

ALASKA STATE LEGISLATURE
SENATE JUDICIARY STANDING COMMITTEE

March 5, 2004

8:05 a.m.

TAPE(S) 04-15,16

MEMBERS PRESENT

Senator Ralph Seekins, Chair
Senator Scott Ogan, Vice Chair
Senator Gene Therriault
Senator Hollis French

MEMBERS ABSENT

Senator Johnny Ellis

COMMITTEE CALENDAR

SENATE BILL NO. 336

"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."

MOVED CSSB 336(JUD) OUT OF COMMITTEE

CS FOR HOUSE BILL NO. 83(JUD)

"An Act adopting a version of the Revised Uniform Arbitration Act; relating to the state's existing Uniform Arbitration Act; amending Rules 3, 18, 19, 20, and 21, Alaska Rules of Civil Procedure, Rule 601, Alaska Rules of Evidence, and Rule 402, Alaska Rules of Appellate Procedure; and providing for an effective date."

SCHEDULED BUT NOT HEARD

PREVIOUS COMMITTEE ACTION

BILL: SB 336

SHORT TITLE: CORRECTIONS: FEES/SURCHARGE

SPONSOR(S): RULES BY REQUEST OF THE GOVERNOR

02/16/04	(S)	READ THE FIRST TIME - REFERRALS
02/16/04	(S)	JUD, FIN
03/05/04	(S)	JUD AT 8:00 AM BUTROVICH 205

BILL: HB 83

SHORT TITLE: REVISED UNIFORM ARBITRATION ACT

SPONSOR(S): REPRESENTATIVE(S) BERKOWITZ

02/07/03 (H) READ THE FIRST TIME - REFERRALS
02/07/03 (H) JUD
03/07/03 (H) JUD AT 1:00 PM CAPITOL 120
03/07/03 (H) -- Meeting Postponed to 03/10/03 --
03/10/03 (H) JUD AT 1:00 PM CAPITOL 120
03/10/03 (H) Heard & Held
03/10/03 (H) MINUTE(JUD)
03/12/03 (H) JUD AT 1:00 PM CAPITOL 120
03/12/03 (H) Moved CSHB 83(JUD) Out of Committee
03/12/03 (H) MINUTE(JUD)
03/31/03 (H) JUD RPT CS(JUD) 4DP 2NR
03/31/03 (H) DP: GARA, ANDERSON, GRUENBERG, MCGUIRE;
03/31/03 (H) NR: SAMUELS, COGHILL
04/16/03 (H) TRANSMITTED TO (S)
04/16/03 (H) VERSION: CSHB 83(JUD)
04/17/03 (S) READ THE FIRST TIME - REFERRALS
04/17/03 (S) L&C, JUD
05/13/03 (S) L&C AT 2:00 PM BELTZ 211
05/13/03 (S) Heard & Held
05/13/03 (S) MINUTE(L&C)
05/15/03 (S) L&C AT 7:45 AM BUTROVICH 205
05/15/03 (S) Moved Out of Committee
05/15/03 (S) MINUTE(L&C)
05/16/03 (S) L&C RPT 3NR
05/16/03 (S) NR: BUNDE, SEEKINS, STEVENS G
03/05/04 (S) JUD AT 8:00 AM BUTROVICH 205

WITNESS REGISTER

Mr. Phillip Eide
Eide, Miller & Pate P.C.
425 G Street, Suite 930
Anchorage, AK 99501

POSITION STATEMENT: Expressed frustration with APOC's proposed regulations

Ms. Pam LaBolle
Alaska Chamber of Commerce
217 2nd Street, Suite 201
Juneau, Alaska 99801

POSITION STATEMENT: Expressed frustration with APOC's proposed regulations

Mr. Larry Wood
Alaska Public Offices Commission
240 Main St.#201
PO Box 110222
Juneau, AK 99811
POSITION STATEMENT: Discussed APOC's regulatory process

Ms. Andrea Jacobsen, Chair
Alaska Public Offices Commission
240 Main Street #201
Juneau, AK 99811
POSITION STATEMENT: Discussed APOC's regulatory process

Ms. Portia Parker
Deputy Commissioner
Department of Corrections
431 N. Franklin, Suite 400
Juneau, AK 99801
POSITION STATEMENT: Presented SB 336 for the Administration

