

HOUSE FINANCE COMMITTEE
March 27, 2008
1:49 P.M.

CALL TO ORDER

Co-Chair Meyer called the House Finance Committee meeting to order at [1:49:15 PM](#).

MEMBERS PRESENT

Representative Mike Chenault, Co-Chair
Representative Kevin Meyer, Co-Chair
Representative Bill Stoltze, Vice-Chair
Representative Harry Crawford
Representative Les Gara
Representative Mike Hawker
Representative Reggie Joule
Representative Mike Kelly
Representative Bill Thomas Jr.

MEMBERS ABSENT

Representative John Harris
Representative Mary Nelson

ALSO PRESENT

Representative Max Gruenberg; Representative Beth Kerttula; Tom Wright, Staff, Representative Mike Chenault; Vern Jones, Chief Procurement Officer, Department of Administration; Aurora Hauke, Staff, Representative Beth Kerttula; Rynnieva Moss, Staff, Representative John Coghill; Marsha Pickering, Deputy Compact Administrator, Social Services Program Coordinator, Office of Children's Services (OCS), Department of Health and Social Services; Mike Lesmann, Community Relations, Office of Children's Services (OCS), Department of Health and Social Services

SUMMARY

HB 50 An Act relating to the Interstate Compact for the Placement of Children; establishing an interstate commission for the placement of children; amending Rules 4 and 24, Alaska Rules of Civil Procedure; and providing for an effective date.

CS HB 50 (JUD) was reported out of Committee with a "do pass" recommendation and with zero note #1 by the Department of Administration and fiscal

note #2 by the Department of Health and Social Services.

#HB367

HB 367 An Act relating to the sale of raw milk and raw milk products.

HB 367 was SCHEDULED but not HEARD.

#

HB 400 An Act relating to a person who seeks medical assistance for a person experiencing a drug overdose.

HB 400 was reported out of Committee with a "do pass" recommendation and with zero note #1 by the Department of Law.

HB 419 An Act prohibiting certain state leases and lease-purchase agreements for equipment and other personal property; and providing for an effective date.

HB 419 was HEARD & HELD in Committee for further consideration.

HJR 37 Proposing amendments to the Constitution of the State of Alaska to correct obsolete references to the office of secretary of state by substituting references to the office of lieutenant governor and to eliminate personal pronoun references in the sections proposed to be amended.

CS HJR 37 (JUD) was reported out of Committee with "individual recommendations" and with fiscal note #1 by the Office of the Governor.

[1:50:04 PM](#)

#HB419

HOUSE BILL NO. 419

An Act prohibiting certain state leases and lease-purchase agreements for equipment and other personal property; and providing for an effective date.

Co-Chair Chenault MOVED to ADOPT work draft 25-LS1567\K, Cook, 3/26/08, as the version of the bill before the Committee. There being NO OBJECTION, it was adopted.

[1:50:46 PM](#)

TOM WRIGHT, STAFF, REPRESENTATIVE MIKE CHENAULT, explained that the work draft proposes a "kinder and gentler" version of the original bill. He stated that HB 419 places into statute, authorization for State departments and other

agencies such as the Supreme Court, the Board of Regents for the University of Alaska and the Legislative Council to enter into lease-purchase contracts for equipment and other properties that are not considered real property.

In the past, there were no limitations on a department's ability to enter into lease purchases for non-real property purchases. The Administration interpreted an Attorney General's opinion from 1987 to give them the power to enter into the agreements. The new section of HB 419, AS 36.30.086, provides the explicit authorization for departments to enter into lease-purchase agreements for equipment to perform the duties and statutory functions of the department.

Mr. Wright continued, the legislation requires that any agency that enters into a lease-purchase contract that exceeds \$100 thousand dollars, provide written notice to the House and Senate presiding officers and the Finance Committee chairs. It also requires that the Office of Management and Budget (OMB) submit a report containing each lease-purchase agreement entered into by an agency during the preceding fiscal year. The report will need to include the purchase price, term payments, the amount of each payment and the amount of interest or financing charges paid.

