

HOUSE FINANCE COMMITTEE
April 7, 2009
2:24 p.m.

2:24:05 PM

CALL TO ORDER

Co-Chair Stoltze called the House Finance Committee meeting to order at 2:24 p.m.

MEMBERS PRESENT

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

MEMBERS ABSENT

None.

ALSO PRESENT

Marit Carlson Van Dort, Special Assistant to the Commissioner, Department of Environmental Conservation; Representative Carl Gatto; Rachel Lewis, Unclaimed Property Section, Tax Division, Department of Revenue; Sandra Wilson, Staff, Representative Gatto.

PRESENT VIA TELECONFERENCE

Alice Edwards, Acting Director, Division of Air Quality.

SUMMARY

HB 214 "An Act authorizing the Department of Environmental Conservation to award grants for the control of air emissions or the development and administration of air quality control programs; and providing for an effective date."

HB 214 was REPORTED out of Committee with a "do pass" recommendation and with a new zero fiscal note from the Department of Environmental Conservation.

HB 64 "An Act relating to gift certificates and gift cards, and to unclaimed property; and making a violation of certain gift card prohibitions an unlawful trade practice."

HB 64 was HEARD and HELD in Committee for further consideration.

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#hb214

HOUSE BILL NO. 214

"An Act authorizing the Department of Environmental Conservation to award grants for the control of air emissions or the development and administration of air quality control programs; and providing for an effective date."

Co-Chair Hawker commented that HB 214 resulted from conversations of the economic stimulus package. He explained that \$2 million could be available to the Department of Environmental Conservation (DEC) for grant awards for air emissions development and air quality control programs. The Department of Environmental Conservation has had limited participation in the program in the past. The new stimulus money creates a competitive grant program that would extend to municipalities. House Bill 214 provides the generic authority to issue grants, subject to appropriation.

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Representative Austerman noted that HB 214 also provides the department with blanket authority when necessary.

Representative Kelly read from the sponsor statement, "The authority is needed so that DEC can distribute funds available through the Air Quality Grant-Diesel Emission Reduction program in the American Recovery and Reinvestment Act (AARA) of 2009." He believed there to be an inconsistency between the bill and sponsor statement.

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Co-Chair Hawker acknowledged that the wording could be clarified. He explained that authority is necessary for the department to distribute funds through the stimulus package, but the authority is not limited to the package.

Representative Kelly maintained that the language was inconsistent.

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ALICE EDWARDS, ACTING DIRECTOR, DIVISION OF AIR QUALITY, DEPARTMENT OF ENVIRONMENTAL CONSERVATION, testified via teleconference, that the legislation authorizes the Division of Air Quality to award grants related to air quality control programs to communities and other entities. The statutory authority could be used for sub-grant funding received from the Environmental Protection Agency (EPA). The department receives EPA grant funds for programs and projects to reduce air pollutants from emissions of diesel engines. The new authority allows the division to grant funds to municipalities for local diesel emission reduction programs. She remarked that directly funding local programs and projects through the granting program would be efficient, and allow more flexibility in distribution of funds to Alaska's communities.

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Representative Fairclough asked if the division would create a new position to oversee the broadened authority. Ms. Edwards replied no.

Representative Kelly asked how the cases are currently handled. Ms. Edwards remarked that the division looked into agreements with other state agencies for different projects, exploring the use of the procurement process to distribute funds, she emphasized that the granting process would be more efficient.

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Co-Chair Stoltze closed public testimony.

Representative Kelly questioned if the \$2 million in stimulus funds was contingent on the passing of the legislation.

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Representative Co-Chair Hawker replied that the Office of Management and Budget with the Department of Environmental Conservation have identified the program as a statutory necessity.

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MARIT CARLSON VAN DORT, SPECIAL ASSISTANT TO THE COMMISSIONER, LEGISLATIVE LIASON, DEPARTMENT OF ENVIRONMENTAL CONSERVATION, reiterated that the additional granting authority is needed to best use the stimulus funds. She added that the funds could be distributed through other methods, but this method would be the most efficient.

Representative Kelly expressed his desire that the bill be limited to the purpose identified in the sponsor statement.

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Representative Fairclough questioned the possibility of limiting the authority to ARRA 2009 funding rather than giving total grant authority. She believed there would be cost to the state to rewrite regulations for grant giving authority. She wondered if the state would be in compliance if it only allowed the granting of the ARRA 2009 money, as opposed to the full amount. Co-Chair Hawker explained that after discussions with the involved departments, it was felt that continued authority was necessary for the existing program to operate more efficiently.

Representative Fairclough asked Ms. Edwards how the grant process is currently run, without the grant authority. Ms. Edwards explained that the grant program is new. She listed several entities that the department has been working with.

