

HOUSE FINANCE COMMITTEE
April 2, 2009
3:06 p.m.

3:06:20 PM

CALL TO ORDER

Co-Chair Stoltze called the House Finance Committee meeting to order at 3:06 p.m.

MEMBERS PRESENT

Representative Mike Hawker, Co-Chair
Representative Bill Stoltze, Co-Chair
Representative Bill Thomas Jr., Vice-Chair
Representative Harry Crawford
Representative Anna Fairclough
Representative Richard Foster
Representative Les Gara
Representative Reggie Joule
Representative Mike Kelly
Representative Woodie Salmon

MEMBERS ABSENT

Representative Allan Austerman

ALSO PRESENT

Representative Cathy Munoz, Sponsor; Representative Beth Kertulla, Sponsor; John Bitney, Staff, Representative John Harris, Sponsor; Dan Fauske, CEO/Executive Director, Alaska Housing Finance Corporation, Department of Revenue; Joe Doogler, Chief Financial Officer, Alaska Housing Finance Corporation, Department of Revenue; Dirk Moffet, Staff, Representative Bob Lynn, Sponsor; Jerry Luckhaupt, Legislative Council, Division of Legal Services; Representative Bob Lynn, Sponsor; Jane Pierson, Staff, Representative Jay Ramas, Sponsor; Doug Wooliver, Administrative Attorney, Alaska Court System; Anne Carpeneti, Assistant Attorney General, Legal Services Section-Juneau, Criminal Division, Department of Law.

PRESENT VIA TELECONFERENCE

Whitney Brewster, Director, Division of Motor Vehicles, Department of Administration.

SUMMARY

HB 199 APPROPS: NON-TRANSPORTATION STIMULUS

HB 199 was HEARD and HELD in Committee for further consideration.

HB 161 JUNEAU SUBPORT BLDG/AHFC BLDG

HB 161 was HEARD and HELD in Committee for further consideration.

HB 3 REQUIREMENTS FOR DRIVER'S LICENSE/I.D.

CSHS 3 (FIN) was REPORTED out of Committee with a "do pass" recommendation and with a previously published fiscal note: FN1 (ADM).

HB 98 ALCOHOL: MINOR CONSUMING/LOCAL OPTION

CSHB 98 (FIN) was REPORTED out of Committee with "no recommendation" and with a new zero fiscal note from the Department of Public Safety and two previously published fiscal notes: FN1 (CRT), FN2 (LAW).

#hb199

HOUSE BILL NO. 199

"An Act making supplemental appropriations and capital appropriations; amending appropriations; and providing for an effective date."

[3:06:26 PM](#)

Co-Chair Hawker MOVED to ADOPT CSHB 199 (FIN), version 26-GH1260\E, Kane, 4/1/09 as a working draft.

Co-Chair Stoltze OBJECTED for discussion.

Co-Chair Hawker informed the committee that the intent of the draft was to forward open and transparent discussion regarding American Recover and Reinvestment Act (ARRA) funds. He detailed that the proposed committee substitute (CS) keeps all the state's options open by accepting and appropriating all monies available under ARRA for Alaskan non-transportation projects.

Co-Chair Hawker stressed that the CS is open for amendment and further evaluation. He noted that one particular item, Part B of the \$20.7 million education program, had caused concern, but was still a work in progress. In the draft CS, the money is appropriated to the Capital Income Fund as a placeholder. He emphasized that the discussion was still ahead; the issue would be dealt with in the capital budget before the end of the legislative session.

Co-Chair Hawker acknowledged questions that had been raised regarding the potential \$15.6 million direct deposit into the unemployment insurance (UI) trust fund. He pointed out that the amount does not need to be appropriated in the CS as the money will automatically be deposited into the trust if separate legislation passes revising the base periods for participating in unemployment insurance.

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Representative Fairclough requested an explanation of legislative intent.

Co-Chair Hawker detailed that Section 10 of the work draft is an initial suggestion for legislative intent. The section states in language as strong as legally allowed that the use of stimulus funds will not create obligations to the state to replace the funds, and that existing programs will not be expanded. The intent is to use the funds to continue existing activities or deal with issues such as deferred maintenance. He added that another important part refuses federal stimulus money that would violate the strong constitutional rights to privacy enjoyed by Alaskans.

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Co-Chair Stoltze WITHDREW his OBJECTION.

Representative Kelly wanted an opportunity to look over the proposed CS and the intent language. Co-Chair Hawker assured him that the CS is a working document subject to committee scrutiny.

Vice-Chair Thomas noticed that the Office of the Governor had \$1 million in discretionary funds and asked whether the legislature could spend the money if the governor refused the funds. Co-Chair Hawker did not believe so.

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Co-Chair Stoltze WITHDREW his OBJECTION. There being no further objection, the work draft was adopted.

HB 199 was HEARD and HELD in Committee for further consideration.

#hb161

HOUSE BILL NO. 161

"An Act relating to the Alaska Mental Health Trust Authority Support Office Building; authorizing the issuance of certificates of participation for construction of the building and authorizing the use of up to \$25,000,000 from the mental health trust fund for

construction of the building; approving leases of all or part of the building by the Department of Administration; and providing for an effective date."

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Representative Foster spoke in support of the bill.

