MINUTES
SENATE FINANCE COMMITTEE
April 15, 2005
9:06 a.m.

CALL TO ORDER

Co-Chair Green convened the meeting at approximately 9:06:30 AM.

PRESENT

Senator Lyda Green, Co-Chair
Senator Gary Wilken, Co-Chair
Senator Bert Stedman
Senator Lyman Hoffman
Senator Fred Dyson
Senator Donny Olson

Also Attending: SENATOR CHARLIE HUGGINS; JANE ALBERTS, Staff to Senator Con Bunde; GREY MITCHELL, Director, Division of Labor Standards & Safety, Department of Labor and Workforce Development; DOUG LETCH, Staff to Senator Gary Stevens; JEFF OTTESEN, Director, Division of Program Development, Department of Transportation and Public Facilities; KATHIE WASSERMAN, Alaska Municipal League

Attending via Teleconference: From Offnet Sites: JOHN SEDOR, Anchorage Society for Human Resource Management; KAREN ROGINA, President & CEO, Alaska Hospitality Alliance; JACK AMON, Co-Owner, Marx Brothers Café and Marx Brothers Café Catering, and Member, Alaska Hospitality Alliance; From Anchorage: STEVE BOYD, Alaska Chapter, National Electrical Contractors Association

SUMMARY INFORMATION

SB 131-WAGE & HOUR ACT: EXEC/PROF/ADMIN/SALES

The Committee heard from the bill's sponsor, the Department of Labor and Workforce Development, and took public testimony. One amendment was adopted and the bill reported from Committee.

SB 16-POWERS/DUTIES DOTPF/TRANSPORTATION PLAN

The Committee heard from the bill' sponsor and the Department of Transportation and Public Facilities. The bill reported from Committee.

SB 158-MUNI TAX ON STATE CONSTRUCTION CONTRACTS

The committee heard from the bill's sponsor, the Department of Transportation and Public Facilities, and took public testimony. The bill reported the bill from Committee.

SB 88-POLICY ON GENERAL FUND REVENUE SHORTFALL

The Committee heard from the bill's sponsor and reported the bill from Committee.

SB 112-TAX ON REAA RESIDENTS

This bill was scheduled but not heard.

SB 147-SPORT FISHING FACILITY REVENUE BONDS

This bill was scheduled but not heard.

#sb131

> CS FOR SENATE BILL NO. 131(L&C)
> "An Act amending the Alaska Wage and Hour Act as it relates to the employment of a person acting in a supervisory capacity or in an administrative, executive, or professional capacity; relating to definitions under the Alaska Wage and Hour Act and providing definitions for persons employed in administrative, executive, and professional capacities, for persons working in the capacity of an outside salesman, for persons working in the capacity of a salesman employed on a straight commission basis, and for persons that perform computer-related occupations; and providing for an effective date."

This was the first hearing for this bill in the Senate Finance Committee.

JANE ALBERTS, Staff to Senator Con Bunde, the bill's sponsor, read from the sponsor statement as follows.

> Alaska's Wage and Hour Act (AS 23.10.050 - 23.10.150) establishes the provisions for overtime compensation. AS 23.10.055 sets forth exemptions to the Wage and Hour Act. One of these exemptions is "an individual employed in a bona fide executive, administrative or professional capacity or in the capacity of an outside salesman or a salesman who is employed on a straight commission basis".
>
> As currently defined in our administrative code, the definitions of "executive capacity," "administrative

capacity," and "professional capacity" are confusing and difficult to interpret. In order to determine if someone is an executive, administrative or professional employee, you have to use what is known as the "long test." In addition to numerous other factors, the long test includes a calculation of the employee's time spent on "non-exempt work" (i.e. work that is not executive, administrative or professional). If an employee spends more than 20 percent (40 percent in retail or service establishments) of their time on non-exempt work, they become subject to the Wage and Hour Act and can qualify for overtime. The ambiguity within the definitions, including the implementation of the 80/20 test, has lead to numerous wage and hour lawsuits, causing great expense to employers and employees.

HB 182 deletes the 80/20 test and sets forth definitions which are much more understandable. The simplicity provided by the new definitions will lead to greater compliance with the statute. It is in the best interests of both the employer and employee that the statutes are straightforward, practical and easy to follow.

HB 182 also clarifies another area of confusion in the Wage and Hour provisions. Currently, a person acting in a "supervisory capacity" is exempt from payment of overtime, but not exempt from the full Wage and Hour Act. The definition of "supervisory capacity" in the regulations is also ambiguous and difficult to interpret. HB 182 removes this exemption from statute. There are two reasons for deletion of the provision. The first reason is that due to the uncertainty in interpretation of the definition, the statue is currently unworkable. Secondly, the new definitions of "executive capacity" and "administrative capacity" would subsume a person working in a supervisory capacity. Therefore, there is no need to have a separate provision.

Enacting this bill will eliminate ambiguities, align Alaska more closely with other states and reduce the number of frivolous lawsuits, while protecting workers' rights to receive overtime.

[NOTE: References to HB 182 should be correctly interpreted as references SB 131]

Ms. Alberts informed the Committee that a forthcoming amendment would address the application of the proposed law.

