MINUTES
SENATE FINANCE COMMITTEE
May 7, 2005
5:45 p.m.

CALL TO ORDER

Co-Chair Green convened the meeting at approximately 5:45:32 PM.

PRESENT

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

Also Attending: JASON HOOLEY, Staff to Senator Dyson; ANNE CARPENETI, Assistant Attorney General, Criminal Division, Department of Law; JOEL GILBERTSON, Commissioner, Department of Health and Social Services; JOHN SHERWOOD, Department of Health and Social Services; JANE ALBERTS, Staff to Senator Con Bunde; BEN MULLIGAN, Staff to Representative Bill Stoltze; REVINA MOSS, Staff to Representative John Coghill; TAMMY SANDOVAL, Office of Children's Services, Department of Health and Social Services; KEVIN BROOKS, Deputy Commissioner, Department of Administration

Attending via Teleconference: There were no teleconference participants.

SUMMARY INFORMATION

SB 54-PROTECTIVE ORDERS FOR SEXUAL ASSAULT

The committee heard from the bill's sponsor and the Department of Law. No action was taken in regards to the motion to adopt a committee substitute, and the bill was held in Committee.

HB 106-SENIOR CARE PROGRAM

The Committee heard from the Department of Health and Social Services. A committee substitute was adopted and the bill reported from Committee.

HB 257-STATE PROCUREMENT ELECTRONIC TOOLS

The committee heard from the bill's sponsor and the Department of Administration. A committee substitute and one amendment were adopted and the bill reported from Committee.

HB 279-OUTDOOR ADVERTISING; ENCROACHMENTS

This Committee bill heard from the bill's sponsor. One amendment was adopted and the bill was held in Committee.

HB 53-CHILDREN IN NEED OF AID/ADOPTION/GUARDIAN

The Committee heard from the bill's sponsor, and the bill was HELD in Committee.

#sb54

> CS FOR SENATE BILL NO. 54(JUD)
> "An Act relating to protective orders for crimes involving sexual assault or stalking, to notifications to victims of sexual assault, and to mandatory arrest for crimes involving violation of protective orders and violation of conditions of release; and amending Rule 65, Alaska Rules of Civil Procedure."

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

Senator Dyson, the bill's sponsor, moved to adopt committee substitute Version 24-LS0132\U as the working document.

Co-Chair Green objected for explanation.

JASON HOOLEY, Staff to Senator Dyson, informed the Committee that Alaska "consistently ranks as one of the worst states for the rate of sexual assault". A recent Federal Bureau of Investigations (FBI) report documented the State's sexual assault statistics at three times the national average. This bill would allow victims of sexual assault to request protective orders in cases "outside of domestic violence". While the traditional belief is that most sexual assaults occur in situations of domestic relationships, relatives or acquaintances, the fact is that it does occur with strangers. This bill would allow these victims to request protective orders identical to those granted in cases of stalking.

Mr. Hooley informed the Committee that three types of protective orders are available: six-month orders, emergency orders for 72-

hours, and ex parte orders for 20 days.

Co-Chair Green asked whether the ex parte order was similar to protective orders issued in cases of domestic violence.

Mr. Hooley affirmed that it was.

5:47:34 PM

Senator Dyson stated that this legislation is the result of a situation in which a police officer who deals with sexual assault situations, went to a Judge to request a restraining order against a perpetrator. The Judge was unable to issue such an order as Alaska law only allowed such an order to be issued in the case of stalking or domestic violence. This legislation would simply add another category through which Judges could issue a restraining order were one warranted.

Co-Chair Green asked regarding the nature of the discussion that occurred in the Senate Judiciary Committee in regards to ex parte orders; specifically that the definition of an ex parte order be provided.

5:48:44 PM

Mr. Hooley referred to language in Sec. 7(a) page three lines 18 through 26 that read as follows.

> (a) A person who reasonably believes that the person is a victim of stalking or sexual assault that is not a crime involving domestic violence many file a petition under AS 18.65.850 and request an ex parte protective order. If the court finds that the petition establishes probable cause that the crime of stalking or sexual assault has occurred, that its is necessary to protect the petitioner from further stalking or sexual assault, that the petitioner has certified to the court in writing the efforts, if any, that have been made to provide notice to the respondent, the court shall ex parte and without notice to the respondent issue a protective order.

Co-Chair Green asked for clarification as to whether the person being accused must be notified of the Court proceedings.

ANNE CARPENETI, Assistant Attorney General, Criminal Division, Department of Law stated that an attempt of notification must be made, but that would be all that would be required. This language would mirror that applicable to domestic violence and stalking protective orders.

Co-Chair Green recalled this being an issue during the domestic violence legislation discussions. This provision is "very troublesome". She asked regarding the experience in this regard, as she has received calls from individuals to whom "fairly severe restrictions had been placed on their coming and goings" by the Court without their knowledge. Her comments should not be misconstrued that she favored anyone mistreating anyone, as she was simply concerned that "the capacity" of having a court hearing without the person being there might be expanded.

Ms. Carpeneti replied that some distinction should be made between this type of ex parte order and the one issued for domestic violence. A Judge has more authority to grant remedies in regards to a domestic violence restraining order.

Co-Chair Green asked that a situation specific to this legislation be provided.

