MINUTES
SENATE FINANCE COMMITTEE
May 4, 2004
9:07 AM

TAPES

SFC-04 # 105, Side A
SFC 04 # 105, Side B
SFC-04 # 106, Side A
SFC 04 # 106, Side B

CALL TO ORDER

Co-Chair Gary Wilken convened the meeting at approximately 9:07 AM.

PRESENT

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

Also Attending: SENATOR GENE THERRIAULT; REPRESENTATIVE KEVIN MEYER; REPRESENTATIVE DAN OGG; PATRICK GAMBLE, President & CEO, Alaska Railroad Corporation, Department of Revenue; RICHARD SCHMITZ, Staff to Senator John Cowdery; CINDY CASHEN, Executive Director, Mothers Against Drunk Driving, Juneau Chapter; DON SMITH, Administrator, Alaska Highway Safety Office; LINDA SYLVESTER, Staff to Representative Bruce Weyhrauch; SUE HARGIS, Boating Safety Specialist, United States Coast Guard; JACK CADIGAN, Captain, United States Coast Guard Retired, and Representative, United States Coast Guard Auxiliary; VANESSA TONDINI, Staff to Representative Lesil McGuire; DOUG WOOLIVER, Administrative Attorney, Office of the Administrative Director, Alaska Court System; MICHAEL LESSMIER, Attorney, State Farm Insurance; LINDA HALL, Director, Division of Insurance, Department of Community and Economic Development; BARBARA COTTING, Staff to Representative Jim Holm; DEBRA BEHR, Assistant Attorney General, Legislative & Regulations Section, Office of the Attorney General, Department of Law; DAVE STANCLIFF, Staff, Administrative Regulatory Review Committee, Office of the Senate President Gene Therriault; PORTIA PARKER, Deputy Commissioner, Office of the Commissioner, Department of Corrections

Attending via Teleconference: From Anchorage: SARA HEIDEMAN, Attorney representing the Native Village of Eklutna; From Seward: RON LONG; From an Offnet Site: BARBARA BRINK, Director, Public Defender Agency, Department of Administration; JENNIFER YUHAS, Executive Director, The Alaska Outdoor Council; From Mat-Su: CLIFF JUDKINS, Chair, Alaska Boating Association; JERRY MCCUNE, Representative, United Fishermen of Alaska and Cordova Fishermen United

SUMMARY INFORMATION

SB 254-TOURISM & RECREATION ASSESSMENT

The Committee heard from the sponsor, adopted a committee substitute, and reported the bill from Committee.

SB 395-MUNICIPAL LAND USE REGULATION

The Committee heard from the sponsor and the Alaska Railroad Corporation. Public testimony was taken, and the bill was held in Committee.

SR 3-COMMEMORATING SEN. FRANK FERGUSON

The Committee heard from the sponsor, adopted one amendment, and reported the bill from Committee.

SB 224-LOWER DWI FOR MINORS TO .02

The Committee heard from the bill's sponsor, Mothers Against Drunk Driving, the Public Defender Agency, and the Alaska Highway Safety Office. The bill reported from Committee.

HB 93-BOATING SAFETY, REGISTRATION, NUMBERING

The Committee heard from the Sponsor, the United States Coast Guard, and took public testimony. One amendment was considered, but not adopted, and the bill reported from Committee.

HB 227-DISTRICT COURTS & SMALL CLAIMS

The Committee heard from the sponsor and the Alaska Court System. The bill reported from Committee.

HB 336-MOTOR VEHICLE INS./ UNINSURED DRIVERS

The Committee heard from the sponsor, the Department of Community

and Economic Development, and the insurance industry and reported the bill from Committee.

HB 419-REGIONAL SEAFOOD DEVELOPMENT ASS'NS./TAX

The Committee heard from the sponsor, the Department of Community and Economic Development, and the industry. One amendment was adopted and the bill reported from Committee.

HJR 44-SEA OTTER RESEARCH/ENDANGERED SPECIES

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

HB 424-REGULATION REVIEW / ANNULMENT

The Committee heard from the sponsor, the Department of Law, and the Regulatory Review Committee. The bill reported from Committee.

HB 484-CORRECTIONS: FEES/SURCHARGE

The Committee heard from the Department of Corrections and the bill reported from Committee.

HB 533-IF UNREAS. AGENCY DELAY, COURT DECIDES

The Committee heard from the sponsor, the Regulatory Review Committee, and the Alaska Court System. The bill was reported from Committee.

HB 511-CERTIFICATE OF NEED PROGRAM

This bill was scheduled but not heard.

#sb254

CS FOR SENATE BILL NO. 254(L&C)
"An Act relating to the levy and collection of an assessment on certain tourism-related and recreation-related sales, leases, and rentals, to tourism marketing contracts, and to vehicle rental taxes; relating to Alaska marine highway system passenger fares; and providing for an effective date."

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

Co-Chair Wilken pointed out that this legislation would reduce the

level of the tourist industry's match requirement as currently specified in the Millennium Plan. by changing He noted that a new committee substitute, Version 23-LS0947\Z is before the Committee for consideration.

AT EASE: 9:11 AM / 9:11 AM

SENATOR GENE THERRIAULT, the bill's sponsor, informed the Committee that while the original purpose of this legislation was to further funding mechanisms through which the tourism industry could be assessed to support marketing efforts "to make the State of Alaska a destination," the Version "Z" committee substitute reflects that, due to industry outfall and such things as the industry's inability to generate funds equivalent to the 60-percent level mandated in the tourism marketing Millennium Plan, the bill has been re-directed to continue the current Millennium Marketing Plan and to lower the required industry contribution to 50-percent.

Senator Therriault voiced appreciation, however, for the fact that the industry does recognize the State's fiscal dilemma and is, therefore, actively attempting to develop self-funding avenues to market the State, even though the industry's original Millennium Plan's assessment was unobtainable.

Co-Chair Wilken noted that a Department of Revenue zero fiscal note, dated May 4, 2004 accompanies the Version "Z" committee substitute.

Co-Chair Green moved to adopt the committee substitute, Version "Z" as the working document.

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

Senator Bunde questioned the amount the State might spend as a result of changing the tourism marketing plan to a 50/50 split, as he pointed out that the Department of Revenue zero fiscal note simply reflects the fact that the bill would not increase the level of funding that the State has been spending in this regard.

Senator Therriault qualified that he did not have the funding particulars with him.

Co-Chair Wilken understood the amount to be four million dollars.

Co-Chair Green clarified that the State's share of the expense would be $2 million in FY 05.

Co-Chair Wilken acknowledged.

Senator Bunde understood therefore that the combined State/industry marketing expenditure would amount to four million dollars.

Co-Chair Green moved to report the committee substitute from Committee with individual recommendations and accompanying fiscal note.

Senator Bunde objected.

Senator Bunde asked whether the original Millennium Plan had a termination date.

Senator Therriault responded that it did not.

Senator Bunde removed his objection.

There being no further objection, CS SB 254 (FIN) was REPORTED from Committee with a new zero fiscal note, dated May 4, 2004, from the Department of Revenue.

#sb395

> CS FOR SENATE BILL NO. 395(TRA)
> "An Act relating to application of municipal ordinances providing for planning, platting, and land use regulation to interests in land owned by the Alaska Railroad Corporation; authorizing the Alaska Railroad Corporation to extend its rail line to Fort Greely, Alaska; authorizing the Alaska Railroad Corporation to issue bonds to finance the cost of the extension and necessary facilities and equipment; and providing for an effective date."

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

Co-Chair Wilken pointed out that this bill has two sections: one would authorize the Alaska Railroad Corporation (ARRC) to issue up to $500 million in tax-free revenue bonds to pay for a rail line extension to Delta and Fort Greely; and the other would exempt land owned by the Railroad from municipal land use regulations. He pointed out that CS SB 395(TRA), Version 23-LS1965\H, and its accompanying fiscal note were before the Committee.

Senator Therriault, the bill's sponsor, explained that the original bill was developed in response to a recent State Supreme Court

ruling, Native Village of Eklutna v. Alaska Railroad Corporation, regarding the Railroad's right to continue to operate a granite quarry in the Eklutna area. Section 1, he continued, contains language that would ensure that Railroad operations could continue and not be subject to differing planning and zoning ordinances as rail lines flowed from one community to another.

Senator Therriault recounted that the bill was expanded to include bond package language that would fund extending the rail line to Fort Greely with the possibility of connecting with Canadian rail lines and continental lines in the Lower 48. He assured that the bonding language would not jeopardize Railroad or State assets, as long-term federal contracts would support the bond requirements. He reviewed the planned route of the rail line as well as the goods that could be transported on the line. He concluded that numerous economic benefits would result were this rail line extended.

Co-Chair Wilken, noting that the bill sections were very "distinct from each other," specified that the two sections would be addressed separately.

PATRICK GAMBLE, President & CEO, Alaska Railroad Corporation, Department of Revenue, communicated that there has been positive response to the bonding proposal, as defined in Section 2, to finance the rail line extension to Delta and Fort Greely. He stated that the federal Department of the Army is interested in the railroad extension as it would provide the Army greater access to training areas as well as to land in the Fort Greeley area slated for an expanded federal missile program to be staffed by the National Guard. He conceptualized that the rail line "would serve as a two-lane road" that could transport military personnel, their families, and contractors, on a year-round basis. He declared that this rail line extension is "very attractive" to the military.

Mr. Gamble explained that in order to fund the extension, the Railroad would act as the bond fiduciary and use its tax-free bonding authority, which has never been utilized before, for the $500 million project. He stated that a portion of the bond debt would conceptually be paid by usage contracts between the Railroad and two separate federal military entities: the Department of Defense Army and Missile Command, as, he explained, the contract would be less expensive to the military than their annual operations and maintenance (O&M) expense budgets would be were the rail line extension not in place.

Mr. Gamble stated that while discussions have transpired with military personnel within the State, they have not occurred with the Department of the Army. He also noted that discussions with

affected Alaskan communities are scheduled in the near future.

Senator Bunde referenced comments indicating that the bond issuance would not incur any expense to the State. However, he questioned whether the fact that "the Railroad is an instrument of the State," would not make the State "the ultimate guarantor of these bonds."

