

HOUSE FINANCE COMMITTEE
May 7, 2005
6:12 P.M.

CALL TO ORDER

Co-Chair Meyer called the House Finance Committee meeting to order at [6:12:51 PM](#).

MEMBERS PRESENT

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

MEMBERS ABSENT

None

ALSO PRESENT

Representative Les Gara; Representative Beth Kerttula; Representative Ethan Berkowitz; Representative Paul Seaton; Melanie Lesh, Staff, Senator Gary Stevens; Randy Bates, Deputy Director, Division of Project Management & Permitting, Department of Natural Resources; Judy Brady, Executive Director, Alaska Oil and Gas Association; Chris Poag, Assistant Attorney General, Department of Law; Dr. Richard Mandsager, Director, Division of Public Health, Department of Health & Social Services; Joe Balash, Staff, Senator Gene Therriault; Jerry Burnett, Legislative Liaison, Department of Revenue; Mark Hickey, Lobbyist, Juneau; Michael Macleod Bull, Executive Director, American Civil Liberties Union (ACLU); Marie Darlin, Alaska Association of Retired Persons (AARP); Amy Oney, Assisted Living Industry Home-Owner, Anchorage; Stacy Kraly, Assistant Attorney General, Department of Law

PRESENT VIA TELECONFERENCE

Sherry Mettler, Assisted Living Industry, Fairbanks

SUMMARY

HB 37 An Act relating to public access to fishing streams.

CS HB 37 (FIN) was reported out of Committee with a "no recommendation" and with zero note #1 by the Department of Fish & Game and a new zero note by the House Finance Committee for the Department of Natural Resources.

CS SB 102(FIN) am

An Act repealing the Alaska coastal management program; relating to an extension for review and approval of revisions to the Alaska coastal management program; relating to reviews and modifications by the Department of Natural Resources; relating to coastal resource district policies; providing for an effective date by amending the effective date of sec. 45, ch. 24, SLA 2003; and providing for an effective date.

HCS CS SB 102 (FIN) was reported out of Committee with a "do pass" recommendation and with zero note #2 by the Department of Commerce, Community & Economic Development, zero note #3 by the Department of Administration, zero note #4 by the Department of Environmental Conservation and fiscal note #5 by the Department of Natural Resources.

CS SB 124(L&C)

An Act relating to requirements to obtain and maintain a fisheries business license; relating to security required of fish processors and primary fish buyers; and providing for an effective date.

HCS CS SB 124 (FIN) was reported out of Committee with a "no recommendation" and with zero note #2 by the Department of Commerce, Community & Economic Development, zero note #3 by the Department of Fish & Game, zero notes #4 & #5 by the Department of Labor & Workforce Development and zero note #6 by the Department of Revenue.

CS SB 125(JUD)

An Act relating to the licensing, regulation, enforcement, and appeal rights of ambulatory surgical centers, assisted living homes, child care facilities, child placement agencies, foster homes, free-standing birth centers, home health agencies, hospices or agencies providing hospice services or operating hospice programs, hospitals, intermediate care facilities for the mentally retarded, maternity homes, nursing facilities, residential child care facilities, residential psychiatric treatment centers, runaway shelters, and rural health clinics; relating to possession

of a firearm at licensed entities and facilities; relating to criminal history requirements, and a registry, regarding certain licenses, certifications, approvals, and authorizations by the Department of Health and Social Services; making conforming amendments; and providing for an effective date.

HCS CS SB 125 (FIN) was reported out of Committee with "individual" recommendations and with zero note #2 by the Department of Health & Social Services and zero note #3 by the Department of Law.

#HB37

HOUSE BILL NO. 37

An Act relating to public access to fishing streams.

[6:13:40 PM](#)

REPRESENTATIVE LES GARA, SPONSOR, noted that Alaska's rivers are a treasured resource for fishermen, boaters, hunters, hikers and people of all walks of life. It is important to protect the public's access to them. HB 37 attempts to ensure future public access to Alaska's fishing streams by putting in place a mechanism for voluntary land exchanges (or purchases) between the State and private owners along important recreational rivers. The program would be facilitated by the Department of Natural Resources and would be completely voluntary. The purchases or trades would only occur if a landowner was willing to engage in trade or sale voluntarily.