5:51:44 PM

Ms. Carpeneti responded that the protective order request pertinent to this legislation would allow an individual to inform the Court that they had been sexually assaulted. If the Judge determined there to be "probable cause to believe that that was correct", and the person requesting the restraining order stated that they had tried to serve the person who sexually assaulted them but had been unable to do so, the Court could "go ahead and grant remedies" in this civil matter, including "to crease sexually assaulting that person", to stay away from the victim's home, to stop contacting the person, and to stay away from that person's home or place of work unless the respondent lived and worked in the same place. In the latter case, the Court might not grant a restraining order unless the person had been actually served.

5:52:56 PM

Ms. Carpeneti communicated that this bill would add two new remedies: the respondent must pay for counseling of the victim or the requester, and whatever relief the Court deemed necessary to protect the person requesting the restraining order. "Once an ex parte order is granted, the person to whom it is ordered has the right" to request modifications to the order "at any time".

[NOTE: Ms. Carpeneti incorrectly informed the Committee that one of the new remedies included in the bill was that the respondent must pay for counseling of the victim or the requester. While that language was a component of the Senate Judiciary committee

substitute, Version 24-LS0132\R, it was removed from the Version "U" committee substitute under consideration. Co-Chair Green clarified this issue in the discussion that occurred between time stamp 5:53:26 PM and time stamp 5:56:41 PM.]

5:53:26 PM

Co-Chair Green read the remedies depicted in the bill in Sec. 5(c)(1) through (4) on page two line 28 through page three, line ten.

> Sec. 5. AS 18.65.850(c) is amended to read:
> (c) A protective order issued under this section may
> (1) prohibit the respondent from threatening to commit or committing stalking or sexual assault;
> (2) prohibit the respondent from telephoning, contacting, or otherwise communicating directly or indirectly with the petitioner or a designated household member of the petitioner specifically named by the court;
> (3) direct the respondent to stay away from the residence, school, or place of employment of the petitioner, or any specified place frequented by the petitioner; however, the court may order the respondent to stay away from the respondent's own residence, school, or place of employment only if the respondent has been provided actual notice of the opportunity to appear and be heard on the petition;
> (4) order other relief the court determines to be necessary to protect the petitioner or the designated household member.
>
> New Text Underlined

Co-Chair Green asked for confirmation that the language depicted in Sec. 5(c) (1) through (3) existed in current domestic violence language.

Ms. Carpeneti clarified that the language is applicable to current stalking protective orders.

Co-Chair Green acknowledged.

Senator Dyson clarified for the Committee that the first version of the bill had "erroneously replicated" the domestic violence protective order provisions. The bill had been revised to replicate stalking provisions.

Co-Chair Green asked for specific examples of the meaning of the term "or other relief" as reflected in Sec. 5(c)(4) on page three,

lines nine and ten of Version "U".

Ms. Carpeneti responded that the term is a common "catch all relief provision" that is included in a variety of cases including domestic violence cases. The language is deemed appropriate, as it would be impossible for Legislators to anticipate and specify "every possible situation"; therefore, this language would provide the Court the ability "to order whatever relief is deemed necessary in a particular case".

Co-Chair Green clarified that the Version "U" committee substitute under consideration, eliminated language specified as Sec. 5(c)(4) in the Senate Judicial committee substitute, Version 24-LS0132\R. The language that was eliminated reads as follows.

> (4) for a protective order for sexual assault, require the respondent to reimburse the petitioner or other person for expenses incurred as a result of the sexual assault, including medical and counseling expenses;

Ms. Carpeneti apologized to the Committee for inadvertently specifying that that remedy was included in the Version "U" committee substitute. She affirmed that it had been removed from Version "U".

Co-Chair Green asked regarding new language specified as Sec. 7(b)(4) on page four lines 15 and 16 in Version "U" that reads as follows.

> (4) enter the protective order in the central registry of protective orders as required under AS 18.65.540.

5:56:41 PM

Ms. Carpeneti informed the Committee that, "the Department of Public Safety maintains a registry of protective orders for domestic violence". When the legislation pertaining to stalking protective orders was adopted, "it didn't provide that protective orders for stranger stalking should be entered into the registry. This bill in this form now provides that … protective orders for stranger stalking and stranger sexual assault may be entered into" the Department's central registry. This action would enable police officers to access information relating to these cases when they "stop or contact a person".

5:57:26 PM

Co-Chair Green clarified that the information "shall" be entered in

the registry.

Ms. Carpeneti affirmed.

Co-Chair Green asked whether the entry in the registry would remain there indefinitely.

Ms. Carpeneti replied that procedures to remove the information are available. Removal would not be automatic.

5:57:36 PM

Co-Chair Green asked whether the registry was public information and whether inclusion on the registry might have other consequences.

Ms. Carpeneti stressed that the registry provides important information to police officers responding to a domestic violence call, specifically when "there are accusations on both sides, of violence", as it would provide a history of any orders that were issued in the past. This information would assist the officer in making a decision in regards to the situation. She was unsure as to whether the information would be used "for any other purpose".

Co-Chair Green ordered the bill HELD in Committee.

AT EASE 5:59:10 PM / 6:01:59 PM

#hb106

> CS FOR HOUSE BILL NO. 106(FIN)
> "An Act establishing the senior care program and relating to that program; creating a fund for the provision of the senior care program; repealing ch. 3, SLA 2004; and providing for an effective date."

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

6:02:01 PM

JOEL GILBERTSON, Commissioner, Department of Health and Social Services, explained that this bill, which is sponsored by Governor Frank Murkowski, would strengthen the Senior Care Program implemented the previous year. The purpose of "the Senior Care Program is to provide assistance for the cost of prescription medicine to low income seniors in the State". He noted that

prescription drugs are not currently provided for by the federal Medicare program, and absent the Senior Care Program, seniors would be required to pay out of pocket or purchase supplemental medical insurance policy. The initial Alaska Senior Care Program provided $120 a month equating to $1,440 a year, to seniors living below 135-percent of poverty level. A prescription drug subsidy is provided to seniors living between 135-percent and 150-percent of poverty.