REPRESENTATIVE CATHY MUNOZ, SPONSOR, addressed specific questions that had been asked previously by committee members. She referred to additional materials covering cost comparison data, due diligence information, and a construction analysis.

Representative Munoz addressed concerns that the proposed building was considered Class A space. She detailed that the proposed construction cost was \$315 per square foot, which is considered Class B space when compared to office space around the state. New office space ranges from \$200 to \$500 dollars per square foot.

Representative Munoz turned to the question of square footage price and reported that a ceiling had been established at \$3.50 per square foot; the intent was to negotiate down from the ceiling. She pointed to extensive data regarding cost comparisons for Anchorage and Juneau. She reminded the committee that the square footage costs do not include investments that the state makes on lease space to make the space meet information technology (IT), lighting, and other requirements. For example, the Frontier Building in Anchorage is leased at \$3.00 per square foot, but recently required over \$1 million in upgrades to make the space adequate.

Representative Munoz discussed concerns raised about the owner of the Department of Labor and Workforce Development (DLWD) building. She noted that the state is not interested in renegotiating a lease contract at the site because of environmental and repair issues.

Representative Munoz emphasized that the proposed project provided great opportunity for the state of Alaska and for the Mental Health Trust; the state would save \$13 million and the trust would be able to develop a key asset.

Representative Munoz mentioned a proposed amendment that would allow the Alaska Housing Finance Corporation (AHFC) to purchase an administrative building in Anchorage using AHFC funds.

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Vice-Chair Thomas puzzled over the location of the building and questioned the price that would be paid. He thought for

the price the building should be where the support building used to be. Representative Munoz responded that the project architects could speak specifically to site issues; she was presenting the mental health trust's proposal.

Co-Chair Stoltze noted that the bill would be heard again the next day.

Representative Kelly commented that his previous questions had been answered completely.

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Co-Chair Hawker stated some of his concerns for the record. He had questions regarding cost, value, quality issues, financing alternatives, and the structure of the bill.

Representative Crawford requested a short explanation as to why it would be to the state's advantage to have someone else build, own, and operate the building instead of owning the building itself. He understood that the deal would be increasingly good for the mental health trust over time and wondered how the state would benefit.

Representative Munoz emphasized that the mental health trust and the state should be regarded as partners. The state works very closely with the trust and encourages it to develop its assets. She thought the project provided the trust with an opportunity to develop their portfolio and provide a revenue stream to beneficiaries over the course of the project. The state would benefit as a funding partner with the trust.

REPRESENTATIVE BETH KERTTULA, SPONSOR, added that another advantage to the state would be saving \$13.5 million.

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Representative Crawford did not understand how the state would save \$13.5 million. He thought the trust could gain by selling the land and investing the earnings. He had been told that the state had paid over \$50 million in rent for the DLWD building. He asked why the state should rent rather than buy and why the state should not appropriate money directly to the trust instead of give it money through rent. Representative Munoz responded that the proposal involves three different sites. The Department of Public Safety (DPS) building on Whittier Street, was built in 1970 to last ten years, but has been occupied by the state for nearly 40 years. Renovation of the DPS building and the second building, the Department of Fish and Game (DFG) building in Douglas, would cost much more than \$8.5 million. She added that the \$13 million savings does not include replacement

costs that the state foresees for both the DPS and DFG buildings.

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Vice-Chair Thomas queried whether the buildings would have 60-foot atriums and whether they would meet the new state energy efficiency codes being proposed because of the stimulus funds.

Co-Chair Stoltze thought the architect could address the question.

Co-Chair Stoltze MOVED Amendment 1, 26-LS0605\W.1, Cook, 4/2/09 (copy on file):

Page 1, lines 2-3:

Delete "the Alaska Mental Health Trust Authority"
Insert "a separate trust land development account"

Page 1, line 6, following "Administration;":

Insert "authorizing the Alaska Housing Finance Corporation to acquire the building that it occupies for an amount that does not exceed \$14,500,000;"

Page 5, following line 20:

Insert a new bill section to read:

"*Sec.8. The uncodified law of the State of Alaska is amended by adding a new section to read:

AUTHORIZING THE ALASKA HOUSING FINANCE CORPORATION TO ACQUIRE A BUILDING. The Alaska Housing Finance Corporation is authorized to acquire the building in Anchorage it occupies on the effective date of this Act for an amount that does not exceed \$14,500,000. This section constitutes the approval required by AS 18.55.100(d) and AS 18.56.090(d) for that acquisition."

Renumber the following bill sections accordingly.

Co-Chair Hawker OBJECTED for DISCUSSION.

JOHN BITNEY, STAFF, REPRESENTATIVE JOHN HARRIS, SPONSOR and CHAIRMAN, LEGISLATIVE COUNCIL, reported that the intent of the amendment was to bring forth a proposal. He explained that the Anchorage Legislative Information Office (LIO) is on a year-to-year lease and needs office space. Conversations with AHFC about space and financing options led to a cost-savings idea. The corporation has needed space as well and had calculated costs for a mortgage that could result in savings of several million dollars.