Representative Gara stated that there are large stretches of private land on streams such as Anchor River, Deep Creek, Parks Highway Streams, the Salcha River and others. The public currently uses the streams and once they are developed, public access will never get them back. HB 37 requires the State to identify private lands along certain high value recreational waters for possible easement, land purchases or trades.

Representative Gara continued, to avoid costly litigation, the State must use its expertise within the Department of Fish and Game and the Department of Natural Resources to identify the most desirable lands for purchase or trade, after public input. The bill does not allow for legal challenges of those determinations.

Other states have waited too long to take steps as proposed in HB 37. In Montana, for example, fishermen have to pay for public access to some rivers and one hundred eighty miles of the Missouri River has been lost to public access.

Now that state budgets \$300 thousand dollars per year to buy back parcels of riverbank land.

Representative Gara concluded that HB 37 would help insure that unparalleled recreational opportunities in the river corridors remain accessible. It provides that the State maintain a registry of lands for possible trades or purchase. The bill does not mandate any funding for trades or purchases, and therefore would lapse once the State determines there is no longer a need to trade or purchase public access.

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Representative Joule asked how the legislation would apply to Native land and allotments. Representative Gara stated it would apply to everyone equally. The language clarifies that if there is land along a fishing stream and land to trade, it could be done. The State cannot take or demand land, but could offer a land trade.

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Representative Hawker questioned the amount of fiscal effort to implement the bill. Representative Gara explained that the bill clarifies that the Department will create a list of lands important for public access. It will take title research work. Over the next few years, the State will attempt to either purchase or make land-trades from that list. He did not see much work happening after the first year and believed it could be handled through existing staff.

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Representative Kelly asked about possible easement right backlash, acknowledging a conflict. Representative Gara did not think that could change current concerns. At this time, it is okay to close off sections of land. The State does have the authority to negotiate certain places and/or to purchase, while the legislation attempts to make a more focused effort.

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Vice-Chair Stoltze inquired if any designations had been made. Representative Gara pointed out areas close to the road system such as the Parks Highway and some on the Kenai Peninsula had been selected. Much of that land is now Native Corporation land. There is a provision protecting that land and he clarified that the State would not be using eminent domain power, only voluntary. Some lands are private. Before the 1970's, the State did not guarantee public access as it does now.

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Vice-Chair Stoltze requested further testimony regarding easements and federal provisions for access. Representative Gara interjected that if federal easements already existed, the State would not bother. The legislation only addresses areas that the public does not have access to.

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Vice-Chair Stoltze questioned the "voluntary situation" and asked about a cost benefit analysis. Representative Gara advised that the priority aims at lands with high value fishery and where public access does not exist. There is no formal appeal process.

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Vice-Chair Stoltze worried about the areas chosen. Representative Gara explained that the Kenai River Sport Fishing Association has requested certain areas. HB 37 leaves it up to the Department of Natural Resources to determine any access that is appropriate to enhance the sport fishery. The factors used to make the decisions are listed on Page 3, starting on Line 6.

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Vice-Chair Stoltze noted that he is a member of an outdoor group and asked if the Department of Fish & Game was already doing that work. Representative Gara acknowledged that was the intent, however, little progress has been made. The Department has not made it a priority. The intent of the bill is to "shake" the Department up so that public access is not lost.

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Vice-Chair Stoltze inquired about the Department's budget process. Representative Gara stated he had worked directly with the Department and if it were not made a priority, they would not do it.

Representative Holm acknowledged that there was no desire by the Department to address anything that was not listed on their priority list. He reminded members that the Legislature cannot mandate, they can only appropriate.

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Vice-Chair Stoltze voiced concern with the type of access being proposed for fishing and hunting. Representative Gara noted that he had voted for the University lands bill

because it required that the University not give away land before knowing if there would be public access to any rivers or streams that have fish. He claimed that there is not a good land title system in the State.

