

HOUSE JOURNAL

ALASKA STATE LEGISLATURE

TWENTY-FOURTH LEGISLATURE - FIRST SESSION

Juneau, Alaska

Friday

March 4, 2005

Fifty-fourth Day

Pursuant to adjournment the House was called to order by Speaker Harris at 10:07 a.m.

Roll call showed 38 members present. Representative Olson had been previously excused from a call of the House today.

Representative Coghill moved and asked unanimous consent that Representative Berkowitz be excused from a call of the House from today to 9:30 a.m., plane time, March 7, 2005. There being no objection, it was so ordered.

The invocation was offered by the Chaplain, Pastor Robert Sherwood of the Church of the Nazarene. Representative Coghill moved and asked unanimous consent that the invocation be spread on the journal. There being no objection, it was so ordered.

The A-10s were doing "hot turns" at the Forward Operating Location. They went from the fueling location to the bomb and missile loading area without turning off their engines. Greg Wilson was piloting the green camouflaged Wart Hog. Greg was six feet two and 250 pounds with a shaved head and a gray handlebar mustache. He almost had to be shoehorned into the cockpit. On the revetment above the A-10 stood the chaplain praying for Greg and his mission. The chaplain was dressed in green camouflaged BDUs. He, the aircraft, and the men loading the missiles appeared like a mirage in the heat of the day amidst the hills of sand. The pilot gave the chaplain a thumbs up. The chaplain saluted the pilot and the plane was off down the runway.

That day an old Forward air controller from Viet Nam using binoculars, a 46-year-old chaplain praying, and an old Cold War tank killer were joined by the Ancient of Days. Greg and his plane single handedly blew up twenty Scud missiles and their launchers. The Scuds in western Iraq had names in their guidance systems like Haifa, Tel-Aviv, and Jerusalem. They would not arrive at their targets that day or ever. That day an old pilot, an old aircraft, and an old chaplain were used by God in Desert Storm as instruments of justice, mercy, and in humility - unlikely players in the electronic Air Force.

We are not to expect justice in this world, but we are never to cease to give it. We are to be merciful to others; for we will be treated in the measure we are merciful. We are to be humble for it is God who gives us our sanity, our health and keeps us from death. Pride is a Scud missile on the desert floor.

Now, Father, fill this place with Your Spirit, manifest synergy and fruitfulness and in justice, mercy, and humility. With respect to other faiths and in the resurrected name of Jesus. God bless you and God bless the state of Alaska. Amen.

The Pledge of Allegiance was led by Representative Foster.

CERTIFICATION OF THE JOURNAL

Representative Coghill moved and asked unanimous consent that the journal for the 53rd legislative day be approved as certified by the Chief Clerk. There being no objection, it was so ordered.

MESSAGES FROM THE SENATE

SJR 2

A message dated March 3, 2005, was read stating the Senate has concurred in the House amendment to SJR 2, thus adopting:

SENATE JOINT RESOLUTION NO. 2 am H
Urging the United States Congress to pass legislation to open the coastal plain of the Arctic National Wildlife Refuge, Alaska, to oil and gas exploration, development, and production.

SJR 5

A message dated March 3, 2005, was read stating the Senate has concurred in the House amendment to SJR 5, thus adopting:

HOUSE CS FOR SENATE JOINT RESOLUTION NO. 5(O&G)
Urging the United States Congress to reauthorize the Methane Hydrate Research and Development Act.

A message dated March 3, 2005, was read stating the Senate has passed the following and they are transmitted for consideration:

**FIRST READING AND REFERENCE
OF SENATE BILLS**

SB 52

CS FOR SENATE BILL NO. 52(L&C) by the Senate Labor and Commerce Committee, entitled:

"An Act relating to certain functions of the division of banking, securities, and corporations and the division of occupational licensing in the Department of Commerce, Community, and Economic Development; relating to program receipts and record search fees of the Department of Commerce, Community, and Economic Development related to banking, securities, and corporations; and providing for an effective date."

was read the first time and referred to the House Special Committee on Economic Development, International Trade, & Tourism and the Labor & Commerce Committee.