Commissioner Gilbertson stated that HB 106 would accomplish two things. First, it "would extend the cash assistance benefit for those seniors living below 135-percent of poverty. That income threshold" is approximately $16,000 a person or $21,600 a couple. In addition a qualifying single individual could have liquid assets of up to $6,000; $9,000 for a couple. The cash assistance program would assist qualifying seniors until they transition on to the new Medicare Part D Prescription Drug Benefit Program anticipated to become available in early 2006.

Commissioner Gilbertson communicated that "the bill would also extend the prescription drug assistance to seniors between 135-percent and 175-percent of poverty. The household income for a person living at the 175-percent of poverty level would be $20,900 for an individual and $28,053 for a couple. When the Medicare Part D benefit becomes available, any senior wishing to participate must enroll in the program which would "have a premium and a deductible, separate and distinct and in addition to their existing premiums and deductibles that they pay for Medicare". The premium would be $35 a month or $670 a year, and the deductible would be $250 a month for seniors living between the 135-percent and 175-percent poverty level; those living below 135-percent of the poverty level would be federally exempt from both the premium and the deductible. Once the Medicare Part D program becomes available, the Senior Care Program would continue to assist seniors living between 135-percent and 175-percent in paying the costs of their premiums and deductibles.

Commissioner Gilbertson anticipated that the State's cash assistance program would continue to serve approximately 7,000 seniors, and that approximately 4,000 seniors living between 135-percent and 175-percent of poverty would qualify for the State's proposed prescription drug assistance program.

6:05:41 PM

Commissioner Gilbertson stated that a summary of the anticipated program expenses is provided on page three of Fiscal Note #8, dated May 5, 2005, prepared by the Department's Division of Finance and

Management Services. The total costs associated for those living at 135-percent of poverty is anticipated to be approximately $5,000,000 in FY 06. The amount depicted for FY 06 would provide for the second half of FY 06 as the initial program was budgeted through January 2006. The FY 07 full-year expenses are anticipated to be $10,000,000.

Commissioner Gilbertson explained that the expenses for the assistance that would be provided to seniors living between 135-percent and 175-percent are similarly depicted. The FY 06 half-year expenses would be approximately $1,200,000. The expenses for the full year of FY would be approximately $2,600,000.

Commissioner Gilbertson noted that the "Combined Program and Administrative Costs" summary reflected a total cost of $6,800,000 for FY 06 and $13,000,000 for FY 07.

Commissioner Gilbertson explained that when the Legislature established the Senior Care Program, it forward-funded the Program through the first half of FY 06. A surplus of approximately eight million dollars is expected to be in that account on January 1, 2006; therefore there would be no need for additional general fund dollars in FY 06. It is projected that $1,249,000 of that surplus would be carried forward into FY 07. This would be married up with an $11,962,600 general fund request to fund the entire FY 07 program expenses.

Commissioner Gilbertson stated that further details about the Senior Care program are provided in a Department handout titled "Comparison of Qualifications and Benefits Beginning January 2006" [copy on file].

Commissioner Gilbertson reiterated that other than a prescription drug discount card and the availability of a prescription drug subsidy to some low-income seniors, "seniors are not receiving any prescription drug assistance from the federal government. It is anticipated that a lot of confusion would occur this year and into the year 2006 in regards to the new federal drug benefit. This legislation would assist in eliminating some of the confusion and burden on seniors.

Commissioner Gilbertson noted that a program termination date of June 30, 2007 is specified in the bill. In addition, any excess funds remaining in the Program's account at that time would revert back to the general fund.

6:09:33 PM

Co-Chair Wilken asked whether the federal poverty level for Alaska is the basis for this legislation.

Commissioner Gilbertson stated that this legislation recognizes the Alaska poverty level, which is a 25-percent increase over the federal national poverty level. In other words, a 175-percent of the national poverty level for the contingent states would be recognized at a 200-percent level in Alaska.

Co-Chair Wilken asked whether an individual's Permanent Fund Dividend (PFD) check is factored into their eligibility calculation.

JOHN SHERWOOD, Department of Health and Social Services, responded that the PFD is not factored into the calculation. Unless it is required by federal statute, the PFD is "disregarded".

Senator Olson noted that that policy "would be consistent" for all hold-harmless provisions relating to public assistance programs.

Senator Olson asked whether the $1,200,000 balance anticipated to be available on January 1, 2006 could be used to increase the monthly payment amount.

Commissioner Gilbertson responded that $6,800,000 of the eight million dollars that would be available on January 1, 2006 would fund the remainder of FY 06 program expenses. The balance would be carried forward into FY 07 to assist in paying that fiscal year's expenses. An additional $12,000,000 in general funds would be required to fund total FY 07 expenses. "The entire Trust fund account would be depleted at the completion of this program."

Senator Olson acknowledged.

Co-Chair Wilken moved to adopt committee substitute Version 24-GH1090\I as the working document.

Co-Chair Green clarified that Version "I" was the document to which Commissioner Gilbertson's comments applied.

[NOTE: While the Version "I" was not formally adopted, that was the implied intent of the Committee.]