Mr. Marc Antrim
Commissioner
Department of Corrections
431 N. Franklin, Suite 400
Juneau, AK 99801
POSITION STATEMENT: Answered questions about SB 336

Ms. Kathryn Daughhetee
Administrative Services Division
Department of Law
PO Box 110300
Juneau, AK 99811-0300
POSITION STATEMENT: Answered questions about SB 336

Ms. Barbara Brink
Public Defender Agency
Department of Administration
900 W 5th
Anchorage, AK 99501-2090
POSITION STATEMENT: Expressed concerns about SB 336

Ms. Anne Carpeneti
Assistant Attorney General
Department of Law
PO Box 110300
Juneau, AK 99811-0300
POSITION STATEMENT: Answered questions pertaining to SB 336

Ms. Diane Wendtlandt
Assistant Attorney General
Department of Law
1031 4th Ave.
Anchorage, AK 99501-1994

POSITION STATEMENT: Answered questions pertaining to SB 336

ACTION NARRATIVE

TAPE 04-15, SIDE A

CHAIR RALPH SEEKINS called the Senate Judiciary Standing Committee meeting to order at 8:05 a.m. Senators Therriault, Ogan and Chair Seekins were present. Senator Ellis was excused.

CHAIR SEEKINS informed members that last year the Senate Judiciary Committee debated and passed a bill that changed the definition of a lobbyist. The Alaska Public Offices Commission (APOC) recently published its proposed regulations resulting from that legislation. Because a number of people contacted the committee expressing concerns about the proposed regulations, he met with the APOC commissioners, who are reviewing the proposed regulations and will decide whether to "pull" the regulations later today. He said committee members would hear testimony on the matter.

SENATOR THERRIAULT asked that APOC address the confusion about the statutory references in the proposed regulations.

CHAIR SEEKINS asked Mr. Eide to address that concern.

MR. PHILLIP EIDE, Eide, Miller & Pate, noted that he was sitting in for Jack Miller of his firm who wrote two letters to the committee dated February 25 and March 4. His firm believes the proposed regulations are flawed in many respects and that APOC's regulatory authority is inconsistent with the statute. The most significant concern is a proposed amendment to 2 AAC 50.545(a)(4), which purports to define "professional lobbyist" as an employee with a primary or substantial responsibility to communicate directly with public officials to influence legislators or legislative action on behalf of the employer. He said the key problem is that the term "professional lobbyist" appears nowhere in the statute. In addition, the definition does not take into account the specific statutory requirement that in order to be regulated as a lobbyist, a person must work 40 hours

within a 30-day period in a calendar year. He assumes the legislature included that condition to provide a bright line test. The regulation ignores that requirement and instead provides an ambiguous definition in what, his firm submits, is an attempt to end run the statutory provision.

MR. EIDE said another section of the proposed regulations that the firm sees as defective, flawed, and in violation of free speech is 2 AAC 50.545(c), which considers time spent before legislative committees to be communicating directly [with legislators]. Eide, Miller and Pate submits that testifying before a committee was not intended to be a form of direct communication, as defined by the statute. It violates a citizen's right to appear and testify publicly. 2 AAC 50.545(e)(2)-(7) lists the items regulated as a cost of lobbying activities. Regulated lobbying activity must be activity intended to influence legislative or administrative action and constitute payments for assistance to a lobbyist. Items (2) through (7) do not make clear that the expenses must be intended to influence legislative or administrative action and several of the regulations refer to the expenses incurred by the employer without referencing the fact that the expenses have anything to do with a lobbyist or an attempt to influence legislation. That section is unclear as to what types of social events are involved, i.e., whether a legislator would have to be present. It is overly broad and would have a chilling effect on the exercise of First Amendment rights.

MR. EIDE then addressed 2 AAC 50.545(e)(3), regarding the cost of media to communicate the employer's position on issues, which he believes is flawed for reasons previously mentioned. Nothing in the statutes or Constitution allows APOC to regulate an employer's right to inform the public on any issues that the employer sees fit. In addition, "media communications" does not fall within the statutory definition. Media communications are intended to inform and influence the public directly. 2 AAC 50.545(e)(4) references employers' lobbying activities so employers, unless they fit the definition of a lobbyist, are not subject to regulation. Any attempt to regulate an employer's activities in terms of polling would violate the intent of the statute. He said unless it's a poll that is specifically intended to influence legislative or administrative action in support of lobbying activities, it does not appear to be covered by the statute. 2 AAC 50.545(e)(5) deals with the employer's cost to communicate with the lobbyist to discuss issues and strategies and is overly broad. An employer can communicate with a lobbyist for any number of reasons that are far broader and

that are not a specific attempt to influence administrative or legislative action.

