

MINUTES
SENATE FINANCE COMMITTEE
May 4, 2006
9:05 a.m.

CALL TO ORDER

Co-Chair Lyda Green convened the meeting at approximately [9:05:32 AM](#).

PRESENT

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

Also Attending: REPRESENTATIVE NORM ROKEBERG; REPRESENTATIVE BOB LYNN; BEN MULLIGAN, Staff to Representative Bill Stoltze; LINDA HALL, Director, Division of Insurance, Department of Commerce, Community and Economic Development; CRAIG JOHNSON, Staff to Representative Lesil McGuire; NANCY MANLEY, Staff to Representative Bob Lynn; MIKE PAWLOWSKI, Staff to Representative Kevin Meyer; TERRY HARVEY, Staff to Representative Bruce Weyhrauch; SARAH GILBERTSON, Special Assistant to the Commissioner, Department of Fish and Game; KAREN LIDSTER, Staff to Representative John Coghill; LARRY DIETRICK, Director, Division of Spill Prevention & Response, Department of Environmental Conservation

Attending via Teleconference: From offnet locations: CECIL BYKERK, Executive Director, Alaska Comprehensive Health Insurance Association (ACHIA); BRIAN ANGEL, Counsel with American Family Life Assurance Company of Columbus (AFLAC) and Vice-Chair, ACHIA Board of Directors; DICK MYLIUS, Director, Division of Mining, Land and Water, Department of Natural Resources; JOHN SCHABEL; From Anchorage: ED SNIFFEN, Assistant Attorney General, Department of Law

SUMMARY INFORMATION

HB 307-KNIK RIVER PUBLIC USE AREA

The Committee heard from the bill's sponsor and adopted a Letter of Intent. The bill and the Letter of Intent reported from Committee.

HB 29-HEALTH CARE INSUR./ COMP HEALTH INS. ASSN

The Committee heard from the bill's sponsor, the Division of Insurance, Department of Commerce, Community and Economic Development, and representatives of the Alaska Comprehensive Health Insurance Association. The bill reported from Committee.

HB 446-PENALTY FOR UNLAWFUL TRADE PRACTICE

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

HB 326-USE OF LEWD MATERIAL AS HARASSMENT

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

HB 41-ASSAULT ON SCHOOL EMPLOYEES/BUS DRIVERS

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

HB 57-SALE OF STATE LAND TO ADJACENT LANDOWNERS

The Committee heard from the bill's sponsor, the Department of Natural Resources, and the Department of Fish and Game. The bill reported from Committee.

HB 419-REPEAL UNDERGROUND STORAGE TANK LAWS

The Committee heard from the bill's sponsor and the Department of Environmental Conservation. The bill reported from Committee.

#hb307

CS FOR HOUSE BILL NO. 307(RES)

"An Act creating the Knik River Public Use Area."

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

Co-Chair Green announced that a Senate Finance Committee Letter of Intent was developed to address concerns raised by members during the bill's first hearing.

Co-Chair Green moved to adopt the Committee Letter of Intent (LOI) and read it into the record as follows.

Letter of Intent
Senate Finance Committee
CS HB 307(RES)

It is the intent of the 24th Alaska State Legislature that the Department of Natural Resources evaluate instituting user fees to pay the long term costs for management and necessary facilities associated with the public use of the Knik Public Use Area established under House Bill 307. The department should consider such fees as a component of the Management Plan that will be prepared under AS 41.23.190.

Senator Stedman spoke in opposition to the establishment of a user fee program and, therefore, objected to adopting the LOI.

[9:07:07 AM](#)

Co-Chair Wilken pointed out that the inclusion of the word "evaluate" was key to his support of the LOI, as it would require the Department to develop a plan, which would then be presented to the Legislature for "some sort" of approval.

Co-Chair Green characterized the Knik Public Use Area (KPUA) as an "unwieldy area" in which to institute a user fee program, as, rather than being a park at which money could be collected at the gate, this is "an open area" with many entry points. An appropriate user fee program must be developed. Options could include the purchase of a bumper sticker, card, or certificate. While a user fee program "would not be an easy thing to implement", it is worthy of discussion.

[9:08:27 AM](#)

Senator Dyson, while appreciating the intent of the LOI, asked the sponsor's opinion of it.

[9:08:35 AM](#)

BEN MULLIGAN, Staff to Representative Bill Stoltze, the bill's sponsor, noted that Representative Stoltze was comfortable with the language since it specified that the implementation of a user fee would be "evaluated". This language would allow any proposed fee structure to be reviewed by the Legislature.

Senator Bunde noted that numerous user fee programs have been successfully implemented in the State. For example, the Anchorage Ski Club sells a pin to generate money to maintain their trails. While the purchase of the pin is voluntary, pressure is exerted on users to purchase one. The State has a snowmobile registration fee that generates money for snowmachine trail maintenance.

