

**MINUTES**  
**SENATE FINANCE COMMITTEE**  
**May 9, 2007**  
**9:21 a.m.**

**CALL TO ORDER**

Co-Chair Bert Stedman convened the meeting at approximately [9:21:19 AM](#).

**PRESENT**

Senator Lyman Hoffman, Co-Chair  
Senator Bert Stedman, Co-Chair  
Senator Charlie Huggins, Vice Chair  
Senator Kim Elton  
Senator Donny Olson  
Senator Joe Thomas  
Senator Fred Dyson

**Also Attending:** REPRESENTATIVE BOB BUCH; LALANYA SNYDER, Staff to Representative Mike Chenault; DAVID JONES, Senior Assistant Attorney General, Opinions, Appeals, and Ethics Section, Civil Division, Department of Law; ANNE CARPENETI, Assistant Attorney General, Criminal Division, Department of Law; TAMMY KEMPTON, Juneau Branch Administrator, Alaska Public Offices Commission, Department of Administration; JERRY BURNETT, Legislative Liaison and Director, Division of Administrative Services, Department of Revenue; GEOFF BULLOCK

**Attending via Teleconference:** From offnet locations: PATRICK GAMBLE, President and Chief Executive Officer, Alaska Railroad Corporation, Department of Commerce, Community and Economic Development; BILL O'LEARY, Vice President and Chief Financial Officer, Alaska Railroad Corporation, Department of Commerce, Community and Economic Development; LISA PARKER, Government Relations Manager Agrium USA, Inc.

**SUMMARY INFORMATION**

HB 109- DISCLOSURES & ETHICS/BRIBERY/RETIREMENT

The Committee heard from the Department of Law, the Alaska Public Offices Commission, and took public testimony. Five amendments were considered with four being adopted and one being withdrawn from consideration. The bill reported from Committee.

HB 133-ELECTRONIC MONITORING OF GANG PROBATIONER

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

HB 229-KENAI GASIFICATION PROJECT; RAILROAD BOND

The Committee heard from the bill's sponsor, the Department of Revenue, the Alaska Railroad Corporation, and a representative of Agrium, USA, Inc. The bill was held in Committee.

[9:22:24 AM](#)

#hb109

SENATE CS FOR CS FOR HOUSE BILL NO. 109(JUD)

"An Act relating to bribery, receiving unlawful gratuities, and campaign contributions; denying public employee retirement pension benefits to certain legislators, legislative directors, and public officers who commit certain offenses, and adding to the duties of the Alaska Retirement Management Board and to the list of matters governed by the Administrative Procedure Act concerning that denial; relating to campaign financing and ethics, including disclosures, in state and municipal government, to lobbying, and to employment, service on boards, and disclosures by certain public officers and employees who leave state or municipal service or leave certain positions in state or municipal government; restricting representation of others by legislators; relating to blind trusts approved by the Alaska Public Offices Commission; and providing for an effective date."

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

[9:22:41 AM](#)

Amendment #6: This amendment supersedes Committee action taken by the adoption of Amendment #4 during the May 8, 2007 hearing on this bill which changed \$10 to \$50 in paragraph (1) of subsection (b) added to AS 24.45.051 by Section 12, page 6 lines 17 through 24. This amendment instead changes the \$10 to \$30. The revised language reads as follows.

(b) A lobbyist required to report to the commission under (a) of this section, who provides or pays for food or beverage for immediate consumption by a legislator or legislative employee or a member of the immediate family of a legislator or legislative employee shall report the date the food or beverage was provided or paid for and the recipient's name and relationship to the legislator or legislative employee, unless the food and beverage

(1) cost \$30 or less; or

Co-Chair Stedman moved and objected for purposes of discussion.

[9:23:32 AM](#)

Senator Huggins understood that this action would not prevent a lobbyist from taking someone out to dinner; it simply pertained to the reporting and bookkeeping requirement associated with that activity. Nonetheless, he questioned whether the requirement might be an "administrative burden".

Co-Chair Stedman affirmed that a meal or beverage costing more than \$30 would be required to be logged in and reported to the Alaska Public Offices Commission (APOC). It would not significantly add to a lobbyist's administrative duties as they typically provide a copy of such expenses to their employers for reimbursement. Increasing the reporting threshold to \$30 is an attempt to find a middle ground that would not be "overly burdensome" but would allow the public "to know who is lobbying who, particularly outside of this building at lunch and in the evenings."

Co-Chair Stedman removed his objection.

Without further objection, Amendment #6 was ADOPTED.

[9:25:21 AM](#)

Conceptual Amendment #1, as amended: This amendment inserts a new section on page 1 following line 12 as follows.

Section 1. AS 11.56 is amended by adding a new section to read:

Sec. 11.56.124. Failure to report bribery or receiving a bribe. (a) A public servant commits the crime of failure to report bribery or receiving a bribe if the public servant

(1) witnesses what the public servant knows or reasonably should know is

(A) bribery of a public servant by another person; or

(B) receiving a bribe by another public servant; and

(2) does not as soon as reasonably practicable report that crime to a peace officer or law enforcement agency.

(b) Failure to report bribery or receiving a bribe is a class A misdemeanor.

This amendment also deletes the entirety of subsection (a) of Section 65, page 38 lines 26 through 27, and replaces it with the following.

(a) AS 11.56.124, added by sec. 1 of this Act, and the amendment of AS 11.56.130(1) made by sec. 2 of this Act apply to offenses occurring on or after the effective date of secs. 1 and 2 of this Act.

