

HOUSE FINANCE COMMITTEE
May 4, 2005
4:52 p.m.

CALL TO ORDER

Co-Chair Meyer called the House Finance Committee meeting to order at [4:52:03 PM](#).

MEMBERS PRESENT

Representative Mike Chenault, Co-Chair
Representative Kevin Meyer, Co-Chair
Representative Bill Stoltze, Vice-Chair
Representative Richard Foster
Representative Mike Hawker
Representative Jim Holm
Representative Reggie Joule
Representative Mike Kelly
Representative Carl Moses
Representative Bruce Weyhrauch

MEMBERS ABSENT

Representative Eric Croft

ALSO PRESENT

Suzanne Cunningham, Staff, Representative Kevin Meyer; Jim Pound, Staff, Representative Jay Ramras; Brett Fried, Economist, Tax Division, Department of Revenue; Mike O'Hare, Staff, Representative Pete Kott; Bryan Butcher, Legislative Liaison, Alaska Housing Finance Corporation; Senator Charlie Huggins; Kurt Fredriksson, Acting Deputy Commissioner, Office of the Commissioner, Department of Environmental Conservation; Dan Easton, Director, Division of Water, Department of Environmental Conservation; Jon Tillinghast, Lobbyist, Sealaska Corporation; Rollo Pool, Southeast Conference; Kate Giard, Chair, Regulatory Commission of Alaska; Ethan Falatko, Assistant Attorney General, Department of Law; Thyes Shaub, Lobbyist, National Federation of Independent Businesses; Stephanie Madsen, Pacific Seafood Processors; Michele Metz, Sealaska Corporation; Kevin Ritchie, Executive Director, Alaska Municipal League

PRESENT VIA TELECONFERENCE

Steve Van Sant, State Assessor, Department of Commerce, Community and Economic Development; Steve Borell, Alaska Miners Association; Dan Fauske, Executive Director, Alaska Housing Finance Corporation; David Lanz, President, Diamond Electric, Denise Michels, Nome; Dick Coose, Former-Assemblyman, Ketchikan; Owen Graham, Alaska Forest

Association; Ron Miller, Executive Director, Alaska Industrial Development and Export Authority, (AIDEA); Brian Bjorkquist, Assistant Attorney General, Department of Law; Lois Epstein, Cook Inlet Keeper, Anchorage; Sharon Fisher, Alaska Industrial Development and Export Authority, (AIDEA); Ron Saxton, Four Dam Pool; Steve Boyd, National Electrical Contractors Association, Anchorage; Mike Pollen, National Alaska, Inc, (NAI), Fairbanks; Cameron Leonard, Assistant Attorney General, Department of Law; James Fueg, Placer Dome; Kathryn Kurtz, Attorney, Legislative Legal Services

SUMMARY

HB 280 "An Act relating to the taxation of mining property; relating to contracts approved by municipalities for payments in lieu of taxes; and providing for an effective date."

CSBH 280 (FIN) was REPORTED out of Committee with a "no recommendation" recommendation and with a new fiscal impact note by the Department of Revenue, and with a new fiscal impact note by the Department of Commerce, Community and Economic Development.

HB 283 "An Act relating to the compensation for board members of the Alaska Housing Finance Corporation; and providing for an effective date."

CSHB 283 (STA) was REPORTED out of Committee with a "do pass" recommendation and with a new fiscal impact note by the Department of Revenue.

SB 158 "An Act prohibiting the imposition of municipal sales and use taxes on state construction contracts and certain subcontracts; and providing for an effective date."

SB 158 was REPORTED out of Committee with a "do pass" recommendation and with a zero fiscal impact note by the Department of Commerce, Community and Economic Development.

CSSB 155(FIN)

"An Act making appropriations from the earnings reserve account for construction of an integrated science complex at the University of Alaska in Anchorage, for replacement of the virology laboratory in Fairbanks, for expansion of the Anchorage Museum of History and Art, for the major maintenance grant fund, and for other capital projects related to education; and providing for an effective date."

HCSSB 155 (FIN) was REPORTED out of Committee with a "do pass" recommendation.

HB 243 "An Act relating to the maximum annual regulatory cost charge collected from certain regulated public utilities and pipeline carriers; and providing for an effective date."

CSHB 243 (FIN) was REPORTED out of Committee with a "no recommendation" recommendation and with a new indeterminate fiscal impact note by the Department of Commerce, Community and Economic Development.

CSSB 110(FIN)(efd fld)

"An Act relating to regulation of the discharge of pollutants under the National Pollutant Discharge Elimination System."

CSSB 110 (FIN) was heard and HELD in Committee for further consideration.

[4:52:19 PM](#)

#hb280

HOUSE BILL NO. 280

"An Act relating to the taxation of mining property; relating to contracts approved by municipalities for payments in lieu of taxes; and providing for an effective date."

JIM POUND, STAFF, REPRESENTATIVE JAY RAMRAS, spoke in support of the legislation. He read from the sponsor statement:

CSHB 280 is interestingly enough a bill requested of this body by the industry. Under its language, mines operating in the state would be taxed by the state on the true and real value of real and tangible property.

Precious metal exploration has continued in the state and several of the locations being developed are not located in organized boroughs. Without the language of CSHB 280 development companies are operating with an uncertain and potentially unstable set of rules for taxation. Using AS 14.17.410 (b) (2) as a tax base, mines in unorganized boroughs would be assessed a four-mill levy. Boroughs forming later would be allowed to tax at their established property tax rate.

Language in the bill also creates a special mining property tax account and allows the legislature to appropriate that money into the public education fund.

Essentially this is an offer by the mining industry to assure funding for Alaska's Education System.

HB 280 is limited to large producers only. Mines producing less than \$10,000,000 are exempt from the tax formula. This keeps what is left of our once profitable mom and pop mines in operation.

In a world market, stability both politically and financially are critical to success for these companies that invest millions of dollars just searching for precious metals. Creating a stable tax base for an industry that creates hundreds of jobs in Alaskan communities makes sound fiscal sense. It also gives unorganized areas of the state a clear understanding of the income they will receive from a mine, once they become a borough and can receive the tax benefit.