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Vice-Chair Stoltze wondered if there was a conflict of interest with his involvement with the Alaska Outdoor Council (AOC). Co-Chair Meyer asked if that group supports the bill. Vice-Chair Stoltze replied they have not to date. Representative Gara pointed out that the largest sport fishing groups statewide support the bill, but could not speak for the Alaska Outdoor Council.

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Representative Holm pointed out statewide concern, as there has not been a complete survey of those lands.

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Representative Kelly referenced Page 2, Lines 3 & 4, regarding the protections. He thought that to get AOC's support, insert, and "trapping "following" hunting and fishing help. Representative Gara agreed.

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Vice-Chair Stoltze commented that "multiple-use" has varying meanings depending on the group. Representative Gara pointed out that Page 3, Lines 7-10, defines public access broadly, including many purposes. He noted that it was not his intent to divert the Department from waterways.

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Representative Kelly suggested amending the language by adding other uses.

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Vice-Chair Stoltze MOVED to DELETE Section #1, the Findings and Intent section, Amendment #1. Co-Chair Meyer OBJECTED.

Representative Gara explained that Section #1 had been drafted to give the Department guidance to alleviate concern of private landowners and give those landholders comfort. He reiterated that the bill only deals with voluntary land trades and purchases.

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Representative Weyhrauch agreed with Vice-Chair Stoltze, suggesting that the language could be added as a Letter of Intent to accompany the bill rather than an actual bill section.

Co-Chair Meyer WITHDREW his OBJECTION. There being NO further OBJECTION, Amendment #1 was adopted.

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Representative Kelly reiterated his recommendation that multiple use language be added.

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Representative Hawker discussed the fiscal note and the cost of operations and MOVED that the fiscal note be zeroed out.

There being NO OBJECTION, fiscal note #2 was zeroed out.

[6:41:39 PM](#)

Vice-Chair Stoltze MOVED to REPORT CS HB 37 (FIN) out of Committee with individual recommendations and with the accompanying fiscal notes. There being NO OBJECTION, it was so ordered.

CS HB 37 (FIN) was reported out of Committee with "no recommendation" and with zero note #1 by the Department of Fish & Game and a new zero note by the House Finance Committee for the Department of Natural Resources.

[6:42:34 PM](#)

#SB102

CS FOR SENATE BILL NO. 102(FIN) am

An Act repealing the Alaska coastal management program; relating to an extension for review and approval of revisions to the Alaska coastal management program; relating to reviews and modifications by the Department of Natural Resources; relating to coastal resource district policies; providing for an effective date by amending the effective date of sec. 45, ch. 24, SLA 2003; and providing for an effective date.

MELANIE LESH, STAFF, SENATOR GARY STEVENS, noted that the Alaska Coastal Management Program (ACMP) is a partnership between federal, state, and local governments providing a voice in federal decision-making. Alaska is one of 34 coastal states that utilize the program, which annually channels millions of dollars in federal grant money. ACMP has helped guide coastal development in Alaska since it was enacted in 1977 and without the program, State and local governments lose their ability to control development on

federal land and the outer continental shelf. In addition, the State will lose millions in federal coastal management planning money.

In 2003, HB 191 substantially revised the State coastal program. The federal Office of Ocean and Coastal Resource Management (OCRM) must approve the revised program. The 2003 legislation included state-imposed deadlines for revisions to local coastal programs. Coastal districts are attempting to follow the statutory directive to revise programs to meet the new requirements, but have repeatedly said that they need more time to complete that process.

Ms. Lesh noted that the version before the Committee extends the existing statutory deadline for district coastal program submissions by eight months and a correlative delay in dates annulling existing standards and program until March 1, 2007. The extensions would ensure an orderly and efficient transition to the new program.

Ms. Lesh advised that the House Resources Committee amended the bill setting a "kill date" ending the Coastal Zone Program entirely if OCRM approval does not occur by January 1, 2006. That date is the deadline in which the Department has assured the Legislature, OCRM will have approved the (NEPA) National Environmental Protection Act or the Environmental Impact Statement (EIS) process of the new State coastal program. That section puts in place the repealing and sunset clauses. An amendment in the House Resources Committee allowed those provisions to take effect after May 10, 2006, which leaves the Legislature time to act, if necessary, to extend the sunset dates of the old coastal management program.