This amendment also adds the definition of "Public Servant" to the bill, as follows.

"Public Servant" is defined in 11.81.900(54)

(54) "public servant means to each of the following, whether compensated or not, but does not include jurors or witnesses:

(A) an officer or employee of the state, a municipality or other political subdivision of the state, or a governmental instrumentality of the state, including legislators, members of the judiciary, and peace officers;

(B) a person acting as an advisor, or consultant, or assistant at the request of, the direction of, or under contract with the state, a municipality or other political

subdivision of the state, or another governmental instrumentality; in this subparagraph "person includes an employee of the person;

(C) a person who serves as a member of the board or commission created by statute or by legislative, judicial, or administrative action by the state, a municipality or other political subdivision of the state, or a governmental instrumentality;

(D) a person nominated, elected, appointed, employed, or designated to act in a capacity defined in (A) - (C) of this paragraph, but who does not occupy the position;

[Note: This amendment was drafted to CS HB 109(JUD) am, Version 25-GH1059\N.A. Therefore, conforming changes must be made.]

[9:25:27 AM](#)

Senator Dyson moved Conceptual Amendment #1, as amended, and objected for purposes of explanation.

[NOTE: Conceptual Amendment #1 had been offered and then withdrawn from consideration during the Committee's May 8, 2007 hearing on the bill.]

Senator Dyson stated that when Amendment #1 was offered during the first hearing on this bill, a question had arisen regarding the definition of "public servant". After conferring with the amendment's drafter, Tamara Cook, Director, Legislative Legal and Research Services, the decision was made to amend the amendment to add the definition of "public servant".

Senator Dyson noted that there has been a national political movement "to add some responsibilities" that would assist in preventing "good people from turning into bad people". This amendment is one such action.

Co-Chair Hoffman understood that the provisions of the amendment would only require public servants, rather than members of the public, to report a bribe.

[9:28:29 AM](#)

Senator Dyson affirmed that to be the intent.

While Senator Elton appreciated the addition of the definition to the amendment, he was unsure how language in subsection a(1) of Section 1, which reads "(1) witnessing what the public servant knows or reasonably should know is...", would be interpreted by the court system.

DAVID JONES, Senior Assistant Attorney General, Opinions, Appeals, and Ethics Section, Civil Division, Department of Law communicated that this "would involve a combined standard. First of all because this is a criminal statute, 'the beyond a reasonable doubt' standard of proof would apply." The second standard, "reasonably should know" would be a "more objective standard".

[9:29:49 AM](#)

Mr. Jones continued that the combination of these two standards would provide the circumstance in which someone could be convicted of this offense. It would be quite obvious a bribe was occurring if both standards were present.

[9:30:10 AM](#)

Senator Dyson appreciated Senator Elton's question as he also had wrestled with the interpretation of language during a separate bill on child crime reporting that specified that a person had the duty to report a child being raped, kidnapped, assaulted, or murdered. To that point, he shared having experienced a quandary once when trying to determine whether he was witnessing a child kidnapping or simply a child upset with his father. Thus, the question is whether a reasonable person could make a determination; the body of law "says that unless it was really clear, you're off the hook, but you do have a duty."

Senator Thomas sought further clarification about how to interpret language in the definition of public servant that reads "includes an employee of the person"; particularly as he would not consider consultants, advisors, and other professions to qualify as "public servants".

Mr. Jones specified that "person" in the legal definition includes corporations and other non-human entities. Thus, "employees of a corporation that is under contract with the State" must abide by this reporting requirement.

9:32:46 AM

Senator Thomas understood therefore that it would not pertain to "a private citizen".

Mr. Jones clarified that it would apply to a private citizen who was under contract to the State.

Senator Thomas surmised therefore, that the individual must be receiving some type of compensation by the public entity.

Mr. Jones affirmed. The person must be "under contract with the State" to provide their service.

9:33:16 AM

Senator Dyson expressed that "the definition was crafted to include" all who could "influence the public process". For instance, people on boards and commissions are specifically identified regardless of whether they receive compensation for their service.

Senator Dyson removed his objection.

There being no further objection, Conceptual Amendment #1, as amended, was ADOPTED.

9:34:13 AM

Amendment #5: This amendment inserts a new paragraph following "commission;" on page 6 line 15 of AS 24.45.041(b), amended by Section 11, as follows.

(9) A sworn affirmation by the lobbyist that the lobbyist has not been previously convicted of a felony involving moral turpitude; in this paragraph "felony involving moral turpitude" has the meaning given in AS 15.60.010, and includes convictions for a violation of the law of this state or a violation of the law of another jurisdiction with similar elements to a felony involving moral turpitude in this state.

In addition, this amendment adds a new bill section as follows.

Section 12. AS 24.45.041 is amended by adding new subsections to read:

(i) A person may not register if the person has been previously convicted of a felony involving moral turpitude in violation of a law of this state or the law of another jurisdiction with elements similar to a felony involving moral turpitude in this state.

(j) In this section,

(1) "felony involving moral turpitude" has the meaning given in AS 15.60.010;

(2) "previously convicted" means the defendant entered a plea of guilty, no contest, or nolo contendere, or has been found guilty by a court or jury; "previously convicted" does not include a conviction that has been set aside under AS 12.55.085 or a similar procedure in another jurisdiction, or that has been reversed or vacated by a court.

Co-Chair Stedman moved the amendment and objected for purposes of discussion.