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Representative Fairclough requested a dollar amount. Ms. Edwards reported that the initial grant for the program was \$295,000. Representative Fairclough asked how long the program had been in existence. Ms. Edwards replied that the first grant was received in the fall of 2008.

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Representative Kelly maintained his concern in granting the department more authority. He questioned the level of importance, at this time, of allowing the department ongoing authority when deciding the use of the stimulus dollars.

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AT EASE

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RECONVENED

Co-Chair Hawker entered into record an email from the Division of Administrative Services with the Department of Environmental Conservation (DEC) (copy on file.) The language in this bill is exactly verbatim as requested by ADEC concerning the grant authority. He stressed the importance of committee support of the bill.

Representative Kelly understood that DEC needed the authority to issue the stimulus money. His concern was with the request for additional authority. He wondered if language could be written into the bill to limit the department's grant authority to the stimulus dollars.

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Vice-Chair Thomas remarked that often small villages are out of compliance and cannot receive grant applications. The bill would allow rural communities to work through DEC to obtain grant monies. He believed that allowing the department the grant authority would be beneficial to rural village communities.

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Co-Chair Stoltze reported on the zero fiscal note attached to the bill.

Co-Chair Hawker MOVED to report HB 214 out of Committee with individual recommendations and the accompanying fiscal note.

Representative Kelly OBJECTED.

A roll call vote was taken on the motion.

IN FAVOR: Crawford, Fairclough, Joule, Salmon, Thomas,
Austerman, Stoltze, Hawker
OPPOSED: Foster, Kelly

Representative Gara was absent from the vote.

The MOTION PASSED (8-2).

HB 214 was REPORTED out of Committee with a "do pass" recommendation and with a new zero fiscal note from the Department of Environmental Conservation.

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#hb64

HOUSE BILL NO. 64

"An Act relating to gift certificates and gift cards, and to unclaimed property; and making a violation of certain gift card prohibitions an unlawful trade practice."

REPRESENTATIVE CARL GATTO, read from House Bill 64, Page 4, Section 4, lines 8-12 (copy on file). The bill defines a gift card as:

a device that is useable up to its face amount instead of cash in exchange for goods or services, except telephone services, supplied by a seller; in this subsection, "device" includes an electronic card, but does not mean an access number or authorization code, whether manually or electronically dialed, to make calls.

The purpose of the bill is to protect gift card purchasers from access or dormancy fees attached to the card. The bill requires gift cards to retain their full value for the life of the card, which the state has defined as 3 years. At the end of the 3 year period, the card would be turned over to the state as unclaimed property.

RACHEL LEWIS, UNCLAIMED PROPERTY SECTION MANAGER, TAX DIVISION, DEPARTMENT OF REVENUE, reported that currently unclaimed property is turned over to the state for gift certificates. This bill clarifies that the term gift cards and gift certificates are used interchangeably. Approximately \$100,000 in unclaimed gift cards has been turned over to the department in the last 5 years, by approximately 1900 people within the state of Alaska.

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Representative Austerman asked how this legislation would affect stores that currently issue paper gift certificates. Ms. Lewis remarked that it would depend on how the gift certificate is issued. As she interpreted the language of the bill, individual retailer's gift certificates are still included as unclaimed property. Representative Austerman asked if it is under definition in this bill that gift card and gift certificate are to be used interchangeably. Representative Gatto referred to page 1, line 5 of the bill, which substitutes the word cards and deletes certificate. Representative Austerman maintained his concern that gift certificates be protected by the bill. Representative Gatto replied that Legislative Legal Services has advised that gift cards and gift certificates are interchangeable terms.

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Co-Chair Stoltze pointed out that the title of the bill refers to both gift cards and gift certificates.

Representative Gatto maintained that the terms are to be used interchangeably. He noted that some promotional gifts are called gift cards. He cited coffee cards, which are donated by the vendor, and have a definite expiration date.

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Representative Austerman felt that the language of the bill was open to misinterpretation.

Representative Kelly echoed Representative Austerman's concerns. He read from page 4, line 8. He wondered whether traditional paper gift certificates purchased as gifts would be protected under the bill.

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SANDRA WILSON, STAFF, REPRESENTATIVE GATTO, replied that when the bill was drafted the names were meant to be used interchangeably. She stated that the more commonly used term is gift card.

Representative Kelly wondered if expiration dates for gift certificates would become obsolete under the bill.

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Ms. Wilson replied that expiration dates would no longer be allowed, but issuance dates would be required.

Co-Chair Stoltze queried how the unclaimed property department would handle paper certificates.

Ms. Lewis explained that when gift cards and gift certificates are sold, a liability is created on the issuing business' account. She detailed the variety of ways that businesses track card balances.