He identified changes made to the bill:

- Section 1 designates in AS 36.30.085 as pertaining to only real property. Previously, there were no provisions addressing the legal definition of personal property.
- AS 36.30.086, lease-purchase of personal property, provides all departments ability to enter into lease-purchase agreements.
- Additional reporting requirement was added, indicating by January 15th of each year, all lease-purchase agreements must be reported to the Legislature.

[1:53:29 PM](#)

Co-Chair Meyer pointed out the testifiers available for comment on the bill. Mr. Wright indicated his gratitude to the many agencies that had assisted in preparation of the bill. He understood that OMB has indicated concern with some reporting requirements for the lease-purchase items & that the Department of Administration might also have concerns. He maintained, it is prudent for all lease-purchase agreements to be reported.

[1:54:36 PM](#)

Representative Hawker inquired if there was a definition of lease-purchase agreement in Statute. Mr. Wright did not believe there was but noted there is a definition of real property and non real property.

Representative Hawker questioned if the intent was to provide an agreement at the end of the lease purchase title to the State of Alaska and if that would be limited scope. He wondered if a loophole was there, escaping reporting. Mr. Wright deferred to the department. He pointed out that AS 36.30.085 discusses lease-purchase agreements and does relate to real property agreements and provides guidelines to lease-purchase agreement concerns.

Representative Kelly asked if the bill would increase or decrease the amount of lease-purchasing done by the State. Mr. Wright did not think it would be affecting it one way or the other and that the sponsor did not want to see the system abused in the future.

[1:57:45 PM](#)

Co-Chair Chenault interjected, the intent is to determine if there are abuses occurring in the programs. Presently, the process indicates there are no abuses but certainly, large amounts of money have gone out. It is the Legislature's authorization to know how the departments are spending the money and how loans are paid back. He wanted to present legislation that provides a report and the details as to how the funds will be used. He reiterated the issue of appropriation power and tracking of money spent across department lines.

[1:59:30 PM](#)

VERN JONES, CHIEF PROCUREMENT OFFICER, DEPARTMENT OF ADMINISTRATION, responded to a previous query by Representative Hawker regarding the difference between a lease and a lease purchase, noting no statutory definition. The difference is that at the end of a lease-purchase, the State would own the asset and at the end of a lease, the asset is returned to the party that it was leased from.

Representative Hawker questioned the terminology of those concepts. He pointed out the principle regarding the title transfer lessee; in other cases where the lease involves substantial value of the asset, while it does not transfer title, it is still required to be recognized as a capitalized asset. He believed that it would be possible to circumvent the intent of the Statute by terms of a lease-purchase agreement, which could actually be a transfer title risk of ownership. At the end of the lease term, the title could remain with the leaser and would not require

disclosure. Mr. Jones agreed that if the State intends to simply lease a piece of equipment with no option of ownership, the bill does not apply.

Representative Hawker requested working with the Sponsor to correct the loophole.

[2:02:37 PM](#)

Representative Crawford remembered that the bill had initially been submitted in conjunction with Governor Murkowski's jet purchase and asked if it was intended to deter future actions such as that. Mr. Jones said if the bill been in place, the Department would have been required to make the transaction and report it to the Legislature and would have shown up in the January report.

[2:03:52 PM](#)

Representative Thomas remembered that the press had indicated that the Legislature allowed the Governor to purchase the jet because of certain language in Statute. He wanted to be guaranteed that would not happen again. Mr. Wright said that the sponsors did discuss caps; however, created complications in cases where the Legislature wants to authorize or approve a lease-purchase by adding unwanted steps. That option has created stumbling blocks by not limiting the Legislature's ability to authorize.