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JOE BALASH, STAFF, SENATOR GENE THERRIAULT, pointed out that the House Resources Committee substitute made five changes:

- Extends the deadline in accordance with what the Governor indicated he would support;
- Provides for a sunset and audit four years after the full implementation of the changes;
- Adds language regarding the adoption by reference of State statute regulations as well as federal regulations;
- Changed the old district programs; and
- Provides a specific deadline for the Department to update their "ABC" list.

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Representative Croft questioned a provision indicating that the entire program would be eliminated if the federal government did not approve it. Mr. Balash explained that the July 1st deadline was "keyed" from what the feds indicated they intended to. It takes approximately 14-weeks to complete an EIS. Given the January 1st date, there should be enough time for Office of Ocean and Coastal Resource Management (OCRM) to engage in the commitments they made to the State of Alaska. The date that the sunset and/or appeal takes affect is May 10th. That date provides the Legislature an entire session to deal with the ramifications if OCRM fails to approve the program. He indicated that it resulted from Section 22, crafted in the House Resource Committee.

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Representative Croft understood that the January 1st date was not problematic. He asked why the State would want to be placed in that consequence, given that the program is the only way which the State can have impact on federal decision-making. Mr. Balash explained that date had been chosen because other dates in earlier sections of the bill returned to March 1st either 2006 or 2007. In order to satisfy the Governor's requirement for the 6-months, grants additional time for districts to revise plans for review and approval.

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RANDY BATES, DEPUTY DIRECTOR, DIVISION OF PROJECT MANAGEMENT & PERMITTING, DEPARTMENT OF NATURAL RESOURCES, offered to answer questions of the Committee.

Co-Chair Meyer asked about the fiscal note. Mr. Bates explained that by extending the coastal district submissions deadline, it would extend the time frame that it takes the Department to review and approve plans. The revision was supposed to occur June 30th 2006. There are currently funds to accommodate staff review coastal district plans. The remaining money runs out June 6th, 2006. In order to be able to accommodate and review those decisions, the Division needs three staff for eight months as requested in the note.

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Co-Chair Meyer noted an amendment included in member's packets, which would extend the program. He asked if that would increase costs. Mr. Bates replied that Amendment #1 would not impact the fiscal note.

[6:56:24 PM](#)

Co-Chair Chenault questioned if the employees are currently on staff.

[6:56:43 PM](#)

Mr. Bates corrected previous comments, noting that Amendment #1 significantly impacts the note.

[6:57:04 PM](#)

Representative Holm asked if the employees were currently on staff. Mr. Bates stated they are currently on staff and the request keeps them there for an additional eight months.

JUDY BRADY, EXECUTIVE DIRECTOR, ALASKA OIL AND GAS ASSOCIATION (AOGA), ANCHORAGE, stated that "they could live with the version of the bill" adopted by the House Resource Committee. She noted that AOGA had opposed possible extensions for a number of reasons and that they would like to see HB 191 implemented. Ms. Brady added that AOGO would support the bill but could not support any other extension.

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Co-Chair Meyer inquired why they would not support any further extensions. Ms. Brady advised that AOGA would like to see OCRM finish their work. The initial program was voluntary. The needs of the program have changed dramatically in the past thirty years. Passage of HB 191 recognizes the differences and refocuses the program. She noted delays on the State side. OCRM has not supported any of the changes and has deliberately "dragged their feet" for implementation.

Representative Croft inquired about the current need for coastal zone management plans. Ms. Brady explained that the State was interested in that program during the 1970's; however, today, those needs have changed and HB 191 reflects that. Some of the enforceable policies are now enacted in State, federal and/or municipal law. There are implementation questions; AOGA does not want to go another three years before anything happens. She emphasized that it should not be a federal program.

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Representative Croft inquired how did "threatening to withdraw from the program" affect the relationship with the federal government. He thought that would be illegal and problematic. Ms. Brady commented that their attorney had evaluated OCRM's arguments, finding them wrong in every instance. No other state in the Union has been held to the standard that Alaska has. The Alaska program is a "jewel in the crown" of the federal agency and coastal management is a

big deal. She believed the federal government would never let the program go and that a long implementation period would negatively affect and jeopardize the program.

