MINUTES
SENATE FINANCE COMMITTEE
May 08, 2004
9:04 AM

TAPES

SFC-04 # 111, Side A
SFC 04 # 111, Side B
SFC 04 # 112, Side A

CALL TO ORDER

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

PRESENT

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

Also Attending: REPRESENTATIVE LES GARA; SENATOR HOLLIS FRENCH; JOEL GILBERTSON, Commissioner, Department of Health and Social Services; CYNTHIA DRINKWATER, Assistant Attorney General, Commercial/Fair Business Section, Consumer Protection Unit, Department of Law; TIM BARRY, Staff to Representative Bill Williams; CODY RICE, Staff to Representative Carl Gatto; AMANDA WILSON, Staff to Representative Norm Rokeberg; JON BITTNER, Staff to Representative Cheryll Heinze; SARAH GILBERTSON, Legislative Liaison, Office of the Commissioner, Department of Fish and Game; ROB BENTZ, Deputy Director, Division of Sport Fish, Department of Fish and Game; JIM PRESTON, Boat Charter Owner/Operator; SUE STANCLIFF, Staff to Representative Pete Kott; KEVIN JARDELL, Assistant Commissioner, Department of Administration; SARA NIELSON, Staff to Representative Ralph Samuels

Attending via Teleconference: From Offnet sites: JULIE DECKER, Executive Director, Southeast Alaska Dive Fishery Association; LINDA WILSON, Deputy Director, Public Defender Agency, Department of Administration; DUANE BANNOCK, Director, Division of Motor Vehicles, Department of Administration; WANETTA AYERS, Southwest Alaska Municipal Conference; From Kenai: BLAINE GILMAN, Attorney

SUMMARY INFORMATION

HB 56-UNFAIR TRADE PRACTICES ATTY FEES/COSTS

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

SB 308-DOMESTIC VIOLENCE PROTECTIVE ORDERS

The Committee heard from the sponsor and the Department of Law. A Letter of Intent was adopted, and the bill was reported from Committee.

HB 341-DIVE FISHERY MANAGEMENT ASSESSMENT

The Committee heard from the sponsor and the industry. The bill was held in Committee.

HB 342-DRIVING UNDER INFLUENCE/ALCOHOL OFFENSES

The Committee heard from the sponsor, Representative Rokeberg's staff, the Public Defender Agency, and the Division of Motor Vehicles. The bill was held in Committee.

HB 452-GUIDED SPORT FISHING/ ADFG & CFEC RECORDS

The Committee heard from the sponsor, the Department of Fish and Game, and the industry. The bill was reported from Committee.

HCR 32-AK INFO INFRASTRUCTURE POLICY TASK FORCE

The Committee heard from the sponsor, the Department of Administration, and took public testimony. Two amendments were adopted and the bill was held in Committee.

HB 511-CERTIFICATE OF NEED PROGRAM

The Committee heard from the sponsor, the Department of Health and Social Services, and took public testimony. Two amendments were adopted and the bill reported from Committee.

HB 91-RETIRED PEACE OFFICER'S MEDICAL BENEFITS

This bill was scheduled but not heard.

HB 425-SCHOOL FUNDS RELATED TO BOARDING SCHOOLS

This bill was scheduled but not heard.

#hb56

CS FOR HOUSE BILL NO. 56(L&C)
"An Act relating to the award to the state of actual reasonable attorney fees and costs, including costs of investigation, in certain court actions relating to unfair trade practices; and amending Rules 54(d), 79, and 82, Alaska Rules of Civil Procedure."

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

Co-Chair Wilken stated that this bill would allow the State to recover enforcement, investigation, and court costs when the State prevails in a Court case against a party that has violated Alaska Consumer Law. He noted that a Department of Law fiscal note accompanies the bill.

REPRESENTATIVE LES GARA, sponsor of the bill, informed the Committee that Alaska, with three half-time attorneys, has the smallest Consumer Protection Agency in the nation, and that, due to insufficient funding, the Agency is limited in what it is able to accomplish. He reminded the Committee that in 1997, Senator Dyson had filed a bill with the intent of boosting Agency funding without increasing the demand for additional State funds. Version 23-LS0300\I of this bill, he stated would further the intentions of that earlier bill by allowing the State, when it prevails in a consumer fraud case under the State's consumer protection laws of the Unfair Trade Practices Act, to collect reasonable attorney costs as determined by the Court, as well as the investigation expenses associated with the case.

Representative Gara explained that, currently, beyond the fines that are levied when the State prevails in a case, the State receives an average of 20-percent of its attorney expenses and none of its investigation expenses. Passage of this legislation, he declared, would assist in offsetting Agency expenses by collecting funds from individuals who have violated consumers' trust or who have, through dishonest means, undermined a law abiding business competitor. These funds, he communicated, would be used to support and expand the program. Therefore, he concluded that were the bill adopted, the State would be allowed when it prevailed in a case, to recoup expenses and thereby demonstrate that the Agency is a cost effective function. In addition, he attested, that the funds generated by this legislation could be used to expand staffing in

order to pursue more cases with "no net cost to the State." He pointed out that the Department of Law's zero fiscal note, Fiscal Note #1, specifies that the bill would not incur any additional expenses to the State and could generate an indeterminate amount of revenue.

Senator Dyson understood that the State currently only prosecutes cases in which a consumer fraud case involves a pattern of multiple victims. Continuing, he asked whether any mechanism is in place through which to protect small businesses from frivolous lawsuits.

Representative Gara affirmed that, due to staffing constraints, the Agency currently pursues cases in which there is a pattern of abuse such as a situation involving a senior care facility in which there are multiple victims as opposed to a single situation in which, for example, a used car salesman makes untrue statements about a vehicle he sold someone.

Representative Gara clarified that the components of this bill would be limited to those situations involving the State rather than being applicable to business against business lawsuits. He stated that were the State involved in what might be a frivolous lawsuit, a determination regarding the merits of the case would be made. He assured that those administering the State's Unfair Trade Practices Act do a "pretty good job" in regard to which cases are processed and that Legislators would "express some outrage" were the State to undertake a frivolous lawsuit.

CYNTHIA DRINKWATER, Assistant Attorney General, Commercial/Fair Business Section, Consumer Protection Unit, Department of Law, spoke in favor of the bill.

Senator Dyson voiced appreciation for the efforts involved in the bill. He noted that, when similar legislation was proposed in the past, it proposed to "empower" both the private sector and the public sector to recover costs were they to prevail in a consumer fraud lawsuit; however, he noted that the time, that language was eliminated from the bill. He expressed delight in the fact that language enabling the State to recoup damages is being pursued through this legislation.

Co-Chair Wilken asked regarding a suggestion offered by Senator Ralph Seekins to amend the bill, during its Senate Judiciary Committee hearing.