Senator Bunde pointed out that this legislation would not have been introduced had users of the KPUA area been more responsible. Implementation of a user fee program would accomplish two things: people who paid the fee "would be less tolerant of the scofflaws" and the funds it generated would help "care for the area".

[9:10:29 AM](#)

Senator Stedman was disinterested in establishing a user fee precedence for areas beyond the KPUA. The prospect of requiring people to pay user fees or to place identifying stickers on their boats or recreational vehicles to recreate, hunt, or fish on State or federal lands, such as the United States Forest Service managed land in Southeast Alaska, was unappealing. He was "adamantly opposed" to the language in the LOI. It could diminish the bill's ability to be adopted by the Legislature.

[9:11:16 AM](#)

Senator Bunde pointed out that recreation in the State is already being paid for, as such things as small boat registration fees already exist. In order to support recreation programs, the State must either implement user fees or utilize the State's general funds.

Co-Chair Green asked whether Senator Bunde could suggest any alternate funding source.

Senator Bunde could not.

[9:11:48 AM](#)

Senator Dyson noted that, for a long time, hunters and fisherman have willingly purchased fishing and hunting licenses, as the proceeds from those licenses are used to fund research and resource management activities. He did not believe that implementing a fee structure in the KPUA would set a recreational use fee precedent because the purpose of the fee would be to limit damage being done in the area and to pay for the cost of policing it. He agreed with Co-Chair Green that the area was difficult to work with. The proposal could either be considered "brilliant" or at a minimum "a well thought out first step" towards a solution.

Co-Chair Green added that the difficulty in addressing the concerns about the area is compounded by the fact that it is "in such close proximity to where people live". The "great deal of interest" in how the area should be managed has increased the conflicts.

Senator Stedman maintained his objection to adopting the LOI.

[9:13:31 AM](#)

Senator Olson, who was unfamiliar with the area, asked whether implementing a user fee would assist in deterring "nuisance behavior", specifically "the discharging of firearms in an unwise manner".

Co-Chair Green responded that the Department of Natural Resources (DNR) might hire "caretakers" to police the area for illegal activities, particularly during evening and weekend hours when the use of the area is the heaviest. Additional funding might be required in the future to support policing efforts. While the State's general fund is not typically used to fund this type of activity, this might be "an exception because it is such a unique" and heavily used area. While the majority of people using the area are respectful and law-abiding, five to ten percent of the users are scofflaws. Peer pressure might have some affect were the implementation of a user fee to fail to alter deviant behavior.

A roll call was taken on the motion to adopt the LOI.

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

OPPOSED: Senator Stedman and Senator Olson

The motion PASSED (5-2)

The Letter of Intent was ADOPTED.

Senator Dyson moved to report the bill and the Senate Finance Committee Letter of Intent from Committee with individual recommendations and accompanying fiscal note.

Without objection, CS HB 307(RES) and the Senate Finance Committee Letter of Intent were REPORTED from Committee with a new \$356,800 fiscal note dated May 3, 2006 from the Department of Natural Resources.

AT EASE [9:16:18 AM](#) / [9:16:38 AM](#)

#hb29

CS FOR HOUSE BILL NO. 29(L&C)(title am)

"An Act relating to the Comprehensive Health Insurance Association; granting a 50 percent premium tax credit for assessments against members of the Comprehensive Health Insurance Association; requiring members to provide information to the association's board of directors or the director of the division of insurance; modifying voting rights for the association members by basing their exercise on a member's share of assessments; basing assessments on major medical premiums; modifying the manner of determining members' liabilities for losses; and changing the definition of "major medical" coverage for purpose of state health insurance and providing for exclusions to major medical coverage."

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

REPRESENTATIVE NORM ROKEBERG, the bill's sponsor, informed the Committee this legislation would change the funding mechanism

for the Alaska Comprehensive Health Insurance Association (ACHIA), which serves as the health "insurer of last resort" for high-risk citizens in the State. ACHIA is a federally mandated program under the federal Employee Retirement Income Security Act of 1974 (ERISA). While individuals participating in ACHIA contribute toward their insurance premiums, any premium shortfall is provided for by an assessment against health insurance underwriters operating in the State. This bill would make a minor change in that funding source process.

Representative Rokeberg directed Committee members to a handout titled "Insurers Writing Comprehensive Health Insurance in Alaska" [copy on file] which depicted the market share of health insurance providers operating in the State in the year 2003. The Alaska Division of Insurance conducts such a survey on an annual basis. It is "sobering" to see that Premera Blue Cross Blue Shield of Alaska has approximately 80 percent of the active insurance market share in the State.

[9:18:22 AM](#)

Representative Rokeberg stated that one of his goals as a legislator was to decrease "the barriers for entry for new underwriters to increase competition and to enable and help pull down rate structures by enabling better competition within the State. Basically, my ten-year quest has fundamentally failed."