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DAN FAUSKE, CEO/EXECUTIVE DIRECTOR, ALASKA HOUSING FINANCE CORPORATION, DEPARTMENT OF REVENUE, provided a memo regarding the proposal (copy on file). He provided history, explaining that AHFC has owned 4.3 acres in midtown Anchorage since 1995; the corporation had planned to build office space but the contract was cancelled. In 1997, AHFC entered into an agreement to lease office space. In 1999, AHFC unsuccessfully sought legislative approval to acquire the property. Tatitlek Corporation bought the building for \$6 million and has been open to sell the property to AHFC. The native corporation wants the 4.3 acres that AHFC owns and AHFC wants the building they are currently leasing from Tatitlek.

Mr. Fauske continued that there have been negotiations to trade assets. Appraisals on the building show that it is worth about \$14.5 million. No cash will be required from the legislature, lease payments will be reduced, and AHFC will acquire an asset. In addition, the increased net income will increase the dividend available to the state.

Mr. Fauske added that the governor's office had not objected to the idea of AHFC purchasing the building. He referred to a spread sheet with detailed descriptions and figures related to the properties (copy on file).

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JOE DOOGLER, CHIEF FINANCIAL OFFICER, ALASKA HOUSING FINANCE CORPORATION, DEPARTMENT OF REVENUE, summarized that the net present value savings [of the trade] would be approximately \$7.5 million, and possibly \$12 million. He continued that the purchase price includes \$2 million for needed upgrades.

Representative Foster cited experience with city taxes, and reported that most of a city can be tax-exempt. He asked how the proposal would affect tax income for Anchorage. Mr. Fauske responded that the building would be tax exempt as AHFC would own it as a state entity. He referred to similar discussion regarding other property.

Co-Chair Stoltze asked if the taxable and tax-exempt aspects would cancel each other out. Mr. Fauske replied that it was possible.

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Representative Gara asked whether the building was currently not taxed because it was owned by Tatitlek Corporation. Mr. Fauske thought it was being taxed.

Representative Gara wondered how much property tax revenue the municipality would lose. Mr. Fauske responded that he did not know but would find out.

Representative Gara asked if Anchorage would end up collecting less money. Mr. Fauske replied that the city would collect less money. He defended AHFC regarding taxes because the corporation brings a lot of assets to Anchorage. He thought the issue was more a state issue. He referred to past debates with the legislature regarding taxes.

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Representative Gara wanted to know the position of the municipality. Mr. Fauske did not know.

Co-Chair Stoltze noted that the municipality is not asked in other similar situations.

Representative Fairclough spoke on the taxing issue. In her experience, taxes do not go up but are spread across the entire body. There are many components: property values might go up or down, the mill rate goes up or down, depending on Anchorage's budget; but government spending is not cut back when less tax income is available.

Representative Gara asked for clarification. Representative Fairclough responded that state government has a bill for various items; if revenue declines, people who have the ability pay in. She pointed to other variables, such as a mini-permanent fund that draws interest.

Representative Gara asked whether AHFC's fund and ability to further its mission would be impacted if AHFC purchased the building.

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Mr. Fauske responded that there would only be a cash displacement and other programs would not in any way be affected.

Representative Fairclough asked whether there would be a small increase in income to the state. Mr. Fauske replied that there would be a positive increment because AHFC would be spending less in operating expenses and 75 percent of the corporation's net income is available for appropriation by the state.

Vice-Chair Thomas asked for clarification about the trade. Mr. Fauske responded that the amount of the land value, estimated at between \$4.5 million and \$5 million, would be deducted from the \$14.5 million and AHFC would owe the

difference. The additional revenue from the second piece of land would also be deducted.

Vice-Chair Thomas asked whether the amendment would give legislative authority to release the assets. Mr. Fauske explained that AHFC needs authority to purchase a building. He stressed that in the present proposal AHFC would be exchanging and not disposing an asset.

Mr. Doogler interjected that AHFC would be disposing an asset as well. He added that AHFC also has the statutory authority to dispose of assets. Mr. Fauske clarified that AHFC cannot sell assets as a private entity would; there is a public process.

Mr. Doogler pointed out that Anchorage would get more taxes from the land when it is developed, which would replace taxes lost by AHFC acquiring the building.

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Co-Chair Hawker asked about the quality and desirability of the exchanged land in the Anchorage market. Mr. Fauske responded that land on 34th street was appraised in 2008 at \$4,168,000; current market value would put it closer to between \$4.7 million and \$5.1 million. As of February 2008 the 1.4 acres at Boniface and DeBarr was appraised at \$511,000; current market value could be slightly higher.

Co-Chair Hawker queried the probability of the property being developed. Mr. Fauske responded that there was a very high probability that Tatitlek Corporation would develop the site. Co-Chair Hawker confirmed that the property would be developed for taxable commercial purposes.

Co-Chair Hawker asked whether AHFC would be the only occupant of the building acquired. Mr. Fauske replied that one tenant, the Alaska Public Safety Employees Union, occupies a small space. Co-Chair Hawker confirmed that there was no commercial plaza involved.

Mr. Fauske stated that AHFC needs to own a building. He did not want higher leases and thought the opportunity was good as the location is centrally located and the property will only increase in value. He did not feel the amendment would harm HB 161.

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Co-Chair Hawker noted that questions he had had regarding deferred maintenance and other issues had been answered. He hoped negotiations would continue in such a way that the state would receive the best value possible. Mr. Fauske agreed.

