

HOUSE FINANCE COMMITTEE  
March 7, 2006  
1:46 P.M.

CALL TO ORDER

Co-Chair Meyer called the House Finance Committee meeting to order at [1:46:39 PM](#).

MEMBERS PRESENT

Representative Mike Chenault, Co-Chair  
Representative Kevin Meyer, Co-Chair  
Representative Bill Stoltze, Vice-Chair  
Representative Mike Hawker  
Representative Jim Holm  
Representative Reggie Joule  
Representative Mike Kelly  
Representative Beth Kerttula  
Representative Carl Moses

MEMBERS ABSENT

Representative Richard Foster  
Representative Bruce Weyhrauch

ALSO PRESENT

Representative Mark Neuman; Senator Con Bunde; Senator Gretchen Guess; Portia Parker, Deputy Director, Department of Corrections; Susan Parks, Deputy Attorney General, Criminal Division, Department of Law; Rynniva Moss, Staff to Rep. Coghill; Tammy Sandoval, Acting Director Offices of Children's Services; Janet Clarke, Assistant Commissioner, Division of Finance and Management Services, Department of Health and Social Services; Virginia Smiley, Director, Division of Pioneer Homes, Department of Health and Social Services; Sharleen Griffin, Acting Director, Division of Administrative Services, Department of Corrections; Robynn Wilson, Director, Division of Tax, Department of Revenue; Jerry Burnett, Legislative Liaison, Department of Revenue; Mila Cosgrove, Director, Division of Personnel, Department of Administration.

PRESENT VIA TELECONFERENCE

Quinlan Steiner, Director, Office of Public Defender; Jan Rutherford, Assistant Attorney General, Department of Law.

SUMMARY

CS SB 218(FIN)

An Act relating to sex offenders and child kidnappers; relating to reporting of sex offenders

and child kidnapers; relating to periodic polygraph examinations for sex offenders released on probation or parole; relating to sexual abuse of a minor; relating to the definitions of 'aggravated sex offense' and 'child kidnapping'; relating to penalties for failure to report child abuse or neglect; relating to sentencing for sex offenders and habitual criminals; and providing for an effective date.

CS SB 218 (FIN) was HEARD and HELD in Committee for further consideration.

HB 408 An Act relating to the definition of 'child abuse and neglect' for child protection purposes; and providing for an effective date.

CS HB408 (FIN) was REPORTED OUT of Committee with individual recommendations and 2 zero fiscal notes (#1, DHSS; New, HFC).

HB 485 An Act amending the State Personnel Act to place in the exempt service pharmacists and physicians employed in the Department of Health and Social Services or in the Department of Corrections and corporate income tax forensic auditors employed by the division of the Department of Revenue principally responsible for the collection and enforcement of state taxes who specialize in apportionment analysis and tax shelters of multistate corporate taxpayers; and providing for an effective date.

HB 485 was HEARD and HELD in Committee for further consideration.

#sb218

CS FOR SENATE BILL NO. 218(FIN)

"An Act relating to sex offenders and child kidnapers; relating to reporting of sex offenders and child kidnapers; relating to periodic polygraph examinations for sex offenders released on probation or parole; relating to sexual abuse of a minor; relating to the definitions of 'aggravated sex offense' and 'child kidnapping'; relating to penalties for failure to report child abuse or neglect; relating to sentencing for sex offenders and habitual criminals; and providing for an effective date."

SENATOR CON BUNDE, SPONSOR, thanked the Committee and pointed out examples from weekend news articles from Anchorage recounting various sexual crimes, especially noting an incident when an perpetrator committed an assault hours after being release from prison. Her concluded that

this was an indication of the need for longer prison sentences.

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Co-Chair Chenault MOVED to ADOPT Work Draft #24-LS1307\U, Luckhaupt, 3/6/06, as the version of the bill before the Committee. There being NO OBJECTION, the motion was ADOPTED.

Senator Bunde referred to SUSAN PARKS, DEPUTY ATTORNEY GENERAL, CRIMINAL DIVISION, DEPARTMENT OF LAW to address the bill. Ms. Parks highlighted changes in the Committee Substitute. She noted changes in Section 1 and 2, referred to as the "peer group amendment". She stated that there was a concern about whether conduct between teenage peers should be considered criminal. She explained that the changes specified the need for one of the teenagers to be 17 years of age or older, and for there to be four years' difference in ages to constitute a criminal act.

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Ms. Parks also noted another major change to the bill contained in Section 8, page 7. She explained that the original bill mandated that there be probation for sex offenses. She pointed out that probation only carried weight if it pertained to suspended time, which enabled violators of probation to be punished. She stated that Section 8 required a certain amount of suspended time so that mandatory probation carried significance. She pointed out that there were amendments to the ranges that had been increased by 5 years to allow for required suspended time.