Representative Joule inquired if it could be an option for the Legislative Budget and Audit (LBA) Committee for consideration of adding a cap exceeding the request. Mr. Wright advised that LBA can not authorize exceeding the caps; they do not have that approval authority.

[2:05:59 PM](#)

Representative Hawker observed that the work draft was intended to be the "nicer" version of the bill; he suggested consideration of the original version. Co-Chair Meyer proposed the bill be held so that Co-Chair Chenault and Representative Hawker could discuss the version to move forward.

[2:06:41 PM](#)

HB 419 was HELD in Committee for further consideration.

#HB400

[2:07:13 PM](#)

HOUSE BILL NO. 400

An Act relating to a person who seeks medical assistance for a person experiencing a drug overdose.

REPRESENTATIVE BETH KERTTULA, SPONSOR, introduced the bill because a constituent's daughter died from a drug overdose, and out of that, she has put her grief to work to determine a way to encourage reporting of someone having a drug overdose. There have been nationwide studies undertaken that address mitigating factors.

[2:08:54 PM](#)

AURORA HAUKE, STAFF, REPRESENTATIVE BETH KERTTULA, stated that HB 400 is an attempt to save lives; approximately 85 Alaskans die each year from drug overdoses and that number exceeds the national average. Many times, deaths from drug overdoses may be preventable by a single 911 call. Often those calls are not made because the people who are witnessing the overdose are afraid of being arrested themselves.

HB 400 identifies the problem by allowing a mitigating factor in sentencing for crimes involving controlled substances, if the defendant sought medical assistance for another person, who was experiencing a drug overdose.

[2:09:56 PM](#)

Representative Hawker asked the specific definition of a drug overdose. Representative Kerttula viewed it as anything threatening a person's health from the use of a drug. Representative Hawker questioned if a single trip on heroine could be considered a drug overdose. Representative Kerttula offered to check into that, advising that what she had seen had been more serious and life threatening.

[2:10:59 PM](#)

Vice-Chair Stoltze mentioned a case that happened in Spenard. He thought that the definition was too ambiguous. Representative Kerttula countered that the judge could make the decision regarding whether it was appropriate or not and that factual information is never taken lightly. Vice-Chair Stoltze did not have the same confidence in the judicial branch.

[2:12:25 PM](#)

Representative Gara took offense to comments regarding judges, made by Vice-Chair Stoltze. Representative Gara suggested that those type of comments are not in the Committee's greatest use of time.

Representative Gara noted that these are not people who have committed a crime and are going to get off sentencing. Instead, it will be a person that has committed a crime and convicted of committing that crime. It is a mitigator indicating that in the circumstances where there is a crime committed, during the commission of that crime, you place the call for help for another person, that action would be considered in the sentencing. If a crime is committed and other awful things have been done also, there would be an aggravator and the judge determines the sentence for those people. There are more aggravators than there are mitigators in the sentencing statutes. Sentencing should be determined by everything the person did. He summed up, a person calling law enforcement to help another person, should receive some favorable consideration.

Co-Chair Meyer agreed that if someone does a good deed, there should be mitigating factors considered. He did not know if people committing the crimes would know that by calling 911, there would be a possibility of a lesser sentence. Representative Kerttula replied that this kind of information does get around and is known and could make a difference. She noted she had looked into the statute and could not determine if there was a criminal law definition for overdose. She thought it might be a medical term.

[2:15:33 PM](#)

Representative Hawker commented that the legislation proposes a "good Samaritan refuge". He wondered if there was another way to look at the language to be more inclusive. Representative Kerttula advised that the information in HB 400 is specific about the actual problem related to the overdose itself. Ms. Hauke added, last year, the State of New Mexico, which also has a high rate of deaths related to drug overdoses, passed similar legislation.