Co-Chair Green noted that Senator Bunde, although absent, has

provided the forthcoming amendment.

Senator Hoffman asked for further information about which states Alaska would be aligned were this legislation adopted.

Ms. Alberts deferred to Mr. John Sedor of the Anchorage Society for Human Resource Management.

JOHN SEDOR, Anchorage Society for Human Resource Management (ACHRM) testified via teleconference from an offnet site and noted that the ACHRM, which represents 200 business members, as well as the Society for Human Resource Management Alaska State Council, with approximately 250 business members, support this legislation. In response to Senator Hoffman's question, he stated that this bill would, foremost, align Alaska with federal system guidelines. Currently, Alaskan private employers and employees must comply with two sets of overtime standards: federal standards and State standards. This bill would move Alaska toward a single unified system for overtime, consistent with the federal Fair Labor Standards Act (FLSA). Thirty-two of the fifty-one jurisdictions in the nation, including the District of Columbia, defer solely to the federal standard. Eight others defer to a standard known as the "short test" rather than "the 80/20 test" that is applied in Alaska. In effect, were this legislation adopted, Alaska would mirror or be consistent with 40 of the 51 jurisdictions. Alaskan employers and employees would benefit by not having to apply two different standards to exempt executive, administrative and professional employees' hours each week.

Co-Chair Green understood that this information is included in Members' packets.

Mr. Sedor affirmed that this information is included in a handout titled "State by State Overtime Comparison, completed Spring, 2004 By: John M. Sedor" [copy on file].

Co-Chair Green stated that a breakout of states' standards is included in the handout.

Senator Dyson surmised that the onus of adhering to the current standard has "more impact" on small enterprises than larger ones.

Mr. Sedor replied that currently, any business "regardless of size" that has exempt employees and desires to conduct business in the State, must comply with two sets of standards. To that point, any business operating in Alaska as well as in other jurisdictions is required to establish a separate process for addressing Alaska's set of exempt employees standards. Smaller businesses are

"especially impacted because the increased cost of administration is more difficult to bear on a small business than a larger business".

Senator Dyson acknowledged the administrative impacts mentioned by Mr. Sedor, and further questioned this issue's impact on small businesses' manpower allocations in that an employee of a small business might be required to work in a "supervisory and leadership role" in addition to conducting "routine and manual labor duties" due to a limited employee base. Applying the exempt standard in this scenario is difficult.

Mr. Sedor concurred that the existing statutory language is especially impacting to small businesses. People who are employed at an executive, administrative or professional exempt level "are hired to accomplish duties … and complete tasks". The time it might take to do something should be "irrelevant in the actual business model". The current law forces both sides into either maintaining "journals or requiring time entries that say" that the person spent six minutes making a pot of coffee, twelve minutes driving to the store; eight minutes reviewing people's work for the day; or two minutes opening the door. This legislation would move the existing mode of interpreting the exempt status "from a time-based unmanageable system" toward a system of a "primary or duties-based test where people are employed to do duties and that is what the courts would consider in determining whether or not they are exempt".

Senator Dyson acknowledged the response.

Senator Olson asked whether this legislation would align with FLSA.

Mr. Sedor replied that certain aspects of Alaska's overtime standards differ from the federal standard. The federal standard is 40 hours a week whereas the Alaska standard is eight hours a day or 40 hours a week. This legislation would substantially move Alaska closer to the FLSA exempt definitional standards in regards to executive, administrative, and professional employees. Employers would only be required "to apply one test rather than two and that test is a duties based test". The State however would not be one of the 32 states that defers entirely to the federal FLSA. This legislation would provide an answer to the question "what is unique about overtime in Alaska?" The answer, in his perspective, is that Alaska pays higher wages than the rest of the nation. Therefore, to qualify for an exemption, Alaskan businesses must compensate an exempt administrative, executive or professional employee with a rate that is "two times the minimum" wage. Therefore, an exempt employee's salary in Alaska would be higher than the federal exempt

wage requirement.

Senator Olson asked whether the business community supports that salary requirement.

Mr. Sedor responded that members of both the Anchorage Society for Human Resource Management and the Society for Human Resource Management Alaska State Council support this legislation.

In response to a question from Co-Chair Green, Mr. Sedor specified that he had concluded his remarks and would be available to answer any further questions.

Amendment #1: This amendment inserts new language in the bill title, following the word "occupations;" on page one, beginning on line seven, as follows.

> directing retrospective application of the provisions of this Act to work performed before the effective date of this Act for purposes of claims filed on or after the effective date of this Act, and disallowing retrospective application for purposes of claims for that work that are filed before the effective date of this Act;

In addition, a new bill section is inserted on page five, following line 30 as follows.

> Sec. 6. The uncodified law of the State of Alaska is amended by adding a new section to read:
>
> APPLICATION AS TO WORK PERFORMED BEFORE THE EFFECTIVE DATE OF THIS ACT. (a) This Act applies retrospectively to work performed before the effective date of this Act for purposes of any claim or proceeding based on AS 23.10.050 - 23.10.150 (Alaska Wage and Hour Act) that is filed on or after the effective date of this Act.
>
> (b) This Act does not apply to work performed before the effective date of this Act for purposes of any claim or proceeding based on AS 23.10.050 - 23.10.150 that is filed before the effective date of this Act.