Co-Chair Stoltze spoke to personal experience with an AHFC purchase and appreciated the open process.

Representative Gara stated his support but wanted to hear from the municipality. Mr. Fauske replied that he would get the information.

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Representative Salmon asked which native corporation owned the building. Mr. Fauske responded Tatitlek Corporation, a subsidiary of Chugach Alaska Corporation.

Representative Kelly asked if there would be further issues. Mr. Bitney stated that "this is it." Mr. Fauske explained that the purchase of the building was originally going to be a stand-alone bill.

Co-Chair Hawker WITHDREW his OBJECTION. There being no further objection, Amendment 1 was ADOPTED.

HB 161 was HEARD and HELD in Committee for further consideration.

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AT EASE

[4:06:22 PM](#)

RECONVENED

#hb3

HOUSE BILL NO. 3

"An Act relating to issuance of identification cards and to issuance of driver's licenses; and providing for an effective date."

[4:06:22 PM](#)

Representative Hawker MOVED to ADOPT CSHB 3 (FIN), version 26-LS0008\P, Luckhaupt, 3/30/09 (copy on file), as a working document.

Co-Chair Stoltze OBJECTED for DISCUSSION.

DIRK MOFFET, STAFF, REPRESENTATIVE BOB LYNN, SPONSOR, introduced the title change of the proposed CS because of added language.

JERRY LUCKHAUPT, LEGISLATIVE COUNCIL, DIVISION OF LEGAL SERVICES, explained that the change was made because of language dealing with regulation authority in response to questions that had been raised.

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Mr. Moffet turned to the next change, regarding a typographical error on page 1, line 9 and page 2, line 1.

Mr. Luckhaupt added that the change was made in response to previous legislation by Representative Crawford.

Mr. Moffet explained the third change extending the expiration date of cards issued to persons 60 years and older on page 2, line 1. Language in version A was changed since the identification cards are free to senior citizens and their physical appearance does not change as fast as that appearance of younger citizens. The sponsor believed that extending the expiration date on the cards would be good business; senior citizens would visit the Division of Motor Vehicles (DMV) less often. He stressed that fewer DMV customers would mean less staff resource. Amendment 3 was offered to make the cards never expire for those over 60 years of age. However, federal regulation (the Real ID Act of 2005) stipulated that eight years was the longest expiration date allowed. He pointed out that the change doubled the expiration date from five years to ten years and had the added benefit of being non-compliant with the Real ID Act.

Mr. Moffet moved to the fourth change regarding anti-Real ID language related to identification cards to conform with AS 44.99.040, Limitations on Certain State Expenditures. He read the language added in version P to page 2, lines 27-29, stating that the Commissioner of Administration may not adopt regulations related to identification cards solely to bring the state into compliance with the requirements of the federal Real ID Act of 2005.

Mr. Moffet detailed that the fifth change also added anti-Real ID language related to driver licenses. Language was added on pages 2 and 3, lines 30-31 stating that for section four, AS 28.05.011 is omitted by adding a new section to read that the Commissioner of Administration may not adopt regulations related to driver licenses solely to bring the state into compliance with the Real ID Act.

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Mr. Luckhaupt explained that the language changes were requested to make sure the Department of Administration (DOA) does not try to bring the state into compliance with the Real ID Act through regulation. He noted that the added language had necessitated the title change.

Mr. Moffet concluded with the sixth change, anti-Real ID disclaimer language on page 5, lines 15-17. Language was added to emphasize non-cooperation with the Real ID Act. He spoke of two amendments adding the anti-Real ID language to HB 3; neither accomplished the desired goal and language was

drafted adding language congruent with Real ID statute yet tailored to deal with the subject of identification cards and driver licenses. The anti-Real ID disclaimer language was also added to clarify that although the state has adopted legal presence law, the bill was deliberately drafted to be non-compliant with the Real ID Act. The sponsors believed that Alaska should determine for itself the perimeters of good business practice.

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Representative Foster did not think the issue was a problem for his constituents and wondered why the issue was being brought up. Mr. Moffet replied that currently in regulation the primary document must be brought to DMV when getting a license for the first time. The requirement will be put into statute by the legislation.

Representative Foster questioned the need for putting the requirement in statute. Mr. Moffet replied that the sponsors believe the policy is good. He emphasized that the bill also allows the DMV to be flexible about the expiration date. He acknowledged that the provision would not affect rural communities.

Representative Foster reiterated his questions. Mr. Moffet explained the desire to keep people who are in Alaska for a limited time period from allowing their legal presence to expire and still be able to keep an Alaska driver's license.

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Co-Chair Stoltze pointed out that the changes wanted by committee members had been covered. He WITHDREW his OBJECTION. There being no further OBJECTION, the CS was adopted.

Representative Kelly commented that his questions had been answered. He agreed that people who were in Alaska illegally should not be allowed to drive. He spoke in support of the legislation.

Representative Joule asked whether the passage of the bill would give law enforcement an excuse to stop people to check their identifications. Mr. Luckhaupt replied that the measure would not allow law enforcement to pull anyone over without justification. In Alaska, there must be probable cause of a violation of law in order to pull someone over.