SB 87

SENATE BILL NO. 87 by Senators Bunde, Wilken, Seekins, Wagoner, and Cowdery, entitled:

"An Act relating to motor vehicle safety belt violations."

was read the first time and referred to the State Affairs and Judiciary Committees.

REPORTS OF STANDING COMMITTEES

HJR 7

The State Affairs Committee has considered:

HOUSE JOINT RESOLUTION NO. 7

Proposing amendments to the Constitution of the State of Alaska to correct obsolete references to the office of secretary of state by substituting references to the office of lieutenant governor.

The report was signed by Representative Seaton, Chair, with the following individual recommendations:

Do pass (4): Gardner, Gatto, Elkins, Seaton

The following fiscal note(s) apply:

1. Fiscal, Office of the Governor

HJR 7 was referred to the Judiciary Committee.

HB 25

The Community & Regional Affairs Committee has considered:

HOUSE BILL NO. 25

"An Act relating to the sharing of fisheries business tax revenue with municipalities; and providing for an effective date."

and recommends it be replaced with:

CS FOR HOUSE BILL NO. 25(CRA)
(same title)

The report was signed by Representatives Olson and Thomas, Co-chairs, with the following individual recommendations:

No recommendation (6): Cissna, Neuman, Kott, Salmon, LeDoux, Olson

Amend (1): Thomas

The following fiscal note(s) apply to CSHB 25(CRA):

1. Zero, Dept. of Revenue
2. Fiscal, Dept. of Commerce, Community, & Economic Development

HB 25 was referred to the Finance Committee.

HB 103

The State Affairs Committee has considered:

HOUSE BILL NO. 103

"An Act requiring an actionable claim against the state to be tried without a jury."

The report was signed by Representative Seaton, Chair, with the following individual recommendations:

Do not pass (1): Gruenberg

No recommendation (5): Gardner, Gatto, Ramras, Elkins, Seaton

The following fiscal note(s) apply:

1. Fiscal, Alaska Court System
2. Indeterminate, Dept. of Law

HB 103 was referred to the Judiciary Committee.

HB 133

The Community & Regional Affairs Committee has considered:

SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 133

"An Act relating to incorporation of boroughs and to regulations of the Local Boundary Commission to provide standards and procedures for municipal incorporation, reclassification, dissolution, and certain municipal boundary changes; and providing for an effective date."

and recommends it be replaced with:

CS FOR SPONSOR SUBSTITUTE FOR HOUSE BILL NO.
133(CRA)
(same title)

The report was signed by Representatives Thomas and Olson, Co-chairs, with the following individual recommendations:

Do pass (5): Salmon, Neuman, Kott, Thomas, Olson

No recommendation (2): LeDoux, Cissna

The following fiscal note(s) apply to CSSSHB 133(CRA):

1. Zero, Dept. of Commerce, Community, & Economic Development

SSHB 133 was referred to the State Affairs Committee.

REPORTS OF SPECIAL COMMITTEES

HB 13

The House Special Committee on Education has considered:

HOUSE BILL NO. 13

"An Act relating to reimbursement of municipal bonds for school construction; and providing for an effective date."

The report was signed by Representative Neuman, Chair, with the following individual recommendations:

Do pass (5): Gara, Gatto, Wilson, Thomas, Neuman

The following fiscal note(s) apply:

1. Indeterminate, Dept. of Education & Early Development

HB 13 was referred to the Health, Education & Social Services Committee.

INTRODUCTION, FIRST READING, AND REFERENCE OF HOUSE RESOLUTIONS

HCR 4

HOUSE CONCURRENT RESOLUTION NO. 4 by Representatives Ramras and Stoltze:

Encouraging the establishment of a methamphetamine watch program.

was read the first time and referred to the State Affairs and Judiciary Committees.