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Co-Chair Stoltze wondered about cards that are donated to charities and non-profits. He asked if an accounting system would need to be created to differentiate that the card had been donated, in order to qualify for a tax exemption. Ms. Lewis assumed that the business would recognize that the card had been donated and that no income had been received. She related methods businesses may use to differentiate between donated and regularly purchased cards. She added that the charity on the receiving end of the donation could not report the card as unclaimed property because money had not been exchanged. She continued that the same rules apply to the person buying the donated card at a charitable auction. Co-Chair Stoltze expressed confusion concerning donated gift cards. Ms. Lewis explained that the donated cards/certificates are exempt from the legislation because they were not initially purchased at full face value. Promotional items and charitable donations are not included in the language of the bill.

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Representative Fairclough felt that excluding card fees in perpetuity would cause businesses significant accounting challenges. She expressed support for the bill's intent, but felt the cards should have dates of expiration printed on them.

Representative Joule commented that gift cards are seldom used in small communities. He stated that smaller communities use traditional gift certificates for

fundraising purposes, and he hoped that the language of the bill would address the donated paper gift certificates.

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Ms. Wilson informed the committee that gift cards that are donated are exempt from the legislation in the bill.

Co-Chair Hawker requested further clarification concerning donated cards. Ms. Wilson referred to page 3, subsection (c), which addresses donations to nonprofit or charitable organizations for fundraising purposes. Co-Chair Hawker felt that the chain of title could be broken without the vendor's knowledge. He expressed concern that the vendor would be mandated to maintain liability on their records in perpetuity. He wondered if the person who purchases, then donates the card, could be responsible for informing the vendor of the break in the title chain.

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Ms. Wilson replied that as the law currently stands, the unclaimed portion of the card must be turned over to unclaimed property after 3 years. Co-Chair Hawker felt that, regardless of the zero fiscal note, the forensic accounting issues that would be created by the tracking of the chain of title for turned in cards would be an overwhelming financial challenge to the department.

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Ms. Lewis responded that the department already receives unclaimed property for cards. The bill is meant to be a consumer protection item from service fees, administrative fees, and latency fees.

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Representative Crawford gave an example where a \$100 gift card is purchased at COSTCO for \$79.00, as a special deal to members. He wondered how the card would be treated under the bill. Mr. Lewis replied that discounted cards were excluded from the bill. Representative Crawford contended that the discounted card should retain the value of the purchase price.

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Ms. Wilson explained that if the gift card can be redeemed at only one retailer, it is covered under the bill.

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Representative Gara referred to page 3, line 7, which applies to gift card face value. He questioned if the law applied to the face value of the card regardless of the amount paid for the card. He wondered if the vendor would be allowed to deduct fees from the stored value of the card once it had been used and was less than face value. He felt that there should be language in the bill that would address the issue.

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Representative Gatto replied that the intent of the bill is to speak to the residual value of the card. He explained that the cards expire at the end of 3 years. While their value does exist in perpetuity, after 3 years, it exists in the management of unclaimed property.

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Representative Gara understood that the issuing of cards can be an accounting strain for businesses. He expressed support for the intent of the bill.

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Representative Austerman understood that the unclaimed balance on a card must be turned over, by the vendor, after 3 years from the issuance date. Ms. Lewis agreed.

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Representative Fairclough asked if the unclaimed card balances are turned in annually. Ms. Lewis replied yes.

Co-Chair Stoltze asked if the account information is turned in directly to the department. Ms. Lewis answered in the affirmative.

Representative Fairclough asked if the department could provide a list of businesses that annually turn over revenue to the department. Ms. Lewis replied that this could be done.

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Ms. Lewis shared that there are over 3,000 companies that report unclaimed property. She said that currently the department has 1,900 unclaimed cards totaling \$100,000.

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Representative Fairclough asked if the department had an auditing system for the accounts. She wondered if the cards that she has personally gifted or received, and that have

expired, are on the departmental list of unclaimed property. Ms. Lewis replied that any unclaimed property over \$25 is listed on www.missingmoney.com.

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Vice-Chair Thomas asked what happens to the unclaimed money on the cards. Ms. Lewis replied that it should go to the state's unclaimed property fund, although that may not always be the case. Vice-Chair Thomas wondered why that was not always the case. Ms. Lewis replied that the departmental resources to enforce compliance are limited.

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Co-Chair Stoltze asked if the issuance of gift cards is a stable, growing aspect of the retail economy. Representative Gatto believed that it is growing substantially. He stated that gift cards are an excellent system for banks and lending institutions to enhance revenue.

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Co-Chair Hawker questioned Representative Gatto's statement that banks are using the cards to enhance revenue. Representative Gatto clarified that revenue is generated by attaching dormancy and access fees to the cards. Co-Chair Hawker felt that generating revenue through fees was contrary to the intent of the bill. Ms. Wilson added that cards issued by financial institutions have more dormancy and activation fees attached to them. Under state law, because the cards are issued by a banking institution and used for interstate commerce, they are not included in the bill.