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Mr. Luckhaupt added that the issue had come up in other states as well when states have wanted to set up check-points. He stated that the only way a state can set up a

check point is to check U.S. citizenship where the state had entered into an agreement with the Immigration and Naturalization Service (INS) or Customs and Border Patrol. Florida has entered into the agreement with some law enforcement, but most states have not.

Co-Chair Stoltze assumed the present administration would not embrace the issue.

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Representative Crawford asked a question regarding the statement that the Commissioner of DOA being unable to adopt regulation related to identification cards in order to bring the state into compliance with the Real ID Act. Mr. Luckhaupt replied that the word "solely" was added so that regulation could be added for other valid reasons.

Mr. Luckhaupt added regarding a previous question that people can be stopped in Alaska for probable cause or reasonable suspicion of imminent physical danger to the public. He provided an example.

Co-Chair Stoltze described experience with local police setting up DUI (drinking under the influence) road blocks and questioned the legality of the practice. Mr. Luckhaupt replied that in Alaska, the question is open as to whether sobriety checkpoints are legal. He added that the U.S. Supreme Court has said that the checkpoints are legal for purposes of the U.S. Constitution; that has not been decided in Alaska.

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AT EASE

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Representative Crawford pointed out that the provision's wording actually could allow regulation adopting the Real ID Act and questioned the use of the word "solely." Mr. Luckhaupt explained that the only purpose of the provision was regulation authority. He added that another previously passed provision prevents any state agency from adopting regulations to implement the Real ID Act; this will be the fourth place in statute stating that Alaska would not comply with the Real ID Act.

Representative Crawford believed that the offending word was "solely." He read the passage without the word: "If the Commissioner of Administration may not adopt a regulation related to identification cards to bring the state into compliance." He thought the passage would make it clear that regulation could not comply with the act. Mr. Luckhaupt responded that the word "solely" would mean that regulation can be adopted for another valid reason.

Representative Crawford proposed saying "with the intent to bring the state into compliance" instead of "solely." He thought the intent would be clear. He asked whether the presence of the word "solely" would say that it is fine to adopt the Real ID Act as long as there is another purpose.

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Mr. Luckhaupt replied that the word "solely" allows other reasons.

Representative Crawford asked if the word "solely" could allow the Real ID Act to be adopted. Mr. Luckhaupt answered that the word "solely" allows the Commissioner of Administration to adopt any regulation relating to identification cards providing it is not solely adopted in order to implement the Real ID Act. He interpreted this to mean that if there is any other valid reason for adopting the regulation, the fact that it brings the state into compliance with the Real ID Act does not matter. He stated that he had drafted the language as he was instructed, but added that the way it is drafted leads to the interpretation. As long as there is any other valid reason, bringing the state into compliance is okay with the word "solely" present, even if the commissioner wants to bring the state into compliance with the Real ID Act.

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Co-Chair Stoltze noted that the same issue had been contentious in a previous meeting.

Representative Gara pointed out that the word "solely" was proposed because no one has come up with acceptable language for the provision; what is clear is that the state does not want DMV to implement the Real ID Act. He thought the response to Representative Crawford's question was yes. He presented a hypothetical: A commissioner has the secret intent to implement the Real ID Act, but says the purpose is to save money. He asked whether the hypothetical would be possible even though it violates the intention of the legislation.

Mr. Moffet clarified that the word "solely" was used because the Real ID Act would not allow DMV staff to be trained regarding fraudulent document detection, for example. He stated that many current good business practices would be discarded if the committee wanted a strict prohibition on anything in the Real ID Act. He described the Real ID Act as a "laundry list" of all the good ideas that the states came up with; he opined that some of the ideas are good and some bad. For example, the sponsor thought that putting the legal presence expiration date directly on someone's card was not a good business practice, even though the Real ID Act would

allow it. All Alaskan cards would look the same except for the expiration date; only looking very closely at the expiration date would indicate the legal status of the holder.

Mr. Moffet stated that the sponsor wanted the word "solely" left in the provision in order to conform to what is already in statute and not re-write the anti-Real ID Act legislation already passed.

Representative Gara wanted his question answered. Mr. Luckhaupt replied that the answer would be yes.

Representative Gara described the conundrum: the legislature does not want DMV to implement the Real ID Act, but the language makes it possible for a DMV person to implement it. He asked whether the legislative intent in the CS was good enough to protect the state from a commissioner who wanted to implement the Real ID Act. Mr. Moffet replied that the legislature oversees the DMV and can change anything they do not want through statute; the division cannot implement the Real ID Act.

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Mr. Luckhaupt noted that the provision passed last year said the division should not be implementing the act. He acknowledged that the hypothetical of the director wanting to implement the act was possible.

Representative Gara stated for the record that the intention is to prevent DMV from implementing the Real ID Act and that no language has been found to make that clearer. He thought Representative Crawford's question was still a concern but he could not find better language.

Representative Foster queried possible penalties for not complying with the federal requirements.

WHITNEY BREWSTER, DIRECTOR, DIVISION OF MOTOR VEHICLES, DEPARTMENT OF ADMINISTRATION (via teleconference), testified that there are some penalties for not complying with the Real ID Act by the end of 2009. She detailed that residents of states that do not issue Real ID Act compliant identification cards or driver licenses will not be able to access federal facilities and will not be able to board airplanes without secondary screening.