Senator Therriault responded that due to the fact that "this is not conduit funding," Senator Bunde is correct in that, were there a default on the part of a State owned entity, the State would be responsible. However, he declared that a default would be unlikely, were a contract in place with the federal government. He pointed out that language addressing the federal government agreement is located in Section 4, Subsection (b) beginning on page two, line 30 and continuing through page three, line seven which reads as follows.

> (b) Before issuing bonds to provide the financing described in this section, the Alaska Railroad Corporation shall enter into an agreement with the United States government that will, in the judgment of the corporation, provide sufficient consideration to
>
> (1) pay the principal of and interest on the bonds as they become due;
>
> (2) create and maintain the reserves for the bond payments than the corporation considers necessary or desirable; and
>
> (3) pay all costs necessary to service or additionally secure the bonds, including trustee's fees and bond insurance premiums, unless those costs are to be paid by a party other than the corporation.

Senator Bunde continued to voice concern, as he argued, the federal government could change its position in regards to the contract. Therefore, he asked, that were this a consideration, whether this bond package could affect the State's bond rating ability.

Senator Therriault deferred to Mr. Gamble to address the affect the bond package might have on the State's bonding ability. However, he exampled that while one Legislature "could not bind" future Legislators, the State would be obligated to fulfill any legal contracts entered into. Similarly, he argued, that were federal military plans to change and were the missile base dismantled, a signed federal/State contractual arrangement would continue to be honored.

AT EASE 9:27 AM / 9:27 AM

Senator Bunde voiced a wildlife resource concern as he reminded that the Railroad currently has problems with moose on the rail line. He questioned whether bison could pose a similar problem along the proposed Delta area rail line route.

Mr. Gamble responded that the "good news" is that the geography of this route is relatively flat and as such, would allow animals to move out of the way of a train as opposed to the difficulty presented to them by "the deep channels" that the train tracks have in other areas of the State. He acknowledged that this concern must be adequately addressed and the federal government must approve the plan before contract negotiations are finalized.

Co-Chair Wilken, being "very familiar with the terrain" the proposed rail line would transit, asked regarding the "physical scope" of the project as described in Section 4, subsection (a) on page two, lines 23 and 24 as he perceived the costs to be high. In addition, he asked whether the project might extend beyond Fort Greely.

Mr. Gamble specified that the $500 million project cost estimate is all-inclusive in that it would sufficiently fund any required land acquisition, existing rail line improvements, maintenance, equipment, sidings, small depots, and the terminus of the rail line at Fort Greely amongst other things. He pointed out that the proposal also contains a "healthy contingency piece in the cost estimate for engineering and construction." He noted that the project cost also includes $45 million that would be used to construct a bridge across the Tanana River to assist the military in accessing their land. In summary, he concluded that, including contingencies, the $500 million estimate is not a conservative number.

Co-Chair Wilken asked whether the aforementioned bridge would be located at Flag Hill Bridge.

Mr. Gamble concurred.

Co-Chair Wilken asked whether the bridge construction project would additionally include a rail line extension into the Blair Lakes area.

Mr. Gamble stated that, in addition to the main rail line being extended toward Delta Junction, an 11-mile rail extension into the Blair Lakes area would also be constructed in order to allow military vehicles to be offloaded within the parameters of the military training range rather than being offloaded and hampering transit on the main rail line.

Co-Chair Wilken asked regarding the terminus slated for construction in Fairbanks.

Mr. Gamble responded that in addition to a terminal at the Fort Wainwright military base to accommodate military freight operations, a passenger terminus would be constructed in Fairbanks.

Co-Chair Wilken requested that a complete project scope be developed to accompany the bill.

Senator Therriault, referencing Co-Chair Wilken's question about whether the rail line would be extended beyond Fort Greely, noted that language in Section 4, subsection (b) on page two, lines 30 and 31, specifies that before the bonds could be issued, an agreement between the federal government and the State must be in place. Continuing, he noted that extending the line beyond Fort Greely would not benefit the federal government and therefore, it would not be expected that their contract would include anything beyond that point.

Co-Chair Wilken noted that in previous years, discussions had included building a rail line that would bypass the City of Fairbanks. Therefore, he voiced concern, for the record, that constructing an 11-mile spur line into the Blair Lakes area might rekindle that discussion, which, he attested, "would not be in the best interest of Fairbanks."

Co-Chair Wilken asked whether the selling of these bonds would negatively affect the State's ability to bond for the gas pipeline.

Mr. Gamble responded no, as he reminded the Committee that the Railroad's tax-free bonding ability is not subject to the bonding limit of the State. In addition, he stated that this bond issuance would not affect the Legislature's previous year's [unspecified] authorization to allow the Railroad to issue bonds up to a 17-billion dollar limit.

Co-Chair Wilken stated that the discussion would now shift to Section 1, which pertains to local municipality regulations and their applicability to the Railroad.

Mr. Gamble commented that the core issue of Section 1 might "be misunderstood." He quoted from the Supreme Court ruling on the aforementioned case that prompted this legislation as follows: "because the Legislature did not clearly express its intent to exempt the Railroad from local zoning laws, we reverse and remand." Therefore, he communicated, the intent of this legislation is "to

request the Legislature to clarify itself for the good of the Court" and thereby "reinstate the status quo" that the Railroad has operated under since the original legislation was implemented 18-years prior.

Mr. Gamble declared that the original bill enacted by the Legislature was approved with the knowledge that federal law exempts railroads conducting interstate commerce from local planning and zoning regulations. He stated that that law "is codified in federal law and remains "intact and exists today." He argued that the State's Supreme Court determination that the intent of the Legislature was unclear is wrong, as he submitted that the Legislators "knew what they were doing" as attested by the fact that the bill has been in effect for 18-years. With respect to the Court, he stated that he agreed with "the three-to two hotly contested" minority decision of the Court, and that the two minority Court members "were very pointed" in their remarks that the federal exemption "as mirrored by the State" should prevail for economic development purposes," and that the Railroad, as an entity of the State, should be controlled by the State rather than by an array of differing local municipality planning and zoning regulations. Were the Court ruling to be upheld, he argued, this kind of local zoning "control over a State entity" would result in economic chaos, as approval would be required for each local municipality case. The Court ruling, he continued, would have severe impact on commerce. He therefore, requested that the Legislature clarify that the status quo mode of operation should continue.

Senator Therriault supported the Railroad's request that the Legislature clarify the intent of the 18-year old legislation. He voiced support for the continuance of the Railroad's zoning exemption, as he declared that requiring the Railroad to adhere to 13 different jurisdictional zoning and planning regulations would create problems. He noted, however, that Section 1 could be amended to address municipalities' concerns.

Senator Bunde understood the range of problems that might occur were each municipality's regulations a consideration. He asked regarding the comment that "the Railroad is a State agency and should be under State control."

Mr. Gamble clarified that the Railroad is a State instrumentality. He voiced that the Railroad's position is that any control over an instrumentality of the State should be limited to the State.

Senator Olson pointed out that the reason for the Court's involvement was due to the fact that numerous citizens feel that

the Railroad has been abusing its authority" in laying down track and acquiring land for 500-foot right of ways without consideration for those affected. He asked how these concerns would be addressed.

Mr. Gamble clarified that a 200-foot right-of-way is authorized, and that most construction occurs on Railroad property. He informed the Committee that the Railroad was awarded 36,000 acres of fee-simple property when the ownership of the Railroad transferred from the federal government to the State. He declared that 80-percent of all Railroad construction projects encompass federal funding and therefore, before any work on those projects could occur, an audited "extensive community out-reach" process is required per federal law. Therefore he attested that these projects have "considerable public input."

Mr. Gamble noted that the majority of the 20-percent balance of Railroad projects, not supported by federal funding, involves minor things such as roof repair and "other nuts and bolts" non-construction projects. He stated that he would be willing "to address specific cases" in this regard; however, he voiced being unaware of any situation in which the Railroad did not take public concern into consideration.

Mr. Gamble acknowledged that public concern and speculation could occur in regard to future Railroad operations such as whether the Railroad might develop a gravel pit in a suburb or construct a hotel that would compete with a another hotel. However, he assured that, were federal funds involved in the development of a gravel pit, it would not be located near a suburb. He also stated that the Alaska Railroad Board serves as one component of the Railroad's "check and balance system," and he noted that the Board's position is that the Railroad is in the Railroad business. Therefore, he noted that such things as the Railroad constructing a hotel would not occur, as it would be outside of scope of things permitted by the Board. In summary, he opined that these concerns are addressed.

Senator Olson shared that the primary concern he hears pertains to the Railroad track leading to the Ted Stevens International Airport in Anchorage. He stated that Railroad land in this area is "sizable" and that it could be more appropriately utilized for other transportation purposes.

[NOTE: Senator Bunde chaired the following portion of the meeting.]

Co-Chair Green recalled that the federal government, rather than the Railroad, specified the land around the Anchorage airport as Railroad holdings in order to address national airport security concerns. She understood that the Alaska Department of

Transportation and Public Facilities was involved in this process.

Senator Olson voiced appreciate for this information as he could now more adequately respond to public concerns.

Amendment #1: This amendment deletes the word "an" in Section 4, subsection (b) on page two, line 31 and replaces it with "a binding". Continuing in subsection (b) on page three, line one, the word "will" is deleted and replaced with "shall"; and on that same line, "in the judgment of the corporation" is deleted. Also on that same line, "consideration" is deleted and replaced with "revenue". The amended language would read as follows.

> (b) Before issuing bonds to provide the financing described in this section, the Alaska Railroad Corporation shall enter into a binding agreement with the United States government that shall provide sufficient revenue to…

Senator B. Stevens moved to adopt Amendment #1 and objected for explanation.

Senator B. Stevens stated that this amendment would eliminate some ambiguity in the language and would clarify the intent of the bill.

Mr. Gamble stated that the Railroad does not object to the amendment.

Senator Therriault stated that this amendment would serve to alleviate some concerns.

Senator B. Stevens removed his objection.

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

SARA HEIDEMAN, Attorney representing the Native Village of Eklutna, testified via teleconference from Anchorage in opposition to Section 1 of the bill. She noted that the Village takes no position on Section 2.