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Ms. Parks also pointed out that on Page 6, line 11, the range of sentence was changed from "one to twelve years" to "two to twelve years".

Representative Stoltze referred to a sentencing proceeding that reminded him of the truth in sentencing provisions, and asked about the actual provisions.

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Ms. Parks emphasized that a prior sexual offense would guarantee a severe sentence for a subsequent offense, whereas a first time offender might receive a lighter sentence, such as four years, with the possibility of discretionary parole.

Representative Stoltze noted that the offender to which he referenced in Wasilla had received a sentence of 99 years, being eligible for parole in 23 years.

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Co-Chair Meyer MOVED to ADOPT Amendment #1.

Page 3, lines 18-21  
Delete subsection (b)

Insert:

(b) This statute does not apply if any of the circumstances or conduct establishing the offense relate to an attorney-client relationship with the sex offender or child kidnapper.

The defendant may file notice pre-trial that subsection (b) applies. The notice merely requires that a good faith basis for its filing exist. The defendant may request a pre-trial ruling by the Judge, or may request a jury determination, or both. The State has the burden to prove beyond a reasonable doubt that subsection (b) does not apply.

Representative Stoltze OBJECTED.

Co-Chair Meyer referred to Ms. Parks for discussion of the amendment. Ms. Parks explained that the amendment pertained to the "failure to report" provisions contained in Section 3 of the bill. She explained that the Public Defender's office raised concerns that the bill created an ethical dilemma for a defense attorney representing a client who should have been registered and was not registered. She stated that the language had been developed in cooperation with the Public Defender's office in order to mitigate the ethical issue.

QUINLAN STEINER, DIRECTOR, OFFICE OF PUBLIC DEFENDER testified online, stating that he had worked with Ms. Parks on the language to remedy the ethical dilemma.

Representative Stolze WITHDREW his OBJECTION.

There being no further objection, the Amendment was ADOPTED.

Representative Kerttula MOVED to WITHDRAW Amendments #2 and #3.

Representative Kerttula then MOVED to ADOPT Amendment #4, 24-LS1307\U.2, Luckhaupt, 3/7/06.

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Representative Hawker OBJECTED.

Representative Kerttula explained that her amendments did not indicate a lack of support or respect for the sponsors, but rather pertained to the complicated nature of the legislation. She thanked the sponsors for changing the crime of omission and for extending statutory rape.

Representative Kerttula specified that Amendment #4 pertained to sentencing for Class A and Class B felonies. She conceded that these were serious crimes that should carry serious penalties, however pointed out that if the sentences were increased to this degree it would generate commensurate costs. She proposed bringing the sentences within a range that allowed for a more gradual impact.

Senator Bunde agreed that the bill would generate a cost. He discussed the merits of the costs as compared to the quality of safety in society. He also pointed out that large sentences, as well as incarcerating offenders for a long and costly period, also served as a deterrent. He concluded that the societal cost therefore balanced the financial costs.

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REPRESENTATIVE NEUMAN (Co-Sponsor) emphasized that, particularly for victims age 13 or younger, the cost of rehabilitation lasted a lifetime. He referred to discussions on the cost of such rehabilitation, and estimated it at \$45,000 per victim. He also noted that there were 518 reported victims, resenting only 16 percent of sexual crimes committed that were actually reported. He also reminded the Committee about the rate of recidivism due to the inability to rehabilitate offenders. He also recalled discussions with Commissioner Tandeske, confirming that these offenders also committed other types of crimes. He concluded that all of these costs should be considered in the entire picture.

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SENATOR GUESS (CO-SPONSOR) spoke in opposition to the amendment, but welcomed the discussion of the issues. She referred to previously passed bills (Sen. French), and testimony by administration stating that the bill did not pertain as much to sentences as to compliance with a court case. She emphasized that the bill sponsors did not contemplate appropriate sentence ranges. She noted that the Legislature discussed such policy issues at length. She pointed out that Senator French's bill did not address first time offenders or the sentencing structure.

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Senator Guess also referred to the third section of the amendment that reduced probation requirements. She pointed out that probation stipulations allowed for the best use of the polygraph in helping prevent offenders from recurrence. She stated her opinion that it was wrong to reduce sentences and probation on a policy basis. She agreed with Representative Neuman that the societal cost of sexual crimes was significant, if somewhat unknown, and concluded that it outweighed any other costs.

Representative Hawker MAINTAINED his OBJECTION.