Co-Chair Stedman advised that this amendment would exclude a person convicted of a felony involving moral turpitude from being a paid lobbyist. He reviewed the list of offenses that qualify as a felony involving moral turpitude.

Co-Chair Stedman felt that the responsibilities of the Legislature, specifically the allocation of money to various communities and projects "that move the direction of the State that have the affect that ripples through decades", require there being "tight requirements on who is allowed to be a lobbyist and lobby the individual elected officials to try to persuade them in particular directions." In a similar fashion to laws that prevent convicted felons from holding certain licenses and undertaking a multitude of other activities, a person convicted of a felony involving moral turpitude should not be allowed to be a paid lobbyist.

[9:36:49 AM](#)

Senator Thomas asked whether a person convicted of this offense could be elected to the Legislature.

[9:37:09 AM](#)

ANNE CARPENETI, Assistant Attorney General, Criminal Division, Department of Law, deferred to Mr. Jones.

[9:37:46 AM](#)

Mr. Jones communicated that following the previous day's discussion on this issue, he had conducted further research. One of the qualifications required to serve in the Legislature is that the person be a registered voter. He reviewed this statute as follows.

Alaska Statute (AS) 15.050.030. Loss and restoration of voting rights. provides that a person convicted of a crime that constitutes a felony involving moral turpitude under state or federal law may not vote in a state, federal, or municipal election from the date of the conviction through the date of the unconditional discharge of the person. Upon the unconditional discharge, the person may register under AS 15.07, which of course invites the question, what is unconditional discharge.

Mr. Jones continued.

AS 15.06.010 provides, in subsection (b)(39), unconditional discharge means that a person is released from all disability arising under a conviction and sentenced, including probation and parole.

[9:39:09 AM](#)

Senator Thomas understood that, after a certain period of time, an unconditional discharge is the typical course of action.

Mr. Jones believed that to be true.

[9:39:31 AM](#)

Co-Chair Hoffman asked whether this was State or federal law; if it was State law, the State could change the language to prohibit a convicted felon from running for public office.

[9:39:55 AM](#)

Mr. Jones suspected, but was uncertain as to whether a Constitutional provision established the qualifications for the

Legislature. If that were the case, a Constitutional amendment would be required to change it.

Ms. Carpeneti understood that a separate bill had been introduced this year that would change when a person convicted of a felony would be eligible to vote. That bill would allow a person released from custody to register to vote regardless of whether they were on probation, parole, or another provision.

[9:40:54 AM](#)

Senator Elton pointed out that "a fundamental difference between a Legislator and a lobbyist" is the manner in which they are "hired". The issue of whether a candidate has a past felony conviction would likely be part of a campaign discussion. "It's not necessarily part of a discussion when an entity is hiring a lobbyist."

Senator Elton considered this hiring process difference to be a significant factor. Thus, while he had previously questioned treating a lobbyist differently than a Legislator, he was comfortable with the approach proposed in this amendment.

[9:41:57 AM](#)

Senator Dyson requested a copy of Mr. Jones' research.

Co-Chair Stedman noted that the material would be provided.

[9:42:21 AM](#)

In response to a question from Senator Thomas, Mr. Jones stated that the Legislative voting provisions referenced in his remarks were in the State Constitution.

Co-Chair Stedman removed his objection.

AT EASE [9:42:56 AM](#) / [9:43:30 AM](#)

Senator Dyson objected. Clarification was sought as to whether the amendment's language would allow a person who had regained their voting right to become a lobbyist.

Co-Chair Stedman considered "the amendment, as written," to be appropriate in its prohibition on allowing a person convicted of

a felony of moral turpitude from becoming a lobbyist. It could be revisited in the future if the determination changed.

Senator Dyson asked whether a court challenge to the amendment is anticipated.

Ms. Carpeneti communicated that a person could file a lawsuit about any law adopted by the Legislature. A "more important question is" whether this prohibition would be upheld by the Court. She "wouldn't be surprised if a lawsuit were filed challenging it. I'm not sure exactly what issues, probably expos facto or other issues. It's hard to predict exactly what would happen, but I think it would be defensible by the Department."

Senator Dyson removed his objection.

Without further objection, Amendment #5 was ADOPTED.

[9:45:54 AM](#)

Amendment #7: This amendment inserts the words "before or" following the word "year" on page 40 line 9 of AS 39.52.180(d) amended by Section 66. The revised language would read as follows.

(d) An individual who formerly held a position listed in this subsection [A FORMER GOVERNOR, LIEUTENANT GOVERNOR, OR HEAD OF A PRINCIPAL DEPARTMENT IN THE EXECUTIVE BRANCH] may not engage in activity as a lobbyist under AS 24.45 for a period of one year before or after leaving that position [SERVICE AS THE GOVERNOR, LIEUTENANT GOVERNOR, OR DEPARTMENT HEAD, AS APPROPRIATE]. This subsection does not prohibit service as a volunteer lobbyist described in AS 24.45.161(a)(1) or a representational lobbyist as defined under regulations of the Alaska Public Offices Commission. This subsection applies to the position of

- (1) the governor;
- (2) lieutenant governor;
- (3) head or deputy head of a principal department in the executive branch;
- (4) director of a division or legislative liaison within a principal department in the executive branch;
- (5) legislative liaison, administrative assistant, or other employee of the Office of the Governor

or Office of the Lieutenant Governor in a policy making position;

(6) member of a state board or commission that has the authority to adopt regulations, other than a board or commission named in AS 08.01.010;

(7) member of the governing board and executive officer of a state public corporation.