Ms. Heideman informed the Committee that another component incorporated in the aforementioned State Supreme Court case is the "balancing of interest test," which is a test that has been adopted by the majority of national courts "to address the issue of governmental immunity from zoning in the last 30 years." She stated that this test has enhanced the public input process in regards to zoning. She respectfully disagreed with Mr. Gamble that the intent of Alaska Statute AS 42.40 is clear as she argued that sufficient testimony regarding the adoption of this Statute did not indicate

that all Railroad land would be exempt from local zoning authority. Continuing, she noted that the Legislature could have specifically included exemption language in the Statute at the time, but chose not to.

Ms. Heideman stated that the federal "Interstate Commerce Commission Termination Act" referred to by Mr. Gamble "abolished" the Interstate Commerce Commission (ICC), "placed restrictions on State and local regulation of railroads and created the Surface Transportation Board." She stated that this federal law specifies, "that State and local economic regulations which would significantly interfere with core rail operations is prohibited." The meaning of this law, she continued, is that any attempt by a State or local government to prevent the operation, construction, or the discontinuance of a rail line would be prohibited by federal law. Therefore, she explained that no local entity could block the construction of a rail line to Fort Greely or regulate the track as it transits from jurisdiction to jurisdiction. She stated, therefore, that the Railroad is protected by federal law as well as by the balancing test that was utilized by the Supreme Court. She reiterated that an extension of a line, placement of a line, whether to discontinue a line, the location of a train depot, and other core things would be protected by federal law, and would therefore not require the balancing test to be put into place.

Ms. Heideman stressed therefore, that, "there is a very finite field within which local governments could regulate in regards to the Railroad." This narrow field, she attested is that to which the balancing test could be applicable. She stated that the Court's implementation of this test "is very fair to everyone," in that it would require the Railroad "to comply with local zoning when compliance would not create a hardship for it…"

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Ms. Heideman reminded the Committee that Alaska Statute Title 35 mandates that, in a similar fashion to the federal ruling for the railroad, the Alaska Department of Transportation and Public Facilities must comply with local zoning ordinances but would be immune from local zoning ordinances "in appropriate cases."

Ms. Heideman stressed that under the balancing test guidelines, public and local officials are able to have input, in limited areas that "are not pre-empted by federal law" in regard to the essential operation of the Railroad.

Ms. Heideman declared that were Section 1 adopted, it would serve to "eliminate all public input, all input from local governments, and eliminate any need for Railroads to consider any legitimate public or local interest." In addition, she pointed out that immunity from local government zoning is not required in order to operate a railroad. She noted that nationally, the majority of railroad ownership is private, and she stressed that these companies are not immune from local zoning ordinances and continue to operate within and across multiple state lines.

Ms. Heideman declared that Section 1 would change "a system that is not broken" and would deny public and local government from infusing legitimate input. She urged that Section 1 be deleted.

Co-Chair Green asked for further clarification of language on the testifier's handout titled "Historical Statement by Sara Heideman (Hedland, Brennan, & Heideman) [copy on file]; specifically the language located in the last paragraph that reads as follows.

> It requires the railroad to comply with local zoning when it can do so without hardship. It permits the railroad to obtain immunity from local zoning when local zoning would interfere with its operations.

Ms. Heideman commented that the balancing test would be applied were the Railroad to seek immunity from a local zoning requirement, after the Railroad made an attempt to comply with local zoning by going to the local planning and zoning commission and applying for a conditional use permit. Were this the case, the Court, she noted would seek to balance the public's and Railroad's interest and determine whether any local interference with Railroad operations might incur. She stated that were the Railroad's interests to outweigh the others, it would prevail in being immune from local zoning. She shared that the balancing test evolved from a case in New Jersey in which a state university attempted to place multi-family housing in a community in which that zoning was not allowed. She stated that, in that case, it was determined that abiding by local ordinance would hinder the function of the university, and the university was granted immunity. Therefore, she continued, were the Railroad to prove that abiding by local ordinance would hinder its ability to perform an essential State function, it would be granted immunity.

Co-Chair Green understood that the balancing test would be applied by the Superior Court, and therefore, she asked whether the non-prevailing party could appeal the immunity determination to the Supreme Court.

Ms. Heideman stated that either side could appeal the ruling. Continuing, she noted that in a situation where the Railroad prevailed, "it would not likely be hindered in its operation unless the opposing party could, during the appeal process, show that it could likely prevail on the appeal or" the opposing side could prove it had the economic means with which to post a bond.

[NOTE: Co-Chair Wilken resumed chair of the Committee.]

RON LONG testified via teleconference from Seward on his own behalf. He voiced support for Section 2, as it is, he declared, "an exciting project." In addressing Section 1, he stated that, while "the need for consistency across jurisdictional boundaries for rights of way" might supersede those of local planning and zoning commissions, it is important to recognize the rights of municipalities pertaining to planning and zoning ordinance variances as outlined in Title 29. This direction, he continued, would allow the Railroad's essential services to be weighed in relation to municipality interests. He stated that a process should be developed that would consider the Railroad's right of way interests as opposed to its real estate development interests. He pointed out that a recent Department of Transportation and Public Facilities (DOTPF) right-of-way model exemption would be a good model as it addresses federal, State, and local discrepancies and incongruities.

Co-Chair Wilken stated that, in his view, Section 1 "is problematic." Therefore, he noted that the Committee has the option of adopting the original version of the bill that does not include Section 1 with the understanding that legislation addressing that issue could be considered early in the next Legislative session.

Mr. Gamble stated that, as per the recent Court ruling in the Eklutna case, the Railroad would be required to acquire a conditional use permit for each forthcoming project that affects a municipality and, were the local planning and zoning commissions conditions not deemed to be in the best interest of the Railroad, would be required to litigate each case utilizing the balancing test. This, he shared, would serve to delay the process on a case to case basis on "the entirety of the line." Continuing he attested that, in addition to requiring municipalities and the Railroad to agree on a project, the Court ruling has "opened the door" to allow private individuals or private group to challenge a permit. He also commented that "tying up a case" via challenges and appeals "is a tactic" utilized by various groups. He reiterated that in addition to the length of time required to conduct the permit process, the litigation process would serve to further delay a project. He noted that the Court ruling is not retroactive.

Co-Chair Wilken, while being sympathetic to the Railroad's concerns as he recalled the delay experienced by the Pogo Mine operations due to "tactics;" voiced concern regarding balancing "the needs of the Railroad against the responsibilities of our assemblies to have planning" in today's environment and in the future.

Co-Chair Wilken referenced a suggestion of the Fairbanks North Star Borough Mayor, Jim Whitaker, in his letter [copy on file] to Co-Chair Wilken, dated May 3, 2004 in which he proposed language that would read as follows.

> (c) By January 10 if each year, the corporation shall provide notice to municipalities of any new land use proposed for that year by the corporation within municipal boundaries. The corporation shall provide amended notice if a proposed land use is changed or an additional land use is proposed during the course of the year. Except in the event of an emergency, an affected municipality shall have at least 30 days after its receipt of the notice to provide advisory comment to the corporation. In the event of an emergency, the corporation will provide notice to an affected municipality promptly after the event.

Co-Chair Wilken opined that the suggestion that a community task force be involved in the process might indicate that more time should be required to address this situation. He noted that other communities such as the Matanuska-Susitna Borough have also voiced concern regarding Section 1. Therefore, he reiterated that in order to provide communities and the railroad proper consideration in this matter, Section 1 should be addressed separately the following Legislative session.

Co-Chair Green suggested that the incorporation of precedent-setting litigation rulings that could not be reversed and the establishment of a more rigorous permitting process might assist this matter. She asked whether there is any "logical distinction" between Railroad operations and its real estate holding as she opined that the real estate holding usage, rather than railroad operation projects, are the underlying issue.

Mr. Gamble responded that determining the boundary lines in regards to these two issues "is a real interesting question," as he continued that since the recent Court ruling, the Railroad has noticed that the vast majority of the issues pertain to land use. He stated that the determination regarding separation between land use and operations could be very controversial and subjective. This he continued is exampled by the controversy surrounding the

Anchorage Ship Creek railroad land wherein the Municipality of Anchorage's planning and zoning commission requirements specify that a certain type of landscaping scheme, including the planting of trees, must be in place. In this regard, he explained that were trees planted per commission's instructions, they would negatively impact the operational ability of the crew manning the line's observation tower. Furthermore, he shared that when the Railroad requested a waiver regarding this issue, the municipality denied one. He stated that were every project required to address things of this nature, it would be very time consuming. He concluded that this situation signifies the intent of the original exemption.

Senator Therriault pointed out that this example applies to the development of a piece of Railroad land that would be used for operational purposes.

Senator Therriault pointed out that language in Section 1, lines 11 and 12 specifies that any Railroad land leased to another entity would not be provided the Railroad exemption and would be subject to local planning and zoning requirements. He noted that leasing of Railroad land is a revenue generating mechanism.

Mr. Gamble clarified that land leased in this fashion today, is not subject to the Railroad exemption.

Senator Therriault stated that the aforementioned amendment suggested by the Mayor of Fairbanks is acceptable to the Railroad, even thought the Mayor's letter states that the Railroad disagrees with it.

Mr. Gamble voiced that the Railroad's comments in this regard were taken out on context.

Co-Chair Wilken stated that this would be clarified.

Senator Olson asked the number of Railroad projects that would be negatively impacted were Section 1 removed from the bill.

Mr. Gamble responded that a borough-by-borough analysis would be required to answer that question; however, he noted that there are approximately 113 projects under consideration. He stated that this information would be forthcoming.

Co-Chair Wilken stated that the struggle with Section 1 is acerbated by the upcoming Legislative Session adjournment date, which, he declared, does not provide significant time to properly address the issue. He noted that the Mat-Su and Kenai Boroughs have evening meetings planned to discuss this issue, and that their

feedback would be helpful. He suggested that a committee substitute be developed that might eliminate Section 1 from consideration at this time.

Senator Dyson encouraged the Committee to consider a committee substitute that would, rather than omitting Section 1, limit it to specific "high priority" projects.