Co-Chair Wilken moved on behalf of Senator Bunde, to adopt Amendment #1.

Co-Chair Green objected for explanation

Ms. Alberts explained that this amendment would provide the effective date for the application of the new primary duty-based standards. The current 80/20 State standard would be applied to any

claim brought before that date and the new primary duties-based standard would be applied to any claim submitted after the effective date.

9:20:22 AM

Mr. Sedor affirmed Ms. Alberts' remarks. A two-year "rolling week-by-week" statute of limitations applies to overtime lawsuits. This amendment specifies that, after the effective date, the rules specified in SB 131 would be applied to the entire claim for events up to two-years. This would allow one rule to be applied to the claim rather than having a debate about which weeks would be argued under the current standards and which weeks would be argued under the new standards. This is "an extremely practical approach to this issue".

Co-Chair Green removed her objection and noted that this amendment would incur a title change.

There being no other objection, Amendment #1 was ADOPTED.

9:22:43 AM

KAREN ROGINA, President & CEO, Alaska Hospitality Alliance, testified via teleconference from an offnet site to voice the Alliance industry's support of this legislation. She asked that the Committee also support the bill. Not only is this an important bill for the hospitality industry, it is important to all employers with exempt employees, as it would apply a single set of standards, which would be easier to understand and comply with. Because the current Alaska exemption status is time-based, an employee's eligibility is determined by how the employee spends their time. This bill would change the definition of exempt status to one based on primary duties. This would better reflect "real life workplace roles". Business owners and operators should be able to rely on exempt workers to deliver results without being required "to micromanage" exactly those employees are spending their time. Oftentimes, a business owner or operator is not on site and is, therefore, "unable to ascertain just what their employees are doing. Instead they must manage by results achieved." Labor attorneys would support the fact that "this is one of the most litigated areas of wage and hour law".

Ms. Rogina shared an example of a wage and hour dispute, which involved a prominent Kenai Peninsula hotel and its food and beverage director who "was considered exempt". The director oversaw a $750,000 budget and was responsible for hiring, firing, staffing, and the overall food, beverage, and catering responsibilities of

the hotel. Upon that person's termination, she produced a "log" that detailed "by the minute how she spent her time each day". Due to a combination of "the seasonality changes" inherent to the hospitality industry and the employer's desire to provide year-round employment, there are times during the year when that employee could have bused a table or seated guests. However, her primary duties, for the most part, were those of an exempt employee. This lawsuit cost the employer thousands of dollars and almost put the hotel out of business. The hotel was "at a total loss of being able to prove otherwise" as it had not kept track of how the person had spent her time "by the minute" since she was a salaried employee. As a consequence of that lawsuit, the hotel now hires only hourly employees. That is the impact of the current standard on the industry. It is detrimental to employees as well, as, absent "a clearer definition of who is exempt and who is not", employers are denying their executive, professional, and management staff access to such things as better health insurance benefits that could otherwise be offered to them because "they are not a segregated group that could be classified differently". In conclusion, this legislation would benefit both employees and employers.

9:25:42 AM

JACK AMON, Co-Owner, Marx Brothers Café and Marx Brothers Café Catering, and Member, Alaska Hospitality Alliance, testified via teleconference from an offnet site in support of the bill. The proposed changes regarding the exempt employee definition would be "a great step forward in modernizing Alaska's labor laws to more accurately reflect the current workplace"; specifically in regards to exempt employees in the hospitality and food service industries and in small businesses where both the employer and the employees "wear many hats". Alaska's 80/20 definition "is so onerous and restrictive that it has forced most operators to keep all employees, including those who head departments or supervise others, hourly. This results in negative impacts to both the employer and the employee" who might be the highest skilled and highest paid worker. As benefit costs increase, employers have been required to change their benefit plans to the effect that an employee must be salaried in order to qualify.

Mr. Amon noted that two of his twelve restaurant employees would qualify as salaried employees as opposed to hourly employees under the new standards proposed in this bill. In his opinion, an employee with the authority to hire and fire and who is responsible for the work of others should be considered managers regardless of whether they work from behind a stove or behind a desk. He warned that this legislation might be interpreted by some as an

opportunity through which employers could "cheat hardworking employees out of legitimate overtime; however, nothing could be further from the truth. In order to run a successful business, "it is essential" that quality employees are properly compensated for their skills. Such employees know that their skills are in demand and would not remain with an employer who attempted to take advantage of them. "The flexibility" offered by this legislation would allow "compensation arrangements" that would be beneficial to both the employee and the employer.

9:28:37 AM

GREY MITCHELL, Director, Division of Labor Standards & Safety, Department of Labor and Workforce Development spoke in support of the bill, as it "would streamline the complex set of criteria for establishing overtime exemptions". One example of the 80-percent test is that under the current regulations, there is a fallback test, which requires only a 60-percent test when applied to service and retail establishments. However, there is a provisional requirement that the employee earn at least two times the federal minimal wage for the first 40 weekly work hours. Thus, while a minimal salary provision currently exists, it only pertains to the service and retail industries and only when applied to the 60-percent rather than 80-percent test. The Division's staff has occasionally experienced difficulty in explaining this to employers and employees. The proposed legislation would assist the Division in alleviating the often difficult "burden" of explaining the existing 80/20 Exempt Status Test to both employees and employers.