[4:53:42 PM](#)

Co-Chair Chenault asked if there was a current limit on what municipalities could tax. Mr. Pound noted that there was not. He thought that the Fairbanks North Star Borough taxed the Fort Knox Mine at the existing mil levy on property (14 mils). The Red Dog Mine pays the Northwest Arctic Borough a severance tax based on mineral production (3 percent). The Usebelli Mine also pays the Denali Borough a severance tax.

[4:54:43 PM](#)

Co-Chair Chenault asked the effect on the Donlin Creek Mine and the Kensington Mine. He asked about the tax structure.

Representative Weyhrauch explained that the City and Borough of Juneau has a two-tier tax structure. These mines currently pay 6.6 mils. If they connect to services the mil rate would increase to 11.

In response to a question by Representative Chenault, Mr. Pound noted that the legislation would not affect any current mines operating within an organized borough. A 4-mil levy on personal property would be imposed on mines operating outside of a municipality. There is nothing in the legislation, which would prevent a municipality from annexing a mine, but they would be required to come in under the existing property tax structure. The state tax would end when the mine is annexed. The legislation does not affect the municipality's tax.

[4:56:40 PM](#)

Vice-Chair Stoltze referenced AS 43.67.020 on page 3. Mr. Pound explained that for a period of 15-years, the tax

language in place under AS 43.67.020 would be restricted to the particular taxes listed "except where a municipality may come in and do personal property tax on a new one". After the 15-year period, the door opens up and there are no exemptions at all on what can and cannot be taxed.

Vice-Chair Stoltze mentioned gas line provisions. He questioned the affect of the legislation on constitutional issues. Mr. Pound discussed his understanding of the intent of section 20. He explained that prior to [a mine] being annexed into a municipality, for a period of 15-years taxes are levied based on the items on the list:

- (1) taxes on the sale or use of minerals;
- (2) taxes on or measured by gross or net income from the taxable property, including income from the exploration for, production of, or of minerals or taxable property; and
- (3) any license, excise, fee, charge, severance, throughput, or other tax on or pertaining to the taxable property or services used in or associated with the taxable property or in its maintenance or operation unless the tax is also levied on property not subject to tax under AS 43.67.010(a).

Vice-Chair Stoltze wanted to make sure that the legislation was on solid constitutional ground.

[5:00:11 PM](#)

Representative Holm expressed concern with the ability to exempt previous taxing authorities. He felt it would be appropriate for the state of Alaska to have an even playing field. He recommended that the "grandfather provision" be reviewed. He pointed out that the residents of the state own the resource, not the municipality adjacent to the resource. The state of Alaska cannot constitutionally allow the municipality to tax the resource. He suggested that the activity could not be grandfathered in because it is illegal in the first place, even though it has been occurring. Mr. Pound agreed that there are constitutional questions that must be addressed by the courts.

[5:03:10 PM](#)

Representative Holm recommended that the issue be addressed before it is passed out of Committee.

[5:05:51 PM](#)

Vice-Chair Stoltze referenced similar provisions relating to the gas line. He asked about the 15-year exemption.

BRETT FRIED, ECONOMIST, TAX DIVISION, DEPARTMENT OF REVENUE, noted that he was not qualified to answer that question.

[5:06:52 PM](#)

ETHAN FALATKO, ASSISTANT ATTORNEY GENERAL, DEPARTMENT OF LAW, did not feel there would be a constitutional issue with the statute. He noted that Article X allows the state of Alaska very broad authority to delegate taxing authority to municipalities.

[5:08:44 PM](#)

JAMES FUEG, PLACER DOME, JOINT VENTURE, referenced the handout from the Donlin Creek project. He commented on the size of the project. A mine in that area would employ over 400 people. There are benefits in addition to those listed in HB 280. He read from prepared testimony:

- The handout presented to you is a brief description of the ongoing work at the Donlin Creek Project. As you can see, if a decision is made to move forward with development of a mine at Donlin Creek this will be one of the largest and most complex resource development projects in Alaska. Current estimated capital costs for the project are well in excess of \$1 billion dollars. A mine at Donlin Creek would employ ~ pay royalties to the shareholders of Alaskan Native Corporation of Calista Corporation, the mineral est~holder for the deposit, and pay Mining License Taxes and Corporate Income Taxes to the State. These benefits are in addition to the potential payments proposed under HB 280.
- One of the biggest uncertainties facing mineral development in the unorganized borough of Alaska., and hence the Donlin Creek Project, amongst others, is the lack of any defined tax structure at the local level. This makes it extremely difficult to accurately predict future operating margins and costs when one is developing the complex economic models that must be completed prior to making a billion dollar investment decision, such as we are facing at Donlin Creek. This in turn makes it harder to achieve a positive decision on such large investments.
- HB 280 presents several mechanisms for companies, who wish to invest in mine development in Alaska, to address these uncertainties, while at the same time providing a mechanism for the industry to contribute to the cost of education in their communities and, should a local government be formed at some point in the future, contribute to the cost of funding local government.

[5:11:30 PM](#)

KEVIN RITCHIE, ALASKA MUNICIPAL LEAGUE, JUNEAU, noted that the League represents future municipalities that might form. He noted that there have been improvements to the legislation. He observed that taking away taxing authority in any manner is of concern to the municipalities. He addressed section 2 (c), which allows a municipality to negotiate a payment in lieu of taxes unless the property is subject to a state contract. He felt that the subsection would take away the authority, which is granted in other parts of the bill, for the municipality to define what is needed to pay for schools, roads, public safety and other services. He encouraged the Committee to review the language more closely.

Mr. Ritchie discussed section 3. Section 3 would broaden the severance tax issue to all municipalities. The provision was recently added. Previously, the bill only impacted the formation of new boroughs. He did not think there was a current severance tax on minerals.

[5:14:56 PM](#)

STEVE VAN SANT, STATE ASSESSOR, DEPARTMENT OF COMMERCE, COMMUNITY AND ECONOMIC DEVELOPMENT, (via teleconference) offered to answer questions of the Committee.