Representative Gara explained that Senator Seekins proposed to amend the bill in a manner similar to a federal anti-trust law that would hold the State responsible for expenses in a consumer fraud

lawsuit were it to not prevail. He stated that while this might sound like "a balanced deal," it would serve "to kill the consumer protection function" in the Department of Law. Continuing, he stressed that these cases are pursued to address consumer fraud situations to which "we all abhor," and were the State, with its limited staff and funding, to lose a case based on a technicality or due to an unreliable witness, it would serve to create "hesitancy" on the part of the Agency to take a case and might "set back the function" of the Agency. Therefore, he urged the Committee not to further that amendment.

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

There being no objection, CS HB 56(L&C) was REPORTED from Committee with indeterminate fiscal note #1, dated April 21, 2003 from the Department of Law.

#sb308

CS FOR SENATE BILL NO. 308(JUD)
"An Act relating to warnings on domestic violence and stalking forms; and increasing the duration of certain provisions of domestic violence protective orders from six months to up to one year."

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

Co-Chair Wilken explained that the Senate Judiciary committee substitute, Version 23-LS1672\H, would double the current maximum length of domestic violence protective orders by allowing a judge to issue an order for no less than six months and up to a maximum of one year. He stated that in addition to being accompanied by several fiscal notes, there is a Letter of Intent from the Senate Judiciary Committee.

SENATOR HOLLIS FRENCH, the bill's sponsor, explained that this bill would allow a judge to extend the current six-month protective order mandate to "up to one year." He informed the Committee that the State has two types of protective orders: a 20-day emergency order that a petitioner could have implemented without the involvement of the other party; and the six month protective order which could be issued upon a court hearing involving the petitioner and the respondent. He clarified that this bill solely addresses the six-month domestic violence protective order, which requires full due process before implementation.

Senator French shared that the Senate Judiciary Committee added language to the bill, which would clarify that false statements made during a court hearing would be subject to the penalty of perjury.

Senator French voiced disagreement with the Public Defender Agency's fiscal note as, he contented that the Agency simply doubled its current associated expense level through the rationale that the length of the protective order would be doubled. He distributed a copy of an email exchange [copy on file], dated March 16, 2004 between himself and Bob Linton of the Department of Law in which it is noted that, of the 23 Domestic Violence Restraining Orders violations cases that occurred in Anchorage between January 1 and March 1, 2004, 19 were related to the 20-day restraining order that is not affected by this legislation, and only four were violations of the six-month order; thus, he contended that most violations occur within the first 20 days of an order. Therefore, he concluded that the fiscal note "is quite a bit higher" than the expenses that would be realized were this legislation enacted.

Senator Bunde asked regarding the Senate Judiciary Committee Letter of Intent that accompanies the bill; specifically whether any financial impact would result.

Senator French replied that the Letter of Intent addresses language in Sections 1 and 3 of the bill, which would require the Alaska Court System to "conspicuously" highlight the penalty for perjury on Court System domestic violence restraining order documents. The Letter of Intent, he continued, would mandate that, only after current forms are exhausted, should the Courts implement the bold type requirement.

Senator French voiced support for the Letter of Intent.

Senator Bunde moved to adopt the Senate Judiciary Letter of Intent.

There being no objection, the Senate Judiciary Letter of Intent was ADOPTED.

Senator Dyson moved to report the bill and the accompanying Letter of Intent from Committee with individual recommendations and accompanying fiscal notes.

There being no objection, CS SB 308(JUD) and the Judiciary Letter of Intent were REPORTED from Committee accompanied by a $125,600 fiscal note, dated April 9, 2004, from the Department of Administration and zero fiscal note #2, dated March 8, 2004 from

the Alaska Court System.

#hb341

HOUSE BILL NO. 341
"An Act relating to the dive fishery management assessment."

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

Co-Chair Wilken explained that this bill would affect the Dive Fishery management assessment in that it would finalize a compromise between Alaska shellfish growers and commercial fishermen and would additionally address long-standing controversies regarding the State's management of geoduck clams and other shellfish stocks on aquatic farm sites. He noted that were the Finance committee substitute, Version 23-LS1280\I, adopted by the Committee, a title change would be required. In addition, he noted that a Department of Revenue zero fiscal note accompanies the bill.

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

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

TIM BARRY, Staff to Representative Bill Williams, the bill's sponsor, explained that this bill was introduced at the request of the Southeast Alaska Regional Dive Fisheries Association (SARDFA). He noted that the original bill incorporated "fairly mild changes" to existing statutes governing the manner in which SARDFA assesses its dive fishermen, Southeast Alaska communities, and dive fishery processor members. He explained that the Association, which is funded by either a one, three, five, or seven percent tax assessed on its members, works with the Department of Fish and Game and the Department of Environmental Conservation to manage and develop the dive fishery in Southeast Alaska. This bill, he recounted, would allow the Association's tax mechanism to be expanded to include two, four, or six percent assessments.

Mr. Barry stated that the bill was recently amended to address an April 2004 State Supreme Court ruling that resulted in the Department of Fish and Game issuing cease-harvesting orders to several geoduck farmers. Consequently, he stated that the Association, shellfish farmers, the Department of Law, the Department of Fish and Game, the Governor's Office and others have

reached an agreement on statutory language that would allow the shellfish farmers to continue to farm shellfish. He pointed out that this language is included in the Version "I" committee substitute before the Committee. He affirmed that this agreement, which has the support of the aforementioned entities, would institute a title change.

Senator Dyson recalled that as this dive fishery industry was being developed, it asked the Legislature to adopt regulations, which would allow the industry to levy sufficient tax assessments through which to administer and supervise operations. He stated that he "was charmed" by the fact that the industry was willing to pay for this endeavor. In that vein, he asked whether this legislation would negatively affect "the bottom line for the State."

Mr. Barry replied that this legislation would not affect the State "in any way." Continuing, he stated that enabling SARDFA to assess a two, four, or six-percent tax would allow the Association "to more effectively pay their own way."

Senator Bunde stated that the bill has changed since he heard it in the Senate Labor & Commerce Committee. Continuing, he asked for further information regarding the standing stock language in the bill; specifically how designating aquatic farm sites in areas where no shellfish naturally exist would benefit the shellfish farming industry, as he contested that were the site suitable for the species, the shellfish would be naturally occurring there. He also asked for further information regarding the grandfathering in of current farms and the "common property" stock that existed on the site before the farm began.

Mr. Barry voiced the understanding that the standing stock and shellfish farmer issue has been a topic of discussion in excess of five years. He stated that the agreement reflected in the Version "I" committee substitute "would define what significant and insignificant standing stock are." Furthermore, he stated that in those cases in which a farmer has a site designated as having an insignificant amount of standing stocks, the farmer could harvest the insignificant standing stock and sell it to a processor. He noted that the any proceeds generated by standing stock, beyond the insignificant stock, would be remitted to the State.