MR. EIDE told members that 2 AAC 50.545(e)(6) pertains to travel costs. His firm submits that unless the employer is defined as a lobbyist, the cost of travel is not subject to regulation. 2 AAC 50.545(e)(7) addresses the costs incurred by an employer when providing a trip for a public official for the purpose of obtaining information. It is inconsistent with the statutory scheme related to regulating lobbying activities.

CHAIR SEEKINS asked Mr. Eide if one of his concerns is that the proposed regulations severely infringe upon free speech and that a person should be able to conduct a media campaign on an issue to inform the public without that being considered as direct communication with a legislator.

MR. EIDE said that is correct.

CHAIR SEEKINS noted the press is able to do that on a daily basis without any regulation.

MR. EIDE said unless an employer meets the definition of a lobbyist, an employer is not subject to being regulated as a lobbyist.

CHAIR SEEKINS said concerns have been expressed in the past that someone who employs a lobbyist and spends a certain amount of time talking to that lobbyist should have to register as a lobbyist as well. He asked Mr. Eide to comment.

MR. EIDE said his concern is that 2 AAC 50.545(a)(4), which attempts to define a lobbyist, takes a step back from what the legislature accomplished by defining a lobbyist using the 40-hour rule. He said the current statutory definition of lobbyist allows one to determine a lobbyist with some precision. The proposed regulation circumvents that effort and is too vague.

CHAIR SEEKINS commented:

...if I look at that statement the way it reads now, the new definition of professional lobbyist as proposed in this regulation, under the rules of strict construction, professional lobbyist means a lobbyist under this statute, which is an expired statute - it says and includes an employee who has primary or substantial responsibility to communicate directly

with public officials to influence legislative or administrative action on behalf of employees. Couldn't that mean every small businessman or woman in the entire state of Alaska would be required to be a registered lobbyist under the rules of construction there even though they may never, if they had the primary responsibility that it could be read to include that they now would need to be a registered lobbyist?

MR. EIDE said that is a possibility and broadening the definition leads to that ambiguity, which he does not believe was the legislature's intent.

CHAIR SEEKINS pointed out that may not have been the intention of the drafters either. With no further questions, he thanked Mr. Eide.

MS. PAMELA LABOLLE, President of the Alaska State Chamber of Commerce, reminded members that the State Chamber was instrumental in getting the bill passed last year so it has been paying close attention to the proposed regulations. The Chamber finds it very distressing that every word that went into the bill last year was debated right down to the final hours of passage yet the proposed regulations have changed the verbiage and set aside the intent that the Chamber and legislature worked so hard to define. She questioned how many times the intent of laws is significantly changed during the regulatory process. She noted these proposed regulations cite non-existent statutes and misname statutes and questioned whether anyone with a legal background reviews the regulations before they are published for public comment. She echoed Mr. Eide's concerns, especially the fact that the Chamber worked to remove the words "substantial" and "regular," but those words have been replaced with the words "primary" or "substantial." She maintained the replacement words set aside so much of the work the Chamber did last year.

MS. LABOLLE said the proposed APOC regulations have created such uproar because they reflect how the regulators, throughout the regulatory arena, take on authority beyond what the legislature intended. She is glad that APOC plans to put the proposed regulations aside and go back to the drawing board, but she is concerned that the public has to be much more attentive to what is happening in the regulatory world.

SENATOR OGAN pointed out that a constitutional amendment has been before the voters three times that would allow the

legislature to overturn regulations. He maintained that a lot of criticism and cynicism has been aimed at the legislature, but it operates in a very open process. Its deliberations are on television and the Internet. Regulatory agencies do not operate with that scrutiny. Most working people do not have time to attend meetings so they expect legislators to keep their "hand on the wheel and watch what goes on." However, he does not have time to monitor all regulations either.

MS. LABOLLE said one thing she has observed during her 30 years of lobbying is that too often, in its effort to pass laws, the legislature will write laws with a broad intent and let the agencies deal with the details. However, that approach sometimes leads to results like the APOC regulations. In the APOC law, the legislature dealt with the details because the previous law contained ambiguities that were the impetus for new legislation. She hopes the legislature would take more time to ensure that its intent is clearly expressed in other arenas and written into law. She also hopes the process changes so that the public gets a better product for comment so that the end result is more realistic.