[5:15:34 PM](#)

STEVE BORELL, ALASKA MINERS' ASSOCIATION, ANCHORAGE, (via teleconference) noted that the mining industry is volunteering to pay a new tax, through HB 280. The tax would be on large mines operating in the unorganized borough at a constant rate for a period of 15 years from the first production at the mine. The industry already pays several taxes to the state depending on the type of land where the mining occurs. A mining license tax is paid to the state regardless of whether the land is on state, federal or private land. Mining also pays corporate income tax, mining claim rentals, production royalty on state owned land, and property tax when the mine is in the organized borough. Mines would also pay taxes to future boroughs. He stressed the need for tax certainty.

[5:17:53 PM](#)

Co-Chair Chenault asked about AS 43.56 properties assessed by the state and the tax proposed on the mining industry. Mr. Van Sant observed that AS 43.56 oil and gas properties, which are assessed by the state and cross-jurisdictional lines between communities, are levied a 20-mil tax by the state. Municipalities levy their mil rate against the 20-mil

tax. Oil companies do not pay more than 20 mils on any evaluation. The State would retain authority to assess a tax on mining property contained within certain boundaries, which don't cross-jurisdictional lines. The 4-mil assessment would come directly to the state unless a municipality was formed.

[5:20:54 PM](#)

Co-Chair Chenault inquired how the value of the 4 mils would be determined. Mr. Van Sant responded that the bill would require them to value property based on the cost approach, which is based on actual costs. This approach is used on the Red Dog Mine. The state also uses this approach on AS 43.56 property along with market and income approach to value.

[5:22:07 PM](#)

Vice-Chair Stoltze asked if there were legal concerns.

KATHRYN KURTZ, ATTORNEY, LEGISLATIVE LEGAL SERVICES, (via teleconference) pointed out that the state has the power of taxation and has the authority to set a tax rate.

Vice-Chair Stoltze asked if there were potential problems with locking into the rate. Ms. Kurtz could not address the gas line issue. She commented that the bill would give the state of Alaska the power in lieu of taxes. It does not cause a great deal of legal concern because of the scope of the issue. She acknowledged that a surrender of the state's taxing power would be unconstitutional.

[5:26:42 PM](#)

Representative Holm asked if the state has the right to give away the taxing authority on minerals owned by the residents of the state and allow municipalities to impose a severance tax. Ms. Kurtz pointed out that the state of Alaska has broad powers in determining the taxing power of municipalities. The state currently has a taxing structure, which allows municipalities to impose property taxes, sales and use powers.

[5:29:17 PM](#)

Representative Joule asked if the bill would change the arrangements of existing borough operations. Mr. Pound did not think it would affect existing operations.

[5:31:02 PM](#)

Co-Chair Chenault asked if 4 mils was a reasonable amount and how it is determined. Mr. Van Sant responded that the 4 mils levy is determined by the school contribution in Title

XIV, which changes each year depending on the value of the mine. The value of the mine is determined by cost. The tax value would increase as the investment increases. He noted that AS 43.56 property is 20 mils times the value. The value would go down each year if new dollars were not invested in the mine. The 4-mil rate is not based on the ore extracted but on the investment in the property.

[5:35:08 PM](#)

Representative Holm MOVED to ADOPT Amendment 1:

Page 4, line 2

Insert new subsection (c)

(c) Property tax imposed by a municipality under AS 29.45 is in place of the tax levied under AS 43.67.010. In the case of a municipality incorporated after January 1, 2005, the transition provisions of AS 29.05.140 govern the transition from assessment by the department to assessment by the municipality.

Re letter the remaining subsection accordingly

Page 5, line 20

Following "after"

Delete "an assessment"

Insert "a determination"

Page 6, line 26

Insert new (2)

(2) "department" means the Department of Revenue or the Department of Commerce, Community, and Economic Development;

Re number the remaining paragraphs accordingly

Page 7, line 6

Following "The Department of Revenue"

Insert "and the Department of Commerce, Community, and Economic Development"

Vice-Chair Stoltze OBJECTED.

[5:35:33 PM](#)

Mr. Pound noted that the amendment deals with how property tax is imposed on a municipality under Title 29. A new borough would have up to two years for transition. The time line for appeals was restructured to allow 30 days after a determination. The Department of Commerce, Community and Economic Development was added under the definition of department and given the power to formulate regulations.

[5:37:44 PM](#)

Co-Chair Chenault asked for the definition of determination. Mr. Pound clarified that there are 50 days.

Vice-Chair Stoltze WITHDREW his objection. There being NO further OBJECTION, Amendment 1 was adopted.

HB 280 was HELD over.

HOUSE BILL NO. 283

"An Act relating to the compensation for board members of the Alaska Housing Finance Corporation; and providing for an effective date."

MIKE O'HARE, STAFF, REPRESENTATIVE PETE KOTT, explained spoke in support of the legislation and read from the sponsor statement.

House Bill 283, an Act relating to the compensation for board members of the Alaska Housing Finance Corporation, would increase the per diem from the current level of \$100 to \$400.

The current level of \$100 per diem has been in place since the inception of the Corporation in 1971. This legislation would provide a much needed increase in the amount of per diem commensurate with the importance of the work being done. HB 283 would increase the per diem compensation to \$400, which is the currently the amount received by the Alaska Permanent Fund Corporation Board of Trustees.

The Board of Directors of AHFC is required to review and consider topics having to do with bonding, the mortgage industry, public housing, and many other technical issues. In any given year, the Board is asked to consider and approve \$600 million to \$1 billion in bond programs and millions of dollars in tax credit and other federal grants. The workload is such that board members must spend a great deal of their personal time studying and educating themselves about corporate activities. These are just some of the reasons why it is important to do what is necessary to help keep as capable a board as possible.

The compensation is only applicable to the four public members of the Corporation's seven member Board of Directors. It is estimated that the increase in per diem would cost the Corporation approximately \$15,000 in corporate receipts per fiscal year.

[5:42:17 PM](#)

Representative Hawker observed that the pension rates would be brought into the 21st Century.