Senator Stedman understood that this is a complex issue that even larger employers have trouble deciphering. Currently, employers could be subject to litigation involving "a revolving multi-year timeframe".

Mr. Mitchell affirmed that this issue "has caused litigation". Years could pass before an employer might "find themselves at odds with the requirements". Sometimes, employees know the rules and start spending more than 20-percent of their time making coffee and other non-managerial duties and deliberately "put their employers in a difficult position, based on the complexity of the current definitions".

Co-Chair Green asked whether this legislation would also simplify regulations.

Mr. Mitchell replied that the legislation would remove the burden of issuing regulations because it would allow the Department "to simply adopt the federal regulatory definitions".

Senator Olson, observing that no one has spoken against the bill, asked the reason that "it took so long" for it to be presented.

Mr. Mitchell replied that he could not provide the answer to the question.

Senator Olson noted that he had experience in the retail service area, and to that point, asked the reason that the 60/40 percent standard rather than the 80/20 standard is applied to that industry. Furthermore, he inquired whether this is addressed in the bill.

Mr. Mitchell responded that the 40-percent test was established as a fall-back from the 80-percent standard as a result of concerns raised by those affected industries. The concerns being voiced today echo those earlier concerns. It is difficult to adhere to the current standards in those businesses where you need the manager to jump in and perform production related tasks in order to manage the business.

In response to a question from Co-Chair Green, Senator Olson stated that he is in support of the legislation.

Co-Chair Green voiced support for it as well.

Co-Chair Wilken moved to report SB 131, as amended, from Committee with individual recommendations and accompanying fiscal notes.

There being no objection, CS SB 131 (FIN) was REPORTED from Committee with previous zero Fiscal Note #1, dated March 14, 2005 from the Department of Labor and Workforce Development.

#sb16

> CS FOR SPONSOR SUBSTITUTE FOR SENATE BILL NO. 16(TRA)
> "An Act relating to the powers and duties of the Department of Transportation and Public Facilities; repealing the requirement for a long-range program for highway construction and maintenance; and repealing a requirement that public facilities comply with energy standards adopted by the Department of Transportation and Public Facilities; and providing for an effective date."

This was the first hearing for this bill in the Senate Finance Committee.

DOUG LETCH, Staff to Senator Gary Stevens, the bill's sponsor, informed the Committee that this legislation would either eliminate or update several obsolete statutes relating to the powers of the Department of Transportation and Public Facilities. Specifically the bill would remove the burden of conducting a cost benefit analysis for each of the Department's projects, regardless of size. This cost-effectiveness analysis requirement has provided opportunities for project opponents to sue the State. The bill contains several key provisions that would change the powers and duties of the Department to bring those statutes in line with the Department's practice of today. There is widespread support for this legislation, as indicated by the letters of support included in the Member's backup material. He asked that any technical questions regarding this legislation be directed to the Department.

9:35:51 AM

Senator Stedman understood that one of the bill's provisions would exclude the cost effective analysis for local service area projects. He asked for further information in this regard.

9:36:24 AM

JEFF OTTESEN, Director, Division of Program Management, Department of Transportation and Public Facilities, stated that the language in question is located in Section 5, subsection (e), page six, beginning on line five of the bill. Subsection (e) reads as follows.

> (e) In evaluating new highways, airports, terminals, ferries, and other major components for inclusion in the plan, the commissioners shall prepare a cost-effectiveness analysis using a consistent methodology. A cost-effectiveness analysis is not required for a project that involves the rehabilitation and maintenance of an existing transportation system or that primarily serves local transportation needs.

Mr. Ottesen clarified that the cost benefit analysis would not be required for the rehabilitation and maintenance of a variety of existing projects or that are essentially local in nature such as local roads, local trails, buses, and vans for senior centers. Conducting such analyses is currently a burden on the Department.

Senator Stedman asked for further information regarding the "local" exemption; specifically whether it would pertain to such things as roads on islands.

Mr. Ottesen responded that the bill's sponsor, working in

conjunction with the Department, deliberately drafted a short bill with the determination that the specifics would be addressed in regulations. "Generally speaking, a local road would be transportation within a borough that basically moves people from one part of a borough to another, be it on an island or be it on a part of the mainland". This would include National Highway System (NHS) routes, major airports, and major port facilities that connect the State. The cost effectiveness requirement would be required on any "major new facilities, with new being the key word here, that are not local in nature. The trouble with the current statute, which was developed in 1977, is that it is now being used as a club to halt projects. It applies to anything". The cost benefit analysis requirement applies to projects approved by the Legislature, projects approved by voters, or even a transit van for a senior citizen center. It also applies to such things as training programs and other things to which determining how to develop a cost benefit analysis would be difficult. The goal is to exempt local roads and activities from "this burdensome" cost benefit analysis.