Senator Huggins moved Amendment #7. This amendment would close a "huge loophole" in lobbying activities by precluding a lobbyist from serving in a position subject to the provisions of this bill for one year before or after being a lobbyist.

Senator Huggins declared that this prohibition had the same merits as current laws which prevent a person holding a public service position subject to the provisions of this bill from becoming a lobbyist for one year after leaving their position.

Senator Dyson objected.

Senator Dyson stated that the amendment, while "well-intended", might have the adverse affect of precluding people who provide "an extemporaneous service" by lobbying because of their conviction to a cause, such as those who "lobby on behalf of abused children, and who typically receive no monetary consideration for their effort from running for public office.

Senator Huggins acknowledged Senator Dyson's remarks, but pointed out that the amendment would not alter language in the subsection that excluded those who serve "as a volunteer lobbyist described in AS 24.45.161(a)(1) or as a representational lobbyist as defined under regulations of the Alaska Public Offices Commission" from running for one of the identified positions.

[9:48:55 AM](#)

Senator Dyson appreciated the clarification, but continued to worry that the amendment might inadvertently preclude people who serve in certain lobbying capacities.

AT EASE [9:49:14 AM](#) / [9:50:11 AM](#)

Without objection, Senator Huggins WITHDREW Amendment #7.

Conceptual Amendment #8: This amendment adds new language to the bill to prohibit a person from being appointed or elected to a position listed in Section 66 39.52.180(d) (1) through (7) for a period of one year after engaging in activity as a lobbyist.

Senator Huggins moved the amendment.

Co-Chair Stedman objected for purposes of discussion.

Senator Elton understood the intent of the amendment, but could not agree to precluding people who had been involved in the governmental process as a lobbyist from running for Governor or Lieutenant Governor. Adoption of the amendment would prohibit such people from filing for those offices even though the issue could be addressed during their election campaign.

Senator Elton stated that he had supported Section 66 because it addressed the "legitimate public issue on whether or not somebody was angling to get a job potentially as a lobbyist while they were a public officer." He was unsure whether prohibiting a lobbyist from becoming a public officer was a real concern.

[9:53:12 AM](#)

Senator Thomas asked whether the action proposed by the amendment was contrary to the Constitution in respect to a person's right to run for office.

[9:53:36 AM](#)

Amendment to Amendment #8: This amendment removes Governor and Lieutenant Governor from the positions subject to the prohibition specified in Amendment #8. Thus the prohibition would apply to the positions listed in Section 66 39.52.180(d) (3) through (7).

Senator Huggins moved the amendment to Amendment #8.

Co-Chair Stedman objected for discussion.

[9:54:19 AM](#)

Senator Dyson concurred with Senator Elton's remarks. Regardless of the "honor and prestige" associated with a State position, he

found it "hard to conceive" that a lobbyist would desire to move to a position with the State because they would earn less money.

Senator Dyson understood that this amendment would prohibit the Governor from hiring, for example, Joel Gilbertson, a former Department of Health and Social Services commissioner, who, due to his experience with public health issues and associated financial aspects, was now employed as a lobbyist with Providence Hospital in Anchorage.

Senator Dyson considered most lobbyists to be "honorable people with a wealth of knowledge", and "limiting ... the pool of experienced people" might be detrimental to the State.

[9:55:54 AM](#)

Senator Huggins stated that there were a number of people, including Mr. Gilbertson, whom he admired. However, were people's biases a constant consideration "we would never pass legislation." Defining what people could do before or after is part of the solution. "It is a safeguard that's worth putting into place."

Co-Chair Stedman removed his objection to the amendment to the amendment

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

[9:57:02 AM](#)

Co-Chair Stedman stated that Amendment #8, as amended, was before the Committee.

Senator Elton argued against the amendment. While he understood the point that a person, formerly employed as a lobbyist, who was appointed to a policy position in State government, could have a bias toward their employer, a similar potential for bias could be found in people with other backgrounds. He provided examples and concluded that a person does not have to be employed by an entity as a lobbyist to display a bias.

Senator Elton contended that a person's background would likely be a consideration and a point of discussion in the hiring process.

[9:59:14 AM](#)

Senator Huggins stressed that a lot of issues are addressed in the bill, including some issues that might not require "fixing". Nonetheless, he intended to vote for the bill "to safeguard Alaskans and restore the confidence in this State in people who work at the State level, period."

Co-Chair Stedman removed his objection to the amendment.

Senator Elton objected to the amendment.

A roll call was taken on the motion.

IN FAVOR: Senator Huggins, Senator Olson, Senator Thomas, Co-Chair Hoffman and Co-Chair Stedman

OPPOSED: Senator Dyson and Senator Elton

The motion PASSED (5-2)

Amendment #8, as amended, was ADOPTED.

No further amendments were forthcoming.

[10:00:39 AM](#)

Co-Chair Stedman asked that the bill's fiscal notes be reviewed.

TAMMY KEMPTON, Juneau Branch Administrator, Alaska Public Offices Commission, Department of Administration, stated that this bill would require APOC to accept handwritten campaign disclosure reports and have them available for viewing on APOC's website within two days after receipt. In order to comply with this provision, APOC must acquire two high speed scanners and add one additional fulltime employee and an additional halftime employee during State election years. The projected cost for FY 2008 is \$250,000 as reflected in the Department of Administration May 8, 2007 fiscal note.