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Co-Chair Meyer summarized that AOGA supports the House Resources Committee date and does not support the amendment.

Representative Weyhrauch MOVED to ADOPT a corrected Amendment #1, Line 3 and Line 7, deleting "February" and inserting "March" and Line 11, deleting "March" and inserting "April". Vice Chair Stoltze OBJECTED.

Representative Weyhrauch requested that the record reflect the true and accurate costs.

REPRESENTATIVE SEATON addressed Amendment #1. He spoke in support of SB 102, which allows the State to impose their standards on federal land. Current dates indicated in the bill allow the Legislature time to act. If it ends on January 1st, the Legislature is removed from the loop.

Representative Seaton spoke to the fiscal note, clarifying that the way in which the program works is in six-month intervals. Beginning July 1st, the money could only be used for implementation of the preliminary approved plan. There is nothing in regulation that prevents the local districts from continuing to use funds for developing local district plans. He highlighted the process of review and asked when it "goes away".

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Representative Seaton observed it would leave without approval. The federal money would remain and then could be used for other activities for local coastal district plans to be written. The federal money cannot be used for approval implementation after the initial six months.

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Mr. Bates added that the Amendment could result in the fiscal note being increased by \$467 thousand dollars. The program received \$2.8 million federal dollars. Amendment #1 would provide a two-month extension. He provided a brief history. OCRA has been preparing for the past several months for the preliminary approval of July 1st, 2006. Preliminary approval only extends the time for six months. January 1st would be the date deadline in which the State could no longer spend monies on the implementation of the coastal program. By extending the deadlines as proposed in Amendment #1, the State agency could access those funds. In order to supplement the money to guarantee that the program

works toward change, the fiscal note represents the amount needed by the Division to keep employees working.

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Representative Croft questioned why the federal government would want to "shut off" the money.

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Mr. Bates responded it is a federal law, which only allows for federal approval for the six months; there is no way to bend that extension past the six months. He reiterated that the State could no longer expend the federal funds.

In response to further queries by Representative Croft, Mr. Bates pointed out that HB 191 change coastal management and requires implementation of the regulations. The coastal management program is codified in HB 191. The State cannot choose to alternatively implement another program that either the Legislature has not embraced or acted upon. If OCRM does not finish their work by January 1st, 2006, there are no more federal funds to continue implementing the program.

Mr. Bates added, the Administration opposes the amendment.

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In response to a question by Representative Croft, Mr. Bates noted that on April 14th, 2005, a letter was received detailing the final changes needed for approval of the coastal program. The Division is in the process of making those regulatory changes. He provided information regarding timelines needed for preliminary approval. Presently, the program is basically approvable.

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Mr. Bates commented on why the Administration objects to the time extensions. The Governor has committed to three timeline extensions for coastal management:

- Extending the State standards
- Extending the revised coastal plan deadline by six months
- Extending the district plan sunset deadline by six months

The extensions were tiered off in HB 191 and included in the House Resources Committee version, the one the supports. He advised that the Division and the Administration do not support Amendment #1.

by the Department of Administration, zero note #4 by the Department of Environmental Conservation and fiscal note #5 by the Department of Natural Resources.

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#SB124

CS FOR SENATE BILL NO. 124(L&C)

An Act relating to requirements to obtain and maintain a fisheries business license; relating to security required of fish processors and primary fish buyers; and providing for an effective date.

Vice-Chair Stoltze MOVED to ADOPT work draft #24-GS1013\L, Utermohle, 5/6/05, as the version of the bill before the Committee. There being NO OBJECTION, it was adopted.

JERRY BURNETT, LEGISLATIVE LIAISON, DEPARTMENT OF REVENUE, stated that SB 124 requires, as a condition of obtaining and maintaining a fisheries business license under AS 43.75.020, an acknowledgment of the obligation to pay the taxes levied, Alaska Seafood Marketing Institute (ASMI) assessments under AS 16.51, employment security contributions under AS 23.20 and Alaska Occupational, Safety, and Health Administration (OSHA) fines under AS 18.60. The bill proposes to deny the applicant a fisheries business license until they have paid in full, all those taxes, assessments, contributions, and fines that are outstanding.