Vice-Chair Stoltze observed that the Alaska Permanent Fund Corporation Board receives \$400 a day and expressed support for the legislation.

[5:44:13 PM](#)

BRYAN BUTCHER, LEGISLATIVE LIAISON, ALASKA HOUSING FINANCE CORPORATION, spoke in support of the legislation. He noted that the Alaska Railroad Corporation (ARRC) Board also receives \$400 a day and pointed out that AHFC is self-supporting. Alaska Housing Finance Corporation receipts would be used, not the General Fund.

[5:44:41 PM](#)

Representative Hawker MOVED to report HB 283 out of Committee with individual recommendations and the accompanying fiscal note. There being NO OBJECTION, it was so ordered.

CSHB 283 (STA) was REPORTED out of Committee with a "do pass" recommendation and with a new fiscal impact note by the Department of Revenue.

DAN FAUSKE, EXECUTIVE DIRECTOR, ALASKA HOUSING FINANCE CORPORATION, DEPARTMENT OF REVENUE, (via teleconference) thanked the committee.

[5:46:08 PM](#)

SENATE BILL NO. 158

"An Act prohibiting the imposition of municipal sales and use taxes on state construction contracts and certain subcontracts; and providing for an effective date."

SENATOR CHARLIE HUGGINS, sponsor, spoke in support of the legislation and read from the sponsor statement.

During the course of business in the last couple of years, subcontractors in the construction industry, who work in some areas of the state, have experienced negative financial impact due to the imposition of local sales taxes on state DOT/PF funded projects.

In the case of a construction contract being awarded and a primary contractor doing business with the state,

the state is the purchaser of those services and, as such, the legal incidence for the tax falls on the state. Based on the state's sovereign immunity and the fact that the state is immune from taxation no tax is owed.

However, when a subcontract is awarded and a primary contractor hires another contractor to do work for him, the subcontractor is not working directly for the state, but for the original contractor, and in some cases a sales tax has been levied on the value of the subcontract.

In one instance, on an Airport Project, a construction contract was awarded to Quality Asphalt Paving (QAP). QAP and Dimond Electric entered into a subcontract directly in connection with the project funded under the construction contract. Dimond Electric was assessed a sales tax of over \$20,000 on the value of their subcontract. This tax was unexpected and not considered in their bid.

The state cannot afford to have an increase in the cost of construction projects due to the levying of sales taxes on state construction contracts or subcontracts directly awarded in connection with the project funded under the construction contract. While all municipalities do not assess this sales tax the policy needs to be consistent statewide.

SB 158 will prohibit the imposition of municipal sales and use tax on state construction contracts and certain subcontracts and remedy the inequity that exists.

Senator Huggins explained that there would be no tax on the gross of a state construction contract. He observed that the Department of Transportation and Public Facilities has previously found that it was cheaper to pay the tax than to go through a change order. He asked the Committee to preserve the traditional way of transacting business.

[5:52:02 PM](#)

Vice-Chair Stoltze spoke in support of the legislation. Senator Huggins stressed that the bill maintains the status quo.

[5:53:38 PM](#)

STEVE BOYD, NATIONAL ELECTRICAL CONTRACTORS ASSOCIATION, ANCHORAGE, (via teleconference) spoke in support of the legislation and maintained that subcontractor work should be exempt from these taxes.

[5:56:10 PM](#)

DAVID LANZ, PRESIDENT, DIAMOND ELECTRIC, (via teleconference) offered to answer questions.

[5:56: 31 PM](#)

DENISE MICHELS, MAYOR, NOME, (via teleconference) referred to her letter in the members' packets (copy on file.) The City of Nome is opposed to SB 158. She asserted that the bill is punitive and unfairly restricts local control. The bill diminishes the existing statutory authority of local governments to raise needed revenues through the levy of taxes. Nome receives most of its revenue from self-tax and property tax. She observed that 40 percent of the property tax is exempt by state statute. Contractors use the municipality's services. Contractors are responsible for due diligences to see what fees or taxes are required in the community. The legislation would reduce the municipality's revenues.

[5:59:04 PM](#)

KEVIN RITCHIE, EXECUTIVE DIRECTOR, ALASKA MUNICIPAL LEAGUE, spoke in opposition to the legislation and referred to a letter from AML to the Committee (copy on file.) He stressed that municipalities must tax to survive. The tax base diminishes in small communities. Municipalities have lost state funds over the past 10 years. He maintained that the issue is not between the contractor and city. He maintained that the cost should come out of the overall cost of state or federal grants. He argued that the impacts are local and the tax benefits local citizens.

[6:01:59 PM](#)

Representative Holm ascertained that Mr. Ritchie had never bid a contract. Representative Holm explained how a contract is marked up, and that the percentage has to be included. He inquired why the Alaska Municipal League would think it appropriate for tax dollars to be taxed.

[6:04:03 PM](#)

Mr. Ritchie responded that in many cases federal money would come into play. He referred to Mayor Michels' statement of small communities struggling to provide basic services. He noted that tax dollars run a municipality. Representative Holm pointed out that this also applies to Anchorage.

[6:07:23 PM](#)

Representative Kelly referred to the letter of April 26 from Kathie Wasserman. He asked Mr. Ritchie to explain the last

paragraph:

The bill summary states that the bill's intention is to "prohibit the imposition of municipal sales and use tax on a construction contract awarded by the state or ~ state agency, or on a subcontract awarded in connection with the project funded under the construction contract." This is misleading, as no communities impose a sales or use tax on a construction contract awarded by the state. This issue is ONLY about subcontract workers that have been hired by the contractor.

Mr. Ritchie explained that no community taxes the full contract. The letter refers to subcontracts awarded in connection with the project.

[6:08:57 PM](#)

Representative Kelly stated the bill's intent is to prohibit the imposition of municipal sales tax and use tax on construction contracts awarded by the state of Alaska or on the subcontractor awarded in connection with the project. He summarized that AML charges that this is misleading.

Mr. Ritchie clarified that communities can't impose a sales tax on the general contractor, but can on subcontractors not awarded by the state. Representative Kelly continued to express concern.