**INTRODUCTION, FIRST READING, AND REFERENCE
OF HOUSE BILLS**

HB 31

SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 31 by Representatives Anderson, Lynn, and Gatto, entitled:

"An Act relating to the presumption of coverage for a workers' compensation claim for disability as a result of certain diseases for certain occupations."

was read the first time and referred to the Labor & Commerce, Health, Education & Social Services, and Finance Committees.

HB 139

SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 139 by Representative Kerttula, entitled:

"An Act relating to the voting rights of felons."

was read the first time and referred to the State Affairs and Judiciary Committees.

HB 198

HOUSE BILL NO. 198 by Representative Elkins, entitled:

"An Act relating to aquatic farming; and providing for an effective date."

was read the first time and referred to the House Special Committee on Fisheries and the Resources Committee.

HB 199

HOUSE BILL NO. 199 by Representative Kott, entitled:

"An Act excluding certain trucks from the definition of 'passenger vehicle' for purposes of the passenger vehicle rental tax; and providing for an effective date."

was read the first time and referred to the Transportation, State Affairs, and Finance Committees.

HB 200

HOUSE BILL NO. 200 by Representative Kerttula, entitled:

"An Act imposing a maximum pupil-teacher ratio in public schools; and providing for an effective date."

was read the first time and referred to the House Special Committee on Education and the Health, Education & Social Services and Finance Committees.

HB 201

HOUSE BILL NO. 201 by Representative Chenault, entitled:

"An Act relating to an application for a permanent fund dividend for a member of the armed forces of the United States serving on active duty outside of the state; and providing for an effective date."

was read the first time and referred to the House Special Committee on Military & Veterans' Affairs and the State Affairs Committee.

HB 202

HOUSE BILL NO. 202 by the House Rules Committee by request of the Governor, entitled:

"An Act relating to complaints filed with, investigations, hearings, and orders of, and the interest rate on awards of the State Commission for Human Rights; making conforming amendments; and providing for an effective date."

was read the first time and referred to the State Affairs and Judiciary Committees.

The following fiscal note(s) apply:

1. Zero, Office of the Governor
2. Zero, Dept. of Law

The Governor's transmittal letter dated March 3, 2005, follows:

"Dear Speaker Harris:

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill that would amend the investigation and procedure laws of the State Commission for Human Rights (commission). The bill would amend the investigation and hearing procedures to enhance fairness and efficiency and to give the commission more enforcement discretion to increase its effectiveness in combating unlawful discrimination.

The bill would add a new statutory provision, AS 18.80.112, to provide the staff of the commission with greater authority to evaluate complaints of discrimination and to choose the complaints that it pursues to hearing before the commission. The purpose of the amendment is to reverse the Alaska Supreme Court's decision in *Department of Fish and Game v. Meyer*, 906 P.2d 1365 (Alaska 1995), that a hearing is mandatory if a complaint is supported by substantial evidence. The court concluded that the state human rights laws did not give the commission staff discretion to discontinue action on a complaint after an investigator found substantial evidence of unlawful discrimination. *Id.*, at 1373. The effect of this decision was to require the commission to commit its resources to any complaint supported by substantial evidence without regard to such factors as the weakness of the evidence, the strength of an employer's affirmative defenses, or the significance of the alleged violation. Providing the commission with genuine prosecutorial discretion would allow the commission to commit its resources to complaints it determines merit pursuit, based on such factors as, for example, the strength of the evidence, the severity of the alleged violation, an employer's history before the commission, or the complaint's value in establishing precedent guiding future conduct.

The discretion of the staff of the commission would also be expanded to allow it to compromise a claim for damages in the conciliation (or

prehearing) phase of the procedures. The bill would avoid conflicts between staff's exercise of its expanded discretion to compromise, dismiss, or pursue a complaint and the concerns of the victims of unlawful discrimination by allowing a complainant to opt out of commission procedures. A complainant may withdraw the complaint at any time before the executive director of the commission makes the decision to go to hearing and, after withdrawal, pursue the claim independently of the commission in another forum.