Senator Stedman opined that, "by that definition, all the roads in Southeast Alaska would be excluded" from the exemption, as none of the roads are tied together. The majority of the roads are on islands.

Mr. Ottesen clarified that the NHS connection definition would apply to a variety of roads in Southeast Alaska. In Ketchikan it would apply to the ferry from the airport to town; in Juneau it would apply to Egan Drive between the airport and downtown. Most of the other roads in Juneau and similar roads across the State "would be excepted".

Senator Olson inquired to the two accompanying zero fiscal notes: Fiscal Note #1, dated March 22, 2005 from the Department of Public Safety and zero Fiscal Note #2, dated March 21, 2005 from the Department of Transportation and Public Facilities. It would be expected that this legislation would save the State money.

Mr. Ottesen responded that there would be cost savings in that "more money would be spent on pavement and less money spent on process". The amount of money that the Department is allocated is, in its entirety, reflected in the budget; however, now it is being divvied up "to support economists and planners to conduct processes" rather than building projects.

Co-Chair Green understood therefore that the funds would be more project specific.

Mr. Ottesen responded that the total amount received would not change.

Senator Dyson questioned whether, "aside from the standards that are applied to really minor sorts of things", some federal standards in regards to such things as thermal and lighting analysis on highways are really inappropriate because of such things as the State's environment and population densities.

Mr. Ottesen responded that the State's responsibility in regards to thermal standards and lighting standards were incorporated in statute in the 1970s at a time when the nation was undergoing its first energy crisis. The Department was designated as the entity to have that oversight; however, over time, the Department's role in "the building world" has diminished and the Department no longer conducts building projects for municipalities or schools for Rural Educational Attendance Areas. National entities rather than the Department set standards, which are then adopted by local building codes. The Department's role in that entire arena has simply evaporated yet the statute remains the same. This legislation is an attempt to conduct some housekeeping."

Co-Chair Wilken moved to report the bill from Committee with individual recommendations and accompanying fiscal notes.

There being no objection, CS SSSB 16 (TRA) was reported from Committee with zero Fiscal Note #1, dated March 22, 2005 from the Department of Public Safety and zero Fiscal Note #2, dated March 21, 2005 from the Department of Transportation and Public Facilities.

9:42:54 AM

#sb158

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."

This was the second hearing for this bill in the Senate Finance Committee.

SENATOR CHARLIE HUGGINS, the bill's sponsor, explained that business conducted in this State should occur in a stable and predictable climate. "A known" incident that "highlights the difficulty" encountered when this is not the case was when a

subcontractor, conducting an approximate $400,000 State contract, was levied a $20,000 tax assessment from a local community.

Senator Huggins continued that that incidence is becoming "a trend", as addressed in an Alaska Municipal League correspondence [copy not provided], which noted that three communities have adopted "a policy of collecting sales taxes from subcontractors doing business in their community regardless of the funding source". Those communities have retained legal representation in this regard. He warned that while the practice might be limited today, without being addressed, it could become a statewide issue. The potential cost of this practice "would place an undue burden on the State; it would be "unfair to contractors" were the Legislature "not to correct that situation". The solution proposed in this bill is simple: it would work for all parties; it would create a stable business environment; it would protect the State; and would clarify the rules in this regard going forward. "It is not punitive and does not seek to recoup any monies".

9:46:09 AM

STEVE BOYD, Alaska Chapter, National Electrical Contractors Association (NECA), testified via teleconference from Anchorage, and noted that he was available to answer questions.

9:46:21 AM

KATHIE WASSERMAN, Alaska Municipal League, spoke against the bill. She stressed that, "no municipality in the State taxes a contractor on a State job. This issue is about the tax imposed on a subcontractor, hired by the contractor". This legislation could expand the exemption to such things as the hotel bed tax or the meal tax charged to contractors while performing a State job. It could also "be extended to include a subcontractor hired by the subcontractor that is hired by the contractor. Sales tax is a local provision" and, therefore, "local governments should exert local control over those taxes. Restrictions on local sales taxes" currently exist through the local election process. The State has curtailed its municipal support that came in the form of such things as revenue sharing and capital matching grants while local community expenses relating to such as fuel and the Public Employees' Retirement System and the Teachers' Retirement System (PERS/TRS) have increased "dramatically". "Tax revenue is one of the few remaining revenue streams left to communities". Even thought the State is exempt from municipality property taxes, State "properties receive the same benefits and services as local property" taxpayers do. The decision as to whether or not to tax subcontractors should be made by the municipality. Were the

imposition of such a tax to have "a detrimental affect on the economy of the community", local elected officials should initiate changes to those ordinances.

Ms. Wasserman stated that the terms "consistency" and "stability" have been used throughout this legislation's proceedings, "yet the State has chosen not to impose any State taxes". That decision has been left to local communities. It would be impossible to incorporate a consistent taxation methodology as the more than 190 communities that do tax have "different needs, different resources, different locations; there is not and cannot be consistency in taxing". Oil companies that operate globally must familiarize themselves with different tax structures in each locale. "A nationwide tax would be more consistent, probably make things easier for oil contractors, but would it be great for the State of Alaska?"

