

MINUTES
SENATE FINANCE COMMITTEE
January 19, 2006
9:06 a.m.

CALL TO ORDER

Co-Chair Lyda Green convened the meeting at approximately [9:06:08 AM](#).

PRESENT

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

Also Attending: SENATOR TOM WAGONER; DICK MYLIUS, Acting Director, Division of Mining, Land and Water, Department of Natural Resources; JASON HOOLEY, Staff to Senator Dyson; ANNE CARPENETI, Assistant Attorney General, Legal Services Section-Juneau, Criminal Division, Department of Law; BRYAN BUTCHER, Director, Governmental Affairs and Public Relations, Alaska Housing Finance Corporation

Attending via Teleconference: From an offnet location: DAVE PARKER, Detective Sergeant, Crimes Against Children Unit, formerly in charge of the Sexual Assault Unit, Anchorage Police Department; DAN FAUSKE, Chief Executive Officer/Executive Director, Alaska Housing Finance Corporation

SUMMARY INFORMATION

SB 55-AGRICULTURAL LAND

The Committee heard from the sponsor and the Department of Natural Resources. The bill was reported from Committee.

SB 54-PROTECTIVE ORDERS FOR SEXUAL ASSAULT

The Committee heard from the sponsor, the Department of Law, and the Anchorage Police Department. A committee substitute was adopted and amended. The bill was held in Committee.

HB 283-AK HOUSING FINANCE CORP BOARD COMP.

The Committee heard from the Alaska Housing Finance Corporation. The bill was held in Committee.

[Note: Computer malfunction occurred and subsequently no time stamps exist for the first portion of the meeting. Audio recording is available by clicking on the timestamp located under the "Call to Order" heading.]

#SB 55

SENATE BILL NO. 55

"An Act instructing the commissioner of natural resources to issue a patent for the remaining interest in certain state land to the owner of the agricultural rights to that land."

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

SENATOR TOM WAGONER, sponsor of the bill, testified that the Department of Natural Resources was available to address the question raised at the previous hearing regarding mineral rights on the property intended for transfer.

DICK MYLIUS, Acting Director, Division of Mining, Land and Water, Department of Natural Resources, noted that the Division would administer the land transfer if this bill passes. He assured that the State would retain subsurface rights. The bill specifies the sale would be a "land estate", which is differentiated from "mineral estate". Land estate specifies the rights "from the ground up" and mineral estate involves the rights of oil and gas and other resources located below the surface. In addition, AS 38.05.125 provides that in "each contract for the sale, lease or grant to State land" the State would retain mineral rights.

Mr. Mylius explained this statute is derived from the Statehood Act provision in which the federal government required that land transferred from federal to State ownership must remain mineral estate. This is enshrined in the Alaska Constitution. Therefore, in any public sale, the State retains mineral rights.

Senator Stedman understood that mineral rights are retained by the State on all lands acquired since the Statehood Act. He asked if patented lands from the time Alaska was purchased by the United States from Russia through territorial days were treated

differently.

Mr. Mylius replied that the Alaska Constitution imposes provisions applying to pre-statehood land grants. The practices of the University of Alaska land trust and the Alaska Mental Health Trust Authority land trust have never included disposal of mineral estate. He was unsure if the "absolute prohibition" applies to these entities.

Senator Stedman asked about property that was patented between 1867 and statehood.

Mr. Mylius answered that in many cases the federal government granted mineral estate on these properties. Whether the homesteader acquired the mineral rights was a site-specific determination. The federal government is not restricted from granting mineral rights.

Mr. Mylius also told of federal mining laws providing that patents could be secured for mining claims on federal lands.

Co-Chair Wilken offered a motion to adopt CS SB 55 (FIN), 24-LS0287\F, as a working document.

Without objection the committee substitute, Version "F" was ADOPTED as a working document.

Co-Chair Green recalled discussion at the previous hearing regarding the fiscal note and whether the amount should be indeterminate rather than zero. A revised fiscal note reflecting this change was submitted.