Co-Chair Wilken stated that the intent would be to protect the Railroad until due consideration could be provided. He opined that perhaps a termination date or other measure would be appropriate at this time.

Senator Therriault stated that the adoption of Mayor Whitakers' language suggestion or a termination date in this legislation might increase the Committee's "comfort level" without hindering the Railroad's ability to operate. This action, he continued would also provide time to develop alternate language that could be considered during the next Legislation Session.

Co-Chair Wilken ordered the bill HELD in Committee in order to develop a committee substitute that could serve as "a bridge during this press of time." He reiterated his concern about the long-term affects of any action taken because the language "is very explicit." He noted that the Railroad's position as stated in Mayor Whitaker's would be further clarified.

#sr3

SENATE RESOLUTION NO. 3
Relating to commemoration of Senator Frank R. Ferguson and other distinguished Senators.

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

Co-Chair Wilken asked the Resolution's sponsor to address Committee concerns regarding the proposed location of the plaque and the nomination process through which names could be added in the future.

Senator Olson, the Resolution's sponsor, noted that this Resolution would honor Senators by having their name included on a commemorative plaque that would be placed in the Capitol. He stated that the plaque would be an alternative to naming rooms and buildings after legislators due to the fact that there are a finite number of such places available. He provided an example of the

plaque [copy on file].

Co-Chair Wilken reminded the Committee that Amendment #2, which was previously adopted, would omit the words "wall outside the Senate Finance Committee Room" and insert the words "place inside the Capitol Building" after the word "prominent" on page two, line 24 of the Resolution.

Amendment #3: This amendment inserts the words "resolution of" following "by" on page two, line 25. Therefore, with the inclusion of Amendment #2, this language would read as follows.

> BE IT RESOLVED by the Alaska State Senate that a commemorative panel be established at a prominent place inside the Capitol Building for the listing of Senators who are specially recognized by resolution of the Alaska State Senate for the value of their contributions to he Alaska State Legislature and the people of Alaska; and be it

Co-Chair Wilken moved to adopt Amendment #3.

Co-Chair Green objected for explanation.

Co-Chair Wilken explained that this language would allow the bill to be considered a "simple resolution" under Legislative Rule 49, which allows a resolution to be approved by either the House of Representatives or the Senate without requiring concurrence from the other body.

Senator Olson voiced support for the Amendment.

Co-Chair Green removed her objection.

There being no further objection, Amendment #3 was ADOPTED.

Amendment #4: This amendment inserts the word "posthumously" into the bill on page three, line 25, following the word "recognized".

Senator Olson moved to adopt Amendment #4.

There being no objection, Amendment #4 was ADOPTED.

Senator Olson moved to report the Resolution, as amended, from Committee with individual recommendations and accompanying fiscal notes.

There being no objection, CS SR 3 (FIN) was REPORTED from Committee with zero fiscal note #1 from the Legislative Council, Legislative

Affairs Agency, dated March 8, 2004.

#sb224

CS FOR SENATE BILL NO. 224(STA)
"An Act relating to a minor operating a vehicle after consuming alcohol, to a minor refusing to submit to chemical tests, and to driving during the 24 hours after being cited for one of those offenses; and providing for an effective date."

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

Co-Chair Wilken noted that the Senate State Affairs (STA) committee substitute, Version 23-LS1037\B, would stiffen the penalties and fines for minors, those under the age of 21, who drive while having a blood alcohol content (BAC) of .02 or higher. He stated that ten fiscal notes accompany the bill.

RICHARD SCHMITZ, Staff to Senator John Cowdery, the bill's sponsor, commented that this legislation was developed to address situations in which minors consume alcohol and drive. Continuing, he stated that minors who consume alcohol and drive with a BAC of .02 percent or higher would be charged with an infraction whereas individuals, age 21 and older who drive with a BAC of .08 percent or higher, would be charged with Driving While Intoxicated (DWI), a misdemeanor. He stated that under this bill, minors would also receive mandatory community service time and increased fines at three separate levels dependent on whether the offense is repeated. He stated that this legislation would acknowledge federal law that does not allow minors to be incarcerated for "a status offense" which is an offense that, dependent on your age, would be legal or illegal. DWI, he stated is a "status offense" in that it is illegal for a 20-year old to consume alcohol, but is legal once that person turns 21 years of age.

Co-Chair Wilken asked whether the Sponsor Statement is applicable to Version "B."

Mr. Schmitz responded that the Sponsor Statement is not current as it refers to the proposed penalty as being a Class B Misdemeanor rather than an infraction as specified in the Version "B" committee substitute.

Co-Chair Wilken asked that an updated Sponsor Statement be provided.

CINDY CASHEN, Executive Director, Mothers Against Drunk Driving (MADD), Juneau Chapter, spoke on behalf of Juneau and four other State MADD chapters. She noted that, in this situation and contrary to MADD's traditional position of supporting Misdemeanor penalties for DUIs, MADD supports the proposed infraction penalty because of the community work service and fine structure that accompanies the bill. She noted that a result of law enforcement efforts to apprehend more people who drive while intoxicated, there has been an increase in the number of arrests of minors operating vehicles after consuming (MOVAC). Court monitoring conducted by MADD, she noted, has observed that this increase in DUI cases has created a bottleneck in the Court System, which has "unfortunately" resulted in numerous MOVAC arrests being delayed, pled down, or dismissed, and the process, she attested, has become considered "a joke" by teenagers and has not served as an incentive to stop drinking and driving. She stressed that the sooner the Court processes MOVACs, the better, as the youth, at that time, "are more contrite and aware of they did screw up, and that they need to figure out what they need to do in the future."

Ms. Cashen stated that by "substantially" increasing the fine and requiring community work service, this bill would be effective. She noted that community work service has seldom been required in the past; however, she opined that it would make a difference and that this legislation would move the MOVACs through the system faster.

Senator Bunde asked whether the increased fine levels would generate sufficient revenue to warrant the increased expenses reflected in the Public Defenders Agency fiscal note.

Ms. Cashen responded that youth currently have a right to a Public Defender; therefore, she declared that MADD does not believe that this bill would incur additional expense to the Agency as "nothing is going to change."

Co-Chair Wilken asked the Agency to expound on the need to increase Public Defender Agency staff by one.

BARBARA BRINK, Director, Public Defender Agency, Department of Administration, testified via teleconference from an offnet site and commented that the Agency's fiscal note was calculated based on Division of Motor Vehicles' projections of minor drivers who are "processed for administrative driver license revocations who are not currently charged with operating a motor vehicle after consuming." "Respectfully disagreeing" with the sponsor and MADD, she stressed that this is a criminal offense and that classifying it as an infraction rather than a misdemeanor would not negate the

need for a jury council or legal counsel. Continuing, she stressed that additional staff would be required as an increase in cases involving juveniles charged with these offenses would result. She also noted that District Court judges rather than magistrates would be required to hear these cases, and she stressed that it is difficult to predict how many cases would be processed.

Ms. Brink agreed that the increased penalties would assist in decreasing the number of minors who choose to drink and drive. She clarified for the Committee that any minor with a BAC of .08 percent or higher would be charged with Driving Under the Influence. She reminded the Committee that the Agency experienced a tremendous caseload increase when the penalties for Minor Consuming (MC) were increased several years ago. She stated that, while this bill would be effective, "Justice comes at a price."

Ms. Cashen reiterated that rather than increasing the number of youth processed for MOVAC, this legislation would move those charged through the system quicker, and as a result, would make the process "easier."

Co-Chair Wilken thanked MADD for the efforts it exerts regarding drunk driving issues.

AT EASE 10:39 AM / 10:40 AM

DON SMITH, Administrator, Alaska Highway Safety Office, spoke in support of the bill.

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

There being no objection, CS SB 224(STA) was REPORTED from Committee with zero fiscal note #5, dated April 27, 2004 from the Department of Public Safety; indeterminate fiscal note #6, dated April 28, 2004 from the Alaska Court System; zero fiscal note #7, dated April 28, 2004 from the Department of Health and Social Services; zero fiscal note #8, stated April 29, 2004 from the Division of Motor Vehicles, Department of Administration; indeterminate fiscal note #9, dated April 29, 2004 from the Office of Public Advocacy, Department of Administration; and $134,700 fiscal note #10, dated April 28, 2004 from the Public Defender Agency, Department of Administration.

#hb93

SENATE CS FOR CS FOR HOUSE BILL NO. 93(TRA)
"An Act relating to boating safety, registration, and

numbering; extending the sunset date of changes in ch. 28, SLA 2000; and providing for an effective date."

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

Co-Chair Wilken noted that the Senate Transportation Committee committee substitute, Version 23-LS0230\U, and its accompanying fiscal notes would serve to extend the termination date of the Alaska Boating Safety Act from 2005 to 2010 and would remove the registration requirement for non-motorized vessels.

LINDA SYLVESTER, Staff to Representative Bruce Weyhrauch, the bill's sponsor, stated that this legislation would extend the termination date of the boating registration program that was implemented in the year 2000. She noted that a termination date was attached to the original legislation due to concern as to whether or not the federal funds the program attracted "might be continuous." She informed that Committee that there is no indication that these federal funds, which are drawn from the Wallace Wallop-Breaux Trust Fund, would terminate.

Ms. Sylvester informed the Committee that the original version of this bill eliminated the termination date section; however, a termination date was included in the committee substitute adopted by the Senate Transportation Committee (TRA). Continuing, she noted that after discussions in regarding the statewide controversy about requiring non-motorized boats to register, the Senate TRA decided to exempt all non-powered boats from the requirement.

SFC 04 # 106, Side A 10:43 AM

Ms. Sylvester noted that the TRA version of the bill is in compliance with federal law, which requires motorized vessels to be registered, and she spoke of the sponsor's desire that the program continue.

Co-Chair Wilken noted that a representative of the Department of Health and Social Services is present to answer questions pertinent to that Department. He voiced the understanding that the Department supports the bill.

Senator Dyson shared that he is a member of the Boating Safety Council. He voiced appreciation for the registration exemption for non-powered vessels as specified in Section 2, subsection (i)(4) on

page two, line 12 that reads as follows.