Ms. Wasserman reminded the Committee that the majority of Department of Transportation and Public Facilities (DOT) projects are conducted in either Anchorage or Fairbanks. The concern about large taxation on DOT projects therefore should be alleviated because neither of these two communities imposes sales taxes. In addition, most airport projects occurring in the Sate are typically 92 percent to 100 percent funded through Federal Aviation Agency (FAA) funds rather than State funding. In conclusion, AML is requesting that the Legislature "trust local communities to do what is right for our shared constituents".

Senator Olson inquired as to how local communities address road maintenance issues such as broken asphalt that might result from heavy equipment used in DOT contract projects.

Ms. Wasserman responded that the community where she resides has had to deal with such issues. In one case, the community had to address boardwalk damage with community general maintenance funding. Demands to the contractor for money to fix the damage would be inappropriate as all he had done was to "run the equipment" for a contracted project down the Boardwalk. Unfortunately the Boardwalk construction was inadequate for that type of use.

Senator Olson inquired as to what other, oftentimes inadvertent, burden communities might have had to address in regards to subcontractors or contractors.

Ms. Wasserman replied that typically when a contractor conducts work in a community, a certain amount of administrative work must be conducted by the city. This is usually not accounted for in the

project expenses. It is acknowledged that the workers on the project do contribute to the local economy via such things as meal taxes and bed taxes, and other support of local businesses. However, "there is still a very big revolving seed of money where the majority of the money and the payroll" moves between the agency to the large contracting corporations. "The cities a lot of times certainly do not come out as well as other entities".

9:52:18 AM

Senator Olson noting that during the April 13, 2005 hearing on this bill, he had asked Steve Boyd of the Alaska Chapter of NECA, whether a local building permit is required, as that building permit fee would assist in supporting associated city expenses. The reply from Mr. Boyd was that no local building permit was required for the contract work. To that point, he inquired to the reason that for the permit exemption.

9:52:39 AM

Ms. Wasserman understood that State projects are typically exempt from the permitting process.

Senator Olson pointed out however, that the contractor is a private entity.

Ms. Wasserman surmised that when a contractor is working on a State project, the State exemption would apply.

Senator Stedman stated that many communities have imposed a maximum tax limitation, of, for example, $1,000 or $500, as the total amount of tax that could be collected on a single sale. Therefore $1,000 might be the total tax amount collected on a one million dollar State contracted project occurring in a community with a local five percent sales tax. However, it should be noted that some communities do not have a limit. That is a local prerogative.

Senator Stedman theorized a scenario in which the contractor might pay the tax on the entire project; however, due to the fact that most projects have multiple subcontractors, it might be feasible that each of those subcontractors would also be required to pay the local sales tax on work relating to that project. This would raise the issue of multiple layer or "double" taxation. While he agreed that the sales tax issue should be a decision of local governments, at some point, there is a concern when dealing with large capital projects that a local sales tax might be charged numerous times on the same project.

9:54:51 AM

Ms. Wasserman appreciated the concern; however, countered that DOT could take the position "that this doesn't work for us", and, as a result, were negative affects to occur on the community then it could address the situation and make changes. Another option, which she believed would not occur as such jobs are sought after, is that contractors could decide not to accept jobs in various communities. In conclusion, the decision should be left to the community rather than DOT or the contractors.

Co-Chair Green opined that the local community could also refuse a project if they felt that "the detriment to the community would be greater than the appeal".

Senator Hoffman stated that the issue of double taxation could also apply to the purchase of, for instance, a case of apples. That product would be subject to multiple taxes ranging from the airport tax levied on the carrier delivering it to the community, the gas tax charged to the transporter delivering it from the airport to the store, or, it could be transported from the airport to the store in a rented vehicle to which a local tax would be applied. The store would than collect the local tax from the consumer who purchased the apples. It could be difficult to separate the various taxes in order to specify that only one tax would be levied.

Co-Chair Green expressed that there is a "distinction" between the imposition of a local tax on a purchase of a product such as an apple and "the State paying millions of dollars for local projects … which money does not go to the project". That is the issue being addressed in this legislation.

9:57:40 AM

Senator Dyson observed that "the sales tax on the services that a subcontractor provides"… differs "in order of magnitude" from the taxes placed on the sale of consumer goods such as apples. He agreed with Co-Chair Green's comment that the action of imposing a local tax on State resources that are being used to construct something of "significant value to the local community … sounds like the local community is looking for another way to bite the hand that is feeding" it or "providing a huge resource at very little direct cost to that community".

Co-Chair Wilken moved to report the bill from Committee with individual recommendations and accompanying fiscal note.

There being no objection, SB 158 was REPORTED from Committee with

zero fiscal note #1, dated April 6, 2005 from the Department of Commerce, Community and Economic Development.

9:59:40 AM

#sb88

SENATE BILL NO. 88
"An Act relating to the policy of the state regarding the source of funding used to cover a shortfall in general fund revenue."

This was the second hearing for this bill in the Senate Finance Committee.