[10:03:24 AM](#)

GEOFF BULLOCK informed the Committee that he was a lobbyist, a father of five, a foster parent, and a felon. The adoption of

Amendment #5 "puts me out of work." He made some bad business decisions in 1998, was convicted, served time, and eventually reestablished his lobbying business. He does not agree with the amendment and considers it "collateral damage".

Mr. Bullock could understand furthering such action if "a felony was committed in the act of a lobbyist or the act of a legislator," but he could not understand the broad action of labeling all felons as being bad. They are not. He "wouldn't mind if any" of the 515 inmates he served time with were his neighbors. "We all make mistakes, we all reach for the first stone to throw, and you guys threw it and it hit me and my family and it hurts."

[10:05:14 AM](#)

Senator Elton spoke to the Department of Administration's "purely administrative" fiscal note which provided for the cost of compiling reports. Missing from the discussion was "the investigatory function of APOC", particularly as APOC was "created to be a watchdog for Alaskans." Not addressing this function in the fiscal note was "bothersome" to him. Nonetheless, he appreciated the efforts exerted to develop this bill and "looked forward to its adoption."

[10:06:45 AM](#)

Senator Dyson was "moved by" Mr. Bullock's testimony and wished that the Committee "had allowed for felons who had served their time and got their rights restored."

[10:07:08 AM](#)

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

There being no objection, SCS CSHB 109(FIN) was REPORTED from Committee with previous zero fiscal note #2 from the Department of Law and new \$250,000 fiscal note, dated May 8, 2007, from the Department of Administration.

[10:07:42 AM](#)

#hb133

CS FOR HOUSE BILL NO. 133(JUD)

"An Act relating to requiring electronic monitoring as a special condition of probation or parole for offenders whose offense was related to a criminal street gang."

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

Co-Chair Stedman noted that the Committee had previously reported out SB 89-ELECTRONIC MONITORING OF GANG PROBATIONER, the Senate companion bill to this legislation. The sponsor of HB 133 would be providing an explanation of the differences between the two bills.

[10:08:22 AM](#)

REPRESENTATIVE BOB BUCH, the bill's sponsor, stressed the importance of this bill: it "may be the difference between life and death for some of those people living in Anchorage." Both SB 89 and HB 133 would require people "convicted of violent gang related crimes to wear electronic monitoring devices" when released on probation or parole.

Representative Buch addressed the differences between the two bills as follows.

HB 133 is more narrowly focused than SB 89.

SB 89 applies to offenders convicted of both misdemeanors and felonies. HB 133 applies only to offenders convicted of felonies. Because of this difference, HB 133 has a substantially lower fiscal note.

SB 89 allows offenders to replace prison time with electronic monitoring. HB 133 does not allow offenders to replace prison time with electronic monitoring.

HB 133 has a sunset provision. SB 89 has no sunset provision.

HB 133 gives the Department of Corrections the receipt authority to collect funds from the offender to pay for the cost of electronic monitoring.

HB 133 is the version that is supported by the Department of Corrections and the Department of Law.

Representative Buch noted that people living in the Anchorage and Kenai areas and their police departments support this bill version.

Representative Buch pointed out that HB 133's fiscal notes are similar to those accompanying SB 89 except they are "less expensive". For instance, the Department of Corrections' fiscal note accompanying SB 89 contained three different cost scenarios; the Department of Corrections fiscal note accompanying HB 133 is the least of those three.

[10:11:17 AM](#)

In response to a question from Senator Thomas, Representative Buch clarified that, unlike SB 89, HB 133 would not allow a person to replace jail time with electronic monitoring.

[10:11:55 AM](#)

Senator Olson asked whether there was any opposition to the bill.

Representative Buch considered this a very serious piece of legislation. While it would have a fiscal impact, it has been tightly constructed to accommodate law enforcement requests. It has significant support from the communities of Anchorage, Kenai, and Fairbanks.

Senator Olson commended the bill's sponsor for his efforts on the bill.

[10:12:45 AM](#)

Co-Chair Hoffman asked whether gang-related crimes were an issue in other areas of the State besides Anchorage, Fairbanks, and Kenai.

Representative Buch replied that other communities believe that addressing the gang-related crime activity that is being "expressly exhibited in Anchorage" would assist in preventing

this type of activity from spreading to other areas of the State. The idea is to "nip it in the bud as early as possible."

[10:13:24 AM](#)

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

There being no objection, CS HB 133(FIN) was REPORTED from Committee with four previous fiscal notes: zero fiscal note #1 from the Department of Law; indeterminate fiscal note #2 from the Department of Administration; indeterminate fiscal note #3 from the Department of Corrections; and indeterminate fiscal note #4 from the Alaska Court System.

[10:14:25 AM](#)

#hb229

HOUSE BILL NO. 229 am

"An Act authorizing the Alaska Railroad Corporation to participate in a project consisting of the acquisition, construction, improvement, maintenance, equipping, or operation of real and personal property, including facilities and equipment, for the Kenai gasification project and Port MacKenzie rail link, authorizing the corporation to issue bonds to finance all or a portion of the project, and identifying these as bonds for an essential public and governmental purpose; and providing for an effective date."

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

[10:14:39 AM](#)

LALANYA SNYDER, Staff to Representative Mike Chenault, the bill's sponsor, explained the bill as follows.