> (4) a boat that is not equipped with mechanical propulsion [, THAT IS EXCLUSIVELY PADDLED, POLED, ROWED, OR POWERED BY WIND, AND THAT IS
> (a) UNDER 10 FEET IN LENGTH; OR
> (b) OPERATED IN THIS STATE FOR A PERIOD NOT EXCEEDING 30 DAYS IN A CALENDAR YEAR BY A PERSON WHO HAS NOT ESTABLISHED RESIDENCY AS DESCRIBED UNDER AS 01.10.055];
>
> New Text Underlined [DELETED TEXT BRACKETED]

Senator Dyson suggested that the word "mechanical" be replaced with the word "powered" as he is concerned the term mechanical could be confusing as such things as mechanically powered peddle-boats might be viewed as requiring registration.

SUE HARGIS, Boating Safety Specialist, United States Coast Guard (USCG), responded that peddle-boats are not recognized as mechanically propelled by the federal government. Therefore, she stated that this should not be a concern because the USCG conducts the training of the State Troopers who would be involved in enforcing the law.

Senator Dyson acknowledged.

Senator Dyson regarded the language in Section 2, subsection (i)(6) on page two, line 22 to be redundant in that its specific reference to "umiaqs," is unnecessary as he viewed those vessels to exempted by the language in Section 2, subsection (i)(4).

> (6) a handmade non-motorized umiaq with a walrus or sealskin covering.

Ms. Sylvester concurred. Continuing, she noted that the TRA committee adopted an amendment sponsored by Senator Olson that incorporated the umiaq reference into the bill, and she noted that this is the first time in Alaska record that umiaqs, which could be powered by motors, are referenced in legislation.

Senator Dyson understood; however, asked why such things as kayaks were not also included.

Ms. Sylvester agreed that it is redundant. In order to address the reason for the inclusion of umiags, she informed the Committee that according to USCG regulations, all undocumented vessels equipped with propulsion machinery must be registered in the State of principal use. This, she stressed, is the intent of this program.

Senator Dyson announced that his vessels would become compliant were this bill adopted.

JACK CADIGAN, Captain, United States Coast Guard Retired, and Representative, United States Coast Guard Auxiliary, stated that he was available for questions.

Ms. Hargis, on behalf of the USCG, thanked the State for implementing the Boating Safety Program in 2000. She noted that Alaska was the last of the fifty states to implement such a program and as a result, benefited from other states' experiences and has become one of the leaders in such things as educational programs. She affirmed that the termination date, which would be extended by this bill, was originally included to address the continuous funding concern.

Ms. Hargis noted that while the USCG is typically involved in boating safety issues when there is the need for a Search and Rescue operation, this legislation allows the USCG to be involved at the educational level and in that regard, could assist in saving lives that otherwise might be lost.

Senator Olson suggested that the words "internal combustion engine" as opposed to the "less vague mechanical propulsion" term be utilized, were clarification on this issue desired.

Ms. Hargis clarified that the term "mechanical propulsion" would serve to include electric engines.

Senator Dyson expounded that "all definitions are problematic" as exampled by the fact that steam engines are external combustion engines.

Senator Olson asked the consequence of not adopting this legislation.

Ms. Sylvester responded that the program would terminate; and as a result Alaska would loose federal funding that is utilized to support educational programs. She noted that were the State to desire to continue any of these programs, general fund support would be required to replace those funds. In addition, she noted, that the boat registration process and the revenue generated from those registrations would revert back to the federal government.

Ms. Hargis noted that while the registration component would continue as a federal program, the benefits to the State would dissipate.

Co-Chair Wilken disclosed his involvement in an organization that, as a result of the programs supported by the Boating Safety Program, provides life jackets to youth in the Fairbanks area.

Co-Chair Wilken ordered the bill HELD in Committee.

[NOTE: This bill was readdressed after the Recess.]

RECESS TO THE CALL OF THE CHAIR 10:53 AM / 2:50 PM

SENATE CS FOR CS FOR HOUSE BILL NO. 93(TRA)
"An Act relating to boating safety, registration, and numbering; extending the sunset date of changes in ch. 28, SLA 2000; and providing for an effective date."

[NOTE: This bill was heard earlier in the meeting, just prior to the 10:53 AM RECESS.]

JENNIFER YUHAS, Executive Director, Alaska Outdoor Council (AOC), testified via teleconference from an offnet site and, while voicing "general support" for the TRA committee substitute, urged the Committee to revoke the non-mechanically propelled vessel exemption afforded in the Version "U" committee substitute in Sec. 2, subsection (i)(4) on page two, lines 12 -15. She declared that allowing this exemption would, in effect, place the burden of funding the program on the shoulders of motorized vessel owners, when in fact, all users benefit from it.

Co-Chair Green asked for confirmation that AOC is concerned specifically about language on lines 12-15 of Section 2, subsection (i)(4) rather than the entirety of the exemption language as identified on lines 12 through 19 of that section in the TRA committee substitute.

Ms. Yuhas clarified that AOC is most concerned about the language on lines 12 through 15 of that section. The language in question reads as follows.

(4) a boat that is not equipped with mechanical propulsion [, THAT IS EXCLUSIVELY PADDLED, POLED, ROWED, OR POWERED BY WIND, AND THAT IS

(A) UNDER 10 FEET IN LENGTH; OR

<u>New Text Underlined</u> [DELETED TEXT BRACKETED]

Senator Bunde questioned the consequences that would occur were the entirety of Section 2, subsection (i)(4)(B) revised, as it would appear that it would allow a person who might, for example, not operate a motorized speed boat for more than 30 days a year, to be exempt from registering.

(B) OPERATED IN THIS STATE FOR A PERIOD NOT EXCEEDING 30 DAYS IN A CALENDAR YEAR BY A PERSON WHO HAS NOT ESTABLISHED RSIDENCY AS DESCRIBED UNDER AS 01.10.055];

REPRESENTATIVE BRUCE WEYHRAUCH, the bill's sponsor, affirmed that would be the affect.

Senator Bunde surmised therefore that the entirety of Sec. 2, subsection (i)(4) should be eliminated.

Co-Chair Green clarified that AOC's position is that the language in Section 2, subsections (i)(4) and (4)(A) that were deleted in the TRA committee substitute be re-inserted.

Senator Bunde understood AOC's concern to be that mechanized vessels would be subsidizing the program. Therefore to address that concern, he suggested that the entirety of Section 2, subsection (i),subsection (4), lines 12 through 19, be eliminated.

Ms. Yuhas clarified that AOC desires to have the language on page two, lines 12 through 15, reinstated into bill.

Co-Chair Wilken clarified that AOC is concerned about the language that reads as follows.

(4) a boat that is not equipped with mechanical propulsion [, THAT IS EXCLUSIVELY PADDLED, POLED, ROWED, OR POWERED BY WIND, AND THAT IS
(A) UNDER 10 FEET IN LENGTH; OR

New Text Underlined [DELETED TEXT BRACKETED]

Co-Chair Green recalled that in order to pass the original bill through the Legislative process, the language in question was added as a compromise measure because, she noted that, at the time, people who owned such things as canoes and kayaks under ten feet in length did not wish to support the program. The supporters of the original bill, she noted, assumed that everyone, regardless of whether their vessel was motorized or not, participated in recreation and would require assistance in times of need or would benefit from one of the educational programs. Therefore, she urged that this language be reinserted.

Amendment #1: This language would reinstate the following language into Sec. 2, subsection (i)(4) on page two, beginning on page 12 as follows.

> (4) a boat that is not equipped with mechanical propulsion, that is exclusively paddled, poled, rowed, or powered by wind, and that is
>
> (A) under 10 feet in length

Co-Chair Green moved to adopt Amendment #1.

Co-Chair Wilken objected for discussion.

Senator Dyson asked the affect of this amendment.

Co-Chair Green stated that were this language reinstated, all boats exceeding ten feet in length would require registration.

Representative Bruce Weyhrauch explained that the bill, after progressing through four different committee hearings, "is a compromised package." He noted that during the bill's progression through committees, AOC had spoken in support of establishing the 2010 termination date in order to more adequately assess the language being discussed in Amendment #1. He informed the Committee that were the language in Amendment #1 reinstated, then language in Section 1, subsection (2) on page one, beginning on line 11, must additionally be discussed as it addresses the same issue.

Senator Bunde understood that adoption of the amendment would specify that non-powered boats under ten feet would be exempt, and that longer boats such as canoes, kayaks and other similar boats would be required to register.

Ms. Hargis affirmed that Senator Bunde is correct in that were Amendment #1 adopted, non-motorized small boats such as paddleboats would require registration. She stressed that adoption of the amendment would not jeopardize compliance with federal requirements. She clarified that "the occasional users" of such things as kayaks and canoes, rather than avid boaters, requested the exemption implemented in the TRA committee substitute.

Co-Chair Wilken understood therefore that were the Committee to adopt the TRA committee substitute as is, his 18-foot canoe would not require numbering and registration; however, he continued, were Amendment #1 adopted, that 18-foot boat would require numbering and registration as it exceeds ten feet in length.

Senator Dyson recalled that during previous committees' discussions, small boat owners objected to registering them because they argued that many small boats are seldom utilized and therefore would not require the same measure of USCG assistance that larger, more frequently used power boats would. He voiced opposition to the amendment.

Ms. Sylvester stated that the original purpose of the bill was to either repeal or extend the termination date of the Safe Boating Program. However, she pointed out that during the committee processes, the issue of whether or not to license non-motorized vessels such as rafts, rowboats, and kayaks, particularly in Interior Alaska, which were used on an infrequent basis, surfaced and became a pivotal point of discussion. She disclosed that "the bottom line" regarding this bill is the fact that the money that funds this program is derived from the federal motor fuel tax rather than from such things as registration fees. Thus, she concluded, "the logical link" in this legislation is the fact that federal regulations specifically require boats propelled by motorized mechanisms to be registered. While voicing appreciation for AOC's position, she observed that there are impassioned positions on both sides of the argument. To put the cost of registering "in perspective," she pointed out that the cost of registering a vessel is $3.33 per year. In summary, she stated that removing the language in question was a policy call on the part of the TRA committee, and she stressed that, "for the price," the Boating Safety Program "is a great program."