Representative Rokeberg shared that the annual assessment levied against insurance underwriters to "subsidize the ACHIA pool" has been approximately \$3.5 million. This is a major concern, as there are large groups in the ERISA pool, specifically organized labor groups, which either do not contribute or pay little toward the ACHIA insurance premiums fund. His efforts to get these groups "to pay more to the pool" have been resisted. The situation was further compounded in 1998 when "the State of Alaska allowed all their bargaining units to step out of the major pool of the State of Alaska".

[9:19:36 AM](#)

Representative Rokeberg referred to an April 20, 2006 handout prepared by ACHIA [copy on file] labeled "ACHIA 1993 through 2005". One of the three pie charts depicted on the handout summarizes the total dollar amount received by ACHIA from 1993 to 2005 from its three financial contributors: Insurer

Assessments-State Portion \$1,364,000; Participant Contributions \$17,049,335; and Insurer Assessments \$29,186,000.

Representative Rokeberg spoke to the pie chart labeled "1998-2005: Proforma with HB29". This chart depicted the contribution the State would have made to ACHIA during the 1998 to 2005 timeframe under this legislation, which would require the State to participate at approximately a one-third of cost ratio. Thus, under the provisions of this bill, between 1998 and 2005, the contribution distribution would have been: State General Fund Contribution, \$12,900,000; Participant Contributions, \$14,861,088; and Insurer Assessments, \$12,900,000.

Representative Rokeberg spoke to the third pie chart labeled "1998-2005: Proforma Assuming State Had Remained Insured". Had the State not opted out of the program in 1998, it would have contributed approximately \$10 million of the \$38 million required. The breakout would have been: State Portion of Assessments, \$10,320,000; Participant Contributions, \$14,861,088; and Remaining Insurer Assessments, \$15,480,000. The conclusion from this chart is that "there is a huge shortfall because of the reduction of State contributions." While that money instead benefited the State's general fund, it was a detriment to the ACHIA program. There should equity in the ACHIA funding.

[9:21:04 AM](#)

Representative Rokeberg specified this bill would require "the State to participate in the funding" of the program, by requiring the State to "allocate one half of the [ACHIA] assessment ... in the form of a tax credit to the [health] insurance companies".

Representative Rokeberg informed the Committee that insurance premium taxes paid to the State by insurance companies are the State's third largest revenue source, the first being petroleum royalty taxes and the second being corporate income taxes. The State received \$47 million from insurance premium taxes last year and the expectation is that the taxes would amount to \$46 million this year. Health insurance companies would pay \$11 million or approximately 25 percent of that amount.

Representative Rokeberg noted this bill would not impact the FY 2007 (FY 07) budget as assessments are delayed to allow the

calculation to be based on actual costs. Therefore, the FY 07 tax credit of approximately \$1,750,000 would affect the State's FY 2008 general fund. The credit amount would increase or decrease each year as determined by the annual ACHIA assessment. He noted that assessment levels are projected to increase.

[9:22:57 AM](#)

Representative Rokeberg proclaimed that this bill would require the State "to pick up their fair share" of the ACHIA assessment. The State would join 32 other states that either partially or fully participate in the funding of this federally mandated program.

[9:23:48 AM](#)

Senator Dyson understood this legislation would not require the State's bargaining units' insurance programs to contribute to the ACHIA fund.

Representative Rokeberg affirmed. While he had in the past suggested their participation, this proposal would specify that "the State as a whole" would make the contribution in the form of a tax credit to the sources of the revenue.

Co-Chair Green declared that the bargaining units chose not "to participate in providing" this insurance coverage which is required by federal and State law. "That was why I fought the State becoming self insured in the first place;" she knew it would be "unfair" to remove "a huge chunk of support of a State mandated program". Her "prediction" that some entity would be required to provide 75 percent of the funds necessary for the program has come true, as the number of private payers in the State is limited. Therefore, "a very small part of the population" is being forced to pay for a State and federally mandated program, which everyone could be "eligible for at some time of their life".

[9:25:39 AM](#)

Senator Dyson pointed out that the State's "small market" size also makes the State a less attractive place for insurance companies to provide "consumer directed care" such as health savings accounts. The availability of such programs could be a part of the solution. He characterized the insurance providers

operating in the State as "institutional and not available to that which I see as a very responsible way of proceeding".

9:26:13 AM

CECIL BYKERK, Executive Director, Alaska Comprehensive Health Insurance Association, testified via teleconference from an offnet location. He has been involved with ACHIA since it was enacted by the State in 1992. ACHIA is a program that could serve all Alaskans. The ACHIA plan was chosen by the State as "the solution" to the federal Health Insurance Portability and Accountability Act of 1996 (HIPAA) mandate that each state must provide all residents of the state access to health insurance. 60 percent of the states adopted plans similar to ACHIA.