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Co-Chair Hawker spoke to difficulties in Alaska and the necessity of identification. He pointed to state statute and regulations connected with obtaining identification cards. He queried the additional difficulties that might be

incurred for renewing identification cards if the legislation passed.

REPRESENTATIVE BOB LYNN, SPONSOR, explained that the provision would not change things for Alaskans but for people coming from out-of-state and for people who are temporarily on a visa or work permit.

Co-Chair Hawker agreed that the additional burden is not on state residents but on other classes of individuals.

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Representative Foster described difficulties experienced by people in the Bush who have to travel long distances to get identification cards.

Co-Chair Hawker asked Mr. Moffet to respond to his question.

Mr. Moffet described changes the bill would put in place. Alaskans who renew driver licenses will not have to show primary documents. Alaskans who have allowed their driver's license to expire will be allowed 90 extra days to renew without showing primary documents; this provision was put in for people in rural areas. The 90-day window was chosen because statute stipulates that people new to Alaska have 90 days to change their license to an Alaska state drivers license.

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Co-Chair Hawker queried additional difficulties that would be caused by the legislation. Ms. Brewster did not think the provision would increase the burden on people who currently hold an Alaska driver's license. She addressed concerns about people from rural areas. She recognized the bigger challenges to those who do not have direct access to a DMV office, but pointed out that people can renew through the mail.

Ms. Brewster referred to future legislation that would allow for renewing online. She explained that the issue is the new digital license. The last of the old Polaroid licenses will expire this year, requiring people to come to an office in person to capture a digital likeness.

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Representative Foster commented on the federal government directing state decisions.

Co-Chair Hawker MOVED to report CSHS 3 (FIN) as amended from Committee with individual recommendations and the accompanying fiscal note.

Representative Gara OBJECTED for discussion. He commented that the rules in place already keep illegal immigrants from getting a driver's license and the proposed law would not change the rules aside from extending renewal time for senior citizens. He noted that legislation on divisive issues increases problems and does not change anything.

Representative Gara WITHDREW his OBJECTION.

Representative Foster commented on the situation in rural Alaska where everyone knows each other.

There being NO further OBJECTION, it was so ordered.

CSHS 3 (FIN) was REPORTED out of Committee with a "do pass" recommendation and with a previously published fiscal note: FN1 (ADM).

#hb98

HOUSE BILL NO. 98

"An Act relating to minor consuming and repeat minor consuming; and providing for an effective date."

[4:49:02 PM](#)

Co-Chair Hawker noted that there would be two amendments to the bill.

JANE PIERSON, STAFF, REPRESENTATIVE JAY RAMAS, SPONSOR, provided history regarding HB 98, explaining that HB 359, legislation amending minors consuming statutes, had been passed the previous year, but had created a new problem related to convictions.

Co-Chair Hawker clarified that new language would provide a technical correction.

Representative Gara MOVED Amendment 1, 26-LS005\A.4, Luckhaupt, 4/1/09 (copy on file):

Page 1, line 1, following both occurrences of "consuming":

Insert "or in possession or control"

Page 1, following line 3:

Insert a new bill section to read:

**Section 1. AS 04.16.050(b) is amended to read:

(b) A person who violates (a) of this section and who has not been previously convicted or received a suspended imposition of sentence under (1) of this subsection is guilty of minor consuming or in possession or control. Minor

consuming or in possession or control is a violation. Upon conviction in the district court, the court

(1) may grant a suspended imposition of sentence under AS 12.55.085 and place the person on probation for up to one year if the person has not been convicted of a violation of this section previously; among the conditions of probation, the court shall, with the consent of a community diversion panel, refer the person to the panel, and require the person to comply with conditions set by the panel, including counseling, education, treatment, community work, and payment of fees; in this paragraph, "community diversion panel" means a youth court or other group selected by the court to serve as a sentencing option for a person convicted under this section; or

(s) shall impose a fine of at least \$200 but not more than \$600, shall require the person to attend alcohol information school if the school is available, and shall place the person on probation for up to one year under (e) of this section; the court may suspend a portion of the fine imposed under this paragraph that exceeds \$200 if the person is required to pay for education or treatment required under (e) of this section."

Page 1, line 4:
Delete "Section 1"
Insert "Sec. 2"

Renumber the following bill sections accordingly.

Page 1, line 9, following "section."
Insert "Repeat minor consuming or in possession or control is a violation."

Page 2, following line 15:
Insert new bill sections to read:
**Sec. 4. AS 04.16.050(1) is amended by adding a new paragraph to read:

(4) "violation" has the meaning given in AS 11.81.900 and the penalties that are provided in this section.

*Sec. 5. The uncodified law of the State of Alaska is amended by adding a new section to read:

LEGISLATIVE RECOGNITION OF EFFECT OF DEFINITION.
The legislature recognizes that

(1) the definition of "violation" in AS 11.81.900(b)(63) provides that persons charged with a violation are not entitled to counsel or a trial by jury; and

(2) notwithstanding the definition of "violation" in AS 11.81.900(b)(63), persons charged with a first offense minor consuming or in possession or control or with repeat minor consuming or in possession or control under AS 04.16.050 are entitled to counsel and a trial by jury under the decision of the Alaska Court of Appeals in State v. Auliye, 57 P.3d 711 (Alaska App. 2002)."