Co-Chair Wilken reviewed the amendment and concluded that a vote for the amendment would reinstate language on page two, lines 12 through 15 that was omitted by the TRA committee. Thus, he stated, adoption of the amendment would serve to continue the original bill's language in that any non-motorized boat, ten feet in length or longer, would be required to register.

Senator Dyson asked how many non-mechanized vessels have been registered since this program's implementation.

Ms. Hargus stated that, "there has been compliance" with the program and that approximately 25,000 vessels have registered. She noted that prior to the program's transferal from federal control to the State, approximately 33,000 boats were registered and that after the transfer, the numbers increased to approximately 85,000 overall. She disclosed that upon a USCG review of Search and Rescue (S&R) responses that were conducted, it was determined that approximately ten percent of the total S&R responses involved non-motorized boats.

Senator Dyson calculated that approximately 25-percent of the entire number of non-motorized vessels in the State that should be registered, are. Continuing, he stated that adoption of this amendment would make the owners of the remaining 75-percent non-compliant, and therefore subject to sanction. Therefore, he asked the penalty for non-compliance.

Representative Weyhrauch stated that, the previous year, he had been cited for non-registration of a 16-foot Boston Whaler skiff. He disclosed that he had received a citation and was required to comply with USCG licensing regulations.

Senator Dyson asked whether his picture was published in the paper.

Representative Weyhrauch responded in the negative, and stated that once he had complied with the requirements, the case was dismissed.

Senator Dyson understood therefore that no fine was levied.

Representative Weyhrauch stated that he was required to comply with the requirements and did not have to pay a fine.

Senator Olson spoke against the amendment.

Ms. Hargus stated that were the State, rather than the USCG, to have cited Representative Weyhrauch, a $50 fine would have been levied for the offense.

Co-Chair Wilken, noting that the end of this Legislative Session is nearing, asked how the adoption of this amendment would affect further action on this bill.

Representative Weyhrauch opined that this action would negatively affect the bill's passage.

Senator B. Stevens understood that the amendment would reinstate the registration for non-motorized vessels that are ten feet in length or longer and would not require registration for non-motorized vessels less than ten feet. He declared a conflict, as he owned boats in each category.

Senator B. Stevens asked the reason that the adoption of the amendment "would dislodge the bill from concurrence."

Representative Weyhrauch responded that getting agreement, in light of the controversy regarding the termination date and the non-motorized vessel registration issues, might be difficult.

In response to a question from Senator B. Stevens, Ms. Hargus clarified that the registration issue pertains to non-motorized boats, as all motorized vessels would continue to be required to register.

Representative Weyhrauch reiterated that the motorized boat registration requirement is because of the federal motor fuel tax.

Ms. Sylvester pointed out that the bill would not have reported from the TRA committee were the exemption for non-motorized vessels not incorporated. She stated that the individuals who opposed the requirement that non-powered vessels be registered would again voice their objection to the bill were this language reinstated.

Co-Chair Wilken voiced that delaying the bill would be problematic.

Senator B. Stevens asked regarding the registration fee.

Representative Weyhrauch responded that the three-year registration fee is ten-dollars.

Ms. Sylvester stated therefore, that the cost is $3.33 a year.

Senator Olson spoke against the amendment due to its negative affect on the use of small non-motorized boats in Rural Alaska. He stated that this is another example of an un-necessary layer of government.

Senator Bunde stated that "for the greater good," he would oppose the amendment. However, he suggested that those who disagree with paying $3.33 a year should not receive S&R support.

Co-Chair Green reminded the Committee that the original Boating Safety Program legislation would not have been enacted were the exemption awarded to non-motorized vessels under ten-feet not incorporated. She opined that all boaters should support the program as all benefit from it.

Representative Weyhrauch acknowledged Co-Chair Green' comment.

A roll call was taken on the motion.

IN FAVOR: Co-Chair Green

OPPOSED: Senator Hoffman, Senator Olson, Senator B. Stevens, Senator Dyson, Senator Bunde, and Co-Chair Wilken

The motion FAILED (1-6)

The motion to adopt Amendment #1 FAILED.

CLIFF JUDKINS, Chair, Alaska Boating Association, testified via teleconference from Mat-Su, to share that the Association's 1,200 membership consists of both power and non-power boaters. He noted that his testimony is "moot" as it pertained to Amendment #1 that the Committee failed to adopt.

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

There being no objections, SCS CS HB 93(TRA) was REPORTED from Committee with zero fiscal note #3, dated January 13, 2004 from the Department of Natural Resources and negative $24,800 fiscal note #4, dated January 16, 2004 from the Department of Administration.

#hb227

> CS FOR HOUSE BILL NO. 227(JUD)
> "An Act increasing the jurisdictional limit for small claims and for magistrates from $7,500 to $10,000; increasing the jurisdictional limit of district courts in certain civil cases from $50,000 to $100,000; expanding the jurisdiction of district courts; limiting magistrates from hearing certain small claims cases; and amending Rule 11(a)(4), Alaska District Court Rules of Civil Procedure, relating to service of process for small claims."

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

Co-Chair Wilken stated that this legislation would increase the jurisdictional limit of District Courts from $50,000 to $100,000. He noted that the Senate Judiciary Committee committee substitute, Version 23-LS0896\U, and an accompanying indeterminate fiscal note is before the Committee.

VANESSA TONDINI, Staff to Representative Lesil McGuire, the Chair of the Senate Judiciary Committee, read the sponsor statement into the record as follows.

> The jurisdictional limit for district courts was last raised in 1990 when the legislature raised the limit from $35,000 to $50,000. By raising the jurisdictional limit from $50,000 to $100,000, this bill will allow for increases inflation and provide increased flexibility for litigants regarding whether

to file in district court or superior court.

The jurisdictional limit on small claims court and magistrate court was last raised in 1997 when the legislature raised the limit from $5000 to $7500. Small claims court offers many advantages over district court to private litigants, including less formal discovery requirements, reduced filing fees, and relaxed evidentiary rules. This bill will increase the limit to $10,000.

The bill also removes prohibitions against the district court hearing claims for false imprisonment, libel, slander, and malicious prosecution. These restrictions were adopted shortly after statehood. District court judges are well qualified and there is no reason to prohibit them from hearing these types of cases.

Finally, the bill will expand small claims jurisdiction over out-of-state defendants. Under current law, small claims actions against out-of-state defendants may only be brought under the landlord-tenant act or under AS 09.05.020, which authorizes services of process against owners or operators of motor vehicles involved in an accident in the State. The bill would authorize small claims jurisdiction over out-of-state defendants under traditional long-arm principles. This expanded long-arm jurisdiction is limited to district court judges. Magistrates will continue to limited by the standards set forth in current law.

Ms. Tondini summarized that the bill would implement several "upgrades" to jurisdictions" of the Court system and would be consistent with the Court's "general philosophy" regarding encouraging citizen to "access lower courts in a friendly manner." She noted that the business community supports this bill.

DOUG WOOLIVER, Administrative Attorney, Office of the Administrative Director, Alaska Court System, noted that while the Court System did not initiate this legislation, several changes incorporated into this bill are consistent with the Court's general philosophy regarding making the Courts more accessible to litigants. However, he noted that the downside to increasing the small claims jurisdictional limit and making the process easier, cheaper, and more relaxed for litigants to sue people, is the concern that judges might hear a large case that might not "have been adequately argued," has had no briefing, and would simply involve two people appearing before a judge. He noted that while judges are comfortable with this process when small dollar amounts are involved, the higher the limit is would increase the likelihood

that the resulting ruling might not be "particularly well thought out."

Mr. Wooliver stated that the Court System's indeterminate fiscal note takes into consideration that more out-of-state court cases are likely and that, due to the higher limit allowed, some non-economical cases might be heard in a small claims court. He noted however, that when the jurisdictional level was last raised, no significant court expense resulted.

Senator Olson asked whether, in addition to the District Court, this legislation might affect other segments of the Court System that operate under "the rules of civil procedure."

Mr. Wooliver responded "not directly, no." He continued that currently, cases involving claims in excess of $50,000 must be heard by the Superior Court, and were this bill adopted, claims up to $100,000 could now be heard by the District Court. He clarified that no jurisdictional issues involving the Superior Court would be affected.

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

There being no objection, CS HB 227 (JUD) was REPORTED from Committee with indeterminate fiscal note #2, dated April 7, 2004 from the Alaska Court System.

#hb336

> SENATE CS FOR CS FOR HOUSE BILL NO. 336(JUD)
> "An Act relating to motor vehicle insurance; limiting recovery of civil damages by an uninsured driver; and providing for an effective date."

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

Co-Chair Wilken commented that this legislation would prohibit a person operating an uninsured motor vehicle from recovering non-economic losses in situations in which injury or death might occur. He noted that SCS CS HB 336(JUD), Version 23-LS1254\I, and two accompanying fiscal notes are before the Committee.

REPRESENTATIVE KEVIN MEYER, the bill's sponsor, pointed out that the two accompanying fiscal notes indicate that no expenses would be incurred were this bill implemented. He explained that this bill

would decree that, "if you are knowingly going to operate a car without State required car insurance, then you simply cannot sue for non-economic damages such as pain and suffering;" however, he clarified that a person could sue for punitive and economic damages such as wages, medical expenses, and car repair expenses. He noted that the word "knowingly" was incorporated into the bill by the Senate Judiciary (JUD) Committee. Other language added by the JUD Committee he explained, stated that a person who knowingly drove without the required vehicle insurance could sue for non-economic damages in situations in which the other driver: was driving while intoxicated or was on drugs; intentionally caused the accident; was fleeing from the scene of the crime; or was at the time of the accident committing "a felony, or was driving recklessly or with gross negligence." He voiced his support for the amendments incorporated into the JUD committee substitute.