Co-Chair Wilken offered a motion to report CS SB 55 (FIN), 24-LS0287\F from Committee with individual recommendations and new fiscal note.

There was no objection and CS SB 55 (FIN) was MOVED from Committee with a new fiscal note dated 1/17/06 from the Department of Natural Resources in an indeterminate amount.

#SB 54

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.

[Note: A motion to adopt CS SB 54 (FIN), 24-LS0132\U, as a working document, was made by Senator Dyson at the previous hearing on this bill. No action was taken and the motion was still active.]

Senator Dyson, sponsor of the bill, removed his motion to adopt Version "U" as a working document. No further action was required to remove the motion.

Senator Dyson moved for adoption of CS SB 54 (FIN), 24-LS1032\N, as a working document.

Without objection, the committee substitute Version "N", was ADOPTED as a working document.

Senator Dyson testified to the bill. He had been approached by the Anchorage Police Department to participate on a team to address sexual assault issues. He learned that some judges were not allowing victims of sexual assault to obtain a restraining order against the suspected perpetrator during the criminal proceedings. These judges have ruled in this manner because sexual assault is not listed among the crimes in which a restraining order could be authorized; only stalking and domestic violence are specified.

Senator Dyson remarked that this legislation would clarify that judges do have authority to issue a restraining order in instances involving sexual assault.

Senator Dyson reported that this bill has undergone extensive review and rewrites since its introduction.

DAVE PARKER, Detective Sergeant, Crimes Against Children Unit, formerly in charge of the Sexual Assault Unit, Anchorage Police Department, testified via teleconference from an offnet location, about the difficulty in obtaining restraining orders in sexual assault cases. Currently, statute provides no positive legal guidance to judges and magistrates to grant these orders in the absence of stalking or domestic violence.

Mr. Parker stated that this legislation would "afford immediate protection" to the victim of a sexual assault to prevent the necessitation that they become a victim of stalking before a restraining order could be attained. It would provide the same degree of protection to victims of sexual assault as victims of

domestic violence or stalking.

Mr. Parker remarked this legislation is particularly important for law enforcement throughout the investigative phase and prior to charges being filed. During this time, the victim has no true legal protection. With the passage of this bill, victims could obtain a restraining order and receive police protection.

Senator Dyson asked if during the investigation phase, in the witness' experience, the alleged perpetrator could contact the victim in an attempt to intimidate or otherwise influence the victim to change testimony.

Mr. Parker affirmed this is a common occurrence. Sometimes the alleged perpetrator is aware that an investigation is proceeding. In any event, the police must guard against the victim being intimidated into changing his or her story. Authorization of a restraining order would assist in preventing this. In other instances, the alleged sexual assault offender has seriously threatened or inflicted violence upon the victim.

Senator Dyson asked if similar attempts are made in cases involving a child victim and who would request a restraining order on behalf of the child in these situations.

Mr. Parker responded that if a child is the victim of a sexual assault, law enforcement could assist the parent or Child Protective Services in obtaining the restraining order. In these cases, the Anchorage Police Department (APD) works in conjunction with the Office of Children's Services to take custody of the child if deemed necessary for the protection of the child. Sufficient protections are therefore available for child victims that are not provided for adult victims of sexual assault.

Senator Stedman asked if charges of sexual assault are misdemeanors or felonies. He also asked the current discretion given to judges to bar an alleged felony perpetrator from contacting the victim.

Mr. Parker replied that most sexual assault offenses are classified as felonies.

Mr. Parker continued that the judge could establish as a condition of bail, an order that the defendant could not contact the victim. This order could be enforced. However, this would occur after the alleged perpetrator is charged with the crime. In addition, "officers on the street" do not have access to bail conditions, whereas restraining orders and domestic violence and stalking orders are readily available. The concern addressed in this

legislation is the period between the sexual assault incident and when the suspect is charged. This could be weeks or months.