Mr. Bykerk informed the Committee that ACHIA has paid out more than \$45 million in claims since 1992. It has collected \$17 million in premiums from individuals enrolled in it. ACHIA has allowed people to manage their own care and medical expenses. Most of the people participating in ACHIA and HIPAA are uninsurable; otherwise they would enroll in other less expensive plans, as ACHIA premiums, at 140 percent of standard plan costs, are significant. Contrary to public perception, ACHIA is not a Medicaid or welfare program. Individuals enrolled in ACHIA have no or few other health insurance options and must contribute to their coverage in order to participate in the system. Due to the out of pocket expense, people in the ACHIA plan tend to "stay out of emergency rooms" unless the medical care is unavoidable.

Mr. Bykerk noted that ACHIA is under funded because ACHIA participant premiums must be kept at an affordable level. "The shortfall is made up by assessing health insurers as a percent of their health insurance premium." Thus, "individuals and small businesses in the State" pay the cost. "HB 29 will ease this burden".

Mr. Bykerk agreed that, in a small but significant manner, the State's participation in funding ACHIA would assist in making the State attractive to new insurance companies. In addition to the State's small population and the geographic distances between communities, there are also business "barriers" to attracting new business. Easing the burden of this program would assist in increasing competition in the commercial insurance industry.

Mr. Bykerk reiterated that approximately two-thirds of the states that have high-risk pools such as ACHIA support their programs with State general funds.

[9:31:10 AM](#)

Mr. Bykerk noted that recently enacted federal legislation would allow ACHIA to acquire federal funding assistance during the next five years. "This is only right" considering the requirements placed on the State by HIPAA. The federal support would further reduce the impact on both the insurance companies and the State's contributions to ACHIA. He noted that the federal support is not reflected in the Department of Commerce, Community and Economic Development fiscal note #1. "All Alaskans benefit directly or indirectly from ACHIA." He encouraged the Committee to advance this legislation.

[9:32:29 AM](#)

BRIAN ANGEL, Counsel with American Family Life Assurance Company of Columbus (AFLAC) and Vice-Chair, ACHIA Board of Directors, testified via teleconference from an offnet location. "By providing access to health coverage, and putting dollars into the health care system, and by keeping people off Medicaid, ACHIA truly does benefit all Alaskans." Because all citizens of the State could benefit by ACHIA, "we believe the most equitable funding approach is one that is broad based". Currently, however, the cost of the program "is borne by a small segment of the population", those individuals and small businesses that purchase health insurance. "By broadening the funding base", this bill would ease the burden on health insurance consumers. He informed the Committee that the ACHIA Board of Directors fully supports the bill, and he urged the Committee to advance it.

Co-Chair Green expressed her support of the bill.

[9:34:40 AM](#)

LINDA HALL, Director, Division of Insurance, Department of Commerce, Community and Economic Development, concurred with Representative Rokeberg's and the ACHIA representatives' testimony on the bill.

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

There being no objection, CS HB 299(L&C)(title am) was REPORTED from Committee with previous zero fiscal note #1 dated March 29, 2006 from the Department of Commerce, Community and Economic Development.

Co-Chair Green knew people in the Matanuska-Susitna Valley who have ACHIA coverage. She was "shocked to learn" the amount of their insurance premiums. This is certainly not a "giveaway plan".

[9:35:46 AM](#)

#hb446

CS FOR HOUSE BILL NO. 446(JUD)

"An Act relating to the amount of a civil penalty for an unlawful act or practice in the conduct of trade or commerce; and eliminating mandatory continuances in these matters after issuance of an injunction."

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

[9:36:03 AM](#)

CRAIG JOHNSON, Staff to Representative Lesil McGuire, the bill's sponsor, stated this legislation would update State consumer protection laws. Civil penalty amounts have not been increased since the bill's enactment in the 1970s. This bill would adjust penalty levels to reflect inflation.

In response to a remark from Co-Chair Green, Mr. Johnson stated that, in addition to adjusting the fine levels to account for inflation, the increased fine levels would provide more substance to the Department of Law's effort to address consumer fraud cases.

[9:37:27 AM](#)

ED SNIFFEN, Assistant Attorney General, Department of Law, testified via teleconference from Anchorage. One of his

responsibilities is the enforcement of the State's Consumer Protection Act. This legislation would "make a correction" to the civil penalty levels specified in State Statute by increasing the maximum allowable penalty from \$5,000 to \$25,000. In addition, the legislation would mandate a \$1,000 minimum fine. This would provide the Department "more teeth" when dealing with "offenders who aren't really worried about breaking the law because they know if they pay back the money" that they received illegally, they might currently only be subjected to "a little scolding from the Department". The proposed \$1,000 mandatory minimum fine level could be a serious deterrent to those considering fraudulent activities. In addition to the minimum penalty, the bill, in general, would expand the "tools" available to the Department's "small enforcement section".

Senator Olson asked whether there was opposition to the bill.

Mr. Johnson responded in the negative.