SFC 04 # 106, Side B 4:11 PM

Representative Meyer stated that this legislation was developed as a result of a constituent who is a single woman with "a low-paying job" and who struggled to pay $1,500 a year for her car insurance, contacted him after discovering that her neighbor, admittingly, did not have vehicle insurance. This woman, he shared, thinking this was unfair, began to research the situation, and found that numerous states, such as California, have adopted legislation prohibiting uninsured motorist from collecting non-economic awards, and that other states also prohibit the furthering of economic awards. He shared that the JUD committee substitute before the Committee resembles law currently in effect in Louisiana. In addition, he disclosed that insurance agencies pass non-economic lawsuits award expenses on to the 82-percent of vehicle owners who pay insurance premiums. Therefore, he stressed that those who do pay are essentially subsidizing the costs incurred by the 18-percent that do not.

Representative Meyers disclosed that a member of his family, while driving, has experienced two instances in which she was hit by an uninsured motorist, and at the time, he thought, "no problem, this is why I have insurance coverage." However, he has since realized that as a result of these types of accidents, his insurance rates rise. Therefore, he stated that as a matter of fairness, "a person who is not paying into the system should not be able to collect as much out of the system." He also proclaimed that individuals who comply with the law and pay liability insurance should be classified as "victims" of an uninsured motorist. He also acknowledged that an uninsured person might be unable to acquire

insurance due to having had multiple accidents or speeding tickets. He stressed that these people should not be on the road. He stated that the goal of this legislation would be to encourage everyone to comply with the law as greater protection and fairness for everyone would result. He reminded that driving is a privilege and not a right.

Representative Meyers noted that the committee substitute also contains "minor technical changes" that pertain to insurance statutes.

MICHAEL LESSMIER, Attorney, State Farm Insurance, informed the Committee that State Farm has 26-percent of the State's automobile insurance market "with approximately 123,000 policies in force." Continuing, he stated that every State Farm policyholder would "positively benefit" were this legislation adopted.

Mr. Lessmier addressed the two technical changes incorporated into the JUD committee substitute in Sections 2 through 5: one being the "mirror rule" which resulted from a federal Supreme Court decision that mandated the each "uninsured/underinsured motorists coverage must mirror the coverage in your liability policy." This, he explained, means that were one's liability policy to provide for punitive damages, one's "uninsured/underinsured motorists policy must also provide for punitive damages. He stated that, "there is no good reason to require a victim of an uninsured motorist to pay for that kind of coverage" in that, he expressed, "punitive damages don't punish the uninsured driver at all, they just punish the victim." Therefore, he stated that the bill addresses punitive damage coverage by specifying that it would "not be required to be part of the uninsured/underinsured motorist coverage."

Mr. Lessmier stated that the other technical change in the bill addresses the system that has been established in the State through which insurance companies provide policyholders the option to elect one of a variety of monetary levels of the mandated offers uninsured/underinsured coverage. He noted that while a person could decline to purchase uninsured/underinsured motorist coverage at the onset of purchasing a new policy, insurance companies are required to provide these options to each policyholder every six months. He continued that, in addition, State Courts have ruled that these coverage offers must be provided for "umbrella policies as well as on the underlying primary policy covering the automobile." Therefore, he stated, the multitude of different offerings on a multitude of different policies is difficult to manage and to understand, and furthermore, he disclosed that one major insurance carrier in the State has halted its issuance of umbrella and access policies as a result of this requirement. In summary, he explained

that the technical change in this regard is that the requirement for the mandatory uninsured/underinsured offers be limited to the primary policy covering the automobile.

Mr. Lessmier stated that neither of these technical changes are controversial, both would be beneficial, and that both are supported by the Division of Insurance.

Mr. Lessmier commented that the language in Section 1 would benefit policyholders and every single person who complies with the insurance requirements. He stated that the New Jersey Supreme Court recently ruled that this type of law "advances a policy of cost containment by insuring that an injured uninsured driver does not draw from the pool of accident victim insurance funds to which he did not contribute. The legislation thus gives the uninsured driver a very powerful incentive to comply with the compulsory insurance laws, obtain automobile insurance coverage or lose the right to maintain a suit for both economic or non-economic injuries." He noted that while this proposed law is not as strict as the New Jersey law, it makes good sense for Alaska and is a step in the right direction.

LINDA HALL, Director, Division of Insurance, Department of Community and Economic Development, informed the Committee that the Department supports the technical language changes.

Co-Chair Green announced a conflict of interest as her family is involved in the insurance industry.

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

There being no objection SCS CS HB 336 (JUD) was REPORTED from Committee with zero fiscal note #1, dated March 29, 2004 from the Alaska Court System and zero fiscal note #2, dated March 30, 2004 from the Department of Law.

#hb419

CS FOR HOUSE BILL NO. 419(RES)
"An Act relating to regional seafood development associations and to regional seafood development taxes."

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

Co-Chair Wilken commented that this bill, Version 23-LS1418\V,

would allow fishermen to form regional seafood development associations to tax themselves and thereby provide a stable funding source for marketing efforts.

REPRESENTATIVE DAN OGG, the bill's sponsor, stated he is sponsoring this bill by request of the Joint Legislative Salmon Industry Task Force. He explained that by establishing 12 voluntary regional area management associations, the salmon industry, who he noted support this legislation, would be able to tax themselves in order to assist in the development and marketing efforts of salmon. He noted that the Copper River Red Salmon Association, which is one such operating association, has been quite successful in its marketing endeavors, and he noted that several other associations are in the developmental stage. He shared that this legislation is spurred by the fact that the federal and State grants that have funded these associations would be terminating in the near future. Therefore, he continued, the proposed legislation would provide a replacement funding mechanism through which associations could tax its members at rates of either point-five percent, one percent, one-point-five percent or two-percent as determined by a vote of permit holders in each association. He noted that once an association is formed in an area, other groups could join it, and he clarified that non-permit holder fisherman could be non-voting members of an association. He also noted that provisions in the bill would allow those not interested in joining an association to opt out of membership and that were an association to desire to disband, it could do so.

Representative Ogg stated that rather than these associations competing with the Alaska Seafood Marketing Institute (ASMI), the goal would be to enhance the marketing of salmon in a collaborative rather than adversarial manner. He urged the Committee to support the bill.

Senator Olson asked whether there is any opposition to the proposal as oftentimes controversy accompanies situations involving taxation.

Representative Ogg responded that there has been no opposition to the legislation. He recalled that some members of the troll industry had some initial questions which were adequately responded to, and that, in general, there has been positive response from the industry as well as from United Fishermen of Alaska (UFA).

JERRY MCCUNE, Representative, United Fishermen of Alaska (UFA) and Cordova Fishermen United, testified in support of the bill. He affirmed that there is industry concern regarding how to replace the current grant funding and that the development of area associations would benefit the industry.

AT EASE: 4:25 PM/ 4:26 PM

Amendment #1: This amendment makes the following changes.

Following the word "fishery" in Section 3, subsection 43.76.370 (b) on page four, line three, the words ", or is amended or terminated," are inserted.

In addition, the amendment would insert, following the word "section;" in Section 3, subsection (b)(1) on page four, line seven, the language "(2) at least 30 percent of the eligible interim-use permit and entry permit holders in the fishery cast a ballot in the election to levy, amend, or terminate the tax;".

Other changes include the replacement of "(a) and (c)" with "(a) - (c)" in Section 3, subsection (d) on page five, line 19; the replacement of "(a), (c), and (d)" with "(a) -(d)" in Section 3, subsection (h) on page six, line ten.

In addition, the phase "upon majority vote at an election held under AS 43.76.370" is deleted and replaced with "upon majority vote of eligible permit holders who vote in an election held under AS 43.76.370 in which at least 30 percent of the eligible permit holders cast a ballot." in Section 3, Section 43.76.375 of Section 3, subsection (a) on page six, lines 21 and 22.

And finally, following the word "tax;" in Section 3, subsection (b)(3) on page seven, line eight, the language "(4) at least 30 percent of the permit holders who are eligible to vote in the election cast a ballot in the election." is inserted.

The amendment also specifies that sections be renumbered accordingly.

Co-Chair Wilken moved to adopt the amendment and objected in order to allow the bill's sponsor to explain the amendment.

Representative Ogg voiced support for the amendment, as it would allow a vote conducted by an association to be validated provided a minimum 30-percent of eligible permit holders participated in the election.

Co-Chair Wilken removed his objection.

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

Senator Bunde moved to report the bill, as amended, from Committee

with individual recommendations and accompanying fiscal notes.

There being no objection, SCS CS HB 419(FIN) was REPORTED from Committee with zero fiscal note #1, dated February 19, 2004 from the Department of Community and Economic Development and indeterminate fiscal note #2, dated February 8, 2004 from the Department of Revenue.

#hjr44

CS FOR HOUSE JOINT RESOLUTION NO. 44(RES) am
Relating to research into the decline of the Southwest Alaska population of the Northern Sea Otter in the western Gulf of Alaska.

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

REPRESENTATIVE DAN OGG, the Resolution's sponsor, explained that this Resolution was developed in response to a recent United States Fish and Wildlife Service proposal to list sea otters in the Southwest region of the State as threatened under the Endangered Species Act. He stated that this Resolution suggests, in "a proactive fashion," that a federal research program be implemented for five years prior to a decision being regarding the sea otter endangerment status, as there is concern that the commercial fisheries operating in the area might be negatively affected were their fishery closed or curtailed were that status enacted.

AT EASE 4:31 PM / 4:31 PM

Co-Chair Green moved to report the Resolution from Committee with individual recommendations and accompanying fiscal notes.

There being no objections, CS HJR 44(RES)am was REPORTED from Committee with zero fiscal note #1, dated March 31, 2004 from the House Resources Committee.

#hb424

CS FOR HOUSE BILL NO. 424(JUD)
"An Act relating to review by the Legislative Affairs Agency of certain state agency regulations proposed for adoption, amendment, or repeal under the Administrative Procedure Act; repealing provisions relating to annulment of regulations; and providing for an effective date."

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

Co-Chair Wilken stated that this bill, Version 23-LS0732\U, "would establish a formal process in which a Legislative review would be included when specified State agencies' regulations are being developed after legislation is adopted. He noted that several fiscal notes accompany the legislation.