Co-Chair Green voiced that furtherance of this bill would allow the Senior Care program to continue to provide assistance to seniors in need, uninterrupted.

Co-Chair Wilken moved to report the bill from Committee with

individual recommendations and accompanying fiscal notes.

There being no objection, SCS CS HB 106(FIN) was REPORTED from Committee with four May 5, 2005 fiscal notes from the Department of Health and Social Services as follow: $163,900 fiscal note #5 from the Division of Health Care Services; $59,000 fiscal note #6 from the Division of Senior and Disabilities Services; $6,614,400 fiscal note #7 from the Division of Public Assistance; and zero fiscal note #8 from the Division of Finance and Management Services.

AT EASE 6:12:32 PM / 6:15:39 PM

#hb257

CS FOR HOUSE BILL NO. 257(JUD)
"An Act relating to and extending the pilot program for state procurement and electronic commerce tools; and providing for an effective date."

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

Co-Chair Wilken moved to adopt committee substitute Version LS0826\P as the working document.

There being no objection, the Version "P" committee substitute was ADOPTED as the working document.

JANE ALBERTS, Staff to Senator Bunde, the bill's sponsor, explained that, contrary to the original version of the bill which would have eliminated a termination date for the Pilot Procurement Program and could have allowed the Program to be implemented in every State department, the Version "P" committee substitute would "significantly scale back" the proposal.

6:16:41 PM

Ms. Alberts stated that the Version "P" committee substitute would not expand the Program to additional agencies; it would simply extend the current Program's termination date. Furthermore, in response to significant testimony by public employee representatives, a new Department of Administration $350,000 fiscal note, dated May 7, 2005, would allow union members in "two new agencies outside the Pilot, operating with state employee procurement personnel", to acquire similar eCommerce tools to those utilized by the Pilot Program "in order to provide side-by-side" procurement comparisons. The software to be purchased must to

similar, but would not be required to be identical, to the software used by the contractor in the Pilot Program. The dollar amount specified in the fiscal note would sufficiently allow for the purchase of such equipment.

Ms. Alberts communicated that Version "P" would extend the termination date of the Pilot Program to July 1,2009 in order to allow the State's procurement program time to become functional and provide sufficient data for the comparison study. Were the State to decide "within 14 months to discontinue the program, there would be time to wind down and perhaps select a different Contractor".

6:18:48 PM

Senator Hoffman, noting that technology advances in the computer industry are constantly occurring, asked whether the State agencies could purchase "better" computer programs were they to become available.

Ms. Alberts understood there to be a variety of programs from which to choose. In recognition of the fact that the two agencies might desire differing programs to meet their needs, any appropriate program within the specified price parameter could be purchased.

Senator Hoffman, agreeing that several programs could be suitable, asked for confirmation that no particular computer program had been specified.

Ms. Alberts understood that the agencies would be able to choose the program they deemed appropriate, "within the constraints of the fiscal note".

Senator Hoffman remarked that his concern would be met "as long as they are able to buy the best available program..."

Co-Chair Green asserted that the specification that the agencies must acquire an eCommerce program similar to the one utilized by the contractor in the Pilot Procurement Program would assure that a good program could be purchased.

Ms. Alberts affirmed that the fiscal note would allow the agencies to purchase a program comparable to that utilized by the contractor, Alaska Supply Chain Integrators (ASCI).

6:20:41 PM

Amendment #1: This amendment inserts a new subsection in Sec. 5 on page four, following line 20.

"(v) The contract authorized by (a) of this section must include terms that protect the interests of the state if the contractor stops performing or fails to perform the contractor's obligations under the contract. In order to allow the Department of Administration and the departments and other instrumentalities of the state participating in the pilot program authorized by (a) of this section to make the transition back to having state instrumentalities handle the activities provided by the contractor under the contract, these required terms must include provisions that

(1) give the Department of Administration and the departments and other instrumentalities of the state participating in the pilot program the right to use, for a reasonable period of time after the contractor stops performing or fails to perform, the electronic commerce tools, including all software, used by the contractor to perform the contract; the provision required by this paragraph must allow use by the employees or contractors of the Department of Administration or the departments or other instrumentalities of the state participating in the pilot program; and

(2) require the contractor to provide whatever assistance the contractor is able to provide to the Department of Administration and the departments and other instrumentalities of the state participating in the pilot program in using the electronic commerce tools referred to in (1) of this subsection and otherwise making the transition."

Senator Dyson understood that the affect of the Version "P" committee substitute would be to eliminate as of July 1, 2009, the entirety of Sec. 2, page one, line 11 through page two, line one. This action would remove the limitations as to which agencies the pilot program could be applied. To that point, an amendment has been developed "that would protect the State in case the contractor providing the services fails to perform". While placing the entirety of a State department's "procurement capacity in the hands of the contractor …. might be wonderful", "the danger is that" were the contractor to fail to perform, the State would have "no fallback position" in which to "to pick up the pieces and start doing their own purchasing". The amendment would require that were the contractor "unable to perform" or to choose "not to perform, their software and files" would become available to the State. This would allow the State to assume those activities.

Co-Chair Green voiced concern that the proprietary rights of contractor to that property might prohibit the State from enacting such language.

Ms. Alberts informed the Committee that the issue has been discussed. The determination was that this would be an acceptable

amendment. However, a representative from the Department of Administration could more appropriately respond to the concern.

Senator Dyson moved for the adoption of Amendment #1.