Renumber the following bill sections accordingly.

Co-Chair Hawker OBJECTED for DISCUSSION.

Representative Gara explained that the amendment would clear up whether the first two convictions would be considered a crime. He did not want a young person to be charged with a crime for the first two violations. He expressed frustration.

[4:52:23 PM](#)

Co-Chair Hawker queried the position of the sponsor on the amendment. Ms. Pierson stated that Representative Ramras did not support the amendment. She spoke to the sponsor's desire to keep the bill clean regarding the minor consuming statute and his feeling that the amendment could cloud the issue.

[4:53:17 PM](#)

DOUG WOOLIVER, ADMINISTRATIVE ATTORNEY, ALASKA COURT SYSTEM, understood the desire to have the statute clear so that the courts would understand that the first two offenses are not criminal offenses. He stated that the law itself is not unclear and that the court will not count the first two offenses as crimes. He acknowledged that the defendants do not always know that.

Mr. Wooliver declared that the concern about adding the word "violation" is its definition in statute; this offense is contrary to that definition in almost all respects. He pointed out that adding the word "violation" would not be a simple fix and judges agree that an additional layer of confusion would be added. The definition of "violation" is a crime that is punishable only by a fine, which does not apply to the statute. The definition also includes an offense for which the defendant does not get counsel, which also does not apply. Another definition is an offense for which the defendant is not entitled to a jury trial, which also does not apply.

Mr. Wooliver stated that the courts were concerned about adding a definition that in all respects is contrary to what the bill actually does. He agreed with the drafter that technically the offense would be a violation, but calling it

a violation creates a lot of confusion because of the definition. He pointed out that the courts have been dealing with minor consuming issues in the legislation for some time and thought the statute was close to working.

Co-Chair Hawker asked for clarification regarding what was meant by the "host of judges" who had been consulted. Mr. Wooliver replied that he routinely asked for comments from judges regarding the possible impact of legislation. Comments regarding HB 98 had indicated concerns about adding confusion.

Co-Chair Hawker asked whether he meant that seated members of the Alaska bench have confided that they have examined the language and expressed concerns regarding their ability to implement the language. Mr. Wooliver responded in the affirmative.

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Representative Gara admitted frustration in not having the judges present to be questioned. Mr. Wooliver replied that the judges disagreed with him from time to time. Representative Gara wondered how the language of the bill was developed. He felt that the statute language should be clearer. He opined that the issue was simple.

Representative Joule wondered whether using language about intent would clarify the issue.

Co-Chair Hawker MAINTAINED his OBJECTION to Amendment 1. He felt that the court system should speak to Representative Gara's office about his concerns.

Representative Kelly asked for clarification. He felt that the language needed revisiting. He suggested that minors might misinterpret the law upon reading it, but summarized that he did not have a problem with the existing language.

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Representative Gara emphasized that the law is not clear. He reiterated concerns that a minor would think they had committed a crime. He asked whether the following language would work: "Minor consuming or in possession or in control is not a crime." Ms. Pierson pointed out that the language should make it clear that only first and second minor consuming was meant.

Representative Gara referred to the language regarding the first and second convictions; he queried his suggested language: "Minor consumer or in possession or in control is not a crime." Mr. Wooliver stated his willingness to work on the language with counsel. Representative Gara requested

viable language that could be used on the floor. Ms. Pierson stated that the sponsor would not have a problem with language that would work for everyone.

Mr. Wooliver noted that he would continue to work with counsel on the language.

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Co-Chair Hawker MAINTAINED his OBJECTION to Amendment 1.

Representative Gara WITHDREW Amendment 1.

Co-Chair Hawker MOVED to ADOPT Amendment 2, 6-LS0051\A.5, Luckhaupt, 4/2/092 (copy on file):

Page 1, line 1, following "consuming;":
Insert "relating to penalties for violations of limitations on possessing, sending, shipping, transporting, or bringing alcoholic beverages to, soliciting or receiving orders for delivery of alcoholic beverages to, and the manufacture, sale, offer for sale, barter, traffic, or possession of alcoholic beverages in, a local option area;"

Page 2, following line 15:

Insert new bill sections to read:

* Sec. 3. AS 04.16.200(h) is amended to read:

(h) Upon conviction of a class C felony under (b) or (e)(2) or (3) of this section, the court

(1) shall impose a fine of not less than \$10,000 and a minimum sentence of imprisonment of

(A) 120 days if the person has not been previously convicted [ONCE];

(B) 240 days if the person has been previously convicted once [TWO TIMES];

(C) 360 days if the person has been previously convicted two [THREE] or more times;

(2) may not

(A) suspend execution of sentence or grant probation except on the condition that the person

(i) serve the minimum imprisonment under (1) of this subsection; and

(ii) pay the minimum fine required under (1) of this subsection; or

(B) suspend imposition of sentence.

* Sec. 4. The uncodified law of the State of Alaska is amended by adding a new section to read:

APPLICABILITY. AS 04.16.200(h), as amended by sec. 3 of this Act, applies to an offense occurring on or after the effective date of this Act. References to previous convictions in sec. 3 of this Act apply to convictions occurring before, on, or after the effective date of this Act."