BARBARA COTTING, Staff to Representative Jim Holm, the bill's sponsor, affirmed Co-Chair Wilken's remarks. She commented that "Legislators are often surprised" by how laws they have enacted are enforced by regulation. She reviewed that, under current law, the lone individual specified to review regulations is the Attorney General. This legislation, she continued, would implement a formal process that would require the Legislative Legal Division of the Legislative Affairs Agency to review regulations, written by the various agencies, in order to determine whether the regulations comply with statutory authority and Legislative intent. She stated that were non-compliance determined, the appropriate people would be notified "and the Legislature can act." She stressed that this process would have a positive impact on the State's economy because the Legislative intent would be upheld and a more stable environment would be created.

Senator Dyson asked whether the sponsor's handout titled "Steps in the Regulation Adoption Process" [copy on file] outlines the current process.

Ms. Cotting affirmed that it does.

Senator Dyson asked where, in the current process, the proposed procedure would be implemented.

Ms. Cotting responded that the proposed Legislative Legal review would occur between Steps Four "Department of Law opens file" and Five "Agency publishes and distributes public notice, add't notice information, and regulations".

Senator Dyson asked for further information regarding the process that would be implemented were Legislative Legal to determine that the regulations were non-compliant.

Ms. Cotting responded that, "at that point, written notice" would be provided to the Department of Law, the agency that developed the regulations, the Regulation Review Committee, the President of the Senate, and the Speaker of the House.

Senator Dyson asked what action might occur upon notification; specifically in a situation where the agency disregarded the notice.

Ms. Cotting responded that other than notification of non-concurrence, the State's Constitution regarding separation of powers would not allow the process to be halted.

Senator Dyson surmised therefore, that the option in that case would be to adopt more State statutes in order to allow more conformity to occur.

Ms. Cotting agreed.

Senator Dyson noted that other states have allowed their legislature to change regulation by resolution. He asked whether this process would require a Constitutional amendment.

Ms Cotting affirmed that it would. She noted that another component of this bill would remove that provision from State statute, as it was declared unconstitutional.

Senator Bunde recalled that a similar proposal by the Legislature had previously been "soundly rejected" in a statewide ballot.

DEBRA BEHR, Assistant Attorney General, Legislative & Regulations Section, Office of the Attorney General, Department of Law, affirmed that such language had been on a Statewide election ballot in 1980, 1984, and 1986, and had, she continued, been defeated each time by voters.

Senator Bunde commented that were a Legislative Legal review process added to the current process, modifications to the process might occur over time. He opined that were this process implemented, the Legislature might benefit by being forewarned that changes might be required "sooner than later." However, he cautioned that, without additional staff, the volume of regulations that occur on an annual basis might overwhelm Legislative Legal personnel.

Ms. Behr stated that the Legislative Affairs Agency's initial fiscal note, in addition to requesting an additional attorney position, reflected funding from the Legislature. However, she noted that that fiscal note was zeroed out by the House of Representatives Finance Committee. She pointed out that the Department of Law's indeterminate fiscal note #6, which accompanies the bill, is the result of uncertainty regarding the level of

resources that might be provided by the Legislature as well as the effect on the level of support the Department of Law would be required to provide to the process.

Senator Bunde asked the number of regulations that would have been reviewed the previous year, were this process in effect.

Ms. Behr responded that this legislation would establish a priority system in that reviews could be limited to regulations resulting from new legislation or expanded to review regulations pertaining to regulations that the Legislature might perceive "to have major policy implications." She reiterated that, in addition to this unknown element, Legislative Legal workloads during the Legislative Session would require Legislative Council prioritization.

Senator Bunde asked for further information regarding the determinations of major policy implications by Legislative committees.

Ms. Behr referred the Committee to the prioritization procedure language located in Section 2, subsection (b)(1) and (2) on page two, lines 7-13 that reads as follows.

> (b) Reviews shall be conducted under (a) of this section in the following order of priority:
> (1) proposed regulations that would implement newly enacted legislation;
> (2) proposed regulations requested in writing to be reviewed by a standing committee, the Administrative Regulation Review Committee, or the legislative council as implicating major policy development.

Ms. Behr stated that this language would assist in avoiding review of every regulation which could, she exampled, range from reviewing regulations pertaining to non-major priority things such as the raising of fees five dollars or increasing continuing education requirements for hairdressers. Therefore, she stated that the bill, as written, would allow regulations to be reviewed as desired by the Legislature.

DAVE STANCLIFF, Staff, Administrative Regulatory Review Committee, Office of Senate President Gene Therriault, stated that this legislation would develop a "cooperative quality review" process that, by allowing the Legislature to be involved in the process, would serve to encourage that regulations are "written more carefully." He noted that were a prioritization process developed, Legislative Legal staff would work with the Department of Law and the various departments' regulation writers to enhance the process.

Furthermore, he continued, that were the system to work as intended, the Legislature could increase funding if so desired.

Senator Olson asked how controversial, high visibility regulations such as those pertinent to the Department of Fish and Game would be addressed.

Ms. Behr stated that the Department of Fish and Game is exempt from this review proposal as that Department has its own Board and has a different regulation process.

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

There being no objection, CS HB 424(JUD) was REPORTED from Committee with zero fiscal note #4, dated March 24, 2004 from the Department of Health and Social Services; zero fiscal note #5, dated March 25, 2004 from the Legislature; and indeterminate fiscal note #6, dated March 24, 2004 from the Department of Law.

#hb484

> CS FOR HOUSE BILL NO. 484(JUD) am
> "An Act imposing a correctional facility surcharge on persons convicted of a crime under state law and on persons whose probation is revoked; relating to fees and expenses for interstate transfer of probation or parole; and providing for an effective date."

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

Co-Chair Wilken stated that the House Rules Committee by Request of the Governor sponsors this bill, Version 23-GH2046\D.A. He noted that the bill would implement correctional fees and surcharges on a person arrested and sentenced to a term of imprisonment. He noted that the level of the surcharge would be dictated by the seriousness of the crime. He noted that several fiscal notes accompany the bill.

PORTIA PARKER, Deputy Commissioner, Office of the Commissioner, Department of Corrections informed the Committee that this House bill is the companion bill to a Senate Bill 336 which was previously reported from Committee. She noted that the lone difference in the two bills is that this bill would eliminate the requirement that an inmate post a bond when being transferred to an out-of-State prison facility. She noted that both the House and the

Senate raised concerns in this regard. Furthermore, she added that language pertaining to the Interstate Compact was eliminated, as pertinent federal rules would be changing this year.

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

There being no objections, CS HB 484(JUD)am was REPORTED from Committee with $46,500 fiscal note #1, dated February 3, 2004 from the Department of Law; zero fiscal note #2, dated April 13, 2004 from the Alaska Court System; and $9,800 fiscal note #3 from the Department of Corrections.

#hb533

CS FOR HOUSE BILL NO. 533(JUD)
"An Act relating to the state's administrative procedures and to judicial oversight of administrative matters."

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

Co-Chair Wilken stated that this bill, which is sponsored by the House State Affairs Committee, would allow a person who is unable to acquire a final administrative decision from a State agency to request assistance from the State Superior Court. He noted that Version 23-LS1833\I is before the Committee for consideration.

REPRESENTATIVE BRUCE WEYHRAUCH, Chair, House State Affairs Committee which sponsors this bill, explained that the intent of this bill is to provide a person the ability to "dynamite a case" being reviewed by an administrative agency from that agency and place it with the Superior Court in order to obtain "a more expeditious decision."

Senator Olson asked how frequently these situations occur.

Representative Weyhrauch clarified that the Superior Court jurisdictional review process is currently unavailable. He explained that, even were this legislation adopted, the proposed process would not be implemented without a "showing of unreasonable delay," and, in addition, the administrative agency would be provided an opportunity to provide a rational reason as to why a decision had not be made. He also pointed out that in some instances, a delay in a determination might benefit an individual as exampled by a situation in which, during the review process, the Department of Fish and Game might issue an interim fishing permit

to a person who might have some issues that might negatively affect their application. On the other hand, he stated, were a determination regarding an appeal of a person's business license delayed, the person's livelihood could be jeopardized. This legislation, he attested, would enable a person to request that the agency "move quickly provide" to expedite the decision.

Co-Chair Green moved to adopt Version "I" as the working document.

There being no objection, Version "I" was adopted as the working document.

Senator Bunde asked regarding Fiscal Note #4 from the Department of Law.

Representative Weyhrauch responded that this fiscal note would address attorney expenses incurred to the Department when it represents an agency in litigation based on unreasonable agency delay.

Senator Bunde observed that this is "when we sue ourselves again."

DAVE STANCLIFF, Staff, Administrative Regulatory Review Committee and Staff to Senate President Gene Therriault, informed the Committee that, since 1980, in excess of 8,500 administrative agency determinations took longer than one year to be completed. Continuing, he noted that "what is not reflected" in the fiscal notes are the savings resulting from "less State time and less State dollars" that would result were decisions made more expediently. He stated that quicker determinations would also positively impact the private sector.

Senator Bunde concurred. However, he noted that while this bill would encourage more agency efficiency, that efficiency requirement could provide the opportunity for State agencies to be sued.

DOUG WOOLIVER, Administrative Attorney, Office of the Administrative Director, Alaska Court System, noted that, even though many people might believe that their delay is unreasonable, the Court System does not believe it would be "flooded" with cases as, he opined, the possibility that a case might be moved to the Superior Court would serve to motivate agency determinations to be conducted within a reasonable amount of time. He noted that this process could also be enhanced as a result of measures included in other legislation that is being introduced. However, he stated that were thousands of yearlong determination delays to occur, the Department would require additional funding.

Representative Weyhrauch informed the Committee that, at one point, language had been made entertained that would have served to withhold payment to Superior Court justices were a ruling not forthcoming within six months after referral. He noted that this language, while not adopted, could also have applied to agency hearing officers.

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

There being no objection, SCS CS HB 533(FIN) was REPORTED from Committee with indeterminate fiscal note #1, dated March 18, 2004 from the Alaska Court System; indeterminate fiscal note #2, dated March 23, 2004 from the Department of Fish and Game; zero fiscal note #3, dated March 23, 2004 from the Department of Health and Social Services; and $84,300 fiscal note #4, dated March 26, 2004 from the Department of Law.
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ADJOURNMENT

Co-Chair Gary Wilken adjourned the meeting at 04:54 PM