AT EASE 6:23:42 PM / 6:25:32 PM

Co-Chair Green noted that the amendment is accompanied by a May 4, 2005 Memorandum to Senator Dyson from Theresa Bannister, Legislative Council, Legal Services, Division of Legal and Research Services, Legislative Affairs Agency [copy on file] that further explains the amendment. The Memorandum reads as follows.

> Impairment of contracts issue. If the proposed amendment requires the parties to modify an existing contract with the pilot program contractor, this requirement may raise an issue under the constitutional prohibitions against the impairment of contracts.1 The initial question appears to be whether or not the change in state law operates as a substantial impairment of the parties' contractual relationship.2 Because this amendment is limited to the remedies under the contract and not the performance obligation to the contract, it may be considered not be to a substantial impairment of the contract.3 So it may not be a problem, but I wanted you to be aware of the issue.
>
> 1. U.S. Const. Art. I, sec. 10; Alaska Const. Art. I, sec. 15.
> 2. 2 Rotunda and Nowak, Treatise on Constitutional Law 15.8, p. 654 (3rd ed. 1999).
> 3. 2 Rotunda and Nowak, Treatise on Constitutional Law 15.8, p. 654 - 655 (3rd ed. 1999); and see Hagberg v. Alaska National Bank, 585 P. 2d 559, 561-562 (Alaska 1978).

Co-Chair Green voiced concern as to how this amendment might impact either the State or the contractor in regards to the terms that already exist in the Pilot Procurement Program contract.

6:27:07 PM

Ms. Alberts noted that because Senator Dyson had voiced this concern in previous hearings, an answer could be provided shortly.

Co-Chair Green ordered the bill SET ASIDE in order to allow the Department of Administration and other concerned parties to review the amendment.

[NOTE: The Committee readdressed this bill at time stamp 6:59:44 PM.]

6:27:27 PM

#hb279

CS FOR HOUSE BILL NO. 279(FIN)
"An Act relating to encroachments in the right-of-way of a highway."

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

BEN MULLIGAN, Staff to Representative Bill Stoltze, the bill's sponsor, stated that the intent of this bill would be to allow certain encroachments to remain on State highways' right-of-ways provided that the encroachment did not impede State highway projects. These encroachments might include such things as water systems or portions of a garage that were unknowingly built on the right-of-way prior to the point at which the State's highway right-of-way progressed and made the encroachment known.

Mr. Mulligan continued that certain encroachments could be grandfathered in by this bill, provided that six criteria, as specified in Sec. 2(c)(1) through (6), page two, lines eight through nineteen, were met. This criterion is as follows.

(1) The encroachment does not pose a risk to the traveling public, and the integrity and safety of the highway is not compromised;
(2) the applicant has demonstrated the encroachment was erected in good faith.
(3) the denial of the encroachment permit would pose a hardship on the person, agency, owner, or lessee who applies for the permit;
(4) the issuance of an encroachment permit will not cause a break in access control for the highway;
(5) the land will not be necessary for a highway construction project during the initial term of the permit; and
(6) issuance of a permit is consistent with federal requirements regarding encroachments on federal-aid highways.

Mr. Mulligan provided examples of situations relating to the criteria: the term "good faith" would apply to situations such as an encroachment that was not intentionally constructed on the right-of-way or that a hardship would be imposed were no alternate reasonable water source available to replace a well located on the right of way.

Mr. Mulligan shared that the Department of Transportation and Public Facilities discussed the conditions of this legislation with the federal government, and that the understanding is that the proposed criteria would be acceptable. Continuing discussions would occur.

Mr. Mulligan noted, however, that language would be included in that bill that would allow the federal government to have the final say on whether or not an encroachment exemption permit would be granted. Nonetheless, this legislation would provide an opportunity for people to petition for an exemption under these guidelines.

Co-Chair Green asked the location of that federal preference.

Mr. Mulligan read the pertinent language which is included in Section 1(d)(2) on page one, lines 11 through 13 as follows.

> (2) present in the right-of-way on the effective date of this Act may remain, subject only to removals required by federal highway funding requirements imposed on the state by federal law, …

Co-Chair Green asked whether the encroachment must have existed prior to a certain time, as otherwise, the Department might encourage someone to build an encroachment and be issued a permit in order to prevent some highway project from occurring due to the costs incurred by having to condemn and purchase that property.

Mr. Mulligan cited an example of a building that was first constructed as a territorial school built by the federal government on the right of way of what was, at the time, only a small two-lane road. The right-of-way at that time was small. Over time, the road was expanded and the right-of-way had increased. The building is now a community building with a playground in which meetings are held and a school is operating. Were an encroachment permit not provided in this case, a portion of the playground and the parking structure would be lost. Another example is that of a 50-year old fire department that could loss a substantial part of its access area.

6:33:26 PM

Co-Chair Green understood that while the bill would allow for such situations, the bill contains a mechanism through which the State could refuse or discontinue a permit were the land to become necessary to a project.

Mr. Mulligan stated that a forthcoming amendment would address Co-Chair Green's concern regarding when an encroachment must have been in place. That date would be specified as January 1, 2005.

Co-Chair Green asked for confirmation that the State could deny a permit or discontinue one.

Mr. Hooley affirmed.

Amendment #1: This amendment deletes "the effective date of this Act" and inserts "January 1, 2005," following the words "right-of-way on" in Section 1(d)(2), page one, line 12.

In addition, the words "the effective date of this Act, is" are deleted and replaced with the words "January 1, 2005, was" in Sec. 2(c) page two, line five.

Furthermore, language following "highway on" in Sec. 2(d) page two, line 21 is deleted and replaced as follows.

