they had not taken the oath of office under the "proper [State] seal" and had not spoken the correct language in taking the oath. He asked if this issue would be addressed.

Ms. Kreitzer had heard similar compliant and replied that this situation would be corrected with the language in Section 1.

Amendment #1: This conceptual amendment inserts a new bill section on page 16, following line 25 to read as follows.

Sec. 12. AS 44.50.068(e) is repealed and reenacted to read:

(e) If the lieutenant governor finds that formal disciplinary action may be warranted, the lieutenant governor shall refer the matter to the office of administrative hearings for a hearing.

This amendment also inserts new bill sections on page 18, following line 8 to read as follows.

Sec. 18. The uncodified law of the State of Alaska is amended by adding a new section to read:

CONDITIONAL EFFECT. Section 12 of this Act takes effect only if a bill is passed by the Second Session of the Twenty-Third Alaska State Legislature, and enacted into law, that establishes procedures for administrative hearings conducted by an office of administrative hearings in the Department of Administration.

Sec. 19. If sec. 12 of this Act takes effect under sec. 18 of this Act, it takes effect on the effective date of the provisions described in sec. 18 of this Act.

Co-Chair Wilken moved for adoption.

Senator Dyson objected for discussion purposes.

Ms. Kreitzer noted the conceptual amendment would allow the Division of Legal and Research Services to make technical changes where necessary. The language of this amendment pertains to SB 203. If SB 203 does not pass, existing statute is retained, that provides that the lieutenant governor determines whether sufficient

evidence exists for a complaint to proceed.

Senator Dyson surmised that the Office of the Lieutenant Governor and the Office of the Governor do not oppose this amendment.

Ms. Kreitzer affirmed.

Senator Dyson removed his objection and the amendment was ADOPTED.

Senator Bunde relayed concerns that all commissioners and appointees do not take an oath of office.

Ms. Kreitzer was unsure of the concern, as all commissioners are required to take the oath.

Senator Bunde clarified that State appointees to the federal Subsistence Board do not take an oath promising to uphold the Alaska Constitution. If this oath were taken, those appointees would be unable to make allocations of fish and wildlife for subsistence users.

Ms. Kreitzer responded that this bill would not address that situation.

Amendment #2: This conceptual amendment would insert language in Section 4, amending AS 09.63.090. Certificate of acknowledgment., and Section 5, amending AS 09.63.100. Forms of acknowledgment., on page 3, line 1 through page 7, line 3, relating to limited liability partnerships to reflect language included in HB 439.

Ms. Kreitzer proposed this amendment to align this legislation to its companion bill in the House of Representatives. It was discovered that this legislation would not pertain to limited liability partnerships. This is "housekeeping language".

SFC 04 # 102, Side A

Co-Chair Wilken moved for adoption.

Without objection the amendment was ADOPTED.

Co-Chair Green offered a motion to report CS SB 302 (JUD), as amended, from Committee with individual recommendations and accompanying fiscal note.

There was no objection and CS SB 302 (FIN) MOVED from Committee

with zero fiscal note #1.

Co-Chair Green spoke to public comments on complications caused by provisions in the FY 04 supplemental budget. She announced she has been communicating with the Office of the Governor and Department of Health and Social Services to achieve an "interim solution" to this "anomaly" to ensure that assisted living and health care providers and other vendors receive payment without delay.

#

**ADJOURNMENT**

Co-Chair Gary Wilken adjourned the meeting.