Co-Chair Wilken, the bill's sponsor, stated that in the time since the April 5, 2005 first hearing on this legislation he has been encouraged by the comments, suggestions, and ideas that individuals have shared with him. During those conversations, it has been realized that "this is a very flexible plan … that can be used as needed when needed". He acknowledged that "it is strange" to be discussing this legislation during a time when the State's oil revenues are increasing. However, it is encouraging that "we don't have our head in the sand". No one should ignore the projected future oil revenues the State could receive as reflected on what he referred to as the "sensitivity chart", on page five of the "Senate Bill 88 A Bridge to Development A Policy on General Fund Revenue Shortfall" handout [copy on file] discussed during the April fifth hearing.

Senator Stedman summarized that the plan proposed in this legislation would, were the State to experience a revenue shortfall, split the draw that might historically have occurred on "the State's savings account", the Constitutional Budget Reserve (CBR), between the CBR and the Earnings Reserve Account (ERA) of the Permanent Fund. While the principal of the Permanent Fund is protected, the Legislature has the Statutory authority to appropriate money from the ERA after dividends and inflation proofing have occurred. Over the past several years, a total of approximately five billion dollars has been drawn from the CBR to address the State's funding shortfall. The CBR balance today is approximately $2.4 billion. Were the State to continue having a funding deficit, the draw on the CBR might lower the balance to "a threshold of approximately one billion dollars. This is of concern to the Administration". While there is debate in regards to what appropriate balance should be maintained in the CBR, "clearly at some point, the State needs to have an adequate cash reserve to use

in cash managing its week-to-week business relationships". Rather than incorporating language into regulation or Statute, this legislation would "recommend a policy for the Legislature to follow to extend the life of the CBR" by "jointly and equally" drawing on both the ERA and the CBR. The intent is to extend the life of the CBR with the hope that the State could reach the point where revenue from a gas pipeline or oil field expansions could provide additional revenue to the State. "On the surface" this is good policy … some decision should be made. While he had supported the Percent of Market Value (POMV) plan legislation that had been discussed the previous year as a means through which to address the State's fiscal dilemma, the Legislature had not adopted it. Therefore another plan must be pursued through which to address the continuing problem. Compromises along the way would occur.

Senator Stedman shared that his concern with this proposal is that neither a maximum CBR or ERA draw amount limit is specified nor has a "trigger point" or a specified CBR balance been identified upon which time the draw would be split between the two accounts. Nonetheless, he would not oppose advancing the bill because he felt that the "debate needs to go forward". It would be in the best interest of the State to further discuss and debate the merits of the bill. "Clearly the numbers" and the sponsor's presentations are very "enlightening. The impact is minimal" in comparison to that of imposing a State income or sales tax "on the individual wealth of the Alaskan residents".

Senator Stedman suggested that, in the "finer points of a long range fiscal plan", consideration be given to incorporating a trigger point of, for example, a $2.5 billion CBR balance being the point at which any draw would be equally split between the CBR and the ERA. Thus the ERA would not be utilized were the State to experience "the good fortune" of such things as economic expansion, additional resource development revenues, and budgetary controls that negated the need for a CBR draw and its balance remained above the specified threshold. He considered the "Permanent Fund the source of capital of last resort for virtually everything in the State". It is estimated that the CBR would contain funds for approximately another ten years; therefore the State must develop a plan that would fund State operations until at least the year 2015.

10:07:16 AM

Senator Stedman desired that the State's policy decisions relating to this bill would include a maximum ERA draw amount. This issue would require more work than the issue of designating a CBR trigger balance. "The point is that" it would be very easy for Legislators to appease constituents by presenting "more proposals for capital

spending than the State could possibly fund … and it is also easier to let the budget grow than to hold it back". Easily accessible funding could serve to increase the State's operating budget to a point that would not be in the best financial interest of the State.

Senator Stedman concluded therefore that incorporating a maximum limit on the ERA draw in addition to establishing a CBR Trigger mechanism balance would be worthwhile efforts in regards to this bill. When this issue moves from this Committee to the Senate Rules Committee, it should be accompanied by a clear message to the people in the State "that the Legislature is serious about dealing with this fiscal issue". The State's fiscal issue has been discussed for years and cannot be ignored, even now when the price of North Slope crude oil is in the range of $48 a barrel. High oil prices would provide additional time in which the issue can be addressed.

10:09:54 AM

Senator Dyson concurred with Senator Stedman's remarks and also echoed Senator Stedman's compliments regarding the efforts exerted by Senator Wilken in the development of this legislation and his "clear" portrayal of the State financial situation going forward.

Senator Dyson stated that as the solutions to the State's fiscal crisis are discussed, it would be his desire that in addition to the inclusion of such things as a "trigger point" on the CBR balance and "stringent restraints" on State spending, that prior to utilizing ERA funds, consideration be given to incorporating a general State tax. He would support "a consumption tax of some sort". A paradigm shift is occurring and these discussions are alerting the public that the State could not continue "with business as usual". Tough decisions must be made.

Senator Dyson stated that, while he would object to a motion to move this bill from Committee, the discussion is valuable.

In response to a question from Co-Chair Green, Senator Dyson restated that he would object to moving the bill from Committee.

Co-Chair Green asked whether the reason for that position was to allow the Committee to conduct further the work on it as Senator Dyson's desire to not move the bill from Committee was in conflict with his earlier remarks in support of developing legislation through which to address the State's fiscal gap.