[2:17:48 PM](#)

Representative Hawker advised that the bill proposes to create a mitigator and asked if that could create a conflict with presumptive sentencing already in Statute. Representative Kerttula did not think so. She said that the Department of Law had looked closely at it. It would only happen after the person is convicted and the judge then makes certain findings; it would be left to the judge's discretion. Ms. Hauke added that the mitigating factor is based on the presumptive sentences. The low-end of the presumptive range is zero to four years; it could be reduced to removing the sentence all together.

[2:19:04 PM](#)

Representative Gara believed that a court could interpret a drug overdose. He pointed out that sentence hearings are not long like trials can be. He pointed out #18, the need to prove that mitigating factors, asking what "suffering" from mental disease means. He thought that some terms just do not need to be defined.

Representative Gara referenced the comment made by Representative Hawker regarding the "Good Samaritan" provision of the bill. To resolve the drug overdose situation, it is a good thing for someone to call for medical help during a crime and recommended that alternative language be included.

Representative Kerttula thought those changes would reduce the title, making it substantially broader. She did not object to that if it were the will of the Committee. She pointed out that New Mexico added immunity to their statute. She had not offered the bill that way. HB 400 specifically offers a mitigator. Co-Chair Meyer commented that those changes should have been made in the House Judiciary Committee.

[2:22:30 PM](#)

Vice-Chair Stoltze asked if references had been made to legal or criminal immunity. Representative Kerttula responded, it would be immunity from criminal prosecution. The Committee chose not to do that.

Vice-Chair Stoltze disagreed with the term "Good Samaritan" suggesting rather a "criminal accomplice with a lapse of conscience". He asked if the legislation could include alcohol abuse. Ms. Hauke stated it deals with AS 11.71, the controlled substances statute. She did not believe that drug overdose would also be considered alcohol overdose. Representative Kerttula said arguably it could be, however, wanted to check it with the Department of Law.

[2:24:45 PM](#)

Representative Joule thought that Representative Stoltze was correct. He noted that he had served on the Alcohol Drug and Advisory Board, referencing alcohol and other drugs. He worried the bill would place a continued stress on the bed space at the Department of Corrections. He wanted to see responsibility in addressing people's choices. Co-Chair Meyer agreed and thought that the bill could actually save the State money. He did not know about sentencing and mitigating factors. Representative Kerttula explained that mitigating factors must be specifically requested, with findings made and after the trial, during the sentencing. Then there is a range of mitigating options and in the higher sentencing, the judge can only reduce ½ of the

sentence. She added that these kind of defendants do know the law and she thought it would have a beneficial result.

Representative Gara advised that the legislation would not cover alcohol abuse; it is only for a conviction under AS 11.71, which he thought was only controlled substances, not alcohol. He stated that part of the criminal system is determining the right level of punishment. Representative Kerttula clarified that the offense that the person is convicted under is under AS 11.71; however, it is the other person that is actually experiencing the drug overdose and consequently, alcohol would be included under the definition.

[2:29:25 PM](#)

PUBLIC TESTIMONY CLOSED

[2:30:09 PM](#)

Representative Gara thought that inclusion of the mitigator could reduce jail time, which could zero out the fiscal note. Co-Chair Meyer advised that the note is already zero.

Vice-Chair Stoltze MOVED to REPORT HB 400 out of Committee with individual recommendations and with the accompanying fiscal note. There being NO OBJECTION, it was so ordered.

HB 400 was reported out of Committee with a "do pass" recommendation and with zero note #1 by the Department of Law.

#HB50

[2:31:39 PM](#)

HOUSE BILL NO. 50

An Act relating to the Interstate Compact for the Placement of Children; establishing an interstate commission for the placement of children; amending Rules 4 and 24, Alaska Rules of Civil Procedure; and providing for an effective date.