SENATOR OGAN pointed out that a check and balance exists in that the Administrative Regulation Review Committee reviews regulations and the legislature can hold hearings and change a statute to clarify its intent.

MS. LABOLLE thanked committee members for taking up this discussion. She felt the committee's review brings to the public's attention the fact that changes need to be made to the entire process.

CHAIR SEEKINS said one reason for the hearing is a renewed interest on the part of the legislature in how it can be involved in the final regulation that will apply the law it wrote. He noted it is easy to take excerpts of the record and piece them together to prove almost any intent. The legislature needs to be able to trust that the administration has the same intent the legislature did when the bill passed. That concern is greater when the legislature is at odds with the agency that will be affected by a statute. Sometimes subtle and not-so-subtle changes in the regulations are made that do not carry out the legislature's intent. He said the legislature has renewed interest in whether it should "run the flag up the flagpole" to point out to the general public that there is a tension here, and that the regulations, although available for public comment, do not get anywhere near the light of day that the legislature's

activities do. Regulations are numerous and complex; the media does not hover over every proposed regulation to see whether it carries out the intent of the law.

CHAIR SEEKINS said the legislature defined a professional lobbyist last year as a person who engages in the business, occupation, or profession of influencing legislative or administrative action.

MS. LABOLLE said that defines her profession.

CHAIR SEEKINS continued that the law says or a person who receives wages or other economic consideration including reimbursement of travel and living expenses to communicate directly with any public official for the express purpose of influencing legislative or administrative action during more than 40 hours in any 30 day period in any one calendar year. He recalled the legislature intended that to apply to an employee of a company who was communicating directly with a legislator for the purpose of influencing legislation or administrative action. He asked if that person could hypothetically be called an employee lobbyist.

MS. LABOLLE said yes and that some employees might be called a government relations person among other titles. She pointed out that a person involved in government regulations might have to watch and track the issues and bills before the legislature yet have no issues of concern that come up in an entire year.

CHAIR SEEKINS said that "influence" is a key word.

MS. LABOLLE replied, "Influence and direct communication are very key words."

CHAIR SEEKINS asked if a VP of government relations who monitored legislation and kept a good relationship with legislators in case something did come up would be considered to be a lobbyist.

MS. LABOLLE said if he had not directly communicated with the legislature to influence, he would not be.

CHAIR SEEKINS asked how that would apply to a government employee. He said the governor regularly proposes legislation and members of the state departments try to influence legislators on the outcome of that legislation.

MS. LABOLLE said they are exempt and she does not know why.

CHAIR SEEKINS commented that as a legislator, he can lobby another senator about a pet bill yet he is not regulated, nor is the media, which publishes stories to inform the public or influence action.

MS. LABOLLE said in her opinion, the media is lobbying when it only reports one side of an issue.

CHAIR SEEKINS asked if the state can only regulate people who are in business.

MS. LABOLLE said that is essentially correct.

CHAIR SEEKINS asked Ms. LaBolle how many businesses the Chamber represents.

MS. LABOLLE replied approximately 700 businesses with about 70,000 employees.

CHAIR SEEKINS asked Ms. LaBolle if she could suggest a better way to get public input into the regulation making process.

MS. LABOLLE said in the Chamber's opinion, the process is broken. Three pieces of legislation have been introduced to fix the regulatory process, which the Chamber supports. In addition, the Chamber has always supported a constitutional amendment to allow the legislature to remove a regulation that contradicts the legislative intent. She repeated that when misinformation is put forth to the public, the public comments are invalid, and questioned why a legal review of those regulations was not undertaken to ensure the intent was met and that the citations were correct. She noted she spent a considerable amount of time reviewing the regulations and hired an attorney to help, which cost the Chamber, and those efforts were a waste of time. She repeated that she believes the entire regulatory review process needs to be tuned up.

CHAIR SEEKINS pointed out that last year, during the hearings on the lobbying bill, several people expressed concern that once they registered as lobbyists, they gave up certain constitutional rights, such as the ability to fully participate in the political process as any other person. Lobbyists cannot serve on a state board or commission, serve as a campaign director or treasurer, host a fundraising event, or engage in a legislative campaign, etcetera.