JULIE DECKER, Executive Director, Southeast Alaska Dive Fishery Association, testified via teleconference from an offnet site and informed the Committee that geoducks are able to grow in areas where they are not currently present or do not naturally grow such as shallow inter-tidal areas. However, she noted that it is unknown as to whether they would grow as well in these areas as they would

in a natural habitat area. Therefore, she attested that, to attract and encourage the growth of the "somewhat risky" shellfish farming industry, it would behoove the State to make available natural habitat sites, as they would provide natural feed and quicker growth. She stated that the primary on-going issue in this industry involves standing stock. She shared that the Alaska Court System has ruled that areas with insignificant geoduck clams should be available as aquatic farm sites, but that areas with significant amounts of standing stock should be regarded as common fishery sites. This issue, she disclosed has been heard by the Lower Court and appealed to both the Superior and Supreme Court. She stated that the Supreme Court has determined that State statutes do not currently allow the Department of Fish and Game to designate any amount of standing stock, significant or insignificant, to a farmer. This legislation, she contended, supports the Lower Court ruling that would change State Statute to allow farmers to harvest an area with insignificant amounts of wild stock. She stated that an agreement has been reached specifying that a harvest of 12,000 pounds or less would be regarded as insignificant wild stock. She noted that the net proceeds of a harvest exceeding that poundage would be remitted to the State. She reiterated that this issue has been addressed for a long time and that the ability of the various entities to reach this agreement was "quite an accomplishment."

Senator Bunde stated that this legislation involves "some interesting common property issues." He asked whether Legislative Legal Services has developed a position regarding this common property stock issue.

Co-Chair Wilken understood that a Constitutional concern has recently arisen regarding this legislation.

Mr. Barry explained that George Utermohle, Legislative Counsel, Legislative Legal Services, has written a memorandum [copy on file], dated May 4, 2004 to Representative Williams, indicating that the agreement presented in this legislation would change State statutes. Furthermore, he stated that while the recent Supreme Court ruling specified that aquatic farmers should not continue to harvest common stock, the Court did not address any Constitutional issues. However, he allowed that Constitutional questions have arisen during the years of dispute involving this issue, and that the entities involved in the development of this agreement "are all aware" that there may be some unresolved Constitutional issues."

Co-Chair Wilken asked that the memorandum be distributed to the Members for review.

Mr. Barry concurred.

Senator Olson asked whether there has been any opposition to the bill.

Mr. Barry replied in the negative.

Co-Chair Wilken stated that the bill would be HELD in Committee in order to further clarify, with Legislative Legal Services, the Constitutional issues being raised.

AT EASE 9:37 AM / 9:38 AM

#hb342

> CS FOR HOUSE BILL NO. 342(FIN) am
> "An Act relating to driving while under the influence, to the definition of 'previously convicted,' to alcohol-related offenses, to ignition interlock devices, and to the issuance of limited driver's licenses; and providing for an effective date."

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

Co-Chair Wilken explained that CS HB 342(FIN)am, Version 23-LS1292\W.A would strengthen the consequences of Driving Under the Influence (DUI) and would provide more authority to the Wellness Therapeutic Court. He noted that a positive fiscal note accompanies the bill.

CODY RICE, Staff to the bill's sponsor Representative Carl Gatto, informed the Committee that this legislation entails several changes to the punishments and sanctions of those convicted with DUIs including that those convicted of driving at twice the blood alcohol content (BAC) limit of .08 percent would be required to install an ignition interlock device on their vehicles for six months and those convicted of driving at three times the legal BAC limit would be required to install the devices for one year.

Mr. Rice noted that another important provision addressed in this bill is the "look-back provision." He shared that current State regulations specify that "misdemeanor look-backs are lifetime" in that, he explained, were a person convicted of a DUI at the age of 18 and then again at the age of 65, it would be recognized as a second DUI offense. He compared the unlimited DUI look-back provision to the State's felony look-back provision, which, while currently set at eight years, is scheduled to be increased to ten

years by the year 2006. This legislation, he explained would reduce the lifetime look-back for misdemeanors to 15-years.

Mr. Rice noted that implementation of a 15-year look-back period for misdemeanors would more align Alaska's look-back timeframe with other states' misdemeanor look-back provisions, as reflected in the chart titled " National Conference of State Legislatures Drunk Driving Sanctions Time Frames Used by States for Inclusion of Prior Offenses" [copy on file].

Mr. Rice further noted that while current law allows only individuals with a single DUI offense to be eligible for a limited driver's license, this bill would allow those with multiple DUIs to be issued a limited driver's license, provided they fulfill certain requirements such as completion of Wellness Courts or installation of an ignition interlock device. He pointed out that the Members' packets contain a flow chart titled "Limited Licenses" [copy on file] that reflects the various requirements. He also noted that the packets contain another flow chart titled "HB 342 - DUI Penalties" [copy on file] that outlines the proposed penalty changes for differing BAC levels as explained in his opening remarks.

Senator Bunde commented that were a 15-year misdemeanor look-back policy adopted, it would "substantially exceed" the look-back period of any other state.

Mr. Rice replied that that is correct, with the exception being Minnesota, which has a 15-year look-back provision.

Senator Bunde questioned the rationale for implementing a misdemeanor 15-year look-back policy when the State's felony look-back policy is limited to ten-years.

Mr. Rice commented that Representative Norm Rokeberg originally proposed this provision in separate legislation, HB 175-PRIOR CONVICTIONS FOR DUI that was absorbed into this legislation.

Senator Bunde asked whether pampering with ignition interlock device readings could compromise their BAC readings.

Mr. Rice expressed that while older devices might have been flawed in this regard, modern devices have been upgraded to incorporate complicated mechanisms and such things as "rolling re-tests." He noted that the devices are constantly being modified to prevent pampering.

Senator Bunde surmised that these "sophisticated" devices must be

expensive.

Mr. Rice replied that use of the device would cost approximately three dollars per day, which could be likened "to the cost of a drink a day."

Senator Bunde calculated that this would equate to approximately a $1,000 a year.

Mr. Rice concurred. However, he stated that, were the device "imposed at sentencing," current statutes could allow the cost of the device to be deducted from the "fairly substantial fines" imposed by the Court.

Senator Bunde expressed that his questions should not be misconstrued to be supportive of drinking and driving but rather to acknowledge that some people do this, as a result of "a mistake or poor judgment." He noted that another example of poor judgment is driving without use of a seatbelt. He stated that he is considering an amendment to incorporate seatbelt requirements into this legislation.