[6:11:35 PM](#)

THYES SHAUB, LOBBYIST, NATIONAL FEDERATION OF INDEPENDENT BUSINESSES, AGC, in support of the legislation. She emphasized that business likes to know what the rules are and have them applied consistently.

[6:12:51 PM](#)

Representative Hawker MOVED to report SB 158 out of Committee with individual recommendations and the accompanying fiscal note.

Representative Joule OBJECTED for discussion purposes. He stressed that the legislature must deal with municipalities and their financial issues. The bigger issue is how we are not sharing the wealth with those communities.

Representative Joule WITHDREW his objection. There being NO further OBJECTION, it was so ordered.

SB 158 was REPORTED out of Committee with a "do pass" recommendation and with a zero fiscal impact note by the Department of Commerce, Community and Economic Development.

[6:14:29 PM](#)

Representative Joule spoke about future problems due to lack of revenue sharing.

[6:16:03 PM](#)

CS FOR SENATE BILL NO. 155(FIN)

"An Act making appropriations from the earnings reserve account for construction of an integrated science complex at the University of Alaska in Anchorage, for replacement of the virology laboratory in Fairbanks, for expansion of the Anchorage Museum of History and Art, for the major maintenance grant fund, and for other capital projects related to education; and providing for an effective date."

Co-Chair Meyer presented the Committee with work draft for SB 155, labeled 24-LS0687\U, Kurtz, 5/4/05. He noted the biggest change was a fund source change from permanent fund earnings were changed to general funds.

SUZANNE CUNNINGHAM, STAFF, CO-CHAIR MEYER, reviewed the changes in the proposed work draft. She clarified that all of the funding sources were changed from permanent fund earnings to general funds.

[6:18:02 PM](#)

She observed that projects in section 3 were reduced to reflect a 70/30 percent split, or 2 percent for REAA's. This change reduced the overall cost of the projects previously contained in the legislation by \$19,447,972 using the capital matching grant formula. She noted that \$57 million in new projects were added to section 3. An additional \$10 million was added in section 5 to the University of Alaska Fairbanks' fisheries and ocean facility at Lena Point. Section 6 was amended from \$5 to \$15 million for the Anchorage Museum of History and Art expansion.

[6:19:16 PM](#)

Vice-Chair Stoltze asked if it would require a title change. Ms. Cunningham agreed that a title change was in order.

[6:19:29 PM](#)

Representative Hawker MOVED to ADOPT the work draft for SB 155, labeled 24-LS0687\U, Kurtz, 5/4/05.

Representative Holm OBJECTED. He felt it would be appropriate to further review the legislation.

Representative Hawker acknowledged the desire to have more time, but pointed out the late date [in the legislative session].

[6:21:15 PM](#)

At ease

[6:25:50 PM](#)

Ms. Cunningham observed that the two largest elements in SB 155 were in section 2, which is the major maintenance list, and section 3, which contains new construction. The Department of Education and Early Development establish the major maintenance list. The intent was to equal out projects awarded to each district.

[6:27:31 PM](#)

Representative Holm WITHDREW his objection.

Representative Hawker noted there was an earnings reserve funding which he preferred.

[6:28:18 PM](#)

Representative Hawker MOVED to report HCSSB 155 (FIN) out of Committee with individual recommendations. There being NO OBJECTION, it was so ordered.

HCSSB 155 (FIN) was REPORTED out of Committee with a "do pass" recommendation.

Co-Chair Meyer announced that the Committee would Recess until 8:30 AM, May 5, 2005.

Representative Hawker asked the committee to move HB 280. Representative Holm objected to that motion, saying he has an amendment. Co-Chair Meyer said there would be time in the morning.

The meeting was recessed at 6:31 PM until 8:30 AM on May 5, 2005.

[8:48:57 AM](#)

Co-Chair Chenault resumed the meeting.

HOUSE BILL NO. 280

"An Act relating to the taxation of mining property; relating to contracts approved by municipalities for

payments in lieu of taxes; and providing for an effective date."

Vice-Chair Stoltze referred to Article IX [Alaska Constitution], and questioned if there is a problem with the legislature surrendering the power of taxation. Mr. Pound restated that legal counsel, as indicated by Ms. Kurtz, does not have a problem with it.

[8:52:14 AM](#)

Representative Kelly referred to Vice-Chair Stoltze's question and summarized that the question is if the state has the right to transfer taxing authority to another entity.

Representative Holm said he spoke with Jack Chenoweth from the Alaska Legislative Legal. He referred to a memo, which states that the legislature has the right to restrict taxation authority and to give it away. The legislature has prohibited municipalities from taxing oil or gas. He noted that the legislation would change a severance tax to a mil tax, which would allow municipalities to tax the infrastructure but not the minerals. He maintained that the legislature has a fiduciary obligation to set state policy that clarifies that the resources are owned collectively and should benefit all Alaskans. He maintained that resources need should be brought into the community pot and it would be bad policy to allow individual communities to benefit.

[8:56:46 AM](#)

Mr. Pound corrected earlier testimony by clarifying that the Northwest Borough does not collect a severance tax.

[8:57:20 AM](#)

Representative Holm MOVED to ADOPT Amendment 2:

Page 2, Lines 18-19

DELETE [other than a tax imposed before January 1, 2006]

Co-Chair Chenault OBJECTED for discussion purposes. Representative Holm explained that the amendment would remove the retroactivity provision. This would prevent municipalities from charging a severance tax on a mineral resource. Mr. Pound stated a concern that some boroughs already use a severance tax.

[8:58:12 AM](#)

STEVE VAN SANT, STATE ASSESSOR, DEPARTMENT OF COMMERCE, COMMUNITY AND ECONOMIC DEVELOPMENT, (via teleconference)

commented on Amendment 2. He explained that Denali Borough collects a severance tax on gravel and coal, which results in approximately \$56 thousand. The Kodiak Island Borough collects a severance tax on timber. He thought that the Lake and Peninsula Borough also has a severance tax, which has not been collected.