The purpose of this bill is to authorize the Alaska Railroad Corporation to issue up to \$2.9 billion in tax-exempt bonds to finance a portion of the Kenai Gasification project. The project will bring coal from Healy to Kenai where low emission coal gasification and electricity

generation plants would be built next to the Agrium plant. The project will also generate electricity for South Central Alaska. It will generate excess carbon dioxide that could be used to improve oil recovery from the wells in Cook Inlet and continue to supply fertilizer to Alaska.

Payment of debt service for facilities and equipment that would not be owned by the Railroad would be provided through a long term contract or other agreement between the Railroad and the project's owner or operator.

Ms. Snyder advised the Committee that an amendment adopted on the House floor allowed the potential for the rail line to be extended to Port MacKenzie. If shipping the coal from Port MacKenzie instead of Anchorage was deemed infeasible, the line would only extend to Anchorage. The bond issuance amount was increased from \$2.6 billion to \$2.9 billion by the adoption of that amendment.

[10:17:28 AM](#)

PATRICK GAMBLE, President and Chief Executive Officer, Alaska Railroad Corporation, Department of Commerce, Community and Economic Development, testified via teleconference from an offnet location and announced that the Railroad had a twofold interest in this legislation. First, from an operational perspective, being able to increase the Railroad's ability to transport coal mined in Healy to an offload point where it would be available to the Agrium fertilizer plant would be a "good sound business" move.

Mr. Gamble stated that "the "second component of our interest" pertained to the federal Alaska Railroad Transfer Act which provided the Railroad the "authority to issue tax free bonds on behalf of the State economic development, which is the mission of the Railroad."

Mr. Gamble noted that while this bonding authority has been authorized in the past, it has never been utilized.

Mr. Gamble specified that this proposal would provide "a general authorization to use our tax-free bonding capability as a financial tool in order to improve the business case for Agrium," if they deem the Railroad extension project to be a

viable option. Even if authorized, the Railroad's Board of Directors would be required to approve each bond issuance.

Mr. Gamble disclosed that, were the decision made to proceed with the project, "as a partner and financier, we would then expect to receive some sort of a fee for the ability to provide this financing."

[10:19:49 AM](#)

Mr. Gamble communicated that, after careful consideration, the Alaska Railroad Corporation and its Board of Directors have concluded that the actions proposed in this bill would be "good business" for both the Railroad and the State.

[10:20:08 AM](#)

Co-Chair Stedman asked the risk exposure the Railroad might experience from underwriting the bonds.

[10:20:39 AM](#)

BILL O'LEARY, Vice President and Chief Financial Officer, Alaska Railroad Corporation, Department of Commerce, Community and Economic Development, testified via teleconference from an offnet location to discuss the Railroad's risk exposure. The proposal currently specifies that some of the authorized amount be directed toward Railroad assets such as locomotives, hopper cars and other infrastructure improvements necessary to support this transportation initiative. The debt that would be issued for those assets would have recourse to the Railroad.

Mr. O'Leary clarified, however, that the vast majority of the debt that would be authorized under this legislation would be recouped to Agrium or whatever entity Agrium might joint venture or partner with as the operator of the facility.

Mr. O'Leary stated that the current estimate for the non-Railroad debt is approximately \$2.4 billion dollars.

[10:22:33 AM](#)

Mr. O'Leary explained that the Railroad would be working with Agrium or the entity created for the project to develop a financial plan for selling the bonds. The standard bond issuance

process would include a competitive selection process for choosing the numerous investment banking firms that would be required in a transaction of this size.

Mr. O'Leary reiterated that the Board would be required to approve any debt issuance.

[10:23:25 AM](#)

Co-Chair Stedman asked for further information about the action taken by the House that added \$300 million to the scope of the project.

[10:23:33 AM](#)

Mr. Gamble explained that the amendment adopted by the House pertained to the Port MacKenzie transportation component. While several transportation options were considered during the history of this legislation, two are "still in play". One involves improving an existing line to the Port of Anchorage and constructing a coal transfer facility which would transfer coal from a train to a covered coal pile. That coal would then be transferred onto a barge and transported to Nikiski.

Mr. Gamble stated that the other, and "preferable", transportation option would include utilizing vast empty acreage at Port MacKenzie. This option "looks very attractive in the abstract". It would allow an efficient dock and offloading process to be "designed from scratch". Unfortunately, the rail line does not currently extend to Port MacKenzie. The \$300 million added to the bill by the House would allow further review of this option, including a determination of whether having to extend the rail line 40 miles from Willow to Port MacKenzie might affect its viability.

Mr. Gamble communicated that another key consideration is whether the Port MacKenzie rail line extension and port development could be "synchronized" with the timeline Agrium has identified for its plant expansion and "the transfer of its energy source" from gas to coal gasification.

Mr. Gamble stressed that even though the Port of Anchorage is the known and available option, the Port MacKenzie option is considered the better choice both for Agrium and other interior

resource development projects which could benefit from having access to this tidewater port.

Mr. Gamble noted that the financing component of the bill does not specify how the debt service of the project would be structured. This would allow the financing team, once engaged, to begin the "long process" associated with designing the financing aspect of the project. Conducting a study on the Port MacKenzie transportation option would alleviate some of the questions that might arise during discussions with potential financing partners and buyers. The study would also "improve the chances of getting an environmental impact study (EIS) started" in regards to getting a rail line to the Port MacKenzie land.

[10:28:02 AM](#)

Mr. Gamble concluded his remarks by specifying that the Railroad strongly supports further consideration of the Port MacKenzie option.