MS. LABOLLE said the sad part about that is those very citizens are the types who show interest in legislative activity but, by so doing, they must become lobbyists and are then prohibited from participating in the campaign cycle.

SENATOR OGAN felt the committee was discussing several First Amendment issues. He said he does not want to live in a society without a free press, but the press does attempt to influence legislation and the outcome of elections. He does not want to inhibit the press's ability to do that. He then said there is a perception that lobbyists are involved in all kinds of back room deals, where everyone smokes Cuban cigars, but in reality, legislators are accessible to constituents when at home so more politics happen in grocery stores.

MS. LABOLLE told members that she also lobbied in Arizona's capital, Phoenix. She found that the Capitol in Phoenix got less attention from the public than the Capitol in Juneau, despite the larger population. She does not think it matters where a capital is located. The people who care and take an interest in what is happening in their government will make it their business to participate. Unfortunately, the majority of people don't care. She said she is proud to be a lobbyist because she believes lobbyists provide information and explain the pros and cons of an issue to very busy people. She does not know how the legislature would find that kind of information without lobbyists. Lobbyists must be accurate and honest, otherwise their careers are over. She repeated that it is important that lobbyists be identified and that business people who only want to participate in the process have that ability without losing certain constitutional rights.

CHAIR SEEKINS said that was the legislature's intent and is reasonable. He noted that he depends on lobbyists quite frequently to get information that he would not otherwise have available. If he were to find that a lobbyist deliberately deceived him, that lobbyist would not be welcome in his office.

TAPE 04-15, SIDE B

CHAIR SEEKINS said he often has to rely on the information provided to him by a lobbyist, as he doesn't want to be called on the carpet later on. He then asked Mr. Wood and Ms. Jacobsen to testify.

MR. LARRY WOOD, one of five APOC commissioners, introduced Andrea Jacobsen, the Chair and public member of APOC. He informed members that today is Ms. Jacobsen's last day of service after five years. He told members that one would expect the APOC to be more partisan in nature but it is not. He has been pleased to serve with people of great integrity and honesty.

MR. WOOD said, regarding the APOC regulations, the regulations are in the drafting process and in the public comment period. However, because of the comments APOC has received, it plans to take those regulations off of the table and rework them. He made two points. With regard to the [citation] problems, the revisor of statutes came back with new numbers after the regulations were codified so staff was already aware of the fact that the numbers needed to be changed. The second point is in regard to the definition of "employee lobbyist." Ms. LaBolle said she falls in the A category.

CHAIR SEEKINS said he would place her in the B category.

MR. WOOD said he walked away last year thinking that people like Ms. LaBolle's primary responsibility, even though she is not a contract lobbyist, would fall under A, the profession or the occupation for the business. However, the uncertainty arises because B says "or wages." Therefore, some people like Ms. LaBolle believe they fall under the B category so the 40-hour rule applies and they do not need to register until they begin. After reflecting on that problem and reviewing public comments, his personal view is that employee lobbyists should be in category B and keep an eye on the 40 hours. And, within the next year, APOC would let lobbyists know how things look and what differences it sees with registering employee lobbyists under the old and new laws. He assured members that, while he has heard terms like "end run" used, the APOC was attempting, in good faith, to try to put its arms around something that was perhaps better left alone. His personal view is to go with the 40-hour approach and report how that is going in the future. He then noted he enjoys the democratic process - the flow of information. APOC was in the midst of that process when this problem came up. APOC has also promulgated a number of other regulations that are working. He said it is difficult to sit quietly and listen while a position is being presented that one disagrees with. If all of the information could be put forward simultaneously, he believes the opposing party would take a different view. He asserted the APOC had no bad motives and was not attempting an end run.

MS. ANDREA JACOBSEN, Chair of APOC, told members she believes she represents the public because she is not affiliated with any business, political party or lobbyist. In her opinion, the reason that lobbyists should be regulated is that the public has the right to know who is influencing government [officials] and to what extent so that the public can determine who they want to vote for. She pointed out that when APOC was designing the proposed regulations, it did so at public meetings with published agendas. APOC did not have the best turnout in terms of public participation. However, public comment periods allow members of the public who could not attend a meeting an opportunity for input. When asked for advice, APOC staff has struggled with the statutory definition of lobbyist because it is difficult to determine who falls under the 40-hour rule and who does not. During APOC's attempt to construct a definition, it was trying to find verbiage that would be clear to everyone.