[9:00:42 AM](#)

Co-Chair Chenault asked Representative Holm to clarify the intent of the amendment. Representative Holm stated that the amendment would prevent any re-cooping or retroactivity. He questioned if those communities that currently have severance taxes in place could collect a mil tax.

[9:01:48 AM](#)

Mr. Van Sant replied that they could have a sales tax or a property tax, but it would take some work. He pointed out that the 4-mil levy is for the unorganized boroughs.

Representative Holm thought the bill might have some unintended consequences. He asked if the Denali Borough currently has a property tax. Mr. Van Sant noted that the Denali Borough does not collect property tax. The Borough collects a bed tax and severance tax. Representative Holm noted that the [severance tax collected in the Denali Borough: \$56 thousand) is insignificant.

[9:05:02 AM](#)

Representative Kelly requested an opinion from the mining industry.

[9:06:20 AM](#)

At ease.

[9:14:31 AM](#)

JAMES FUEG, PLACER DOME, MEMBER COUNCIL OF ALASKAN PRODUCERS, testified via teleconference. He addressed the mining perspective on granting severance taxes. He said, in general, the mining industry does not support them, but is in favor of grandfathering in existing severance taxes. Representative Holm asked if this was a constitutional position. Mr. Fueg said no.

[9:16:31 AM](#)

Representative Joule asked for clarification. Representative Holm replied.

A roll call vote was taken on the motion to ADOPT Amendment 2.

IN FAVOR: Kelly, Holm
OPPOSED: Joule, Moses, Stoltze, Weyhrauch, Foster, Hawker, Chenault, Meyer

The MOTION FAILED (2-8).

Representative Joule MOVED to report CSHB 280 (FIN) out of Committee with individual recommendations and the accompanying fiscal impact notes.

Representative Holm OBJECTED.

A roll call vote was taken on the motion to report CSHB 280 (FIN) out of Committee.

IN FAVOR: Stoltze, Foster, Hawker, Joule, Chenault, Meyer
OPPOSED: Moses, Weyhrauch, Holm, Kelly

The MOTION PASSED (6-4).

CSBH 280 (FIN) was REPORTED out of Committee with a "no recommendation" recommendation and with a new fiscal impact note by the Department of Revenue, and with a new fiscal impact note by the Department of Commerce, Community and Economic Development.

[9:22:13 AM](#)

HOUSE BILL NO. 243

"An Act relating to the maximum annual regulatory cost charge collected from certain regulated public utilities and pipeline carriers; and providing for an effective date."

Representative Stoltze MOVED to ADOPT work draft for HB 243 labeled 24-GH1138\Y, Craver, 5.3.05. There being NO OBJECTION, it was so ordered.

Representative Kelly observed that the legislation has the support of the Governor and Alaska Industrial Development and Export Authority (AIDEA). The legislation would extend for one year the opportunity for the Four Dam Pool utilities to create a financing agreement that is satisfactory to AIDEA.

[9:23:16 AM](#)

Representative Hawker spoke in support of the legislation and pointed out that there would be a zero fiscal note from Department of Commerce, Community and Economic Development.

[9:24:03 AM](#)

Vice-Chair Stoltze requested comments from Mr. Miller.

RON MILLER, EXECUTIVE DIRECTOR, ALASKA INDUSTRIAL DEVELOPMENT AND EXPORT AUTHORITY, (AIDEA), (via teleconference) explained that the one year extension would allow the Four Dam Pool power agencies to provide a financing plan demonstrating committed funds for completion of the Swan/Tyee project. According to the original Memorandum of Understanding (MOU), the Four Dam Pool Power Agency had until April 11, 2005 to provide such a financing plan to AIDEA. A plan contingent on state and federal grants was submitted, but not accepted. An alternative was proposed, which would require the Agency to deposit \$5 million with AIDEA or Alaska Energy Authority (AEA) in an escrow account. The \$5 million would be a credit that the Four Dam Pool Power Agency would be required to pay into the PCE endowment should they not come up with a financing plan showing committed sums to complete the project. This was agreed to in the MOU. He observed that AIDEA has proposed a mechanism to allow the Agency to retain interest on the \$5 million proposal. He noted that AIDEA does not support of oppose the legislation.

[9:27:20 AM](#)

In response to a question by Vice-Chair Stoltze, Mr. Miller clarified that the legislation pertains to the Four Dam Pool Power Agency and is not connected to Healy coal production. There is a potential impact to the PCE endowment. There could be a possible loss in earnings to the endowment from a one-year delay. He observed that it is a policy call for the legislature.

[9:29:26 AM](#)

Representative Weyhrauch summarized that the legislation is an innocent extension to allow the parties to establish the terms of a MOU. The potential impact of the PCE is a by-product of the extension. In response to a question by Representative Weyhrauch, Mr. Miller noted that the Four Dam Pool Power Agency is a joint action agency that was created to acquire the Four Dam Pool assets from the Alaska Energy Authority. Wrangell, Ketchikan, Kodiak, Copper Valley and Petersburg make up the agency, which is not a state agency. The MOU agreement is between the AEA and the Four Dam Pool Power Agency.

[9:31:24 AM](#)

Representative Kelly referred to "may" on page 4, line 10, which would benefit AEA and AIDEA. He noted that the Governor is in support of this bill.

[9:32:26 AM](#)

Representative Hawker asked if the fiscal note was from the Regulatory Commission of Alaska and asked AIDEA if a zero note is appropriate.

[9:32:58 AM](#)

SHARON FISHER, ALASKA INDUSTRIAL DEVELOPMENT AND EXPORT AUTHORITY, (AIDEA), (via teleconference) stated that the fiscal note should be indeterminate due to the loss of a year's worth of interest, if money is not held in escrow.

[9:33:57 AM](#)

Representative Hawker MOVED to remove of the Regulatory Commission of Alaska fiscal note and adopt an indeterminate note from AIDEA. There being NO OBJECTION, it was so ordered.

Representative Kelly agreed with the indeterminate note.

Vice-Chair Stoltze said he is operating under a good-faith effort by allowing an indeterminate fiscal note.