Representative Kerttula concurred with the Sponsors' addition of probation to the Committee Substitute, and explained that her amendment was an effort to bring the sentencing down into a somewhat reduced range with commensurate probation periods. She stated that this was the most difficult of her proposed amendments.

Responding to a question by Co-Chair Chenault, Senator Guess clarified an earlier observation that sexual offenders responded well to the structured environment of incarceration. She referred to Senator French's bill, and a supporting document confirming that sexual offenders often received "good time", which under the current amendment would be eight years.

Representative Bunde noted that sex offenders often sought vulnerable victims.

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A roll call vote was taken on the motion.

IN FAVOR: Moses, Kerttula

OPPOSED: Stoltze, Hawker, Holm, Joule, Kelly, Meyer, Chenault

The Amendment FAILED on a vote of 7 to 2.

Representative Kerttula MOVED to ADOPT Amendment #5, 24-LS1307\U.1, Luckhaupt, 3/7/06.

Representative Stoltze OBJECTED.

Representative Kerttula explained that the amendment pertained to Class C Felonies. While she conceded that these offenses could indicate serious behavior, she noted that it could also include less serious behavior such as touching. She stated her belief that the maximum sentences were often disproportionate to the less serious crimes. She also noted that the Amendment contained a commensurate reduction of probationary periods.

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Representative Stoltze referred to comments made in the Senate Judiciary Committee regarding the issue of incidental touch, and asked how often instances of this nature were prosecuted.

SUSAN PARKS, DEPUTY ATTORNEY GENERAL, CRIMINAL DIVISION, DEPARTMENT OF LAW referred to case examples and stated that in 2004, of over 100 case that were charged with touching offenses, only 40 times did they receive the most serious offense, and usually when accompanied by a more serious charge. She noted a case in Anchorage when a young girl had received touches over an eight year period, that eventually developed into more serious conduct, and concluded that this was often the case. She also noted that touching offenses were often prosecuted when offenders had been interrupted or fought off. She noted several cases of touching offenses in various serious circumstances and concluded that these could be potentially serious offenses.

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Representative Stoltze concluded that the touching offenses in a situation of an accidental or "barroom grope" were rarely prosecuted. Ms. Parks responded that those types of cases were not usually charged.

Representative Neuman referred to the first section of the amendment, deleting the numbers "99" and "20", and pointed out that the bill language actually stated "not more than 99/20". He also referred to lines 22 to 23 of the amendment proposing to delete "99" and insert "9 to 20", and pointed out that these sentences pertained to a third felony conviction.

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Responding to a comment by Co-Chair Meyer, Senator Guess stated that the Sponsors were opposed to the amendment. Senator Guess noted that at the third degree level, a wide variety of conducts were included. She noted a recent study about the problem of rape in prisons, as well as about incest. She concluded that there were serious crimes included in this range. She explained that a wider range of sentences at this level of offense was to give courts flexibility.

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Representative Kerttula expressed that while she appreciated the benefit of flexibility, she maintained concern over the large range of offenses in the bill. She

proposed breaking the bill apart, and separating the lesser offenses from much more serious behaviors. She also commented that, along with flexibility, an amount of discretion remained to the courts. She noted that low level thefts were also included within the same level and therefore subject to the same sentencing structure.

A roll call vote was taken on the motion.

IN FAVOR: Moses, Kertulla

OPPOSED: Stoltze, Hawker, Holm, Joule, Kelly, Chenault, Meyer

The motion FAILED on a vote of 2 to 7.

Representative Kerttula MOVED to ADOPT Amendment #6.

Representative Hawker OBJECTED.

Representative Kerttula commented that in her experience as a defense attorney she had dealt with offenders who were well aware of sentencing ranges. She stated her concern that such knowledge of sentences might induce an offender to murder a victim of a sexual assault in an attempt to obtain a lighter sentence.

Representative Hawker strongly maintained his objection, expressing his concern for victims of sexual assaults who serve a "life sentence" of suffering.

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Representative Neuman stressed that the majority of crimes referred to by the amendments were committed against persons under the age of thirteen. He also noted that the perpetrators often carried firearms, thereby justifying the higher sentences.

Representative Bunde pointed out that in any of the sentences, a single mitigating circumstance could reduce the sentence by as much as half. He noted that courts and juries could exercise a certain amount of discretion in these circumstances. He mentioned that other states had substantially increased penalties for sexual predators. He also pointed out that offenders often moved from state to state, and was concerned that Alaska could become a prime destination for sexual predators if our sentences were lower.

Representative Kerttula clarified that her amendments did not address repeat offenses, and only pertained to the lower end of the offenses. She proposed that the lower end of the

sentence should be lower than that for murder in the second degree.