Senator Stedman recalled that the legislature "tightened up" provisions relating to restraining orders several years prior, an action he supported. However, he has since been contacted regarding abuse of that system. He exemplified divorce and custody cases in which an ensuing "race to the judge" occurs to obtain a restraining order in an attempt to gain leverage in the proceedings. These unintended consequences should be addressed. He wanted assurance that this legislation could not further allow for these activities.

Senator Dyson shared this concern. However, sexual assault is primarily "stranger assault" and not committed by family members. The Division of Legal and Research Services pointed out that restraining orders are included in civil code, whereas sexual assault crimes are addressed under criminal code and are therefore not related. The intent of this legislation is to provide protection for victims from the time in which the crime occurred until charges are filed against the alleged perpetrator.

Senator Dyson relayed that most of the instances involving alleged misuse of restraining orders are attempts to "tilt" the custody or property dissolution in a marriage or business relationship. In the case of sexual assault, custody and property settlements are not involved and thus no benefit would be achieved from the issuance of a restraining order. As a further prevention of abuse, this legislation stipulates that a victim must declare to the judge any pending legal actions. The judge would then be able to consider whether a restraining order could be an attempt to gain leverage in those proceedings.

Mr. Parker agreed Senator Stedman's point is valid, informing that he has witnessed such attempts. Stalking and sexual assault are usually crimes against unrelated people and no benefit would be gotten from filing a "false order". Magistrates have been more willing to modify domestic violence restraining orders when approached by the other party. The APD therefore encourages the party to whom the order was issued to present his or her case to the court. Modifications have been made immediately in some instances.

Senator Stedman noted that in child custody cases, charges of sexual assault against the child are sometimes made as a "gaming mechanism". He was therefore cautious with regard to restraining orders.

Mr. Parker reiterated that this bill includes safeguards against

abuse of restraining orders in cases of sexual assault. The Office of Children's Services is involved in addressing crimes committed against children. He stated that several cases occur annually, in which a party levies false accusations of sexual abuse against a child in anticipation that the party would automatically receive custody of the child in question. Investigations of child sexual abuse are handled carefully with this possibility in mind. However, these instances are usually included in domestic violence situations rather than sexual assault.

Senator Dyson added that during the drafting process for this bill, the provision allowing for issuance of restraining orders in cases of sexual assault was originally included in the provisions relating to domestic violence. The language was amended to include the sexual assault provision with the stalking provisions specifically to avoid abuse of the restraining order process to accomplish other goals.

Senator Olson asked what changes were made in the committee substitute Version "N" from earlier versions.

JASON HOOLEY, Staff to Senator Dyson, testified that Section 5 of Version "N" deleted a remedy that "requires the respondents to reimburse the petitioner for counseling and medical expenses".

Senator Olson asked the reason for the removal of this provision.

Senator Dyson replied that the requirement for the alleged perpetrator to provide these services to the victim should be determined after the case is adjudicated and the defendant has been found guilty.

Senator Olson noted that the remedy was provided as an option.

Senator Dyson answered that the language provides the judge with the discretion to award reimbursement for counseling and medical expenses.

ANNE CARPENETI, Assistant Attorney General, Legal Services Section-Juneau, Criminal Division, Department of Law, testified to a question posed at the last hearing held on this bill on May 7, 2005 asking whether the Central Registry of Protective Orders was available for any use beyond that of peace officers making a determination for arrest. She had since verified that the registry is private and access is restricted to the aforementioned use.

Ms. Carpeneti stated that the Department supports this legislation.

Ms. Carpeneti proposed an amendment to the title of the bill to include reference to sexual abuse in addition to sexual assault. The provisions of this legislation cover sexual abuse victims where a protective order is appropriate, although the bill title does not reflect this. Such clarification would strengthen the State's position in the event the law was later challenged in court.

Co-Chair Green asked if the bill title is this important.

Ms. Carpeneti affirmed and told of a brief she was preparing in which the Department was attempting to determine legislative intent for legislation adopted in the 1980s. She stressed, "Everything helps."

Co-Chair Green asked what language of the bill specifies that sexual abuse is included in the provisions.