10:12:09 AM

Senator Dyson opined that a "better product" could be developed that would meet his and Senator Stedman's concerns. While he "guessed" that the bill would move forward, it would do so without "his support at this time".

Co-Chair Green asked Co-Chair Wilken whether his desire is for the legislation to move forward at this time or whether the suggestions presented by Senator Stedman and Senator Dyson be further considered by this Committee.

10:12:45 AM

Co-Chair Wilken responded that due to the amount of other legislation that the Committee must address during the limited time remaining in this Legislative session and the fact that he did not expect this bill to be adopted by the Legislature this year or even the following year, his desire would be to move it from the Committee at this time. This "very flexible" policy legislation could be revisited and adjustments could be made were the need to arise. He noted that the bill could be returned to the Committee for further consideration and that he is receptive to some of the suggestions that were offered. In view of the favorable fiscal situation that the State is currently experiencing, it is his determination that this legislation would not be awarded much forward momentum. Were the decision made to keep the bill in Committee, he doubted it would receive another hearing this Session.

Co-Chair Green commented that in 1997, 1999, and 2002, she had been "very involved" in efforts to protect the Permanent Fund Dividend and incorporate inflation proofing of the Fund in the State's Constitution. This purpose was to protect the Fund from being "the focus of the conversation" when addressing the State's fiscal challenge. It is frustrating that those efforts did not come to fruition. Nonetheless, language that is worthy of mentioning in Co-Chair Wilken's aforementioned presentation is the line item on page 25 that states that this legislation "strengthens the Alaska's bond rating and saves millions of dollars". "There's a terrible irony in the State's" funding, bonding, and revenue scenarios because "we do not use anything from the Permanent Fund earnings"; that money "is not considered part of the State's revenue stream … Therefore, it's not part of the State's fiscal plan, it doesn't reflect as well as it should on" the State's bond rating. However, people who "survey" the State's debt situation determine that the State has minimal debt. Nonetheless, they point out that "the State does not have a fiscal plan, which really means you don't have an income tax". This is being mentioned as, today, April 15th, is the date that

individual's federal income tax is due. She declared that she does not support a State income tax and for that reason alone, she is in favor of this legislation. The State must determine how to improve its ability, "in times of need", to bond for a needed project by being able to show that the Permanent Fund is a component of the State's portfolio. Currently, that is not the case. It is "awful" that the State must be required to show "on paper" that the Legislature could use Permanent Fund earnings, even though the Legislature already has the authority to do so. "It's not prohibited, it's allowed, it's provided and … nothing in this should constitute a limitation on that right or charge".

10:17:12 AM

Co-Chair Green voiced appreciation for Co-Chair Wilken' development of legislation that would remove "pressure" on both systems. This legislation, "more than anything" protects the CBR. "It ends the conversation of 'oh, how horrible that you have to take money from the CBR'".

10:17:37 AM

Senator Dyson voiced appreciation for Co-Chair Green's remarks and clarified that his comments should not be misconstrued, as he "clearly" understands that the Permanent Fund was established to provide funding when the day came that oil revenues were insufficient to fund State operations. Nothing more would be required to allow "the Legislature to access the ERA for support of government". Accusations that he is "much too idealistic or naïve" occur when he shares his position that the three sources of State income: revenues, the CBR, and the ERA, should be accessed in that order rather than being viewed as equals. The CBR should be used for the short-term and the ERA for the long-term. He would support utilizing "the ERA to support a level of government that the State requires when revenues are insufficient and the CBR approaches" some determined minimal threshold.

AT EASE 10:19:35 AM / 10:19:45 AM

Co-Chair Wilken reiterated his earlier comment that, "the beauty of this is that it provides a great deal of flexibility for this Legislature and all Legislatures that will follow until we can build a bridge to development". The details would be developed over time, as currently sufficient funds are available; however, there would be a need to complete the task within four, six, or ten years. That is what this legislation "is all about". He again voiced appreciation for the support that the legislation has received. It is a flexible plan and would provide one more tool

through which to balance the State's budget, "with minimal impact to families and those people who choose to invest" in the State.

Co-Chair Green asked regarding the use of the word "policy" in Section 1(b), line five, page one of the bill; specifically whether a "policy" differs from being a mandate or a requirement or the word "shall", in that it is a suggestion.

Co-Chair Wilken responded that, in this sense, the term "policy" is a suggestion: it could be ignored, changed, or whatever the Legislature seated at the time, might feel appropriate.

Co-Chair Wilken moved to report the bill from Committee with individual recommendations and accompanying fiscal note.

Senator Dyson objected.

A roll call was taken on the motion.

IN FAVOR: Senator Olson, Senator Hoffman, Co-Chair Wilken, and Co-Chair Green

OPPOSED: Senator Dyson and Senator Stedman

ABSENT: Senator Bunde

The motion to report the bill from Committee PASSED (4-2-1).

SB 88 was REPORTED from Committee with Department of Revenue zero Fiscal Note #1, dated February 15, 2005.

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ADJOURNMENT

Co-Chair Green adjourned the meeting at 10:22 AM.