Delete

> "the effective date of this Act that is not authorized by a written encroachment permit until the department determines that the encroachment does not qualify for an encroachment permit issues"

Insert

> "January 1, 2005, unless the owner, occupant, or person in possession of the encroachment or any other person causing or permitting the encroachment to exist receives the notice provided under AS 19.25.230 and is informed of the application process for an encroachment permit"

Finally, the amendment inserts a new section into Sec. 2 page three following line eight as follows.

> (g) Except for damage, injury, or death resulting from gross negligence or reckless or intentional misconduct of the state or an agent or employee of the state, the state is not liable for damage to, or damage resulting from the presence of, an encroachment in the right-of-way of a state highway."

Co-Chair Wilken moved for the adoption of Amendment #1.

Mr. Mulligan noted that this amendment would specify that an encroachment must have been in existence by January 1, 2005. The

addition of subsection (g) "would remove any liability from the State" for its allowance of an encroachment.

Co-Chair Green understood therefore that the inclusion of subsection (g) would remove the State from liability pertaining the encroachment.

There being no objection, Amendment #1 was ADOPTED.

6:36:31 PM

Senator Stedman remarked that language in Section 1(d)(2) page one, line 11 as well as language in Sec. 2(c) page two, line two, are of concern as the use of the word "may" and the word "shall", respectively, could imply that citizens could have the right of imminent domain on a right-of-way. He asked that input from the Department of Transportation and Public Facilities be provided in this regard as there are numerous encroachments throughout the State, which the Department must address. This language appears to be "restrictive" and as such might place the Department "at a disadvantage" in its ability to clear a right-of-way.

Co-Chair Green asked whether the language beginning with "if the department finds that" as reflected in Sec. 2(c) page two, beginning on line seven and continuing for approximately "anther twenty or so lines" would address that concern. In addition, she asked whether this concern had been raised in any other committee hearing on this bill.

6:38:26 PM

Mr. Mulligan responded in the negative. Continuing, however, he noted that while the Department had expressed some "unease" with the language, no amendment had been suggested.

Senator Stedman asked that further input from the Department be sought as "operative words such as the Department shall issue an encroachment permit" could result in "substantial impacts" on the State.

Co-Chair Green asked that a representative from the Department provide input to the Committee in this regard.

Senator Stedman also suggested that the encroachment permits issued by the Department should be time specific and should include renewal provisions.

Co-Chair Green asked whether such language was included in the

bill.

6:39:38 PM

Mr. Mulligan stated that current regulations allow for the issuance of five-year permits, which could be renewed in five-year increments. This would be verified.

Co-Chair Green ordered the bill HELD in Committee in order to receive further information from the Department.

6:40:10 PM

#hb53

SENATE CS FOR CS FOR SS FOR HOUSE BILL NO. 53(JUD)
"An Act relating to child-in-need-of-aid proceedings; amending the construction of statutes pertaining to children in need of aid; relating to guardianships; relating to the confidentiality of investigations, court hearings, court records, and public agency records and information in child-in-need-of-aid matters and certain child protection matters, to immunity regarding disclosure of information in child-in-need-of-aid matters and certain child protection matters, to proceedings regarding voluntary relinquishment and termination of a parent and child relationship, to eligibility for permanent fund dividends for certain children in the custody of the state, and to juvenile delinquency proceedings and placements; reestablishing and relating to a state citizens' review panel; amending the obligation of a public agency to disclose agency information pertaining to a child in need of aid; relating to disclosure of confidential or privileged information about children and families involved with children's services within the Department of Health and Social Services to officials for review or use in official capacities; relating to reports of harm and to adoptions and foster care; relating to consent for the medication of children in state custody; prescribing the rights of family members related to child-in- need-of-aid cases and establishing a familial priority for adoption; modifying adoption and placement procedures in certain child-in-need-of-aid cases; relating to the admissibility into evidence of the prior recorded statement of a crime victim less than 16 years of age; amending Rules 9 and 13, Alaska Adoption Rules, Rules 3, 17.2, 18, and 22, Alaska Child in Need of Aid Rules of Procedure, Rules 14 and 15, Alaska Rules of Probate Procedure, and Rule 801, Alaska Rules of Evidence; and providing for an effective date."

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

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REVINA MOSS, Staff to Representative John Coghill, the bill's sponsor, accompanied by TAMMY SANDOVAL, Deputy Commissioner and Manager, Office of Children Services, Department of Health and Social Services, characterized this bill as being "an example of excellent committee work and collaboration between" the Governor Frank Murkowski Administration and the Legislature. The Division of Public Advocacy, the Public Defenders Office, the Office of Children's Services, the Alaska Court System, and the Department of Law worked diligently in the effort to develop the bill. She noted that Representative Coghill has a special interest in the subject of this legislation and that interest is what spurred his decision to become a Legislator.

Ms. Moss stated that this bill would remove language from State Statute AS 47.10.960, which allowed there to be "no duty or standard in care for children in State custody". The intent of that language was to free the Department of Health and Social Services from any "civil liability if they couldn't abide by timelines that were imposed by HB 375". However, whenever a parent read that language they were "insulted that they were held to a standard of duty for the care of their children but the State had language" exempting them from that standard. The bill's sponsor determined that language like that should not be included in State Statutes.