[9:35:48 AM](#)

Representative Kelly MOVED to report CSHB 243 (FIN) out of Committee with individual recommendations and with the accompanying fiscal note. There being NO OBJECTION, it was so ordered.

CSHB 243 (FIN) was REPORTED out of Committee with a "no recommendation" recommendation and with a new indeterminate fiscal impact note by the Department of Commerce, Community and Economic Development.

[9:36:28 AM](#)

CS FOR SENATE BILL NO. 110(FIN)(efd fld)

"An Act relating to regulation of the discharge of pollutants under the National Pollutant Discharge Elimination System."

KURT FREDRIKSSON, ACTING DEPUTY COMMISSIONER, OFFICE OF THE COMMISSIONER, DEPARTMENT OF ENVIRONMENTAL CONSERVATION, new commissioner, provided written testimony:

Mister Chairman, members of the Committee, I am pleased to testify today in support of this Bill authorizing the Department of Environmental Conservation (DEC) to assume primacy for the National Pollutant Discharge Elimination System (NPDES) permit program from the federal Environmental Protection Agency (EPA).

Governor Murkowski and I believe passage of this legislation will allow Alaskans to better protect the State's water resources and build a strong economy.

With me today is Dan Easton, Director of the Department's Division of Water to provide you with the details of how this bill was developed.

Under federal law all discharges to surface waters must be permitted under the NPDES permit program to protect water quality. Community sewage treatment facilities, construction of storm water drains on more than one acre, seafood processors, log transfer facilities, ballast water discharge facilities, mining operations, oil and gas operations, and fish hatcheries all must have NPDES permits to operate. There are currently over 2300 regulated permit holders in Alaska under the NPDES permit program.

The federal Clean Water Act is founded on the principle that the rights of states to manage water quality within their borders should be protected. The Clean Water Act includes provisions for a state to assume primacy from the Environmental Protection Agency (EPA) for issuing NPDES permits for discharges to surface waters within the state's borders. In states that do not assume primacy, EPA runs the NPDES program.

Like four other states, Alaska has never pursued the opportunity provided by the federal Clean Water Act to shape the NPDES water pollution control permit program to fit our state's unique circumstances. The bill before you would allow DEC to develop a comprehensive water quality protection program where all program components, from legislative budgeting and oversight to fieldwork and enforcement, are conducted here in the state, where Alaskans can shape solutions to fit Alaska's challenges.

Without this legislation, EPA will continue to be Alaska's water quality permitter. EPA makes the permit rules and review timeframes. EPA decides what goes into the permits and who gets inspected. EPA decides how Alaska's water quality standards will be applied to specific discharges. EPA sets Alaska's water quality priorities. EPA decides what's important for Alaska and what's not.

As you know, Governor Murkowski has an ambitious agenda for the responsible development of Alaska's natural resources. The Governor has pledged to improve permit efficiency without a rollback of environmental protection. However, as long as EPA runs the NPDES permit program in Alaska, DEC cannot fix what we don't control. We can't establish appropriate performance measures with the legislature for timely permit actions, we can't establish the state's annual permit and environmental protection priorities, and we can't offer a timely appeal process that allows conflicts to be judged by Alaskans in Alaska.

A state run NPDES permit program won't be free. When EPA issues permits in Alaska the costs are borne by the U.S. taxpayer. A state permit program will shift authority and responsibility to the state, but it will also shift some of the costs to permit holders and the state.

State primacy for the NPDES permit program is a critical investment in the stewardship of Alaska's environment and development of our natural resources. It will better align regulatory requirements with real Alaskan conditions and the real risks to Alaska's water quality. A faster, more effective state permit program will be based on Alaska's priorities - not national "one-size-fits-all" priorities. DEC's permit priorities; level of effort and performance measures would be subject to annual review and approval by Alaskans through their elected officials in the state Legislature.

If Alaska is to realize the promise of resource development, we must accept responsibility for managing Alaska's water quality by assuming primacy for the NPDES program.

It's time we invest in the development of Alaska's resources by taking responsibility from the federal government to protect Alaska's environment. I respectfully ask that you vote to pass SB 110.

[9:41:12 AM](#)

DAN EASTON, DIRECTOR, DIVISION OF WATER, DEPARTMENT OF ENVIRONMENTAL CONSERVATION, explained that SB 110 was the result years of effort, starting in 2002. The legislation began with SB 326, which asked the Department to take a look at the consequences and benefits of state primacy for the National Pollutant Discharge Elimination System (NPDES) permit program. He gave a brief history of the process of looking at primacy.

He acknowledged that there was a sizeable fiscal note. The Department currently has a staff of 30 and budget of \$3.3 million, which would become part of a NPDES program. Senate Bill 326 indicated that there would need to be a staff of 43 and a budget of \$4.8 million dollars [to implement state primacy]. The fiscal note indicates the difference. The Division of Water welcomes the opportunity for an all Alaskan program.

[9:43:11 AM](#)

Co-Chair Meyer referred to the fiscal note and questioned if the industry fees are detailed in the program receipts. Mr. Easton clarified that it would take two years to implement the primacy. The fiscal note reflects an incremental increase as the state does more and more and can charge more and more. It will start modestly and build. The Division already collects some fees. He observed that, on average, fees would increase by 1.8%.

[9:44:21 AM](#)

Representative Joule voiced concern that primacy might adversely affect the fisheries resource. He questioned the zero fiscal note from Department of Fish and Game.

Representative Joule noted that the federal government recognizes tribal governments and noted that state primacy would affect their standing.

Commissioner Fredriksson stressed that it is a question of accountability. He felt that the state could be more accountable than the federal EPA. He acknowledged that the Department of Fish and Game does play a role. He felt that state primacy would allow them to be more responsive to local concerns and did not envision any change. The same entities would still be involved in review of the NPDES permits.

[9:48:24 AM](#)

Representative Joule asked if the Department would actively seek some of that consultation. Commissioner Fredriksson replied yes. He maintained that the state would be able to work with the tribes in the constructing and permitting process.