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

There being no objection, CS HB 446(JUD) was REPORTED from Committee with previous zero fiscal note #1 dated February 21, 2006 from the Alaska Court System and indeterminate fiscal note #3 dated March 15, 2006 from the House Finance Committee pertaining to the Department of Law.

[9:40:16 AM](#)

#hb326

SENATE CS FOR CS FOR HOUSE BILL NO. 326(JUD)

"An Act relating to the definition of the crime of harassment; and providing for an effective date."

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

[9:40:26 AM](#)

MICHAEL PAWLOWSKI, Staff to Representative Kevin Meyer, the bill's sponsor, stated this legislation was developed to address a loophole in existing State harassment statutes, which was

brought to Representative Meyer's attention by a constituent. Previously adopted legislation addressed harassment conducted by electronic communications, but did not address harassment by the publishing and posting of photographs and other lewd materials.

Mr. Pawlowski disclosed that the situation brought to Representative Meyer's attention involved a woman who allowed her boyfriend to take pictures of her. Because the picture taking was consensual, it did not violate any lewd material laws. However, after the relationship terminated, the ex-boyfriend printed pictures of the woman and posted them around the University of Alaska Fairbanks campus. Nothing currently exists in State law to prohibit this action. Thus, this bill would expand State Statutes to include "the publishing or posting of lewd pictures to the definition of harassment". In other words, the use of intimate pictures to bully, annoy or harass someone would be prohibited. Adoption of this bill would not incur any fiscal impact on the State, as evidenced by the three zero fiscal notes accompanying it.

[9:41:47 AM](#)

Senator Bunde understood therefore that this bill would prohibit the sharing of intimate pictures with strangers, even had the person in the picture initially consented to being photographed.

Mr. Pawlowski concurred. "The intent of the person doing the harassing is what matters". This bill would apply to a situation in which the person publishing or posting pictures of someone intended to harass or annoy that person. While he had used the word "lewd" in his comments, the "terms are more clearly defined" in State Statute.

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

There being no objection, SCS CS HB 326(JUD) was REPORTED from Committee with three previous zero fiscal notes: fiscal note #1 dated January 13, 2006 from the Alaska Court System; fiscal note #2 dated January 26, 2006 from the Department of Law; and fiscal note #3 dated January 17, 2006 from the Department of Public Safety.

[9:43:44 AM](#)

#hb41

SENATE CS FOR CS FOR HOUSE BILL NO. 41(JUD)

"An Act relating to minimum periods of imprisonment for the crime of assault in the fourth degree committed on school grounds, on a school bus, at a school-sponsored event, or at certain school district administration offices."

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

REPRESENTATIVE BOB LYNN, the bill's sponsor, informed the Committee that this bill had passed the House of Representatives with a unanimous vote of the members present. He supported the title change adopted by the Senate Judiciary Committee which expanded the scope of an assault against a person to include an assault occurring "on school grounds, on a school bus", and "at a school sponsored event".

Representative Lynn pointed out that the bill would also require a person convicted of a misdemeanor assault occurring at the aforementioned locations to receive a mandatory minimum sentence of 60 days. This bill would complement HB 88-CRIM LAW: MINORS, SCHOOLS, DRUGS, SENTENCES, which was recently signed into law by Governor Frank Murkowski. This bill would address misdemeanor assaults, while HB 88 would address felony assaults on school employees made with a deadly weapon.

Representative Lynn contended that the mandatory 60-day sentence specified in this bill was an "appropriate" sentence. The message must be sent that assaults on school grounds would not be tolerated.

Representative Lynn disclosed that, being a retired public school teacher; he personally understood "how dangerous working on school premises could sometimes be". He noted that representatives from the Department of Law, the Anchorage School District, and the Alaska Association of School Boards, which is on record in support of the bill, were available to answer questions. He urged the Committee to advance the bill.

AT EASE: 9:46:23 AM / 9:46:35 AM

Co-Chair Green appreciated the work conducted on this bill. She directed members' attention to a Mat-Su Valley Frontiersman newspaper article titled "Police: Student urged into fight by mother" [copy on file] about a Wasilla middle student who was urged by her mother and another adult to assault another student. The school district found they could not take action against the adults for their involvement. She mentioned that Senator Ralph Seekins has also recognized the validity in addressing such a situation. Passage of this legislation would delight school districts for it would provide them the ability to adequately address assault situations in the future.

Senator Stedman asked whether the bill's language might subject junior high or high school boys who might "get a little rough with each other" when settling issues to 60 days in jail, were such action to occur on school grounds.

NANCY MANLEY, Staff to Representative Lynn, deferred to the Department of Law.

ANNE CARPENETI, Assistant Attorney General, Legal Services Section-Juneau, Criminal Division, Department of Law, stated that the situation "would depend on the circumstances". Students fighting at a school-sponsored event would be subject to this provision if "we could prove beyond a reasonable doubt that they were assaulting each other".

Senator Stedman questioned the "leeway" a judge might have in dealing with these situations. "More often than we'd like", the reality is that such behavior does occur with young adults.