MS. JACOBSEN said APOC takes the public comments it receives to heart. She believes the process does work. APOC's intent, when it received the letters of concern, was to discuss those regulations at its scheduled meeting today with input from the public. She repeated the process works very well because these regulations were not a "done deal." APOC was going through one of the many steps in the process. She indicated, regarding the citation errors, that the publisher had re-alphabetized something and did not notify APOC, so the problem is not associated with the legal review. She told members given that all proposed regulations were put out for public comment, APOC would like to bifurcate those that are not "broken" and move on so that it can better address the needs of its agency.

SENATOR OGAN jested that one of the unintended consequences that may be a positive of last year's legislation is that he has talked to lobbyists who could be exempt but choose to register so that they do not have to contribute to candidates in their districts.

CHAIR SEEKINS stated, for the record, that he has known Mr. Wood for a very long time. He opined:

The business community is not worried. They're not trying to hide in the dark. They would have no problem registering as someone who is trying to influence legislation or administrative action if they didn't lose their right to participate in the political process equal to the same government employee who is

lobbying us on behalf of keeping his job. I mean if we're looking for full disclosure as to who's trying to influence legislators that's one thing. No one would object to that. If it is the public's right to know, no one objects to knowing who is talking to legislators about legislative issues. It's that if they hit a certain mark, they lose their ability to participate in the political process equal to everyone else out there.

There's the whole threat and the whole reason that the business community is concerned because they look at this as a possible threat by people who want to eliminate them from the political process, not because of the public's right to know. And I don't know a businessperson in the state that would object to putting their name on a list - I'm going to try to influence the legislature on a bill - if they didn't have the threat of losing that constitutional right. That's why they're looking at you through a microscope because they're not sure if that's your intent or not because they don't know you....

CHAIR SEEKINS suggested that this discussion might go away if the legislature eliminated some of the lobbyists' loss of constitutional rights.

9:10 a.m.

SENATOR OGAN mentioned that he has been through five election cycles and has always had positive dealings with APOC, even though he is not an immaculate record keeper. He said APOC staff has been easy to work with and has given clear direction anytime problems arose, and that he believes all contributions should be transparent.

MR. WOOD thanked Senator Ogan for the feedback.

CHAIR SEEKINS agreed that legislators should report every dollar that is donated to their campaigns and noted the legislature passed legislation to that effect last year. He then thanked Mr. Wood and Ms. Jacobsen.

There being no one else wishing to testify, he told participants the committee held this hearing for several reasons. The first was to let the people, who have perceived the proposed regulations as a thinly veiled attempt to further infringe on

their constitutional rights, have an open discussion with those promulgating the regulations and the legislators who initiated the bill last year to clear up the intent. He said if any regulatory agency ever has a question about the intent of legislation he sponsored, he would want the agency to call him for his opinion. He noted the legislature is concerned that regulations can change the intent of legislation without intending to do so. He then announced a 5 minutes recess.

SB 336-CORRECTIONS: FEES/SURCHARGE

CHAIR SEEKINS announced that SB 336 was before the committee.

SENATOR OGAN questioned why the charge is only \$100 for violating probation. He felt that amount will not provide enough incentive.

MS. PORTIA PARKER, Deputy Commissioner of the Department of Corrections (DOC), told members that SB 336 requests a correctional facility surcharge for offenders who have been convicted of felony and misdemeanor charges. DOC researched other states' fees, and found they charge a variety of booking fees, administrative surcharges and other fees. Those fees range from \$20 to \$250, depending on the state and whether the fee is issued by an intake facility, jail, or long-term facility. Because the State of Alaska has a unified [corrections] system, the state operates all jails and prisons. Other states have county and city facilities. Most of the fees in other states were challenged and upheld in different jurisdictions if the fees were uniform and treated people equally. She noted that DOC believes that charging a fee for a conviction as part of the court judgment would be the safest and easiest way to avoid challenge, rather than charging a booking or intake fee, which is problematic when charges are dropped or the offender is not convicted. DOC decided on the \$100 amount based on what it believes can be collected from this population.

DEPUTY COMMISSIONER PARKER explained the second part of SB 336 pertains to a \$100 application fee for an interstate transfer for those on probation or parole. Most states have such a transfer fee. The applicant will also have to file cash or a bond because DOC often has to go out-of-state to return the offender to Alaska if the offender commits a crime.