Senator Olson voiced the concern that imposing restrictive devices such as the ignition interlock device might impede the safe use of the vehicle by the offender or by other people who might use the vehicle.

Mr. Rice responded that the device requirements are easy to comply with.

Senator Olson continued to voice concern that, at an inopportune moment, the requirements of the device might not allow the vehicle to operate in a necessary manner when being driven.

Senator Bunde asked for additional information regarding the DUI misdemeanor look-back timeframe of 15-years.

AMANDA WILSON, Staff to Representative Norm Rokeberg, expressed that State laws pertaining to DUIs are harsh and that the lifetime look-back policy reinforced that position. However, she noted that treating individuals with two DUI offenses twenty or thirty years apart in the same manner as repeat offenders who have multiple DUIs in a relatively short period of time is unfair and is not the intent of the law. Therefore, she stated that the purpose of this proposal is to "correct an oversight" rather than to lessen the DUI penalty.

Senator Bunde asked the reason the felony look-back timeframe is

less that the 15-year misdemeanor timeframe proposed in this legislation.

Ms. A. Wilson stated that the 15-year misdemeanor look-back time period was determined upon review of what other states were doing. She noted that only one other state has a lifetime look-back policy.

Co-Chair Green asked for confirmation that this bill is the result of the merger of other similar bills.

Mr. Rice replied that it is.

Co-Chair Wilken interjected that, due to the fact that Representative Rokeberg sponsored one of the original bills, his staff is available to answer questions.

LINDA WILSON, Deputy Director, Public Defender Agency, Department of Administration, testified via teleconference from Anchorage and echoed the testimony that Alaska has some of toughest DWI offense penalties in the country and that there is only one other state with a lifetime look-back policy. She stressed that even with limiting the look-back time period to 15-years, Alaska would continue to have a tough stance on drinking and driving offenses. She declared that current law is unfair in that it would treat someone convicted of a DUI at the age of 18 and then convicted again at the age of 72 as a second offender. She voiced support for limiting the look-back to 15-years.

Ms. L. Wilson voiced concern that the bill does not provide consideration to the fact that no ignition interlock devices are available for off-road vehicles, which are utilized in road-less areas.

SFC 04 # 111, Side B 09:53 AM

Ms. L. Wilson also voiced concern as to whether there would be the ability to install the devices on vehicles in remote areas of the State such as Nome, and if that ability were available, how much the installation cost would be. She declared that requiring a person to install the device might pose to be a difficult and unfair thing that "might be harsh on poor people" or to those who live in remote areas. She also questioned the manner through which BAC would be measured and noted that the issue of whether someone's BAC was double of triple the legal limit could result in litigation.

DUANE BANNOCK, Director, Division of Motor Vehicles, Department of Administration, testified via teleconference from an offnet site, in support the bill; particularly the language that would expand the issuance of a limited license to repeat DUI offenders provided certain requirements are in place. He noted that currently repeat DUI offenders are not eligible for limited licenses.

Co-Chair Wilken ordered the bill HELD in Committee in order to address questions that were raised.

#hb452

> SENATE CS FOR CS FOR HOUSE BILL NO. 452(RES)
> "An Act relating to licensing and regulation of sport fishing operators and sport fishing guides; relating to licensing and registration of sport fishing vessels; authorizing the Department of Fish and Game and the Alaska Commercial Fisheries Entry Commission to release records and reports to the Department of Natural Resources and the Department of Public Safety; and providing for an effective date."

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

Co-Chair Wilken informed the Committee that this legislation would establish minimal licensing requirements and fees for two types of sport fishing guide licenses: sport fishing services operator licenses and sport fishing guide licenses. He stated that Version 23-LS1619\W and its accompanying fiscal notes are before the Committee.

JON BITTNER, Staff to Representative Cheryll Heinze, the bill's sponsor, informed the Committee that the sponsor is presenting this bill at the request of the Department of Fish and Game. He noted that the bill would create two new licenses and requirements. The fee for a sport fishing guide license, he noted, would be $50 annually and the sport-fishing operator's license would be $100 annually, and he clarified that were a person to provide both services, the fee would be limited to $100. Continuing, he stated that the sport-fishing guide licensing requirement mandate the licensee to have minimum liability insurance, first aid training, and conduct certain "minimum" reporting requirements.

Mr. Bittner pointed out that Members' packets contain a chart titled "Regulations after passage of HB 452" [copy on file] that depicts current reporting requirements and those that would be

implemented were this legislation adopted. He stated that currently, with the exception of minimal reporting requirements in the Kenai River Management area, no reporting is required for guided freshwater fishing. He noted that the freshwater fishing report requirements that would be established by this bill would provide the Department with "more useful information" and would align with current saltwater fishing report requirements which include such things as the number of hours fished, the number and types of fish caught, and the general location fished.

Mr. Bittner stated that Version "W" differs from the previous version of the bill, CS HB 452(FIN)am, Version 23-LS1619\U.A, in regards to sport guide vessel licensing registrations. This language, he noted, is located in Section 2, subsection Section 16.05.395 and Section 3, subsections (a), (b), and (c) on page two of the bill. He summarized that this language would move sport guide vessel registrations from the Commercial Fisheries Entry Commission (CFEC) to the Division of Sport Fish, Department of Fish and Game in order to "consolidate information" and to streamline the process by having all the sport guide information in one State agency. He noted that the $20 vessel registration fee currently charged by CFEC would be eliminated were this legislation adopted and the guide registration fee enacted.

SARAH GILBERTSON, Legislative Liaison, Office of the Commissioner, Department of Fish and Game, commented that the sport fish industry is important as it generates approximately $6 billion in revenue a year. She stated that currently, while individuals participating in the sport fishing industry, must register with the Department of Fish and Game, there are no registration fee, license, insurance, medical, training or reporting requirements in place. This legislation, she continued, would establish annual $50 sport fish guide license fees, annual $100 operator license fees applicable to the owner of a business who employs guides, or an annual $100 combination guide/operator license.

Ms. Gilbertson stated that this legislation would also allow the Board of Fish to establish reporting guidelines that would provide the Department and the Board of Fish "better information" with which to manage the fishery. This information, she shared, would include such things as where the guides are operating, how many and what fish are being caught, and the frequency of the operations. She stated that rather than implementing "onerous and burdensome" reporting requirements, the Department's desire is to make them flexible and area appropriate.

Ms. Gilbertson stated that the bill, during its numerous committee hearings, has been amended to best serve the desired objectives and

has garnered wide spread support from numerous sport fishing charter boat and guide associations in Sitka, Homer, Kenai and other areas. She noted that the language in Version "W" which moved vessel registration to the Division of Sport Fish within the Department of Fish and Game and eliminated the vessel fee was "the icing on the cake for a lot of folks."

Senator Dyson asked the difference between an operator and a guide.