Ms. Moss communicated that, in addition to this bill, three other bills had been introduced this Legislative Session in regards to the Office of Children's Services (OCS): Governor's bills SB 83-TERM. PARENTAL RTS/CINA/DELINQUENCY CASES and SB 84-CHILD PROTECTION CONFIDENTIALITY which addressed making the process more open to the public and voluntary relinquishment, respectfully; and Representative Rokeberg's bill, HB 17-CINA; ADOPTION; FOSTER CARE, which "dealt with public disclosure of information and a working relationship between the Legislature and OCS in representing the interests of constituents and their children". In addition, there was also the expectation that Representative Mike Chenault and Representative Lesil McGuire would be introducing OCS legislation.

Ms. Moss stated that arrangements were made for the various bill sponsors to meet with OCS in order to satisfy the concerns and change the "system to make it work better without stepping on each other or canceling each other out". As a result, it was agreed that

HB 53 would become an omnibus bill comprised of all the provisions included in other OCS legislation.

Ms. Moss stated that the overlying goal of the bill is to "strengthen families". She noted that until recently, OCS had been named the Division of Family and Youth Services. To that point, Representative Coghill held strong convictions to include families in the process. "This legislation strengthens the rights of adult family members" … it places them before foster homes". It would require OCS to identify family members in order to determine whether a family member "could take the child into their home" after a child is taken into State custody. The bill also contains a family member preference provision. For instance, grandparents who had previously taken care of a grandchild, who was now in State custody, for 12 consecutive months could not only receive custody of the child, but they could adopt the child. This provision would also apply to other adult family members.

Ms. Moss communicated that the bill would specify that efforts to place a child with relatives or family friends should occur before the child was placed in the home of a stranger. The bill also provides that a child should be placed in the least restrictive placement in close proximity to the parents. The bill also includes an order of placement preference.

Co-Chair Green asked which section of the bill was being discussed.

Ms. Moss responded that her recent comments refer to language in Sec. 34, page 20 line 20, through page 21 line three. Continuing, she noted that the first placement preference would be an adult family member followed by a family friend. "The third would be a foster home and last resort would be an institution."

Ms. Moss voiced that rather than explaining the bill, section by section, the decision had been made to address the bill by subject matter.

Ms. Moss informed that Sec. 13 page ten, lines three through 18, would require that OCS endeavor to provide parental and family visitations for the children. The family must be notified as to the reason a visitation was denied, were that the OCS decision. In that case, the family must also be informed that they had a right to a hearing in the matter.

Ms. Moss explained that Sec. 4, page three, line nine through page four line 17, and Sec. 17 page 12 line two through page 14 line four, "place into Statute voluntary relinquishments of parental rights" with the ability to retain certain things such as

visitation rights or written communication with the child. Again, were OCS to deny the voluntary relinquishment, they must notify the parent as to the reason and alert them to their right to have a hearing.

Co-Chair Green asked the reason for there being "parallel references" in these sections.

Ms. Moss responded that Sec. 4 would address adoption law and Sec. 17 would address the Alaska Child in Need of Aid (CINA) Rules of Procedure law.

Ms. Moss explained that Sec. 37 page 21 line 23 through page 24 line three, would clarify "that poverty by itself is not a reason to deny placement with relatives". This section would also specify that parental rights could not be terminated due to OCS ordered treatment not being received by the parent. At times that treatment might not be available and at times, even without such treatment, the parent "is able to straighten out their lives". However, were a parent not to get treatment and not to change their lifestyle, other reasons to terminate parental rights would come into play.

Ms. Moss noted that the bill would "encourage OCS to train their foster parents to be mentors". While numerous letters from foster parents had been received in opposition to this provision, the language was included as permissive rather than mandatory language. OCS would have the responsibility of identifying which foster parents would be good mentors. She characterized the language included in the Judiciary committee substitute before the Committee as "compromise" language, in order to address those situations in which the foster family might also be the adoptive parents, as, in such a case, "there was no incentive for them to encourage visitation with the biological parents". The Judiciary Committee language in this bill would allow for that situation, but would also promote placing a child with a foster or adoptive family with a mentor who would encourage visitation and reunification for the child and the parents.

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Ms. Moss informed the Committee that language in Sec. 15 page 11 lines one through 11 would change "the definition of major medical treatment to include medication used to treat and diagnose mental health disorder". She opined that "OCS has done a fairly good job of trying to do this anyway", but Representative Coghill desired that language be placed in Statute that would require OCS to consult with the parents and receive their permission to administer mental health disorder medication to children in OCS custody. Were

OCS to determine that the parents had "unwisely denied" such medicine administration, the matter could be taken to Court.

Co-Chair Green asked for further clarification as to the circumstances to which this provision would apply.

Ms. Moss responded that this would apply to a child in State custody to whom OCS has determined that medication for mental disorder should be prescribed. Parental permission would be required in order to administer that medication. This would occur prior to termination of parental rights.

Ms. Moss stated that Sec. 10 page six line 18 through page seven line 24 would further the process' transparency by opening court proceedings to the public. Sideboards to the proceedings are specified so that a Judge could order the proceedings closed in situations where a child might "be stigmatized or emotionally damaged, if it would interfere with a criminal investigation, or if the disclosure would violate State or federal law".

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Ms. Moss continued that the first order of business in a CINA hearing proceeding is that the Judge would issue an order with complete instructions as to how the hearing would operate; including what information a person could or could not disclose to the public. No information could be provided that would identify "in any way" who the involved parties were. Were the Court instructions disobeyed, the Judge could impose sanctions that could include prohibiting a person from attending another CINA hearing, regardless of who the parties were.