Mr. Burnett pointed out that the bill also repeals and reenacts AS 44.25.040, requiring the filing of a performance bond by fish processors and primary fish buyers. The bond would be more accessible for collection of claims by the Department of Labor and Workforce Development (DLWD) for unpaid employment security contributions. That action would be achieved by providing a process for the Department to file directly with the Commissioner of Revenue, a claim against the bond instead of obtaining a court judgment.

Additionally, the bill preserves existing statutory priority for use of the bond to pay fishermen and employees first. In order to achieve that, the Department would be obligated to return money collected from the bond if the processor or buyer did not replenish it and the fisherman or employee obtained a final judgment against the bond.

In conclusion, SB 124 provides that if a bond is depleted by the Department's claim, the fish processor or fish buyer would be subjected to an increased bonding requirement.

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Representative Moses MOVED to ADOPT Amendment #1, #24-GS1013\I.2, Utermohle, 5/7/05. Co-Chair Meyer OBJECTED.

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MARK HICKEY, LOBBYIST, JUNEAU, explained that he represents two rural boroughs with significant fishing activity. He noted that both client's support and urge prompt passage. The current bill deals with applicable local fishery taxes. In effect, if the bill passes, in order to retain the license, there are criterion the processor must be current on and that includes local fishery taxes. The section the amendment attempts to change is on Page 2, Lines 22-24.

Mr. Hickey explained why the amendment was needed. It replaces current language with new wording that triggers a decision relating to the processor paying taxes at the local jurisdiction. One of two things could occur:

- Final judgment through the court; or
- An administrative determination made by the municipality regarding the unpaid fishery taxes, certifying due process.

Mr. Hickey stated without the provision, a final judgment becomes a lengthy process to obtain. Incorporating the amendment provides a quicker "trigger".

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Representative Hawker asked if the proposed language would provide a final administrative determination challenge during the legal process. Mr. Hickey said during a typical process, payment would be held in escrow and the mechanism would not be triggered. He had no idea what the end result would be; however, the intent is to determine a reasonable and useful structure.

Co Chair Meyer requested legal assistance in response to Representative Hawker's query.

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CHRIS POAG, ASSISTANT ATTORNEY GENERAL, DEPARTMENT OF LAW, commented that an administrative appeal to the Supreme Court would address if the administrative action was challenged in the Superior Court and could result in a different finding. He spoke to the State, not municipal law. If a license action were taken, a final administrative decision could be implemented.

Representative Hawker noted that if there were an administrative determination made at the final level, it could provide a strong base not taking that action. He indicated support for Amendment #1.

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Representative Kelly agreed, noting it could help the municipality and raise the trust level.

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Mr. Poag explained that the difference with the political subdivision administrative process, the provision provides administratively before the State taxes are used to deny a license. There are processes used before the final penalty affects the license. When the Department of Revenue receives the notice from a political subdivision, they have to refer that to the Department of Law to provide a case analysis, which requires that the Department of Law determine if the procedural safeguards were provided. It is important that when an administrative process takes place, taxes owing cannot be relied upon unless the taxpayer knows that their license may be affected. Such action could trigger a review necessary by the Department of Law.

Mr. Poag advised if the amendment were implemented, the Department would need to deal with the State's hearing process regarding unmet concerns.

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Vice-Chair Stoltze asked if the process could be simpler. Mr. Poag stated that the way the amendment was drafted, the political subdivision presents the Department of Revenue, the administrative finding. If there were a sufficient base to deny that license, they would be afforded a hearing before it could be denied. The burden falls upon the Department of Revenue and that causes concern.

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Representative Hawker inquired if there was any reason not to resolve the conflict through the regulatory process. Mr. Poag explained that the Department of Revenue would be denying the person the license and in order to do that, it is important that procedural safeguards are in place. Such action is done on a case-by-case base. The Department of Law is responsible for each one.

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Representative Hawker recommended that the amendment should move forward with the understanding of that intent. He

encouraged work to be done with the sponsor of the amendment in order to resolve departmental concerns.