[10:28:13 AM](#)

Co-Chair Stedman questioned the reason the \$300 million was offered as a Floor amendment rather than being included in the original bill or adopted during the committee hearing process.

Mr. Gamble credited this as being a timing issue. Even though the Port Mackenzie transportation option was one of the numerous transportation options originally considered, it did not materialize as a strong option until Agrium's plant and energy source projects and the project financing structure became more defined.

[10:29:48 AM](#)

Co-Chair Hoffman asked that a copy of the Alaska Railroad Corporation's current financial statement be provided to the Committee. He also sought information about the Railroad's long-term expansion plans and other projects being considered.

[10:30:36 AM](#)

Mr. Gamble affirmed that this information would be provided. The Railroad seeks local community participation when considering expansion plans and other projects. Status reports are also

provided to the Legislature annually. Additional information would be provided upon request.

Co-Chair Hoffman asked whether the Corporation has developed a list of long-range projects. If so, he would appreciate that information.

Mr. Gamble affirmed that the information would be provided. One of the projects on the list is to move the existing rail line, which runs through the middle of Fairbanks, to a less congested area. Similar action is being considered for other communities including Wasilla.

Co-Chair Hoffman asked whether the list is prioritized.

Mr. Gamble responded in the negative.

Co-Chair Hoffman asked "why not?"

[10:32:12 AM](#)

Mr. Gamble expressed that the size and scale of each project, the length of time required to conduct a project EIS, and the need to identify a funding source makes it difficult to prioritize the list. Therefore, the Corporation advances work on projects "in parallel". Experience indicates that while one project might advance ahead of others today, in a year's time, it may lag behind.

[10:32:58 AM](#)

Co-Chair Hoffman asked that action on the bill be delayed until the requested information could be reviewed.

[10:33:07 AM](#)

Senator Thomas asked the anticipated timeline for this "big project"; specifically how the money would be allocated and when the Agrium plant might convert to coal gasification.

[10:33:40 AM](#)

Mr. Gamble deferred to representatives from Agrium USA, Inc.

[10:33:50 AM](#)

LISA PARKER, Government Relations Manager Agrium USA, Inc. testified via teleconference from an offnet location and communicated the expectation that the timeline "for bringing this project on line" would be 2011 or 2012. Specific "gates" have been identified. Once a gate is reached, the project would be re-evaluated and a determination made regarding whether to continue advancing the project. The next evaluation is scheduled for the summer of 2007. If the project is approved at that point, the next evaluation would be conducted a year later.

[10:35:25 AM](#)

Co-Chair Stedman, who considered it "odd that we would have a \$300 million Floor amendment", asked the Department of Revenue to further address this issue. Something of this "magnitude" should have been addressed during the committee process.

[10:35:51 AM](#)

JERRY BURNETT, Legislative Liaison and Director, Division of Administrative Services, Department of Revenue, informed the Committee that the Department had not been involved in the discussions about the bill or about adding \$300 million to it.

Mr. Burnett advised, however, that the bill would not affect the State's debt capacity or credit rating, as the project would be funded with "pure non-recourse project financing conduit revenue bond type financing." The \$300 million added by the Floor amendment would have recourse to the Railroad.

[10:36:45 AM](#)

Co-Chair Stedman asked whether the Department had any interest in how the Railroad, which is considered "a separate entity from the State", operated.

Mr. Burnett pointed out that the Railroad, as an independent corporation, "has specific authorization for their bonding" under the Railroad Transfer Act. They are able to utilize this type of bond structure "on their own."

[10:37:29 AM](#)

Co-Chair Hoffman understood, however, that "the State of Alaska would be financially responsible" if the Corporation was unable to pay the bonds.

Mr. Burnett replied that "the recourses would be against the assets of the Railroad. There is no moral obligation or other State credit support in this legislation."

[10:38:13 AM](#)

Co-Chair Hoffman qualified this as the reason he requested a copy of the Railroad's financial reports. It is doubtful whether the Railroad's "assets are sellable or marketable to anyone else" or whether anyone else "would accept and operate the Railroad to pay off this large debt." Thus, "the next person in line will be the State of Alaska."

Co-Chair Hoffman deemed this a "fiduciary responsibility" the Committee and the Department of Revenue should consider when discussing a project of this nature. He expected the Department to provide "a straight answer" when questioned about the issue.

[10:39:18 AM](#)

Co-Chair Stedman asked Mr. O'Leary to provide further clarification on the issuance of the bonds and the recourse in respect to the \$2.3 million bonding authority and the \$300 million component.

[10:39:43 AM](#)

Mr. Gamble interjected to acknowledge that the issue was confusing. The bonding authority in the bill is a general authority in accordance with the Federal Transfer Act; it specifies that the Railroad's Board of Directors and the Legislature must approve any sale of bonds by the Alaska Railroad Corporation. However, the bonds could not be sold until the entity assuming the debt service was identified.

Mr. Gamble reiterated that identifying the entity which would assume the debt service is not required at this stage of the game. The first step is to simply receive authorization from the Legislature to consider utilizing the Railroad's bonding ability. The most recent of several such authorizations was in

respect to funding the Alaska Gas Pipeline. No one had been identified to assume debt service in that instance either.

Mr. Gamble continued as follows.

In this potential sale, there are three separate components: the Agrium component, the amendment component, and then the smaller component that the Railroad would have recourse to, that I think Mr. O'Leary referred to when he talked about us buying assets and then being responsible for the payment of funds that might be borrowed to buy assets. And in that sense, the recourse would be to the Railroad. The remainder, if it were chosen, and that has not yet been decided either, if the Railroad were chosen to actually do the financing, it would be conduit financing with no recourse to the Railroad.