Ms. Carpeneti understood the Senator's concern, as she recalled from her high school experience that "kids did push each other around". However, "it would be unlikely" under those circumstances that an assault charge would be issued "unless the fight was very serious".

Ms. Carpeneti clarified, that, were there cause to prosecute, youth under the age of 18 would be prosecuted under juvenile law. This provisions in this bill would apply to people 18 years of age or older.

Co-Chair Green pointed out that internal school discipline policies involving the principal, the student's parents, and the

school's disciplinary committee would first address an in-school event.

Ms. Carpeneti anticipated that juveniles would be involved in "the vast majority" of these situations. This legislation would not be applicable in those cases.

Senator Bunde noted that a school confrontation that "escalated to a really extreme situation" could be charged as an assault under existing criminal law. To that point, he asked whether this bill would impact existing assault laws.

Ms. Carpeneti stated this legislation would not affect existing law. "There is already an aggravating factor for this kind of conduct on school grounds that applied to all felony assaults against a person".

Senator Bunde asked whether this bill would "increase that punishment" in the case of "a student upon student assault".

Ms. Carpeneti expressed that this legislation would not affect juveniles; it would not apply to people under the age of 18.

Senator Bunde shared "a very unfortunate event" in which a parent attending their child's hockey game in Anchorage assaulted a juvenile referee. He asked whether this legislation would be applicable to such a situation were it a school-sponsored event.

Ms. Carpeneti affirmed it would. "It would apply to the adult".

Co-Chair Green referred to language in Section 1(d)(1) and (2) of the bill, beginning on page 1 line 6 through page 2 line 7, which specified this legislation would be applicable to a person "who knowingly directed the conduct constituting the offense at a uniformed or otherwise clearly identified peace officer, fire fighter, correctional employee", emergency medical technician, paramedic, ambulance attendant, or other emergency responder who was engaged in the performance of official duties at the time of the assault or person on school grounds or at a school sponsored event.

Ms. Carpeneti affirmed.

Co-Chair Green continued that, rather than the target of the bill to be two kids fighting on a school playground, the focus of the bill would be to provide legal recourse for school officials in such cases as that detailed in the aforementioned newspaper article about the adult who "spurred the child on" to fight. The school district was frustrated when it found it had no legal recourse against the adult. She apologized, had her earlier remarks misled the discussion.

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

There being no objection, SCS CS HB 41(FIN) was REPORTED from Committee with three previous zero fiscal notes: fiscal note #6 dated January 28, 2006 from the Department of Administration; fiscal note #7 dated January 30, 2006 from the Department of Law; and fiscal note #8 dated January 30, 2006 from the Department of Public Safety.

AT EASE 9:54:39 AM / 9:58:27 AM

#hb57

CS FOR SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 57(FIN)
"An Act relating to the sale of certain state land to adjacent landowners."

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

9:58:50 AM

TERRY HARVEY, Staff to Representative Bruce Weyhrauch, the bill's sponsor, explained the bill would revise State Statute to allow the Department of Natural Resources to negotiate with a private landowner the sale of a parcel of State land, 20 acres or smaller, which was surrounded by land held by that private landowner. These land parcels are unique in that the only access to these parcels would be through the private landowners property. This negatively impacts the ability of the State to sell the land to another entity.

Mr. Harvey noted that Representative Weyhrauch has been working with Representative Bill Thomas in regards to such a parcel of

land in Haines, which is in Representative Thomas's election district. A person in Haines has been working for 30 years on developing his land for a mining operation, which would be open to the public. That individual's property completely surrounds a pre-Statehood mining claim that has reverted to State ownership. The individual in this situation "should be allowed to work directly with the State," as it would remove the burden of advertising and survey work he would be required to pay for were he to attempt to purchase the land through the typical State land disposal process.

[10:00:27 AM](#)

Mr. Harvey noted that Dick Mylius, Director, Division of Mining, Land and Water, Department of Natural Resources, was available to answer technical questions about the bill. Sarah Gilbertson with the Department of Fish and Game was also available to address public access issues that might arise were the State to engage in such a sale. The Haines landowner, John Schnabel, was also available to discuss his situation.

[10:01:03 AM](#)

Senator Bunde asked whether a survey would be required on such parcels.

Mr. Harvey assumed a survey would be required. However, the direct negotiation sale process would forego the advertising and other requirements for someone in Mr. Schnabel's position.

Senator Bunde, agreeing to the uniqueness of there being State land surrounded by privately held land, asked whether other private landowners were seeking to acquire such land.

Mr. Harvey understood there were other cases, however, Mr. Schnabel was the only one seeking to purchase such land at this time.

That being the case, Senator Bunde declared this "seems to be kinda pushing the edge of special interest legislation".

Co-Chair Green asked whether this situation might be referred to as "an in-holding".

Mr. Harvey responded in the affirmative.