Representative Kelly commented on "good faith" during the process.

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Co-Chair Meyer WITHDREW his OBJECTION to Amendment #1. There being NO further OBJECTION, it was adopted.

[8:02:03 PM](#)

Vice-Chair Stoltze MOVED to REPORT HCS CS SB 124 (FIN) out of Committee with individual recommendations and with the accompanying fiscal notes. There being NO OBJECTION, it was so ordered.

HCS CS SB 124 (FIN) was reported out of Committee with a "no recommendation" and with zero note #2 by the Department of Commerce, Community & Economic Development, zero note #3 by the Department of Fish & Game, zero notes #4 & #5 by the Department of Labor & Workforce Development and zero note #6 by the Department of Revenue.

[8:02:42 PM](#)

#SB125

CS FOR SENATE BILL NO. 125(JUD)

An Act relating to the licensing, regulation, enforcement, and appeal rights of ambulatory surgical centers, assisted living homes, child care facilities, child placement agencies, foster homes, free-standing birth centers, home health agencies, hospices or agencies providing hospice services or operating hospice programs, hospitals, intermediate care facilities for the mentally retarded, maternity homes, nursing facilities, residential child care facilities, residential psychiatric treatment centers, runaway shelters, and rural health clinics; relating to possession of a firearm at licensed entities and facilities; relating to criminal history requirements, and a registry, regarding certain licenses, certifications, approvals, and authorizations by the Department of Health and Social Services; making conforming amendments; and providing for an effective date.

DR. RICHARD MANDSAGER, DIRECTOR, DIVISION OF PUBLIC HEALTH, DEPARTMENT OF HEALTH & SOCIAL SERVICES, provided Committee members a handout - Public Health, Protecting and Promoting the Health of All Alaskans. (Copy on File).

Dr. Mandsager pointed out the three goals of the bill.

- The Department currently licenses or certifies 19 programs administered under at least 12 different statutory schemes. The Division of Public Health has been given the responsibility of managing the licensure and certification of the programs. Dr. Mandsager explained that each program has different rules and the goal is to standardize and simplify regulatory and statutory law.

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- The second goal is to determine how to minimize the risk to vulnerable clients by utilizing background checks as they work with the institutions. There would be a two-part background check modeled on existing programs.
- The bill envisions a private registry.

Dr. Mandsager noted that Amendment #1, clarifies the immunity language. (Copy on File).

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Co-Chair Meyer asked about the zero fiscal notes. Dr. Mandsager explained that the original bill had a small fiscal note from the Department of Law, however, that Division received a large federal grant from the Centers for Medicare and Medicaid Services to pilot the approach to the background checks. There is money in the grant to pay for regulation development; hence, the notes were zeroed out.

MICHAEL MACLEOD BULL, EXECUTIVE DIRECTOR, AMERICAN CIVIL LIBERTIES UNION (ACLU), voiced concern with how vague the criminal registry was and the prohibition conflict with the State's duty to provide service to prisoners.

Mr. Bull supported the link between the restriction imposed on a person coming out of prison, who may or may not have been rehabilitated. Basically, ACLU opposes implementing more barriers for those re-entering society.

Mr. Bull proposed use of a mechanism to define the listing process. If the name were on a registry then that person would be barred from interacting with the entity. Objections exist on two levels:

- Policy level - The more barriers placed on a person, the more difficult it becomes to reenter society; and

- Constitutional right for rehabilitation of prisoners.

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MARIE DARLIN, COORDINATOR, ALASKA ASSOCIATION OF RETIRED PERSON'S (AARP) TASK FORCE, JUNEAU, spoke in support of the legislation, which would put all regulations for assisted living into one place.

AMY ONEY, ASSISTED LIVING HOME, ANCHORAGE, spoke in support of the reorganization, but expressed concern with the registry. She believed that the language was too broad.

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Representative Holm inquired if the proposed legislation could level the playing field between profits and non-profits. Ms. Oney agreed, pointing out that the bill has brought attention to that matter, yet voiced concern that licensing costs for funding would not be able to keep up with regulation requirements.