ROB BENTZ, Deputy Director, Division of Sport Fish, Department of Fish and Game explained that an operator is the owner of a business that provides boats and employs guides. He stated that, particularly in Southeast Alaska and Cook Inlet, there are numerous one-person businesses in which the owner owns the boat, owns the business, operates the boat, and serves as the guide. This person, he stated would be considered a sport fish guide.

Senator Dyson asked the difference between a charter business operation and a situation in which a guide accompanies a client in a boat.

Mr. Bentz stated that the definition of a guide in a charter business "is a person that accompanies and personally assists other people during any portion of the fishing trip." This, he attested, is different from a transporter or an outfitter who just provide transportation services from one point to another.

Senator Dyson asked whether a person who owns and operates a boat but does not provide any fishing assistance to a client would be classified as a guide.

Mr. Bentz responded yes, as he is providing a charter vessel and is accompanying the client. He noted that there is also such a thing as a "bare boat charter" in which people rent a boat and fish unaccompanied by a guide.

Senator Dyson asked for further clarification regarding a situation in which an accompanying owner/operator of a vessel is on the boat but does not provide assistance to a client who is fishing.

Mr. Bentz expressed that were an owner/operator of a boat to take a client out fishing but not provide them "assistance in any way," he would be considered the operator rather than a guide, "if he had someone down there to assist them down there on the deck."

Senator Dyson asked at what point, a trip, with a guide accompanying clients on a boat, would be recognized as a charter operation.

Mr. Bentz responded that when a guide accompanies clients on a boat trip, it would be considered a chartered fishing operation the instance they begin to fish. Continuing he stated that were the trip to simply involve whale watching, and not engage in sport fishing, it would not be considered a chartered fishing trip.

Senator Dyson asked in what situation a boat with a guide and fishing clients would be required to adhere to United State Coast Guard charter license regulations.

Mr. Bentz responded that anytime "a paying client is onboard a vessel and they are being accompanied by an operator of that vessel," that operator is required to possess a United States Coast Guard operator's license. He noted that the size of the boat is not a factor in this requirement.

Senator Dyson understood therefore that were a client to operate, for example, an eight-foot boat, an operator license would not be required; however, were a guide to accompany that client on a vessel that the client operated, the guide would be required to have a Coast Guard license.

Mr. Bentz responded, "to my knowledge, yes."

Senator Olson asked whether this legislation is being presented as a result of a problem with the current management of the sport fish guide industry.

Mr. Bentz responded that one reason for the legislation is to assist in addressing the current lack of information regarding the impact on a fishery and the number of people fishing, particularly in remote freshwater areas He stated that while this might not be classified as a problem, it is difficult to track overall usage. He also noted that, as a result of the lack of information, the Department might recommend more conservative regulations than necessary to the Board of Fisheries.

Senator Olson opined that the Department is currently experiencing funding shortfalls which are serving to reduce fishery management. He voiced concern that more staff and more funding would be required to manage the licensing process, and as result, the Department's efforts might be further negatively impacted.

Ms. Gilbertson responded that the costs of the license program and subsequent data analyses have been analyzed and that the proposed program would be receipt-supported. The fee structure proposed, she continued, would provide sufficient funding to implement the

program. She referenced the Division of Sport Fish fiscal note # 2 and noted that while the analysis specifies that four new full-time positions and one new part-time positions would be required, the full-time positions would be staffed by shifting four Department funded employees, who currently process the Saltwater Log books reports, to staff the needs of this proposal. The receipts generated from this legislation, she attested, would then pay these people's wages. Therefore, she declared, this proposal would be increase staffing by only the one part-time position.

Ms. Gilbertson noted that it was made known during the bill's hearing in the Senate Resources Committee that increasing the scope of State government is not a desired end result. She shared that shifting vessel registration to the Division of Sport Fish was supported by numerous entities as it would increase efficiency in government and create "one stop shopping."

Senator Olson asked how these fishing management changes might affect subsistence fishing issues in areas under federal management.

Mr. Bentz responded that this legislation would serve to alleviate a lot of the problems that have arisen during the last few years as the federal government, the Board of Fish, the Department of Fish and Game and State would have better information as to who is operating where and what they are doing. This, he stated, would enable better management decisions to be made.

Senator Olson respectfully argued that many problems have arisen due to the dual management scenario in which federal entities manage one area and the State manages another. The current situation, he declared presents hardships to residents who are therefore "double hand-cuffed." He stated that, in his experience, "the route" is more complicated.

Mr. Bentz agreed that this legislation would not simplify the situation, as he noted there is the chance of controversies when there are "two, in some cases, conflicting regulatory regimes." He stated, however, that the information this legislation would provide would benefit State and federal agencies.

Senator Olson referenced language pertinent to the reporting requirements as specified in Section 6, subsection 16.40.280(b) on page seven, lines 19-23 that read as follows.

> (b) A person who holds a license issued under AS 16.40.260 or 16.40.270 shall comply with the reporting requirements in this section and reporting requirements adopted in regulation by

the department or board. The department and the board may adopt by regulation requirements for timely submission of reports required under this section or under regulation adopted by the department or board.

Senator Olson asked what consideration would be provided to individuals in remote settings who experience difficulties in submitting reports due to such things as infrequent or poor mail service in respect to fines and other penalties.

AT EASE 10:18 AM / 10:18 AM

Senator Olson asked whether this language could be eliminated or modified.

Mr. Bentz clarified that the intent of the language is to allow the Department to develop reporting and guide regulations on a "least intrusive, less problematic" area-by-area basis.

AT EASE 10:19 AM / 10:19 AM

Mr. Bentz declared that the regulations would be developed, by area, with input from the guides and would be user friendly. He stated that the Board of Fish, whose meetings are open to the public, would formulate reporting and other guidelines dependent on an area's circumstances.

Ms. Gilbertson reiterated that the Department would continue to work with the industry to address the logbook reporting concern, and she noted that recently, the Department decided to waive the logbook submittal requirement when periods of inactivity occur. She stressed that there is no intent to place "a burden" on operators, and that the intent is to gather "better information" with which to better manage the resource.

Senator Olson noted that the reporting submittal issue could be a burden to anyone anywhere in the State as oftentimes, weather could hinder the submittal for weeks at a time. He asked for industry testimony in this regard.

JIM PRESTON, Boat Charter Owner/Operator, stated that the timeliness of reporting and the obligation to maintain logbooks is an industry concern. He disclosed that he had been fined $200 last year for not submitting his logbook when his boat was out of commission and, during that period of inactivity, he had forgotten to remit his logbook. However, he acknowledged that, as a result of industry and Department discussions, the Department has changed the reporting requirement concerning periods of inactivity. He noted

that the Department has also specified that, were this legislation enacted, there would be more industry/Department collaboration regarding regulations. He stated that guides in remote areas of the State often have to depend on air taxi pilots, ferry personnel and others to assist in getting their logbooks reports to the Department. In summary, he voiced the understanding that the Department would, through cooperative efforts, address the areas of industry concern.