SENATOR OGAN noted that SB 336 does not address indigent people who cannot pay and he suspects a number of offenders will fall in that category.

DEPUTY COMMISSIONER PARKER deferred to the Department of Law for an explanation of the collections process but pointed out that permanent fund dividends can be garnished, as well as any wages earned while incarcerated.

SENATOR OGAN questioned whether felons are eligible for permanent fund dividends.

DEPUTY COMMISSIONER PARKER deferred to the Department of Law for an answer.

SENATOR OGAN said he would be willing to propose an amendment to increase the \$100 fee for parolee release to provide a disincentive to violating parole.

CHAIR SEEKINS asked if the \$100 would be collected when a prisoner is released on parole or whether it would be collected if the person ends up back in jail.

DEPUTY COMMISSIONER PARKER said the \$100 surcharge on probation and parole is suspended so it does not have to be paid unless an offender violates the conditions of probation or parole. She explained that a felon who is incarcerated would have to pay the \$100 correctional facility fee and then an additional \$100 fee if that felon is released on parole or probation and violates the conditions. She further explained that a small number of offenders who want an interstate transfer will also have to post cash or a bond and that is only paid if DOC has to pick the person up out-of-state for a violation.

MR. MARC ANTRIM, Commissioner of DOC, clarified that SB 336 does not address parole. Probation is a function of the court; parole is the function of an independent board. There is no interaction between the court system and the parole board so SB 336 does not have a fee collection process attached to it.

CHAIR SEEKINS indicated that SB 336 is basically a revenue bill that attempts to recover some of DOC's costs.

COMMISSIONER ANTRIM said that is correct.

CHAIR SEEKINS asked how much DOC expects to recover at 100 percent.

COMMISSIONER ANTRIM said about 30,000 bookings are made each year but not all of those folks are convicted.

DEPUTY COMMISSIONER PARKER added that the DOL's fiscal note is based on what DOL believes it can collect, not on 100 percent collection.

MS. KATHRYN DAUGHHETEE, Director of the Administrative Services Division, DOL, answered the amount would be \$1.3 million if 100 percent was collected.

CHAIR SEEKINS said he watches the judicial system on a routine basis and often questions, when he sees a DUI reported in the newspaper, how a \$1,000 mandatory fine can be reduced to \$300. He believes the court's rationalization is that it is better to collect some amount from people who cannot pay the full amount. He questioned whether the courts will further reduce the fines if offenders must pay these other fines.

COMMISSIONER ANTRIM believed the court's intent is to suspend, not reduce, the fine to exercise a hammer on a subsequent offense. He noted that in a typical DUI case, an offender might be fined \$1000 with \$250 suspended and the jail time would be 10 days with 7 suspended. However, if that person gets a second DUI, the \$250 fine and 7 days in jail would be added to the next sentence.

CHAIR SEEKINS said he has no problem with trying to collect the fines when possible because incarceration is expensive.

SENATOR OGAN jested that the state could probably contract with the Hilton Hotel to house prisoners for a lesser amount than prison cells.

CHAIR SEEKINS took public testimony.

MS. BARBARA BRINK, public defender for the State of Alaska, told members that she fears that as the state continues to add surcharges and fees, it might be imposing burdens on people that are impossible to meet. Those people who are getting released from custody have families to support and bills to pay. In criminal cases, their most pressing obligation is to pay restitution. In addition, most of these people are disqualified from receiving a permanent fund dividend. She pointed out that according to a recent Alaska Judicial Council study, public attorneys handle 80 percent of all criminal cases. Collecting fees from 80 percent of that population will be very difficult. Many of these people have already been fined: the mandatory minimum fine for DUI penalties ranges from \$1500 to \$10,000.

Essentially, the state already charges a conviction surcharge of \$100 for a felony, \$50 for a misdemeanor, and \$75 for a DUI. Those fees are used for public safety training. Defendants who need treatment are referred to the Alcohol and Safety Action Program, and those defendants pay a \$100 fee, half in cash, before they are even accepted to the program. And people serving sentences for DUIs must pay their cost of imprisonment. Those costs range from \$236 to \$2,000. On top of that, the state imposes Rule 39 costs, which requires offenders to pay \$250 to \$5000 for their [court-appointed] lawyer.