Ms. Carpeneti cited Section 10 on page 5, lines 3 and 4, which inserts a new paragraph to AS 18.65.870 to read as follows.

(4) "sexual assault" has the meaning given in AS 18.66.990.

Ms. Carpeneti explained this provides a cross reference to the statute that defines sexual assault as including sexual abuse.

Ms. Carpeneti assured Senator Stedman that this legislation would not apply to cases in which individuals were fighting over custody of children. This legislation would apply to individuals not of the same household, with no children in common and are not married to each other.

Senator Olson referenced notations he made during the previous hearing on this bill in which he reported that the language pertaining to reimbursement for counseling and medical expenses was included to allow this remedy.

Ms. Carpeneti responded that the current language of Section 5 (4) is a "catch all section" that would allow courts to order relief in a particular situation if deemed appropriate. She expressed general concern that a suspect could be required to pay compensation for actions in which no charges were filed.

Senator Dyson appreciated the assistance of Ms. Carpeneti in this and other matters relating to addressing crimes of sexual assault.

Co-Chair Green called on Anna Fairclough to give testimony via teleconference from Anchorage. It was determined that Ms.

Fairclough was unavailable.

Co-Chair Green asked if the sponsor had updated the sectional analysis for this bill to reflect the changes made in the committee substitute Version "N".

Mr. Hooley reported he was in the process of doing so.

[Note: Timestamps available and operable for the remainder of the meeting.]

AT EASE until [9:47:54 AM](#)

[9:48:35 AM](#)

Co-Chair Green requested the sponsor provide an updated sectional analysis directed to the committee substitute.

[9:48:58 AM](#)

Amendment #1: This amendment inserts "sexual abuse" in the title of the committee substitute on page 1, line 2 following "sexual assault". The amended language reads as follows.

An Act amending protective order statutes for crimes involving stalking to include crimes involving sexual assault and sexual abuse, to provide for other relief order by a court, to add the protective orders to a centralized agency, and to require notification of the court of known civil or criminal actions involving the petitioner or respondent; relating 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 amended Rule 65, Alaska Rules of Civil Procedure.

Senator Dyson moved for adoption.

The amendment was ADOPTED without objection.

[9:49:50 AM](#)

Co-Chair Green ordered the bill HELD in Committee.

#HB283

[9:49:52 AM](#)

CS FOR HOUSE BILL NO. 283(STA)

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

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

BRYAN BUTCHER, Director, Governmental Affairs and Public Relations, Alaska Housing Finance Corporation, read testimony into the record as follows.

House Bill 283 simply would increase board member compensation for board meetings from \$100 to \$400 for the board members of the Alaska Housing Finance Corporation. Our board of directors is required to review and consider topics having to do with bonding, the mortgage industry, public housing and many other technical issues.

In any given year, the board is asked to consider and approve anywhere from \$600 million to \$1 billion in bond programs and millions of dollars in tax credit and other federal programs.

The workload is such that the board members must spend a great deal of their personal time studying and educating themselves about corporate activities.

HB 283 increasing the compensation to \$400 would be increasing it to the same level of other boards, such as the Alaska Railroad [Corporation], the [Alaska] Permanent Fund [Corporation], and the Retirement Management Board.

The compensation would only apply to the four public members of the board who are Frank Roppel of Wrangell, Bert Sharp of Fairbanks, Clay Porter of Anchorage and Marty Shuravloff of Kodiak.

We estimate it would cost approximately \$20,000 in Corporate receipts a year to make this change.

[9:51:45 AM](#)

DAN FAUSKE, Chief Executive Officer/Executive Director, Alaska Housing Finance Corporation, testified via teleconference from an offnet location that the board activities have expanded since the honoraria was last increased in 1971. The proposed increase would serve as a positive compensation for board members' time away from other activities.