Renumber the following bill section accordingly.

Vice-Chair Thomas OBJECTED.

Co-Chair Hawker shared that the language in the amendment is linked to another bill in committee related to limitations on alcohol importation. He reported that he had spoken with the co-chair of the committee, who indicated that he had no problem with the amendment as long as legal counsel could provide assurances.

ANNE CARPENETI, ASSISTANT ATTORNEY GENERAL, LEGAL SERVICES SECTION-JUNEAU, CRIMINAL DIVISION, DEPARTMENT OF LAW, testified that the amendment attempts to address previous mistakes in SB 265. The intent of the legislation was to adopt mandatory minimum penalties for bootlegging that were the same as mandatory minimums for drunk driving. Unfortunately, the definition of "previously convicted for bootlegging" is different than for the term "previously convicted for drunk driving." In terms of felony bootlegging at least, the legislation passed did not do what it was intended to do.

Ms. Carpeneti stated that Amendment 2 would make the repair. She reported that she had spoken with Representative Herron and assured him regarding the language.

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Representative Gara wondered about a concern with the underlying bill related to rural Alaska. He asked whether Representative Herron objected to a portion of the bill. Co-Chair Hawker answered yes. He reiterated that Representative Herron was not concerned about the provisions in the amendment.

Representative Gara asked for clarification regarding how the amendment corrects the bill. Ms. Carpeneti replied that the amendment adopts the same mandatory minimum penalty for first-time felony bootlegging and first-time felony drunk driving.

Representative Gara felt that the crimes were not equal in weight. He felt that the first-time \$10,000 penalty plus 120 days in jail might not be appropriate for a bootlegging offense. Ms. Carpeneti replied that bootlegging has had negative consequences in rural communities that have voted to be dry or damp. She stressed that both issues have large effects on communities.

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Representative Joule agreed with the language with reservations. He expressed concern regarding the

disproportionate amount of rural Alaskan males in the prison system. He shared that his community (Kotzebue) is a damp community, but bootlegging is not legal. Alcohol can be imported and consumed, but not sold. He described a community less than 200 miles away that can import, consume, and sell alcohol legally. He stated concerns about pushing communities into going wet. He understood the complexity of the problems, but worried that at some point people could figure out that voting to go wet would release the males in prison.

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Representative Gara deferred to rural legislators regarding the scope of the problem and the penalties and questioned the felony level for first-time bootlegging. Ms. Carpeneti explained how the current law works. The state has to prove that the alcohol was brought in for the purposes of sale. There is also a presumption that can be rebutted that bringing in more than 10.5 liters of distilled spirits, 24 liters of wine, or 12 gallons of malt liquor amounts to transporting with the intent to sell.

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Ms. Carpeneti continued that SB 265 included that a third conviction of bootlegging would be a Class C felony and smaller amounts would be a Class A misdemeanor. She indicated that past support for the measure by rural representation had prompted submission of the bill by the department.

Representative Foster thought there was not disincentive to bootleg because of high profits.

Vice-Chair Thomas spoke to past support from rural members for the provision.

Co-Chair Hawker queried the sponsor's position regarding Amendment 2. Ms. Pierson replied that the sponsor did not have a problem with the amendment.

Vice-Chair Thomas WITHDREW his OBJECTION. There being NO further OBJECTION, it was so ordered. Amendment 2 was ADOPTED.

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Representative Gara asked if his proposed language "minor consuming or in possession or control is not a crime" would successfully say that the first and second violations are not a crime.

JERRY LUCKHAUPT, LEGISLATIVE COUNCIL, DIVISION OF LEGAL SERVICES, testified that he agreed with the concept that the offense should be denominated. He pointed out that the legislature identifies every type of criminal statute. However, the offenses are violations; the word is used in Title IV for any non-criminal offense dealt with in the criminal justice system. He did not understand why the magistrates had a problem. He stated concerns about saying the offense is not a crime, including that they would be considered a civil offense, necessitating litigation of all the issues again.

Representative Gara noted that there are only two offenses in the state, civil and criminal. He asked if there was statute language that the offense was a violation. Mr. Luckhaupt responded that it does not say the offense is a violation.

Representative Gara asked whether the offenses were being interpreted as a violation even though the statute does not say it that way. Mr. Luckhaupt responded in the affirmative.

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Representative Gara stated that he only wanted to say that minor consuming is not a crime, which does not add or take away the word. He queried objections to saying "not a crime."

Co-Chair Hawker questioned the productiveness of the conversation.

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Representative Kelly stated that he was comfortable with the amendment.

Co-Chair Hawker agreed that he would support an amendment with both Representative Gara and the sponsor's name on it.

Co-Chair Hawker noted the zero fiscal notes.

Vice-Chair Thomas MOVED to report CSHB 98 (FIN) out of Committee with individual recommendations and the accompanying fiscal notes. There being NO OBJECTION, it was so ordered.

CSHB 98 (FIN) was REPORTED out of Committee with a "no recommendation" and with a new zero fiscal note from the Department of Public Safety and two previously published fiscal notes: FN1 (CRT), FN2 (LAW).

ADJOURNMENT

The meeting was adjourned at 5:27 PM.