Representative Bunde stated that research showed that by the time a perpetrator was arrested and tried they often had committed a number of unreported offenses.

A roll call vote was taken on the motion.

IN FAVOR: Kertulla

OPPOSED: Hawker, Holm, Joule, Kelly, Moses, Stoltze, Meyer, Chenault

The motion FAILED on a vote of 1 to 8.

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Representative Bunde departed the meeting and stated that he was opposed to any amendments.

Representative Kerttula MOVED to ADOPT Amendment #7 (24-LS1307\U.4, Luckhaupt, 3/7/06).

Representative Hawker OBJECTED.

Representative Kerttula explained that the amendment dealt with the failure to report sexual offenders or child kidnappers. She noted that this section of the bill had been amended to address ethical considerations for defense attorneys.

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Representative Kerttula suggested that the standard should be one of "knowingly" disregarding requirements rather than "recklessly". She noted that in an earlier discussion Ms. Parks had referred to other legislation that employs such dual standards. Representative Kerttula proposed that the current standards in the bill would make it confusing and more difficult to prosecute.

Senator Guess stated that she was opposed to the amendment, and confirmed their belief that the dual standards would not cause confusion.

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Ms. Parks stated her belief that changing the mental state to "recklessly" would make it more difficult to prosecute the cases. She noted that certain offenses contain both a "reckless" and "knowing" terminology. She pointed out that "recklessly" was a difficult standard to meet, since it requires that the offender is aware of and consciously

disregards a substantial risk, constituting a gross deviation from a reasonable standard of conduct. She expressed concern that those who wish to remain ignorant of circumstantial evidence can simply claim to "not know", whereas it can be proven that a person acted in reckless disregard of the evidence.

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Representative Stoltze asked how it would affect a family situation. Ms. Parks confirmed that the concern would be that individuals would choose not to confirm suspicions.

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Representative Hawker observed that use of the "reckless" standard had been adequately defended. He questioned, however, the double standard "and knowingly". Representative Hawker asked whether, if an individual was unaware of location of a perpetrator, their knowing could be proven.

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Representative Neuman stated his opinion that the standards were a policy decision. He questioned whether if an individual knew of incest in a family, or a sexual molester, and purposefully did not bring these facts forward, or even witnessed an act while under the influence of a substance, they would bear some measure of guilt. He observed that the victims should be given first consideration, along with our responsibility to society. He suggested that there should be a greater aptitude toward societal responsibility.

Representative Hawker commented that in the construction of statute, they were obligated to protect the innocent, as well as provide a vehicle to prosecute the guilty. He expressed concern that with the current bill, the statute might prosecute the innocent.

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Senator Guess acknowledged Representative Hawker's observation as valid, and conceded that language might be changed to protect an individual who failed to report the location of a sex offender due to their lack of knowledge.

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Representative Hawker asked if it was the chairman's intention to report the bill out of Committee, and suggested that the language could be remedied during discussion of other amendments.

Co-Chair Meyer recommended that the amendment be withdrawn.

Representative Kerttula WITHDREW Amendment #7.

Co-Chair Meyer stated that the bill would be HELD. He requested that updated fiscal notes be prepared for the next hearing to take into account any bill changes.

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Representative Kerttula requested that the remainder of her amendments (#8-10) be withdrawn in order for further consideration before the next hearing.

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CS SB 218 (FIN) was HELD in Committee for further consideration.

[2:40:18 PM](#)

#hb408

HOUSE BILL NO. 408

"An Act relating to the definition of 'child abuse and neglect' for child protection purposes; and providing for an effective date."

[2:42:27 PM](#)

Co-Chair Chenault MOVED to ADOPT work draft #24-BH202\Y. There being no objection, the DRAFT was ADOPTED.

Rynnvieva Moss noted that the bill was sponsored by the Governor, and explained the influence of last year's House Bill 53, combined with efforts of the Administration and various legislators into one vehicle, called the Family Rights Act of 2006. She acknowledged the inclusion of legislation by Representative Chenault, Representative Coghill, and changes added by the Office of Children's Services (OCS).

Ms. Moss addressed Representative Coghill's concern with section 5 of the Committee Substitute. She explained that last year, under the previous law as written in HB 53, OCS could only discuss the report of harm that involved the disclosing information in the case of a resulting death. At that time, the Attorney General's office stipulated that the agency could only discuss the most recent report of harm that actually resulted in the death. She clarified that the revised bill now allows them to discuss any report of harm once requirements had been met, regarding any child in this situation.