Co-Chair Green characterized this situation as "a reverse in-holding". There are numerous parcels of "in-holding" land in the State with access issues.

10:02:40 AM

DICK MYLIUS, Director, Division of Mining, Land and Water, Department of Natural Resources, testified via teleconference from an offnet location. This legislation would change the State's "preference rights" statutes. Typically State land is sold through a competitive process through which any Alaskan could participate. However, "preference rights are the exception" as they allow the State to negotiate a sale with one individual. Typically this process is utilized when an individual legally occupies the land and has made significant investments on the property.

Mr. Mylius stated that the preference rights process could be expanded to allow State land, which is surrounded by privately held land, such as the aforementioned land in Haines, to be sold. Such land would be unattractive to others, as it is inaccessible.

Mr. Mylius stated that this legislation would include such land in an existing "remnant" preference rights statute that allows the State to negotiate the sale of a small parcel of land within a municipality to an individual. A best use interest finding, land survey, and appraisal would be required, and the land would be sold at fair market value. He noted that the Haines land exceeds the parcel size currently specified in the statute. A survey has already been conducted on the parcel.

Mr. Mylius noted that, while the land in Haines is the only known parcel, there could be others, considering the size of the State and the amount of land the State owns.

Senator Bunde questioned the claim that such land would be inaccessible, as he understood an existing State law would require granting right-of-way access to land.

10:06:32 AM

Mr. Mylius clarified that the law was specific to land sold by the State; the State would be required to insure there was legal

access to any land it sold. A private landowner would not be required to provide legal access to land sold by the State; the purchaser would be required to negotiate directly with the private landowner for access. He was unsure whether the access requirement was required by State law, as the Department of Natural Resources provides access to land it sells as a matter of policy.

Senator Bunde asked whether the land might qualify for access under the provisions of the State's RS 2477 rights-of-way project.

Mr. Mylius understood there was a RS 2477 route near or on the Haines parcel. Its exact location has not been confirmed, as it has not been surveyed. While RS 2477 "would provide trail access, one of the problems with RS 2477 is it's not unlimited access" and there are other [unspecified] RS 2477 restrictions. Thus, it is unclear as to whether the RS 2477 access would be sufficient to allow development of the land. While the route is recognized under State law, it has not been recognized by the court system and thus, at this point, could not be relied upon to provide legal access to the land.

Senator Bunde appreciated Mr. Schnabel's situation, however, suggested the bill be referred to the Senate Judiciary Committee so his concern about whether this was special interest legislation could be addressed.

[10:08:50 AM](#)

Senator Stedman furthered Senator Bunde's access question, by asking whether "prescriptive easements", which are used to acquire access across property that is privately owned, could be utilized in these cases.

[10:09:27 AM](#)

Mr. Mylius, noting he was not proficient in the subject of prescriptive easements (PEs), explained that the court must approve PEs. The Court would require seven to ten years of actual documented use as well as documentation proclaiming that no one had attempted to block the access. Nothing like that has been filed in the Haines case. The Department could attempt to establish a PE, however, it would be "a time consuming and expensive process" with an unforeseeable outcome.

Senator Stedman informed the Committee that, while the Department felt there could be other similar parcels like the Haines land, no inventory of parcels had been provided when the bill was heard in the Senate Resources Committee.

Co-Chair Green assumed there could be other parcels of land to which this bill would apply, particularly in areas where road construction has occurred.

Senator Olson understood that the bill's previous committee of referral had considered an amendment sponsored by Senator Ralph Seekins.

Mr. Harvey communicated that it was not until after the bill reported from the Senate Resources Committee, that the sponsor became aware Senator Seekins had some legal concerns pertaining to the differences between a direct preference sale to an individual and the State's typical land disposal process. Representative Weyhrauch understood that the Senator's concerns arose because he did not have the benefit of hearing Mr. Mylius' testimony. No amendments have been requested.

Co-Chair Green opined that the key language in the bill is that "the director 'may' allow the land" in question to be sold to the adjoining landowner through the direct preference sale option. This language is located in Section 1(7) page 3 lines 1 through 11 of the bill. In other words, the director would determine whether to allow this process to transpire.

Mr. Harvey noted that Sarah Gilbertson with the Department of Fish and Game would explain the efforts taken to address public access concerns.

[10:13:25 AM](#)

SARAH GILBERTSON, Special Assistant to the Commissioner, Department of Fish and Game, announced that the Department is aware of numerous parcels of land in the State to which this legislation could apply. Some of these parcels "are State owned land that is adjacent to a waterway" such as a stream or river. The surrounding land is either privately or federally owned in these cases. The Department's primary concern with these parcels of land was to preserve Alaskans' ability to access the water.

Ms. Gilbertson stated that the Department's concerns were addressed by adding the requirement that a best interests finding be determined, as specified in Section 1(7)(b)(A) on page 3 line 5 of the bill. The inclusion of the best interest findings would ensure that the access to waterways issue would be addressed.