[9:49:27 AM](#)

JON TILLINGHAST, SEALASKA CORPORATION, spoke in support of the legislation. He noted that Sealaska is a federally recognized tribe. He stressed that that consultation with

EPA has not always been good, while their consultation with the Department of Environmental Conservation had been good.

[9:51:19 AM](#)

KEVIN RITCHIE, EXECUTIVE DIRECTOR, ALASKA MUNICIPAL LEAGUE, noted that the AML supports the bill. He observed that the legislation would enhance local control and provide greater access and accountability.

[9:52:06 AM](#)

DICK COOSE, FORMER ASSEMBLY MEMBER, KETCHIKAN, (via teleconference) voiced support for the legislation. The state needs to control its own future. He maintained that state management would be better than that of the federal EPA. He felt that the Department of Environmental Conservation uses better science and works better with people in the permitting process. He recounted problems with EPA.

[9:55:44 AM](#)

LOIS EPSTEIN, COOK INLET KEEPER, ANCHORAGE, (via teleconference) expressed concern with the legislation and summarized written testimony (copy on file.)

She stated that SB 110 accurately reflects the wish list from the industry members of the Department of Environmental Conservation's workgroup studying NPDES. She noted that because public interest groups were not allowed to participate in the work group their concerns were never addressed. She requested changes be made to the committee substitute in sections 1(b)(2) and 4(h)(3). She urged opposition to passage of the legislation.

She listed three reasons for their opposition:

1. The high governmental cost of the permitting program; which only will grow as the state's industrial growth increases,
2. Ensuring a high-quality permitting program to protect Alaska's salmon and ether fish.
3. Ensuring governmental accountability to the public and Tribes,

Ms. Epstein continued to explain that permittees could suffer with passage of the legislation. She maintained that according to SB 11's fiscal note, the legislature would need to appropriate, at a minimum, \$1.5 million each year. These costs are for a service - wastewater discharge permit issuance - that the state now gets for free, This is a major change to DEC operations. She observed that the workgroup limited permit fees at 16% of program costs (compared to 57%

of program costs paid by permittees in Oregon and 75-80% paid in Washington). She maintained that the increased costs would come from other state initiatives such as education or road maintenance. She asserted that industrial growth or growth among businesses with less than 20 employees could further increase costs. She stressed that the DEC fiscal note, prepared on April 25, does not show how fines will meaningfully reduce these new costs. The Fiscal Note does not estimate the NPDES fines likely to be received, only total fines historically received for all DEC programs.

Ms. Epstein pointed out that the Department of Environmental Conservation would not get any more federal funding, since the state receives the maximum amount allowed for administering its Clean Water Act programs. While federal funding is projected to continue at the current level, the federal budget process in future years may decrease this amount, resulting in additional costs to the state.

If the legislature fails to fund the program adequately in the future, it is likely that permit issuance would be slowed and permit errors may occur. Since there is virtually no chance that EPA will take back the permitting program once it has been given to the state, permittees will suffer due to insufficient general fund resources.

The workgroup's report states that permit fees "are expected to increase by a factor of 1.8, a substantial increase," including increases to municipal permit fees. Thus, both state and local costs will increase significantly should the state obtain NPDES primacy.

Fiscal Note cost estimates are arguably low because proposed DEC staffing levels are insufficient to implement the program adequately. If the program is not carried out with sufficient technical and enforcement staff, water quality and fish habitat will decline. Currently, a total of 51 full-time equivalent (FTE) employees from EPA and DEC carry out the permitting program. DEC estimates reduce this number to 43 ETE, including a 38% reduction in program development staff (e.g., water quality standards staff), a 28% reduction in permitting staff, and a 16% reduction in compliance and enforcement staff.

Ms. Epstein asserted that the reductions are serious and would change the nature and timing of permit issuance. She stressed that they are not opposed to NPDES primacy, but expressed concern the state of Alaska is trying to "do it on the cheap". She noted that the state of Alaska expects to spend only 52% of the resources that Washington State spends per permit.

Ms. Epstein requested that the legislature obtain additional, detailed information from DEC on the adequacy of

its staffing estimates, especially for technical and enforcement staff, and on the likelihood of EPA approving the permitting program with serious staff reductions in a state with numerous, large industrial operations.

"Additionally, Cook Inlet Keeper and industry- members of the workgroup share a concern about the limited technical expertise at DEC and the likely use of consultants to develop permits. Problems with the use of consultants include potential conflicts of interest and the lack of long-term DEC staff experience with particular industries, which can result in technical deficiencies and costly staff inefficiencies, though conflicts of interest were discussed in the workgroup, Section 4(h)(4) needs to be amended to specifically prevent conflicts of interest for DEC consultants."

Ms. Epstein summarized that NPDES primacy is a major undertaking with serious fiscal, fish and governmental accountability implications.

[10:04:02 AM](#)

MIKE POLLEN, NTL ALASKA, INC, (NAI), FAIRBANKS, (via teleconference) noted that he had provided testimony to his representatives. He related a couple instances that occurred to him personally with testing laboratories in Fairbanks. He stressed that the EPA has not been timely in coming forward in providing standards or permits.

He stated that he has worked with both the EPA and the Department. He felt that Department of Environmental Conservation staff are more confident and have the skills require for implementing the program. He supported the legislation, which is an economic issue and stressed the impact on mining and gas line project, which could be held hostage by a badly written contract and/or permit. He urged passage and funding of the positions.

[10:08:51 AM](#)

STEPHANIE MADSEN, VICE PRESIDENT, PACIFIC SEAFOOD ASSOCIATION PROCESSORS, noted that she participated in the workgroup. She stressed that they are not limited to paying 16 percent of the Department of Environmental Conservation budget. She observed that under HB 360 in 2000, there was a formula of direct costs identified by the department. She acknowledged that the direct costs would go up. She felt that the increase costs would be worth it to have Alaskans interpreting Alaska water standards. She emphasized that the federal Clean Water Act would guide the program and EPA would still be available for consultations. She urged passage of the legislation.

10:11:09 AM

CS SB 110 (FIN)(efd fld) was HELD in Committee for further consideration.

ADJOURNMENT

The meeting was adjourned at 10:12 A.M.