Ms. Moss stated that language in Sec. 28, page 19 lines one through 11 would require the Department to provide each parent a copy of the grievance procedures. A supervisor would review the case in which a grievance was filed in objection to the manner in which OCS was handling a case. Were the supervisor to determine that the case was being handled properly, the parent could further petition to the new State Review Panel that would be established by this bill.

Ms. Moss informed that, in addition to conducting hearings regarding complaints against OCS, the State Review Panel would be responsible with adopting policy and procedures by regulation. Reports would be compiled "about how OCS was operating" including what their "good" and "bad" points were, and what potential legislation might be considered in the future.

Ms. Moss stated that a component of the aforementioned Governor's

bills is included in Sec. 27, page 17, lines 26 through page 18, line 31. This section would establish provisions that would "allow OCS to disclose confidential information to the public under certain circumstances". Disclosure is currently prohibited.

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Ms. Moss continued that this Section would allow disclosure when "the parents have disclosed information about OCS's participation in a case; it would allow disclosure when a perpetrator has been charged with a crime; and it would allow disclosure when a report of harm has resulted in a death or near-death fatality" of a child. She noted that this Section was amended in the Judiciary Committee in order to assure that "the release of information was kept at top level of management" by either the Commissioner or the Commissioner's designee of the Department of Health and Social Services or the Department of Administration.

Ms. Moss stated that this legislation would also further Legislators' desire that as many interviews "as possible" with the child be audio or video taped. Mandatory videotaping is required of suspected victims of sexual abuse. Child Advocacy Centers are defined in relation to this endeavor because it is not, of yet, defined in State Statute. The bill would also establish criteria for schools when interviewing children at school and would direct OCS to work with law enforcement and schools to establish such procedures.

Ms. Moss stated that language in Sec. 59 page 31 lines four through 24 was amended in the Judiciary Committee to allow for a Court rule change "that would allow videotape interviews of children under the age of 16 in criminal investigations to be admissible in Court as evidence under certain circumstances". Those conditions would include that "the recording was made prior to the proceeding; the victim be available for cross-examination; the prosecutor and any attorney representing the defendant were not present when the statement was taken; recording must be both visual and audible; each person participating in the taking of the statement is identified on the recording; videotaping was taken in avoidance of undue influence of the victim; the defense has been afforded the opportunity to observe the tape, and the Court had an opportunity to view the tape and deem it reliable and trustworthy".

Co-Chair Green voiced concern to Sec. 59. In recognition of the fact that observers would be prohibited, she asked how many times a recording could be conducted and specifically whether rehearsals would be prohibited.

Ms. Moss responded that, "it would prohibit rehearsal".

Co-Chair Green asked for further confirmation.

Ms. Moss stated that the intent of the legislation would be to promote the audio and video taping of all interviews. There would not be an opportunity to rehearse. The Department of Law could provide further testimony in this regard.

Co-Chair Green asked whether all the recordings would be available for the Court hearing.

Ms. Moss affirmed that had "all" of the aforementioned criteria been adhered to, the answer would be "yes".

Co-Chair Green asked whether a hearing officer or a judge would view this information.

Ms. Moss specified that a Judge would view it.

Co-Chair Green understood therefore that a Judge, rather than "a Trial by Jury or a panel of regular people", would be viewing the information.

Ms. Moss deferred to the Department of Law to provide the specific information being sought.

Due to time constraints, Co-Chair Green ordered the bill HELD in Committee.

#hb257

> CS FOR HOUSE BILL NO. 257(JUD)
> "An Act relating to and extending the pilot program for state procurement and electronic commerce tools; and providing for an effective date."

Co-Chair Green announced that this bill was again before the Committee. The discussion would continue in regards to the impact that might result by the adoption of Amendment #1.

Ms. Alberts expressed that the Amendment has been deemed acceptable to the sponsor.

6:59:44 PM

KEVIN BROOKS, Deputy Commissioner, Department of Administration,

stated that after discussing the issue with Senator Dyson and Ms. Alberts, the understanding is that the intent of the amendment would be to provide protection to the State were the Pilot Program to fail at some point in the future. The Department appreciates the intent and viewed this as a positive amendment to the bill.

Amendment-to-Amendment #1: This amendment-to-the-amendment would replace the words "whatever assistance the contractor is able to provide" with the words "reasonable assistance" in subsection (v)(2) of the amendment, following the word "provide". The amended language would read as follows.

> (2) require the contractor to provide reasonable assistance to the Department of Administration and the departments and other instrumentalities of the state participating in the pilot program in using the electronic commerce tools referred to in (1) of this subsection and otherwise making the transition.

Senator Dyson moved to amend the amendment.

There being no objection, the amendment-to-the-amendment was ADOPTED.

There being no objection, Amendment #1, as Amended, was ADOPTED.

Senator Dyson stated for the record that a representative of the contractor has conveyed that the contractor is in agreement with the amendment.

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

There being no objection, SCS CS HB 257(FIN) was REPORTED from Committee zero fiscal note #1, dated April 8, 2005 from the Alaska Court System, indeterminate fiscal note #2, dated April 8, 2005 from the Division of General Services, Department of Administration, and a new $350,000 fiscal note from the Senate Labor & Commerce Committee for the Department of Administration, dated May 7, 2005.

Senator Hoffman, while voicing no objection to the action, asked that the State's Chief Procurement Officer provide a position statement regarding the legislation prior to its' Senate Floor Session hearing.
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AT EASE 7:02:56 PM / 7:06:12 PM

ADJOURNMENT

Co-Chair Green adjourned the meeting at 07:06 PM.