Mr. Preston noted that he was speaking on behalf of operators in Homer and other places, as some of them were unable to participate due to being unable to access their local Legislative Information Office.

Senator Olson asked whether Mr. Preston would support eliminating or changing language in Section 6(b) that pertains to reporting requirements. He noted that while he understands that additional information would be helpful to the management of the resource, the penalties for non-reporting or tardy reporting are of concern; especially when someone is very busy at the peak of their season.

Co-Chair Wilken understood that language in Section 6(b) addresses these circumstances by allowing for "timely submission of reports required under this section or under regulation as adopted by the department or board." Therefore, he understood that regulations would consider the circumstances and accommodate them.

Mr. Bittner concurred.

Mr. Preston informed the Committee that he is also a member of the advisory panel of the North Pacific Fisheries Management Council. He stated that the Council views logbook data as a way to verify and justify information pertinent to harvest. He stated that the validity of the information is crucial to the legitimacy to the data. Continuing, he noted that the Department currently relies on the data provided by the saltwater reporting logbooks. He stated that were this legislation adopted, it would provide the industry legitimate standing before the Board of Fish, which, he declared, is currently not the case. Therefore, he stated that this legislation would provide the industry the ability to work with the Board to develop area appropriate regulations.

Senator Olson reiterated the importance in accommodating remote area guiding operations.

Senator B. Stevens understood that there are many requirements that must be met in order to obtain a sport fishing guide license including such things as being a citizen of Canada, the United

States, or Mexico; meeting first aid and six-pack license requirements; and submittal of the proper fees. Therefore, he asked what additional requirements must be met as referenced in Section 6, subsection (a)(6) on page six, lines five and six that reads as follows.

> (6) satisfies all additional requirements adopted in regulation by the Board of Fisheries.

Mr. Bentz explained that this language would allow additional things to be adopted as required by the adoption of new proposals by the Board.

Senator B. Stevens voiced that with the exception of the vagueness of this language, which would allow "a non-legislative institute to create the guidelines for the qualifications of a license," he supports the legislation.

Senator Dyson asked Mr. Preston whether a licensed fishing guide, employed by Mr. Preston and operating one of Mr. Preston's boats, would be required to be individually licensed by the Coast Guard.

Mr. Preston affirmed that anytime an individual is operating a boat available for hire and has paying passengers, he is required to have either a United States Coast Guard license, commonly referred to as "a six-pack license," or a Master's License.

Senator Dyson asked whether the fact that the client, rather than the guide, is operating the vessel would have a different bearing on the Coast Guard license requirement.

Mr. Preston stated that he would defer to the Coast Guard to provide an answer to the question.

Co-Chair Green asked whether the licensing guideline parameters Senator B. Stevens was concerned about might be addressed in other State statutes.

Mr. Bentz responded that the State's codified regulations do address future license changes; however, he stated that the language in question is specific to a Board of Fisheries proposal that might be adopted and would modify requirements. He stated that the Board does operate under public process guidelines.

Ms. Gilbertson pointed out that this legislation, at the recommendation of the Alaska Outdoor Council, is scheduled to terminate on January 1, 2010. Therefore, she noted that were it determined that the program is not beneficial to the industry, it

could be eliminated. She stated that the Department supports the proposed timeline, as the intent of the program is to enhance the industry.

Senator B. Stevens voiced appreciation for Senator Green's efforts to address his concern. However, he noted that while he continues to question the Board's ability to dictate requirements, he would not prevent the bill from moving forward; especially in light of the fact that the sport fish industry supports the bill.

Senator Hoffman asked whether the sport fish industry in Southwest Alaska has testified in regard to this legislation.

Mr. Bentz expressed that the progress of this legislation has been continually updated and distributed to Department area offices and to groups and lodges throughout the State. He noted that while feedback was received from the Fairbanks and Chitna area, he could not recall any comments being received from the Southwest region of the State.

Senator Hoffman asked whether the Department could anticipate whether Native Corporations in the Southwest region of the Sate would support this legislation.

Mr. Bentz replied that he could not answer on their behalf.

Senator Olson asked, were this legislation enacted, that follow-up reports be provided to the Legislature; particularly in regard to the implementation of the reporting timelines.

Senator Dyson reported a conflict of interest, as he is involved in the sport fish guiding industry.

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

There being no objection, SCS CS HB 452(RES) was REPORTED from Committee with $3465,600 fiscal note #2, dated March 16, 2004 from the Sport Fish Division, Department of Fish and Game; zero fiscal note #3, dated April 1, 2004, from the Department of Public Safety; and negative $92,000 fiscal note #4, dated May 6, 2004 from the Commercial Fisheries Entry Commission, Department of Fish and Game.

#hcr32

CS FOR HOUSE CONCURRENT RESOLUTION NO. 32(EDT) am
Relating to information infrastructure and establishing the Alaska Information Infrastructure Policy Task Force.

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

Co-Chair Wilken stated that this bill, CS HCR 32(EDT)am, Version 23-LS1717\Q.A, is sponsored by Representative Pete Kott at the request of Economic Development International Trade and Tourism Committee. Continuing, he noted that the bill would establish as 13-member Alaska information infrastructure taskforce, which would be charged "with reviewing and analyzing current and long term information infrastructure needs."

SUE STANCLIFF, Staff to Representative Pete Kott, the bill's sponsor, reiterated that this "task force would be charged with consideration of Alaska's role and interest in the long-term information structure development." She stated that the goal would be "to provide Alaska's communities with access to broadband connectivity and provide for improved access to fiber optic connectivity." These technological advances, she stated, "would help bridge the divide between rural Alaska from the benefits in technology advances realized in urban Alaska.

SFC 04 # 112, Side A 10:42 AM

Ms. Stancliff shared that Ireland is a "shining example" of what benefit could result from public and private partnerships dedicated to technological advancement, as it is currently the largest exporter of software products in Europe with 300 leading electronic companies and nine of the ten top pharmaceutical companies in the world. She stated that these opportunities "are not out of reach for Alaska."

Ms. Stancliff stated that the distance between Alaska's communities and the gaps in the State's infrastructure are exacerbated "by federal lands, federal land laws, vast distances, and the relative newness" of the State. Furthermore, she commented that while "no paved highway may ever connect the regions of the State "to the outside world… a telecommunications superhighway can link them all." She declared that "innovation engineering concepts and robust technologies" could be implemented in the State to assist in helping "the Alaskan economy evolve into a 21st century economic powerhouse." She stressed that the proposed task force would be required to assist in determining "how State government could use its resources to create an environment in which the private sector has the incentive to provide information technology usually

broadband fiber based technology to small rural markets." She shared that information task forces similar to the one being proposed have been effective in assisting rural areas develop in Colorado and North Carolina and other states to address the digital divide between urban and rural areas.