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Ms. Oney discussed the regulations detrimental to the existing homes because of extensive requirements for those homes. There is no way for those costs to be recouped, which places the home in a difficult position.

Representative Holm mentioned his concerns with the regulation requirements. Ms. Oney explained that in the proposed regulations, there are requirements on food handling such as the number of times hand towels must be laundered and how that is documented.

[8:21:26 PM](#)

Representative Holm felt that regulations could be onerous in regard to family-style dinner situations. Ms. Oney agreed.

Representative Holm reiterated his concern about the process and asked if the elderly are threatened in the homes in any way. Ms. Oney responded that in some homes, there are existing beds. If there is no quality level of care, the homes lose clients. There are regulations now regarding the certification process; the next step proposed could place a "huge burden" on the administrative process for the smaller homes.

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Representative Holm recalled the arbitrary decision made to cut back dollars allocated for each patient. Ms. Oney said that resulted from refinancing room and board cap. It went from beyond the indicated amount for Adult Public Assistance (APA) and refinanced that into the Adult Medicaid funds. The amount changed from \$75 dollars per day to \$18.54 per day. She added, her business has experienced a net loss of \$4,000 to \$5,000 per month. Homes have gone through the regulatory review for those extra funds in order to meet their business obligations.

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Representative Holm was disturbed with the way the State of Alaska treats elderly. It is not in the best interest for the State to make the regulatory practice so difficult that it impacts providing consistent care.

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SHERRY METTLER, (TESTIFIED VIA TELECONFERENCE), ASSISTED LIVING INDUSTRY, FAIRBANKS, addressed concerns of the non-profit versus the profit playing field. Larger homes have higher resources and time to review regulations, which total 230 pages. She addressed "safety issues" and how regulations affect the simplest tasks.

Ms. Mettler commented on the registry and the process of hiring. She indicated concern with misconduct and abuse issues the registry proposes, pointing out that every person working in the industry must have a criminal background check. To create another level of criminal justice could potentially destroy lives and discredit homes. It puts everyone at risk working in that industry. She reiterated her concerns regarding the registry, the burden on those homes and cuts to administrative costs.

[8:31:22 PM](#)

Representative Hawker MOVED to ADOPT Amendment #1, #24-GS1016\L.1, Mischel, 5/7/05. Co-Chair Meyer OBJECTED.

STACY KRALY, ASSISTANT ATTORNEY GENERAL, DEPARTMENT OF LAW, noted that Amendment #1 provides a technical correction. Co-Chair Meyer WITHDREW his OBJECTION. There being NO further OBJECTION, Amendment #1 was adopted.

[8:34:28 PM](#)

Representative Croft MOVED to ADOPT Amendment #2. Vice-Chair Stoltze OBJECTED for the purpose of discussion. Representative Croft pointed out that there are different classes of volunteers. He maintained the purpose of the amendment was to remove the requirement for criminal

background checks for "supervised" volunteers in facilities listed.

Dr. Mandsager agreed with the intent of the amendment. He pointed out that problems arise where volunteers might form a regular relationship with the home's clients and then might take advantage of that client. Dr. Mandsager suggested alternative language on Page 11, Line 15, deleting "or" and inserting "and who have regular contact with individuals who receive services from the entity or". That language should cover volunteers that are coming on a regular basis.

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Representative Croft pointed out that there could be a regular volunteer group such as a Sunday church group. He suggested that the Department provide guidance through the regulations.

[8:39:05 PM](#)

Representative Croft reiterated his argument in support of the amendment.

Vice-Chair Stoltze noted that he has regular contact with the homes in his district, as do the Eagle Scouts and other groups.

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Dr. Mandsager noted that the intent was to limit the number of crime background checks on volunteers to those that spend regular, unsupervised time with the clients. He hoped to do that through regulation.

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Vice-Chair Stoltze mentioned clerical visitations as being one of the most regular-type of volunteer help.

Representative Hawker spoke in support of the amendment, suggesting that "unsupervised" would be the correct approach. Discussion followed between members regarding the intent of "unsupervised".

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Representative Holm stressed the importance of encouraging volunteers and cautioned against creating more bureaucracy than necessary. He requested that the bill be held in Committee.