The bill would expand on a procedural change made in 2004 when the power to appoint the individuals who conduct commission hearings was moved from the commission to the chief administrative law judge in the Department of Administration. The bill would apply all of the statutes regarding hearings of the office of administrative hearings to the commission (including statutes addressing the qualifications of the persons who would conduct the commission's hearings) except for the statutes establishing hearing procedures. The commission's hearing procedures would be any specific procedures set out in AS 18.80 and the uniform procedures in the Administrative Procedure Act, AS 44.62.330 - 44.62.630. The bill would eliminate from AS 18.80 some duplicative procedural requirements that are addressed in the Administrative Procedure Act, such as the admissibility of evidence and the requirement that testimony be under oath. Another change would be the addition of a provision similar to a motion for summary judgment in the civil rules of court to allow a summary decision on the law if the facts are not disputed. The reason for allowing a summary decision is that it is a faster procedure than a hearing, and it would provide a sufficient opportunity to be heard on the legal issues when the facts are not in dispute. The bill would add a provision tying the rate of interest on commission economic awards to the rate of interest on judgments in AS 09.30.070, to conform the commission's rate to the rate awarded by other administrative agencies and the courts. It would continue to allow the commission to amend an accusation after a case is referred for hearing, but it would require that each new claim be supported by substantial evidence and that the commission provide a respondent with the opportunity to address new claims informally before being required to defend them in a formal hearing. The bill would move the statute of limitations for bringing a claim from regulation (6 AAC 30.230) to statute.

The bill would identify the specific relief available to remedy discrimination, to make the process more open and predictable and, thus, fairer. The bill would incorporate into statute the Alaska Supreme Court's conclusion that the commission lacks the authority to award punitive or noneconomic damages. The bill would amend AS 18.30.130 to establish restoration of the benefit that was deprived -- hiring, promotion, or reinstatement to a position with back pay -- as the customary remedy for unlawful employment discrimination. The bill would define "pay" broadly to mean all compensation for service, including the cost of employee benefits. In the unusual case of an employee who is unable to return to work, the bill would allow an award of up to one year of future compensation. For any pay that the commission awards, the bill would require the commission to offset the amount an employee should have been able to earn after making a reasonable effort to find similar work.

Very importantly, under the bill the commission would retain the authority to order affirmative action to correct unlawful discrimination and to award "any appropriate relief" if it needs to innovate in order to remedy an unusual case of discrimination.

By increasing the commission's discretion in handling complaints, the bill would enable the commission to allocate its diminishing resources to cases in which the commission could be the most effective in addressing and eliminating unlawful discrimination. By streamlining commission procedures, the bill would help contain costs and ensure that the procedures are equitable to both complainants and the persons, businesses, labor organizations, and employment agencies charged before the commission with unlawful discrimination.

I urge your prompt and favorable action on this bill.

Sincerely yours,
/s/
Frank H. Murkowski
Governor"

HB 203

HOUSE BILL NO. 203 by Representative Anderson, entitled:

"An Act relating to a motor vehicle dealer's selling certain motor vehicles as new model motor vehicles or as new model motor vehicles having a manufacturer's warranty."

was read the first time and referred to the Labor & Commerce and Finance Committees.

HB 204

HOUSE BILL NO. 204 by Representative Thomas, entitled:

"An Act relating to the prescription and use of pharmaceutical agents, including controlled substances, by optometrists."

was read the first time and referred to the Health, Education & Social Services and Labor & Commerce Committees.

CONSIDERATION OF THE DAILY CALENDAR

LEGISLATIVE CITATIONS

Representative Coghill moved and asked unanimous consent that the House approve the citations on the calendar. There being no objection, the following citations were approved and sent to enrolling:

Honoring - Major General John M. Brown III

By Representatives Dahlstrom, Harris, Anderson, Berkowitz, Chenault, Cissna, Coghill, Crawford, Croft, Elkins, Foster, Gara, Gardner, Gatto, Gruenberg, Guttenberg, Hawker, Holm, Joule, Kapsner, Kelly, Kerttula, Kohring, Kott, LeDoux, Lynn, McGuire, Meyer, Neuman, Olson, Ramras, Rokeberg, Salmon, Samuels, Seaton, Stoltze, Thomas, Weyhrauch, Wilson