RYNNIEVA MOSS, STAFF, REPRESENTATIVE JOHN COGHILL, directed her comments to Representative Coghill's involvement with the legislation. She stated that HB 50 provides provisions for adoption of a new Interstate Child Placement Compact (ICPC). The current ICPC was drafted in 1959 to assure that children placed across state lines were placed with the same protections and services as children placed intrastate. Through the years, it has become evident that the ICPC has resulted in unnecessary delays in moving children across the

state lines, lack of accountability and an outdated administrative process. The current ICPC applies to all interstate placements such as placement with relatives and residential treatment centers, not just placements involving children in state custody.

Ms. Moss continued, the new compact would hold states to a higher standard of duty, eliminating regulation of children not in state custody, making provisions for private child placement agencies and bringing the administrative process into current times with home study incentives, definitions for new terminology requiring consideration of interstate placements, cooperation between member states in sharing information and providing foster parents more participation in the process.

Ms. Moss stated that HB 50 provides state child placement agencies and courts, the tools to make faster interstate placements and holds all parties accountable for providing a safe, reliable home for children in out-of-state placement.

[2:34:27 PM](#)

MARSHA PICKERING, DEPUTY COMPACT ADMINISTRATOR, SOCIAL SERVICES PROGRAM COORDINATOR, OFFICE OF CHILDREN'S SERVICES (OCS), DEPARTMENT OF HEALTH AND SOCIAL SERVICES, addressed the ICPC, which attempts to bring more uniformity to the process because under the current compact, the rules and regulations that have been developed were not drafted under the Administrative rule process. The Department wanted to determine accountability for the receiving state. The new compact offers the opportunity to come up with rules & regulations that all states follow and requirements will include enforcement. There would also be a required mediation structure, allowing for lawsuits in federal court. The reciprocity element will be a continuation of current practice with more uniform guidelines.

Ms. Pickering noted that the compact has been endorsed by the National Council on State Human Services & the National Association of Public Child Welfare Administration & other agencies.

Ms. Pickering commented that another opportunity under the ICPC will be uniform data collecting, sharing & guidelines involving tribal governments. Under the new commission, the State would have opportunities to actually work with the tribes to determine a mechanism for the placements. The legislation will provide for provisional approval. She commented on the length of time it takes for placements. The new compact provides the Division the opportunity to offer provisional approvals based on local background checks.

Ms. Pickering added that the new compact deletes the requirement for parents to go through the compact to place their children in residential treatment centers. It no longer applies to foreign adoptions or families making decisions among themselves regarding the placement with someone that is not an actual relative but a part of the family. The compact will require a State advisory committee for oversight, which will be represented from each branch of government.

[2:40:09 PM](#)

Representative Joule asked about the fiscal costs. Ms. Pickering anticipated two years for all states to enact the legislation; it will take approximately another year to determine the rules and regulations. At that time, the Department will be able to determine what is needed for compliance and the associated costs.

Co-Chair Meyer asked if thirty-four other states would need to approve before going into effect. Ms. Pickering said yes.

Representative Gara asked if the proposed compact had the same language as the one put before the other states. Ms. Pickering said it was the same with the addition of statutes to support the provision to renumber. Ms. Moss interjected that the provision that was renumbered was an indirect court rule that applies only to the State of Alaska.

[2:42:35 PM](#)

PUBLIC TESTIMONY CLOSED

Ms. Moss noted that the sponsor decided to hold the first draft of the compact as he wanted to be guaranteed that it would not supersede State law and wanted to make sure that any threat to State sovereignty was eliminated. Through negotiations with the Division, language concerns were removed.

[2:43:40 PM](#)

Representative Kelly asked if those comments had been directed to Page 2, the Department of Health and Social Services fiscal note reference to tribes. Ms. Moss said no; however, the old version stated that regulations adopted by the commission would supersede State law. She provided examples of language that had been removed. Representative Kelly asked assurance that was no longer a concern. Ms. Moss agreed.

[2:44:54 PM](#)

Co-Chair Meyer referenced the Department of Health and Social Services fiscal note.