Ms. Moss also noted that another concern by Representative Coghill was addressed by Section 7 of the Committee Substitute. Ms. Moss explained that this amendment resulted from a situation occurring in Representative Coghill's district where two teenage children had been placed in a foster home and foster parents had collected the children's previous pfd's. In this case, the foster placement did not work out, but the children's dividends were lost. The bill stipulates that once a child has been placed in the custody of OCS, their dividends will accrue until they reach the age of 18, at which time they will have one year to collect the dividends.

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Ms. Moss pointed out that Section 4 incorporated House Bill 327, by Representative Chenault, requiring that when a public official requested information, the Department be given five working days to collect information. She expressed that the Sponsor was very pleased with the Committee Substitute, and thought that the language was excellent.

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TAMMY SANDOVAL, DEPUTY COMMISSION FOR THE DEPARTMENT OF HEALTH AND SOCIAL SERVICES OFFICES OF CHILDREN'S SERVICES testified regarding the bill. She stated that the original intent of HB 408 was to comply with federal law. The "Keeping Children and Families Safe Act" of 2003, amended the Child Abuse Prevention and Treatment Act (CAPTA), and enacted new federal requirements for those states receiving CAPTA funds. She then explained that the bill had been amended to include a reporting requirement at delivery by a health care provider determining that a child has been "adversely affected by or is withdrawing from expose to, a controlled substance or alcohol". She explained that Sections 1, 2 & 3 related to reasonable efforts and involuntary termination of parental rights. She stated that these sections had been amended to require the court to find clear and convincing evidence, rather than a preponderance of evidence, prior to terminating parental rights.

Ms. Sandoval referred to Jan Rutherford, Assistant Attorney General, Department of Law, who was online to answer any questions.

Ms. Sandoval also referred to Section 4, related to Department of Health and Social Services and the Administration's disclosure to public officials. Sections 5 and 6 related to disclosure of agency records, amended to comply with the intent of HB 53, as it relates to disclosing information about high profile child protection case. She noted that they had experienced the function of HB 53, and

suggested the new language to provide more transparency and accountability. She concluded that Section 7 changes conditions under which OCS could release a child's PFD account trust monies.

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Representative Kerttula asked regarding changing the evidence standard to clear and convincing, and expressed concern that currently if the court found by preponderance of evidence, which was a lower standard, children could be pulled out for a number of serious circumstances. She asked how the department of law felt about raising the standard.

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JAN RUTHERDALE, ASSISTANT ATTORNEY GENERAL, DEPARTMENT OF LAW noted that the amendments involve the termination statutes only, and not the initial removal, which is under temporary custody and adjudication. She stated that the department of law actually pointed out the current problem, due to the constitutional argument that the standard of evidence was too low.

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Co-Chair Chenault referred to the indeterminate fiscal note, and asked if OCS would be affected by the requirement to track permanent fund monies for children until the age of 18. Rep Chenault asked how many children were currently tracked in this way.

Ms. Sandoval noted that the indeterminate note had been prepared earlier, but that after clarification about the intent of the provision with the sponsor, the fiscal note was changed to zero. She responded that only 17 children in this year had been placed in guardianship.

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Representative Kerttula asked about the section that added alcohol into the definition of child abuse and neglect. She noted a concern with section 8 regarding the level of effect from alcohol that would constitute the definition. She gave the example that an individual might have consumed alcohol before knowing they were pregnant, and expressed that she did not believe this should fall under the definition.

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Ms. Rutherfordale responded from a legal standpoint that this section applied only with children born with very obvious fetal alcohol syndrome, but not when a person had consumed a minor amount of alcohol prior to knowing they were pregnant.

She stated that other affects of alcohol were not apparent until a child had entered school age, presenting in a child's ability to focus, poor judgment ability, etc..

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Co-Chair Meyer opened the floor to public testimony. There was no one available for testimony, and testimony was closed.

Co-Chair Meyer asked about the indeterminate fiscal note, and Ms. Rutherford reiterated that once a confusion had been clarified, the fiscal note had been reflected as zero.

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Ms. Moss explained the concern that, in the way the bill had been written, OCS would be required to apply for dividends for children that were no longer in their custody but with a legal guardian. She explained that dividends were applied for only when the child was in the custody of OCS; otherwise their legal guardian would apply.

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Co-Chair Chenault MOVED to create a Zero Fiscal Note for Health and Social Services, Children's Services, Children's Services Management, Component #2666 (3/07/06). There being NO OBJECTION, it was so ordered.

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Co-Chair Chenault thanked Ms. Sandoval for her good work resolving cases. He then MOVED to REPORT CS HB408 (FIN) out of Committee with individual recommendations and 2 zero fiscal notes (#1, DHSS; New, HFC).