In Memoriam - Edwin G. Church

By Representatives Kohring, Gatto, Neuman, Stoltze, Harris, Anderson, Berkowitz, Chenault, Cissna, Coghill, Crawford, Croft, Dahlstrom, Elkins, Foster, Gara, Gardner, Gruenberg, Guttenberg, Hawker, Holm, Joule, Kapsner, Kerttula, Kott, LeDoux, McGuire, Meyer, Olson, Ramras, Rokeberg, Salmon, Samuels, Seaton, Thomas, Weyhrauch, Wilson; Senators Green, Huggins

UNFINISHED BUSINESS**HB 46**

Representative Coghill moved that the House rescind previous action in failing to pass on reconsideration (page 417):

CS FOR HOUSE BILL NO. 46(FIN)

"An Act relating to grants to certain public utilities for water quality enhancement projects and water supply and wastewater systems."

Representative Kerttula objected.

Representative Rokeberg placed a call of the House.

The call was satisfied.

The question being: "Shall the House rescind previous action in failing to pass CSHB 46(FIN) on reconsideration?" The roll of the House was taken with the following result:

CSHB 46(FIN)--RECONSIDERATION

Third Reading

Rescind Previous Action in Failing to Pass

YEAS: 27 NAYS: 11 EXCUSED: 2 ABSENT: 0

Yeas: Anderson, Chenault, Coghill, Dahlstrom, Elkins, Foster, Gatto, Guttenberg, Harris, Hawker, Holm, Kelly, Kohring, Kott, LeDoux, Lynn, McGuire, Meyer, Neuman, Ramras, Rokeberg, Samuels, Seaton, Stoltze, Thomas, Weyhrauch, Wilson

Nays: Cissna, Crawford, Croft, Gara, Gardner, Gruenberg, Joule, Kapsner, Kerttula, Moses, Salmon

Excused: Berkowitz, Olson

And so, the motion passed.

CSHB 46(FIN) was again before the House in third reading under reconsideration.

Representative Wilson moved and asked unanimous consent that CSHB 46(FIN) be returned to second reading for the specific purpose of considering Amendment No. 2.

Representative Coghill objected.

The question being: "Shall CSHB 46(FIN) be returned to second reading for the specific purpose of considering Amendment No. 2?"
The roll was taken with the following result:

CSHB 46(FIN)--RECONSIDERATION

Third Reading

Return to Second for Amendment No. 2

YEAS: 25 NAYS: 13 EXCUSED: 2 ABSENT: 0

Yeas: Cissna, Crawford, Croft, Dahlstrom, Elkins, Gara, Gardner, Gatto, Gruenberg, Guttenberg, Joule, Kapsner, Kelly, Kerttula, Kott, LeDoux, Moses, Neuman, Ramras, Salmon, Samuels, Seaton, Stoltze, Weyhrauch, Wilson

Nays: Anderson, Chenault, Coghill, Foster, Harris, Hawker, Holm, Kohring, Lynn, McGuire, Meyer, Rokeberg, Thomas

Excused: Berkowitz, Olson

And so, CSHB 46(FIN) was returned to second reading.

Amendment No. 1 was not offered.

Amendment No. 2 was offered by Representative Wilson:

Page 2, following line 28:

Insert a new subsection to read:

"(k) Municipalities shall be given one additional point by the Department when considering these grants."

Representative Wilson moved and asked unanimous consent that Amendment No. 2 be adopted.

Representative Kelly objected.

Representative Wilson moved and asked unanimous consent that Amendment No. 2 be withdrawn and replaced with New Amendment No. 2.

Objection was heard.

The Speaker ruled New Amendment No. 2 in order, and so Amendment No. 2 was withdrawn.

New Amendment No. 2 was offered by Representative Wilson:

Page 2, following line 28:

Insert a new subsection to read:

"(k) Municipalities shall be given an additional point in the point system used in awarding grants under this system. In this subsection, "point system" means the method used by the department to determine which grantees will be awarded grants from the funds available."