MIKE LESMANN, COMMUNITY RELATIONS, OFFICE CHILDREN'S SERVICES (OCS), DEPARTMENT OF HEALTH AND SOCIAL SERVICES, explained the fiscal note, which does reflect that in the first two fiscal years, OCS would not be requesting additional resources; beginning in 2011, that would change depending on ratification of the thirty-four other states.

Representative Kelly mentioned the size of the note and asked what would happen if it was not passed. Ms. Moss pointed out that the fiscal notes reflect the administration of the commission. She did not believe that they "fairly reflect" that and less expense would be incurred by OCS from the quickness of placement, putting children with family rather than into foster homes. She reiterated, the fiscal note does not adequately reflect the real fiscal impact.

Representative Kelly asked if the sponsor believes the actual cost would be lower. Ms. Moss said yes. Representative Kelly advised that family should be taking care of these concerns and that they should not be paid. Ms. Moss responded that there are incidences where the State does pay family in situations which the children have either physical or mental problems that need medical attention and Medicaid assistance.

[2:48:03 PM](#)

Representative Hawker MOVED to REPORT CS HB 50 (JUD) out of Committee with individual recommendations and with the accompanying fiscal notes. There being NO OBJECTION, it was so ordered.

CS HB 50 (JUD) was reported out of Committee with a "do pass" recommendation and with zero note #1 by the Department of Administration and fiscal note #2 by the Department of Health and Social Services.

#HJR37

[2:48:48 PM](#)

HOUSE JOINT RESOLUTION NO. 37

Proposing amendments to the Constitution of the State of Alaska to correct obsolete references to the office of secretary of state by substituting references to the office of lieutenant governor and to eliminate personal pronoun references in the sections proposed to be amended.

REPRESENTATIVE MAX GRUENBERG, SPONSOR, advised that in 1970, the legislature proposed and the voters of Alaska approved a series of amendments to the State Constitution that changed the name of the Office of "Secretary of State" to the office of "Lieutenant Governor". At that time, the drafting attorneys did not catch all of the references to "Secretary of State".

HJR 37 corrects the two remaining references to "Secretary of State". The proposed amendments, if approved would place it before the voters in the next general election. He added, it also corrects personal pronouns referenced in those sections.

[2:50:27 PM](#)

In response to Representative Gara's observation of changing all pronouns to "he", Representative Gruenberg responded that he wanted to take the path of least resistance and controversy.

Representative Gara thought that since the bill intends to be a "clean-up", all legislators should not be referenced as "he". Representative Gruenberg noted that the original bill could be adopted rather the House Judiciary draft.

Representative Gara asked why the House Judiciary Committee changed the pronouns to "he". Representative Gruenberg noted that the House Judiciary draft has attached a memorandum addressing two subjects. For that reason, it was determined safer to limit it to "Lt. Governor" and "he". He noted that another bill HJR 7, adds additional language clean-up.

[2:53:41 PM](#)

Vice-Chair Stoltze commented that incorrect gender reference falls under obsolete but that the courts will do what they want to in any case. He noted that he had not received any complaints regarding the matter.

Representative Hawker questioned why an oversight from a previous amendment, merits a process of putting it back in front of the people for a vote. Representative Gruenberg responded that it is important to keep the Alaska Constitution correct and up to date, acknowledging, it is not earth-shaking.

[2:58:36 PM](#)

Vice-Chair Stoltze stated that he would vote "do not pass" the bill out of Committee if the sponsor intended to place any amendments into it on the House floor. Representative Gruenberg replied he had no intention of adding amendments.

Co-Chair Chenault MOVED to REPORT CS HJR 37 (JUD) out of Committee with individual recommendations and with the accompanying fiscal note. There being NO OBJECTION, it was so ordered.

CS HJR 37 (JUD) was reported out of Committee with "individual recommendations" and with fiscal note #1 by the Office of the Governor.

[3:01:00 PM](#)

#

ADJOURNMENT

The meeting was adjourned at 3:03 P.M.