Co-Chair Green asked for confirmation that the addition of that language appeased the concerns of the Department.

Ms. Gilbertson affirmed.

AT EASE [10:14:54 AM](#) / [10:15:58 AM](#)

Co-Chair Green appreciated the work that has been conducted on the issue.

[10:16:26 AM](#)

JOHN SCHNABEL, the owner of 84 acres of land surrounding the State parcel in Haines, testified via teleconference from an offnet location. His attempts to purchase the State parcel began in 1980, and the effort has been very challenging. He pointed out that in separate efforts to purchase other State land via the public outcry auction, he was held financially responsible for the land surveys and advertising notices. Even though he had paid those expenses, other people had the right to bid against him without any financial obligation.

Mr. Schnabel said he planned to develop the 84 acres into a wilderness and gold panning experience for tourists. His concern is that a conflicting activity might present itself on the 13-acres parcel of land within his development, were it sold to another individual at an outcry auction. This bill would assist in making his development plans "secure".

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

Without objection, CS SS HB 57(FIN) was REPORTED from Committee with previous indeterminate fiscal note #1 dated April 4, 2006 from the Department of Natural Resources.

[10:18:30 AM](#)

#hb419

HOUSE BILL NO. 419

"An Act repealing the Board of Storage Tank Assistance, the underground storage tank revolving loan fund, and the tank cleanup loan program; repealing certain reporting requirements relating to underground petroleum storage tank systems; making conforming amendments; and providing for an effective date."

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

Co-Chair Green read the bill's title.

[10:18:52 AM](#)

KAREN LIDSTER, Staff to Representative John Coghill, the bill's sponsor, stated that, in order to meet federal Environmental Protection Agency (EPA) guidelines regarding underground storage tanks, the Legislature, in 1990, approved HB 220, which created the Underground Storage Tank Program (USTP) and the Storage Tank Assistance Fund (STAF) grant program. Grant applications to STAF were prioritized on criteria established by the Board of Storage Tank Assistance (BSTA).

Ms. Lidster stated that USTP was phased out shortly after the EPA underground storage tank program ended, and the STAF grant program was converted to the Underground Storage Tank Revolving Loan Fund (STRLF) in the year 2002. However, the initial grant program was "extremely successful" and when STRLF was created there were no applicants for its funds. With the transition to STRLF, there was no reason to continue the BSTA. Therefore, this bill would modify "the end date for the Board [of Storage Tank Assistance] in order to be consistent with the end date for formal termination of the loan program." It would in essence eliminate statutes and regulations that are no longer required.

[10:20:49 AM](#)

Senator Bunde asked for further clarification of the reason STRLF did not receive any applications, specifically whether the funds provided by STAF had adequately addressed the entirety of

underground tanks or whether the transition from a grant program to a loan program caused the decrease in applicants.

Ms. Lidster deferred to Larry Dietrick with the Department of Environmental Conservation.

[10:21:22 AM](#)

Senator Bunde clarified his question as whether there were storage tanks still needing to be addressed and whether they were not being cleaned up because the program changed to a loan program.

[10:21:36 AM](#)

LARRY DIETRICK, Director, Division of Spill Prevention & Response, Department of Environmental Conservation, stated that 6,000 of the 7,000 underground storage tanks in the State have been removed. The balance of the tanks was upgraded to current requirements. The effort has cost \$43 million. This "was a very significant program", and the hope is that it negated the threat from underground storage tank pollutants.

Senator Bunde understood therefore that the deteriorating tanks were "eliminated".

Mr. Dietrick affirmed.

Senator Olson asked whether the term "eliminated" meant that the tanks were actually removed or were simply "not being used anymore".

Mr. Dietrick stated that 6,000 tanks were physically removed.

Senator Olson asked whether the program addressed both under and above ground storage tanks.

Mr. Dietrick responded that the program was limited to underground storage tanks.

Senator Hoffman asked whether restoring the program to a grant program would generate further applicants.

Mr. Dietrick expressed that continuing the grant program as it was originally designed, which was to remove tanks not meeting

EPA standards, would not generate additional applicants, as all of the tanks were either removed or updated.

Co-Chair Green opined that Senator Hoffman appeared to be having difficulty believing that.

Senator Bunde shared Senator Hoffman's sentiment. "If there wasn't a free lunch, they wouldn't be standing in line."

Co-Chair Green voiced being encouraged that "we are ending an era".

[10:24:30 AM](#)

Senator Olson asked whether the underground storage tank program pertained to both water and petroleum product tanks.

Mr. Dietrick stated that the program was limited to petroleum product tanks.

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

There being no objection, HB 419 was REPORTED from Committee with previous zero fiscal note #1 dated March 21, 2006 from the Department of Environmental Conservation.

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ADJOURNMENT

Co-Chair Lyda Green adjourned the meeting at 10:25:48 AM.