Representative Wilson moved and asked unanimous consent that New Amendment No. 2 be adopted.

Objection was heard.

The question being: "Shall New Amendment No. 2 be adopted?" The roll was taken with the following result:

CSHB 46(FIN)--RECONSIDERATION

Second Reading

New Amendment No. 2

YEAS: 17 NAYS: 21 EXCUSED: 2 ABSENT: 0

Yeas: Cissna, Crawford, Croft, Dahlstrom, Elkins, Gara, Gardner, Gruenberg, Joule, Kapsner, Kerttula, LeDoux, Moses, Neuman, Salmon, Seaton, Wilson

Nays: Anderson, Chenault, Coghill, Foster, Gatto, Guttenberg, Harris, Hawker, Holm, Kelly, Kohring, Kott, Lynn, McGuire, Meyer, Ramras, Rokeberg, Samuels, Stoltze, Thomas, Weyhrauch

Excused: Berkowitz, Olson

And so, New Amendment No. 2 was not adopted.

The question to be reconsidered: "Shall CSHB 46(FIN) pass the House?" The roll of the House was taken with the following result:

CSHB 46(FIN)--RECONSIDERATION

Third Reading

Final Passage

YEAS: 26 NAYS: 12 EXCUSED: 2 ABSENT: 0

Yeas: Anderson, Chenault, Coghill, Croft, Dahlstrom, Elkins, Foster, Gatto, Guttenberg, Harris, Hawker, Holm, Kelly, Kohring, Kott, LeDoux, Lynn, McGuire, Meyer, Neuman, Ramras, Rokeberg, Samuels, Stoltze, Thomas, Weyhrauch

Nays: Cissna, Crawford, Gara, Gardner, Gruenberg, Joule, Kapsner, Kerttula, Moses, Salmon, Seaton, Wilson

Excused: Berkowitz, Olson

And so, CSHB 46(FIN) passed the House on reconsideration and was referred to the Chief Clerk for engrossment.

Representative Coghill moved and asked unanimous consent that the following members be excused from a call of the House. There being no objection, the members were excused as noted:

Representative Gardner - from noon, March 4 to 9:30 a.m., plane time, March 7, 2005

Representative Neuman - from noon, March 4 to 9:30 a.m., plane time, March 7, 2005

Representative Weyhrauch - from 5:00 p.m., March 4 to 7:00 p.m., plane time, March 7, 2005

Representative Holm - from 6:00 p.m., March 4 to 9:30 a.m., plane time, March 7, 2005

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Representative Chenault - from 6:00 p.m., March 4 to 9:30 a.m., plane time, March 7, 2005

Representative Gara - from 6:00 p.m., March 4 to 9:30 a.m., plane time, March 7, 2005

Representative Kohring - from 10:00 a.m., March 5 to 10:00 p.m., plane time, March 13, 2005

HB 13

Representative Neuman added his name as cosponsor to:

HOUSE BILL NO. 13

"An Act relating to reimbursement of municipal bonds for school construction; and providing for an effective date."

HB 149

Representative McGuire added her name as cosponsor to:

HOUSE BILL NO. 149

"An Act relating to further regulation of the sale, possession, and delivery of certain chemicals and precursors used in the manufacture of methamphetamine."

HB 175

Representative Gara added his name as cosponsor to:

HOUSE BILL NO. 175

"An Act relating to the creation of a civil legal services fund."

HB 184

Representative Harris added his name as cosponsor to:

HOUSE BILL NO. 184

"An Act relating to firearms."

ENGROSSMENT**HB 46**

CSHB 46(FIN) was engrossed, signed by the Speaker and Chief Clerk and transmitted to the Senate for consideration.

ANNOUNCEMENTS

House committee schedules are published daily under separate cover.

ADJOURNMENT

Representative Coghill moved and asked unanimous consent that the House adjourn until 11:00 a.m., March 7, 2005. There being no objection, the House adjourned at 11:46 a.m.

Suzi Lowell
Chief Clerk