There being NO OBJECTIONS, the bill was passed by UNANIMOUS CONSENT.

#hb485

HOUSE BILL NO. 485

"An Act amending the State Personnel Act to place in the exempt service pharmacists and physicians employed in the Department of Health and Social Services or in the Department of Corrections and corporate income tax forensic auditors employed by the division of the Department of Revenue principally responsible for the collection and enforcement of state taxes who specialize in apportionment analysis and tax shelters of multistate corporate taxpayers; and providing for an effective date."

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JANET CLARKE, ASSISTANT COMMISSIONER, DIVISION OF FINANCE AND MANAGEMENT SERVICES, DEPARTMENT OF HEALTH AND SOCIAL SERVICES, referred to Virginia Smiley to speak to a situation which generated the bill.

[3:01:55 PM](#)

VIRGINIA SMILEY, DIRECTOR, DIVISION OF PIONEER HOMES gave an overview of the pharmacist duties in the Pioneer's Home. She gave the following overview of the pharmacy and pharmacist duties as follows:

"The six Pioneer Homes located in Ketchikan, Sitka, Juneau, Anchorage, Palmer and Fairbanks all rely on receiving medications for their residents from the Division's central pharmacy located in APH.

Per state and federal law the pharmacy must be under the oversight of licensed pharmacists. We can and do use school of pharmacy interns and pharmacy assistants, but three pharmacists are necessary to supervise staff, dispense medications, comply with Medicare Part D and Medicaid documentation, and provide clinical consultation to physicians, residents, families, and staff.

In the quarter ending Dec 31, 2005, the pharmacy packaged and dispensed 353,821 individual doses of medications. Dispensing that volume of medications requires a full staff present and working.

We have almost a full year's history in first losing our pharmacists to jobs that pay much higher wages and then not being able to attract new pharmacists to apply for the vacant positions.

The federal government is paying wages that are competitive with the private sector, and offering signing bonuses and forgiveness of student loans.

Nationally, the same is true in the private sector, as shown by lucrative offers being made to pharmacists in recruitment letters and advertising in national publications.

For eight months of last year we had a single pharmacist on our payroll. It was necessary for us to sign contracts with two temp agencies, and we were able to fill many, but not all, of the vacant shifts. We paid the contract agencies \$70 hr for their pharmacists.

At this critical point we finally placed the pharmacist PCN into a temporary higher paying category in order to recruit and hire more competitively. However, the Division of Personnel advised us we would have to seek a more permanent solution. That is why we are here today.

The problem is that under the present wage scale for permanent pharmacist positions in the state system, we are not competitive with other employers.

We are asking to have pharmacists moved into the exempt service with other professional classifications as it will provide the needed flexibility to be competitive in the marketplace.

She noted that pharmacists dispensed an extremely high number of doses of medication, but that they were not able to attract or retain qualified pharmacists as compared with other states. She notes that during the following year, only one pharmacist was on contract, requiring them to hire temporary pharmacists at over double the salary paid to the contract employee."

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Ms. Clarke noted that eight pharmacy positions existed in the Department of Health and Social Services: three at the Pioneer Home, two at API, two in Medicaid, and one in epidemiology and public health. She stated that those in these positions were required to provide high-level consultation services, meaning that risks were great if these positions were not filled. She noted that in the private sector, pharmacists were paid \$55 to \$65 per hour, or up to \$70 per hour for temporary employees. She proposed that pharmacists belonged in the same exempt category as psychiatrists, medical examiners, etc.

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LAURA LINK, DIVISION OF ADMINISTRATIVE SERVICES, DEPARTMENT OF CORRECTIONS expressed that her department experienced similar problems in recruiting and retaining qualified pharmacists.

Responding to a question by Co-Chair Meyer, she stated that pharmacists maintained similar educational requirements as doctors.

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JERRY BURNETT, DIRECTOR OF ADMINISTRATIVE SERVICES, DEPARTMENT OF REVENUE spoke to the second part of the bill, regarding corporate tax forensic auditors, moving them into the exempt category.

ROBYNN WILSON, DIRECTOR OF TAX DIVISION, DEPARTMENT OF REVENUE explained the function of auditors for the State of Alaska. She discussed the method for determining the taxable income of large groups of companies. She noted the complexities involved in dealing with multi-state and worldwide companies that did business in Alaska, as well as the wide variety of taxpayers. She explained the goal of determining value of property, sales, vessels, etc.