MS. BRINK cautioned that because of the way this fine is imposed, when an offender is brought to jail, whether booked or not, it provides a lot of opportunity for unfair application. The fine will be based solely on whether the police officer or district attorney chooses to issue a summons or to arrest someone. She feels it is particularly onerous to impose a fee of \$100 and a bond requirement for those who would like to get an interstate transfer. It seems the state would want to encourage people to be with families and support networks in other states while on probation rather than to stay in Alaska because they cannot pay the fee.

SENATOR OGAN asked Ms. Brink if the statistic she cited about 80 percent of criminal defendants being represented by public defenders includes people who are on public assistance.

MS. BRINK said it does. A person on public assistance is presumed to be indigent and is entitled to public counsel. Of the 80 percent, 63 percent are appointed a public defender and 17 percent are appointed to the Office of Public Assistance.

SENATOR OGAN said his knee-jerk reaction is that public assistance should be cut off for repeat felons.

CHAIR SEEKINS asked if a booking facility is a correctional facility.

COMMISSIONER ANTRIM said it is.

CHAIR SEEKINS asked if any person who is convicted would pay for the booking, even if that person does not spend a day in jail.

COMMISSIONER ANTRIM said that is correct. He then agreed with Ms. Brink that a lot of fees already exist but some people keep re-offending and find money to buy drugs and alcohol and pay impound fees for their cars. He does not believe an additional

\$100 will slow them down. He noted the bond for the Interstate Compact is designed to recoup some of DOC's costs. DOC must fly a state trooper to another state and usually house that person for a night so DOC must buy three plane tickets and pay per diem plus the personnel costs.

CHAIR SEEKINS informed members that an amendment proposed by DOC had been distributed.

DEPUTY COMMISSIONER PARKER told members that DOC worked with the court system and DOL on the amendment, which makes some technical changes to improve the collection procedure, particularly as it relates to the probation fee.

SENATOR THERRIAULT moved to adopt the proposed amendment [Amendment 1], which reads as follows.

A M E N D M E N T 1

OFFERED IN THE SENATE TO SB 336:

Page 2, lines 5 and 6:

Delete: ", as a condition of probation,"

Page 2, line 14:

Between "under" and "this" insert: "(a) of"

Page 2, line 15:

After "conviction." Insert: "The court shall include the imposition of a surcharge under (c) of this section in the order revoking probation."

Page 2, line 20:

After "28.30.032(o)." insert, "The state may enforce payment of a surcharge under this section under AS 09.38 as if it were a civil judgment enforceable by execution. This subsection does not limit the authority of the court to enforce fines."

SENATOR OGAN objected for the purpose of discussion. He asked if the intent of the amendment is to allow a person who cannot pay to be put on probation.

DEPUTY COMMISSIONER PARKER said if a person is on probation and their provision is revoked, that person will have to pay the \$100 fee. That language was rewritten so that the fee is not listed as a condition of probation because there was no way to make that work. The fee would be imposed once revocation occurs.

SENATOR OGAN asked for a description of the second change the amendment will make.

DEPUTY COMMISSIONER PARKER deferred to DOL.

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MS. ANNE CARPENETI, representing the Criminal Division of DOL, told members that the amendment was suggested by a judge who reviewed the bill and was concerned about the possibility of collecting the surcharge for revocation of probation. DOL agreed with the judge's assessment and made minor amendments to make the collection of that surcharge similar to the process used to collect the facilities fee.

SENATOR OGAN referred to the language on page 20 and asked what "a civil judgment enforceable by execution" means.

MS. DIANE WENDTLANDT, Assistant Attorney General, DOL, explained it means that DOL can garnish permanent fund dividends, wages, or bank accounts. In general, DOL would not do that for amounts as small as \$100. DOL handles a large volume so it is not economically feasible to do more than attach the permanent fund dividend. Without the amendment, DOL would be unable to get a writ of execution, meaning it could not do any involuntary collection. DOL could only accept voluntary payments, which would be fairly low.

SENATOR OGAN referred to the fiscal note and asked if the state will collect more money than the collection costs.

CHAIR SEEKINS said that depends on how much can be collected.

SENATOR OGAN removed his objection to adopting Amendment 1, therefore it was adopted.

CHAIR SEEKINS closed public testimony.

SENATOR OGAN moved CSSB 336(JUD) from committee with individual recommendations and attached fiscal notes.

CHAIR SEEKINS announced that without objection, the motion carried. He then adjourned the meeting at 9:55 a.m.