And also I might mention that these projects are not in competition with any other projects, whether they're current Railroad projects that are already on the books or ones that could be anticipated in the future.

These financings are independent and because we're not capped, hum, we're not prioritizing nor are we precluding the option of continuing to work other large projects with other options for financing those projects as well. That is a strength of this tool that the State has, and one we're very interested in working with the State to use for continued economic development. With that as sort of an overview, Mr. Chairman, thank you. And I'll pass the more detailed portion of your question to Mr. O'Leary.

[10:43:09 AM](#)

Co-Chair Stedman asked that Mr. O'Leary also address the non-recourse element associated with this issuance; specifically how the State or the Railroad might be affected "if Agrium was to go insolvent and default on their bonds."

[10:43:40 AM](#)

Mr. O'Leary stressed that the portion of the bond issuance that would be recoured to the Railroad was "the smallest piece of this proposed transaction." That debt would be recoured to the

assets owned by the Railroad if the Railroad was unable to pay their portion of the debt.

Mr. O'Leary specified that the largest piece of the transaction relates to Agrium.

Mr. O'Leary explained "that, by statute," bonds issued by the Alaska Railroad Corporation "cannot be backed by the full faith and credit of the State of Alaska. So, there is no recourse to the State." This would be expressly included in the documentation accompanying any such bonds.

[10:45:00 AM](#)

Mr. O'Leary clarified that his references to Agrium in this discussion should be interpreted to represent either Agrium or a joint venture or partnership involving Agrium in regards to this project. The bonds sold to support this project "would have recourse only to the assets of that entity". There would be no recourse to either the Railroad or the State.

Mr. O'Leary pointed out that if that entity fails to meet its debt service obligation, "the lenders would look to the assets of that entity."

Mr. O'Leary noted that while the management of the Railroad must recommend and the Board of the Railroad must approve the sale of the bonds, "the marketplace" would have the "ultimate control on this." Prior to the sale of the bonds, "the marketplace would opine as to whether they believe that the project and this entity will be able to pay those bonds back." If the determination is positive, the bonds will sell; otherwise, they would not.

[10:46:40 AM](#)

Co-Chair Stedman voiced disbelief that the marketplace could be so "efficient that once they decide to issue double A, triple A bonds, they never get downgraded and never go into default." Nonetheless, he understood that if there was a default on this issuance, it would not impact the Railroad's ability to issue bonds in the future. "It wouldn't affect their rating, wouldn't affect the State in any way. It would just be a \$2.4 billion collapse all in the laps of Agrium."

Mr. O'Leary stated that even though "this would not be a positive thing for the Railroad," there would be no "legal recourse to the Railroad's assets." The bonds would never be sold with the "Railroads' assets as the security or supporting it" simply because the Railroad's balance sheet and revenue streams could not "support something of this magnitude."

[10:48:08 AM](#)

Co-Chair Hoffman pointed out that there have been [unspecified] bonds sold in the past that have not been repaid. This undermines one's confidence that bonds receiving the financial market's "seal of approval ...are guaranteed to be paid back."

Co-Chair Hoffman then questioned why the Legislature must approve the sale of these bonds if the State would not be held liable.

Mr. O'Leary responded that Alaska Statutes require Legislative approval in order for the Alaska Railroad "to issue public debt".

Co-Chair Hoffman declared that "there has to be a reason for that." He shared the belief that the Legislature has "a fiduciary responsibility for many of the corporations that are under us, even though we don't approve your budgets. You are a State corporation, and then by being a State corporation, I believe that the State of Alaska is ultimately responsible."

Co-Chair Hoffman voiced that while this may be argued, in his opinion, the "corporation is owned by the State of Alaska" and therefore an entity that the Legislature could "decide to keep or decide to sell." Thus, were to Legislature to approve the sale of these bonds and there were a default, "the State of Alaska would be responsible. We do have a fiduciary responsibility to make sure that the State of Alaska is protected."

[10:50:35 AM](#)

Senator Elton asked whether the \$300 million added by the House amendment would solely support the construction of the spur line from Wasilla to Port Alexander or whether it would also provide funding to support the transfer facility "between the rail and marine link."

[10:51:59 AM](#)

Mr. Gamble stated that "the \$300 million is the all-in cost for the Railroad component". It would accommodate both the spur line and "the operational activities that would occur at the end of the spur line" at Port MacKenzie. This would include the off-loading and coal pile facilities as well as on-site maintenance. The local government would be providing the land and Agrium would be responsible for the barge loading and dock improvements "specific to the project."

[10:52:47 AM](#)

Senator Elton asked that Agrium be provided an opportunity to discuss whether incorporating the Port MacKenzie spur into the project would increase their costs.

Co-Chair Stedman stated that that information would be provided during the next hearing on the bill.

[10:53:22 AM](#)

Senator Thomas understood that Agrium was considering switching its power source from gas to coal gasification because of the limited amount of gas available in South Central Alaska. Thus, he raised concern that this switch would be detrimental to further exploration and development of gas in Cook Inlet. It might also negatively affect consideration of running a spur gasline from the North Slope to the area.

[10:54:17 AM](#)

Co-Chair Stedman ordered the bill HELD in Committee.

#

**ADJOURNMENT**

Co-Chair Bert Stedman adjourned the meeting at [10:54:28 AM](#).