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Ms. Wilson noted her experience as an auditor hired by the State of Alaska 11 years ago. She explained that at that time, a number of their more experienced auditors came from the internal revenue service. She noted that public auditors made money by working long hours, as employees gained experience. She pointed out that at that time the state paid a wage competitive with the federal government.

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Ms. Wilson then explained how circumstances had changed in several ways: 1) large public accounting firms had condensed, decreasing supply of employees; 2) the manner of business had changed, with a new focus on selling tax structures; 3) accounting rules had developed out of recent corporate upsets, increasing the wages for auditors in the private sector. She pointed out that the state of Alaska had maintained an even wage, while wages in the public and federal sectors had increased. She stated that in recent years, the number of state auditors decreased from ten to two, a number too small to complete the workload.

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She noted that the department had tried several recruitment methods for auditors. She discussed methods seeking auditors from the University of Alaska that had as yet been unsuccessful, and noted that even if it had succeeded; they did not have the ability to train new auditors. She concluded that salary was the problem in recruitment, and proposed that the bill would help to attract experienced auditors by establishing three exempt positions that could compete with the private market.

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Responding to a question by Co-Chair Meyer, Ms. Wilson noted the curiosity over whether new auditors might be needed in developing the new PPD tax.

Responding to a further question, she noted that the educational requirements for auditors would include a Masters Degree or Certified Public Accountant certificate.

Representative Joule asked for clarification on the exempt status. Mr. Burnett explained that an exempt position was not covered by the personnel rules adopted by the Personnel Board and not subject to the salary schedule of other employees, enabling salaries to be paid by a different method.

Representative Joule asked whether exempt positions were only appointed, such as government officials. Mr. Burnett explained that certain positions in Department of Revenue were exempt, not due to political appointment, but rather to skills sets.

[3:18:41 PM](#)

Representative Stoltze asked what aspect of the classification status solved the salary problems.

Mr. Burnett clarified that the issue at hand was one of salary, and not classification. He noted that they were currently unable to pay beyond the classification limit of range. He stated that the department was not able to pay the level of salary expected by an experienced CPA, which could exceed \$100 thousand.

Responding to another question by Representative Stoltze, Ms. Wilson noted that a salary survey focused on the Level 3, revealed a large salary disparity at the higher level, higher than the disparity on levels 1 and 2. She explained that even moving an auditor up by one or two ranges could not provide a competitive salary within the market. She concluded that this was the reason for the need for a category.

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Representative Kerttula commented that exempt employees were easier to terminate. She wondered if this would present a problem with the coming oil taxes. She asked whether it was possible to simply negotiate higher salaries in the collective bargaining process.

Mr. Burnett conceded there might be some possibility of negotiating a higher salary within classified service. He pointed out that the terms of the negotiation would need to be approved by the legislature, which he proposed would be an inefficient method of hiring.

Representative Kerttula commented that it might be worth that method considering the importance of the upcoming jobs.

Representative Kelly asked if it was standard for these types of positions to be exempt in the private sector. Mr. Burnet clarified that the types of jobs in the private sector were structured differently. He surmised that auditors might not be terminated for political reasons.

Representative Hawker noted his own experience during his tenure at the Legislature of auditors being terminated for political reasons.

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JIM DUNCAN, BUSINESS MANAGER, ALASKA STATE EMPLOYEES ASSOCIATION testified. He concurred that both pharmacists and auditors were difficult to recruit and required a higher salary, but disagreed with creating an exempt position to solve the problem, pointing out that other types of positions were difficult to fill. He reminded the Committee that the merit system of employment was established by the Alaska State Constitution, with those elected or appointed being exempt from the system. He expressed concern over changing the system through this bill, and observed that the issue at hand was salary rates and not policy.

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Mr. Duncan proposed that in exempt service there would be political pressure. He gave the example of an auditor being placed under pressure by a large corporation to slow an audit by means of the exempt system. He further pointed out that as the State considered changing its corporate tax structure, it might not be wise timing to move those in charge of collecting tax and auditing corporations into exempt status where they might be subjected to political pressure. He referred to recent occurrences in Department of Natural Resources.

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Mr. Duncan commented that the classified system was not at issue, but rather the pay structure within the system. He reminded the Committee that the pay plan was mandatory, subject to bargaining, enabling the Administration to change the pay plan due to an inability to attract employees. He stated that he was currently composing a letter to the Administration proposing that ranges 28, 29 and 30 be added to the pay scale in order to solve the problem. He suggested that the classified service ought to afford the same salary as in exempt service. He encouraged the Administration to examine the ability for movement to other pay scales through internal/external comparisons and market based studies.

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He suggested that currently they were comparing inappropriate job classes, and that other comparisons should be made to perhaps create a new job class family for these forensic auditors.