Ms. Stancliff informed the Committee that the task force would consist of "two government agencies, three legislators, a University of Alaska delegate, and seven at-large members who would have the vision and knowledge of the industry" with the vision "to include homeland security and missile defense, and economic development in rural Alaska."

Senator Dyson voiced appreciation for the efforts being asserted in these planning efforts. He opined that the Resolution, as written, specifically denotes "fiber optic as the only solution as opposed to satellite or microwave transmission." He stated that were this the case, it would present "an unfortunate limitation" on the task force.

Ms. Stancliff responded that the State's current fiber optic communication system runs from Prudhoe Bay to Fairbanks, to Anchorage, to Juneau and provides telecommunications to the outside world. She noted that one issue before the task force is to determine how to expand the infrastructure of the fiber optic network that is currently in place. She noted that wireless communication would be a related component.

Senator Dyson asked, for the record, whether this Resolution would limit the horizon to just fiber optics.

Ms Stancliff replied that this Resolution would "absolutely not" limit the scope of the task force to fiber optics.

Amendment #1: This amendment would insert "(1) the commissioner of administration or the commissioner's designee;" into the Resolution on page two, line 17.

In addition, the amendment would replace the number "seven" with the number "six" on page two, line 22 of the Resolution. The revised language would read as follows:

> (5) six at-large members chosen jointly by the Speaker of the House of Representatives and the President of the Senate.

Co-Chair Wilken moved to adopt Amendment #1 and objected for explanation.

KEVIN JARDELL, Assistant Commissioner, Department of Administration, explained that were this amendment adopted, the Department, which currently "has the sole authority for the design and implementation of all telecommunication" in the State, would have representation on the Task Force. This representation, he noted, would allow the Department to "mesh" its planning and policy responsibilities with the other Task Force members' positions. He cautioned that omitting the Department from the task force would limit the task force's effectiveness. He noted that to really succeed with this endeavor, public and private entities, working together, would be necessary. He commented that the bill's sponsor is not opposed to the Department's participation on the task force.

Ms. Stancliff affirmed that the sponsor does not object to the amendment.

Co-Chair Wilken removed his objection.

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

WANETTA AYERS, Representative, Southwest Alaska Municipal Conference (SWAMC) testified via teleconference from an offnet site in support of the bill, as it would benefit the SWAMC region. She noted that SWAMC would support any technology that would further telecommunication connectivity to the region. She voiced optimism that advances in this field would assist "to bridge the digital divide" and would enhance the economy of the region and the area's quality of life.

Senator Dyson understood that the adoption of Amendment #1 would require concurrence from the House of Representatives.

Conceptual Amendment #2: This amendment inserts the words, "and wireless" following "fiber optic" on page one, line eight of the Resolution. The revised language reads as follows:

> Whereas access to fiber optic and wireless connectivity will help bridge the digital divide that separates rural Alaska from the benefits of technological advances realized by urban areas; and

Senator Dyson moved to adopt Conceptual Amendment #2.

There being no objection, Amendment #2 was ADOPTED.

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

Co-Chair Green objected.

Co-Chair Green voiced concern regarding the $99,500 fiscal note #3, dated March 4, 2004 from the Legislative Affairs Agency; specifically that funding for a fulltime eleven-month staff person would be required.

There being no objection, Senator Dyson removed his motion to report the bill from Committee.

Co-Chair Wilken ordered the bill HELD in Committee in order to address concerns regarding fiscal note #3.

#hb511

SENATE CS FOR CS FOR HOUSE BILL NO. 511(HES)
"An Act relating to the certificate of need program for health care facilities; 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 Health, Education, & Social Services Committee (HES) committee substitute, Version 23-LS1755\X, is before the Committee. He noted that two Letters of Intent accompany the legislation.

SARA NIELSEN, Staff to Representative Ralph Samuels, the bill's sponsor, stated that this bill would attempt to "level the playing field," by altering current Certificate of Need (CON) requirements such as those that pertain to a relocation of an ambulatory surgical facility to a new site. In addition, she explained that the bill would further define the term "expenditure" to aid in correcting a current "loophole" in the CON process in which "facilities are leasing space and equipment to themselves" to circumvent "the one million dollar threshold," which is the point at which a CON would be required.

Ms. Nielsen noted that the bill would also: eliminate the requirement that an additional CON be required for expenses associated with routine maintenance and replacement; would not require a CON to be issued in the case of an emergency or temporary situation such as an earthquake; and would add independent diagnostic facility and residential psychiatric treatment centers to the definition of a health care facility. She pointed out that the inclusion of these two entities in the definition would require them to adhere to CON requirements.

Ms. Nielsen stated that the bill would also require the Department of Health and Social Services to process CON applications more expeditiously by specifying a 60-day rather than a 90-day review process. She noted that the bill also specifies that were a residential psychiatric treatment center under construction at the time this legislation enacted, it would not be required to adhere to CON guidelines.

Ms. Nielsen explained that the Senate HES committee substitute addressed concerns regarding the CON process that was provided for in the House of Representatives Letter of Intent.

Amendment #1: This amendment inserts new language into Section 2 of the bill on page two, line one, as follows.

> (d) Beginning July 1, 2005, the $1,000,000 threshold in (a) of this section shall be increased by $50,000 annually until July 1, 2014.

Co-Chair Green moved to adopt Amendment #1.

Co-Chair Wilken objected for explanation.

Co-Chair Green explained that while she had originally sought a larger annual CON limit increase, the $50,000 annual increase is acceptable to most concerned parties. She informed the Committee that Alaska is one of only six states with a CON ceiling of one million dollars or less as others have no ceiling or incorporate a significantly higher ceiling pertinent to such things as long-term care facilities or renovations. She stated that Alaska's current ceiling was established in the 1980s and has never been inflation proofed. She stated that, while this issue would continue to be re-addressed every few years, this amendment would serve as a step in adjusting the "woefully" low CON rate in that, by the year 2014, it would be to "at least half of the level" it should be. This gradual rise, she noted, would not be implemented until January 1, 2005.

Co-Chair Green noted that the Department of Health and Social Services' Commissioner voiced concern that too rapid an increase might negatively affect programs such as Medicaid.

Co-Chair Wilken asked for further clarification regarding what would be affected in Sec. 2(a) were this amendment adopted.

Co-Chair Green clarified that Sec. 2(a) pertains to the CON threshold.

Co-Chair Wilken removed this objection to Amendment #1.