[9:52:26 AM](#)

Co-Chair Wilken characterized this legislation as a "subjective call". He referenced an interoffice memorandum from the Office of the Governor dated February 9, 2005 [copy on file], which lists the honoraria paid to members of other boards overseen by the State. Before he could support an increase for the Alaska Housing Finance Corporation (AHFC) board members, he needed information about qualification and duties of members, as well as how the members were selected. He was unsure if the amount should be increased to \$400 regardless. If this legislation passed, he anticipated that all of the other boards would request increases for their members.

[9:53:39 AM](#)

Mr. Butcher responded that the governor appoints the four public board members. Frank Roppel had chaired the AHFC board of directors during the 1970s and 1980s. Bert Sharp had "extensive dealings" with the Corporation during his tenure in the Senate and seat on the Senate Finance Committee. Marty Shuravloff is the head of the Kodiak Regional Housing Authority. Clay Porter is an architect who has been involved in the housing industry for "many years" in Southcentral Alaska and serves on the board of the Cold Climate Research Center in Fairbanks.

[9:54:33 AM](#)

Mr. Fauske furthered that the areas of expertise of board members are specified in statute. The expertise of one member must be "rural", one seat is designated for an expert in health and social services, one seat is designated for a finance expert and one member must have energy expertise. Names of potential board members are submitted to the governor for appointment along with recommendations based on the candidates' qualification for a particular seat.

[9:55:14 AM](#)

Senator Stedman agreed with Co-Chair Wilken that this matter should be further reviewed to determine if the impact could be more encompassing.

[9:55:38 AM](#)

Senator Olson also agreed. He qualified that the issue is not whether these board members are deserving of higher compensation. Rather the concern is that this could "snowball" and other boards

could deem increased compensation for their members as an achievable goal.

[9:56:12 AM](#)

Mr. Fauske told of former AHFC board member, Mike Cook, whose activities with the board "cost him a great deal personally because it kept him away from his business." Mr. Cook held the seat designated for a finance expert and spent numerous hours ensuring that federal regulations were complied with.

Mr. Fauske pointed out that this Corporation has "delivered back to the State" almost \$1.4 billion in returns over the past ten years. The efforts required of board members and subsequent funds generated for the State should be compensated in an ability to attract competent members.

[9:57:14 AM](#)

Senator Olson asked how difficult it is to recruit board members.

[9:57:23 AM](#)

Mr. Fauske spoke of conflicts potential board members, such as bankers, homebuilders and others, have in wanting business relations with AHFC. Service on the board takes time away from members' other activities. Members are also prohibited from doing business with the Corporation.

[9:58:37 AM](#)

Senator Olson asked if the proposed \$400 honoraria would increase the number of qualified applicants willing to serve on the board.

[9:58:54 AM](#)

Mr. Fauske replied that this would not necessarily occur. It could influence a potential member's decision when considering the amount of time involved in holding the position. The increased compensation would be "very helpful" to the Corporation.

[9:59:17 AM](#)

Co-Chair Wilken reiterated that the proposed increase is subjective. He requested a written description of the four public seats, the required qualifications, and the backgrounds of the current members, their other employment or whether they were retired.

[10:00:03 AM](#)

Co-Chair Wilken reminded that the legislature increased honoraria for the Alaska Retirement Management Board the previous year, an action he supported. However, he cautioned that if this legislation passed, the legislature must be prepared for requests for additional compensation increases.

Co-Chair Wilken stressed his concerns did not pertain to the expertise and public service of board member Bert Sharp.

[10:00:56 AM](#)

Co-Chair Green stated that information regarding the functions of other boards and the amount of investment capital handled would assist in this decision. Some boards operate more as decision makers than investors.

[10:01:20 AM](#)

Mr. Butcher would provide the requested information.

[10:01:32 AM](#)

Co-Chair Wilken suggested that the honoraria rate of all the boards could be reviewed simultaneously. A determination could be made to increase the compensation for all members to an amount of \$250. He admitted that those requesting an increase to \$400 would likely not be satisfied.

[10:02:03 AM](#)

Co-Chair Green ordered the bill HELD in Committee.

#

ADJOURNMENT

Co-Chair Lyda Green adjourned the meeting at [10:02:31 AM](#)