Mr. Duncan stated that he did not believe the bill would serve the State's problems well and would erode the merit system. He addressed the issue of pharmacists, noting that federally funded positions were required to be subject to a merit based pay system, and asked how these requirements would be satisfied or if federal funding would be lost.

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Mr. Duncan also noted that pharmacists' positions were established, and pointed out that our constitution prevented repairing a contract by passing a statute. He pointed out that the pharmacists were covered by the current collective bargaining agreement. He proposed that the statute would violate the contract provision. He stated that although the Union did not wish to enter into a debate, they would certainly demand enforcement of their current contract.

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Mr. Duncan expressed his confusion over the description for the position of forensic tax auditor. He noted the theory that a description would be written after hiring the type of individual needed for the job and proposed that the process should work in a different manner. He stated his belief that a forensic tax auditor was a Revenue Auditor 4 and read from the description of that position: "work with multiple and complex accounting methods and systems, generate significant revenue from the collection of taxes, apply a wide diverse body of authorities dealing with apportionment issues, determine correct unitary group, apportionable income, be aware of state statute and federal regulations". He concluded that the new positions duplicated a position, which occurred within the classified service. He suggested that a new pay plan be discussed with the Union, and that a job description be developed, prior to a hiring process. In summary, he stated his belief that the proposed process was flawed, ignoring the mandatory bargaining agreement of the state and perhaps other representing unions. Mr. Duncan also surmised that the proposed legislation would place these revenue auditors at will and subject to pressures by those corporations they audit. He observed that while a new revenue system was being considered, they were also considering placing those overseeing the taxes in an "at will" position subject to political pressure. He urged care in considering this legislation.

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Representative Hawker asked whether Mr. Duncan had discussed these issues with the Administration. Mr. Duncan stated that the Union had not been briefed in advance by the Administration, but that they now intended to follow up with discussion. In response to a follow up by Representative Hawker, Mr. Duncan expressed his belief in the possibility for productive discussion and the implementation of an improved pay plan. He emphasized that his proposal would not open the discussion of changing pay plans for other positions.

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Representative Kelly asked if such a circumstance had occurred before. Mr. Duncan referred to a list of positions that had been added to the exempt service. He noted however that these jobs were formerly in commissions, for example the Mental Health Trust, when employees were actually laid off and then rehired into exempt service. He urged caution, since there were other jobs where pay scales were not adequate.

Representative Kelly asked if the system proposed was flexible enough to allow for downward changes. Mr. Duncan responded that although the union would not advocate for lower pay, there had been determinations for positions to be classified downward in the past.

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Clarifying an issue for Representative Kelly, Mr. Duncan commented that the pharmacist shortage had been solved on a temporary basis. Representative Kelly asked whether this would be a method to carry forward until the next round of bargaining to solve the current problem. Mr. Duncan conceded that this was possible. He pointed out, however, that since the proposed legislation would not take effect until July, and a new pay period could be in place by that time.

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Co-Chair Meyer expressed the intention to HOLD the bill in Committee, and a desire to view Mr. Duncan's letter to the Administration. He suggested that there be a representative from the Administrative present at the next hearing of the bill.

MILA COSGROVE, DIRECTOR, DIVISION OF PERSONNEL, DEPARTMENT OF ADMINISTRATION clarified that there were three types of employees: 1) Classified, fully subject to the merit system, including the classifications and pay plan; 2)

Partially Exempt, not subject to all rules, but subject to classification and pay plan; and 3) Exempt, which were not subject to classification or pay plan, but still possibly subject to collective bargaining, such as employees of the Marine Highway System.

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Ms. Cosgrove noted that while some exempt positions were "at will", such as Commissioners and high level policy makers, other exempt employees were held at a higher bar for dismissal from state service. She pointed out that these state employees were treated fairly and equitably with management rights and not easily dismissed.

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Ms. Cosgrove also emphasized that wages for pharmacists and other such professionals were very volatile at the current time. She suggested that these wages were well beyond what could be negotiated under the current classification plan, which relies upon the concept of internal alignment. She explained that all job classes must bear some relationship to one another. She followed that revenue auditor positions would have to increase to remain in relation to the increased wages for top-level auditors. She also pointed out that the state was considering a market based pay plan, but stressed that internal alignment would still apply. She concluded that the market based pay plan would not solve the problem of pharmacists and auditors at the highest level. She expressed a desire to reply in more detail at the next meeting.

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Co-Chair Meyer stated that HB 485 would be HELD in Committee for further consideration.

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ADJOURNMENT

The meeting was adjourned at 3:49 P.M.