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

BLAINE GILMAN, Attorney, testified via teleconference from Kenai and noted that his clients: The Lord's Ranch, Arkansas Counseling, and Alaska Counseling among others; currently provide residential psychiatric treatment for approximately 110 children in the State of Arkansas, some of whom are from Alaska. He noted that these clients are in the process of purchasing land in Kenai upon which to construct a children's psychiatric treatment center. He asked that consideration be given to implementing an October 1, 2004 effective date for the bill rather than an immediate effective date as specified in Section 9, page five, line 27, as their project would be negatively impacted were it required to adhere to the CON specifications.

Mr. Gilman also requested adding the words "if necessary" to building permit language as specified in Section 8, subsection (c)(1)(B) on page five, line 23. He noted that while the land currently identified for purchase by his clients is within the Kenai Municipal Borough city limits, an alternate site is located outside of the Municipality and, as such, is exempt from building permit requirements. He asked that consideration be given to both amendment suggestions.

Co-Chair Wilken asked the Department of Health and Social Services to respond to Mr. Gilman's concern regarding the bill's effective date.

JOEL GILBERTSON, Commissioner, Department of Health and Social Services, affirmed that this legislation would incorporate residential psychiatric treatment centers into the CON process. He noted that, due to the unavailability of in-state services, approximately half of the State's youth in need of these services are receiving treatment outside of the State. He noted that the effective date identified in this bill was determined based on the Department's historical Certificate of Need process that has addressed such things as how a project "in the works" would be recognized. He furthered that the traditional interpretation of grandfathering in a project that is "in the works" would include projects that have a building permit; have a valid set of architectural drawings; and of which valid construction has begun. He stated that the Department's historical interpretation policy was incorporated into the Senate HES committee substitute, as referenced in Section 8, subsection (c) beginning on page five, line 17 of Version "X".

Commissioner Gilbertson informed the Committee that there are, currently, a number of private for-profit and non-profit organizations examining whether or not to construct residential treatment centers in the State, and he noted that were they all furthered, they might provide more beds than the State requires. Therefore, he communicated that the Department is supportive of incorporating these types of facilities into the CON program as it would provide the State the opportunity to oversee what the actual needs of the State are and to determine the appropriate geographical placement of these centers in order to best serve those in need of services. He concluded therefore that the Department supports an effective date consistent with historical Department interpretation.

Co-Chair Wilken noted that the effective date issue had been discussed in other committee hearings on the bill, and, while he acknowledged Mr. Gilman's concern, he voiced understanding the Department's "logic" in this regard.

There being no further questions regarding the effective date clause, Co-Chair Wilken asked the Department to address the building permit issue for facilities being constructed outside of an organized community

Commissioner Gilbertson stated that Mr. Gilman's concern regarding the appropriateness of requiring a building permit in an area where none is otherwise required is "a fair comment." Therefore, he stated that the Department would support an amendment to clarify that were a building permit not otherwise necessary, the State should not require it.

Conceptual Amendment #2: The intent of this conceptual amendment is to clarify that a building permit would not be required for a facility being constructed in a location that would otherwise not involve a building permit, such as being outside of an organized borough. The language being affected by this amendment is located in Sec. 8, subsection (c) (1) (B) on page five, line 23 of Version "X".

Senator Dyson moved to adopt Conceptual Amendment #2.

There being no objection, Conceptual Amendment #2 was ADOPTED.

Co-Chair Green asked whether the Senate HES Committee Letter of Intent would supersede the House of Representatives Letter of Intent.

Senator Dyson affirmed that it would.

Senator Dyson moved to adopt the Senate HES Committee Letter of Intent.

Ms. Nielsen acknowledged that the Senate HES Committee Letter of Intent was appropriate.

Co-Chair Green objected to the motion.

Co-Chair Green brought to the Committee's attention her on-going concern regarding the discrepancies that exist "between regulations and current statutes;" particularly in regards to some of the decision making that is conducted in regards to the CON process. She noted that this Letter of Intent specifies that CON applicant information should not be made available before the CON has been declared complete by the Department, as those involved in the CON process should be assured that their preliminary information would be kept confidential until that point.

Co-Chair Green removed her objection.

There being no further objection, the Senate HES Committee Letter of Intent was ADOPTED.

Co-Chair Green moved to report the bill from Committee.

Senator Olson interjected that the CON process has evolved beyond its original intent. Continuing, he declared that there is a belief that the CON process is used as a tool by large health care organizations to refrain smaller local health care entities from advancing their service. Therefore, he asked how he could assure small entities that this bill would not inhibit their ability to compete with larger organizations or businesses.

Commissioner Gilbertson agreed that the Certificate of Need program has been an issue of debate for a long time. He stated that the Department endeavors to manage the CON program in a fair manner. He stated that when reviewing a CON, one of the Department's primary considerations is whether there is a need for the service. He noted that the lone exception would be that the cost factor is an additional concern in the case of long-term care facilities. He stated, therefore, that the CON program has provided the State with the ability to appropriately determine the level of need in a community and statewide. He stressed that the Department has worked aggressively to expand health care services in the State, and he opined that the CON program "is not a barrier" to this goal. He stated that this legislation would affect residential psychiatric care facilities, imaging facilities, and ambulatory surgery

centers, as they are not currently included in the CON requirements. He agreed that health care has changed since the inception of the CON process; however, he stressed that the Department is aware of the on-going challenge of fairly administering the CON program during these "changing times."

Senator Olson reiterated the concern that the CON is a complicated program and that providers in rural areas of the State are concerned that larger organizations could use the program to the disadvantage of smaller programs.

Commissioner Gilbertson replied that the Department reviews and approves appropriate applications and denies inappropriate ones, both from large and small organizations.

Senator Dyson declared that this bill would provide some improvement to the current process. He stated that, in the bigger picture, the process might not work well for a small entity that wishes to offer services also offered by a larger facility. However, he stated that assistance in the effort to address "the deeper underlying problems" of providing health care in the State is welcome.

Co-Chair Green restated her motion to report the bill, as amended, and the HES Letter of Intent, from Committee with individual recommendations and accompanying fiscal notes.

There being no objection, SCS CS HB 511(FIN) was REPORTED from Committee, accompanied by the HESS Letter of Intent, and zero fiscal note #1, dated March 1, 2004 from the Division of Public Health, Department of Health and Social Services and zero fiscal note #2, dated March 1, 2004 from the Division of Behavioral Health, Department of Health and Social Services

AT EASE 11:20 AM / 11:21 AM

RECESS TO THE CALL OF THE CHAIR 11:21 AM / 3:54 PM.
#

ADJOURNMENT

[NOTE: Due to technical difficulties, the adjournment of the meeting was not recorded.]

Co-Chair Gary Wilken adjourned the meeting at 03:54 PM.