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Co-Chair Hawker felt that financial institutions were responsible for many of the card fees, and that it is counterintuitive to exclude banks from the bill. He wondered if a mandatory disclosure bill would be better, as the terms of the card use would be adequately disclosed.

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Representative Gatto replied that the disclosure statements that appear on gift cards are often difficult for the average cardholder to read. He believed that most people are surprised by the fees.

Representative Austerman voiced concern with the language in the bill that requires the cards last in perpetuity.

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Co-Chair Stoltze felt that cards are purchased for convenience. He hoped that disclosure requirements could be accomplished in statute. He recognized that gift cards are a large profit center for some institutions.

Representative Gatto maintained that the goal of the bill is to protect the consumer from false or deceptive advertising and hidden fees.

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Representative Fairclough voiced support for ensuring full disclosure, but felt that the bill asks for more than that. She asked how the state will manage the accounting for cards sold by a third party.

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Ms. Lewis explained that the bill addresses non-profits and charitable contributions where the current law does not. Third party sellers are considered acting agents for the cards they represent. She added a person receiving the card as a gift is often not aware of all the conditions that pertain to the card.

Representative Fairclough maintained concern as to how the bill would affect businesses when accounting for cards/certificates.

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Representative Crawford expressed that he was still not clear as to the necessity of the bill requiring the cards last in perpetuity. He understood that perpetuity would last as long as unclaimed property could account for it with the money turned in by the initial merchant. Ms. Lewis replied that some businesses will honor cards after the 3 year limit, and then request reimbursement from unclaimed property. Representative Crawford perceived that after 3 years, the business can send the card balance to unclaimed property, and no longer be compelled to honor the card. He estimated that after sending the balance to unclaimed property, the business would no longer need to keep it "on the books". Ms. Lewis agreed. Representative Crawford felt that this answered the question of perpetuity for the merchandiser. Ms. Lewis explained that the liability to the business is released.

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Representative Austerman asked for the effective date of the bill. Ms. Wilson replied that it would take effect 90 days after being signed by the governor. Representative Austerman

wondered if that would give businesses enough time to comply.

Ms. Lewis stated that the law requires that all businesses must review their books for outstanding liabilities by the end of June. An unclaimed property report must be prepared and sent to the department by November 1. She added that the process may be more of a challenge for businesses that issued cards with expiration dates.

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Co-Chair Hawker wondered about the importance of requiring an issuance date on the card, if the card is viable in perpetuity.

Representative Gatto replied that knowing the date of issuance will aid in marking the 3 year time period, after which the obligation no longer falls on the seller, but is turned over to unclaimed property.

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Co-Chair Hawker believed that ultimately the seller must have the date of issuance on record in order to determine when the 3 year lifespan of the card begins and ends. Representative Gatto explained that the merchant would be required to maintain a record of sale and an ID number, generated by payment with a credit card. Using the issuance date on the card to determine that 3 years have passed, the information would be transmitted to unclaimed property. Co-Chair Hawker agreed that the date of issuance is important to the seller of the card, but irrelevant to the buyer. He stressed that mandating that the date of issuance be printed on the card upon its sale is irrelevant to the mission being undertaken in the bill.

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Representative Gatto felt that an issuance date should be clearly printed on the card in order to enable the consumer to keep track of the age of the card/certificate.

Co-Chair Hawker felt that what the department was attempting to accomplish by putting an issuance date on the face of the card, is complicated. He judged that the consumer would not be aware of all the operations of law that affect the card, and more information would be required to be printed on the card.

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Representative Gatto replied that the bill is meant to protect consumers under the law, regardless of whether or

not the consumer is aware of the law. He pointed out that there is limited space for information to be printed on the card.

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Representative Crawford wondered if it would speak to Co-Chair Hawker's concerns if the date the card was to turn 3 years old was clearly printed on it. Co-Chair Hawker replied yes.

Representative Gara did not think that the bill presents a problem for non-profits. He felt that businesses with the sophistication to issue gift cards would honor donated cards, regardless of an expiration date.

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Representative Austerman asked if removing the words "in perpetuity" from the bill would change the intent. Representative Gatto replied yes. The words "in perpetuity" are necessary to protect consumers with cards that are very old, yet unredeemed. The unredeemed card still has value until it is redeemed by the card holder, either through the vendor or unclaimed property.

Representative Austerman asked how long unclaimed property retains the unclaimed balance. Ms. Lewis replied that a working balance of several million dollars is maintained by the department for unclaimed property and that the money is always available.

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Representative Austerman felt that if the money is always available from unclaimed property, after the 3 year expiration date of the card, the word perpetuity was unnecessary in the language of the bill. Ms. Lewis argued that the words "in perpetuity" are meant to ensure consumer confidence.

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Representative Fairclough wondered how much gift cards contribute to the multi-million dollar unclaimed property fund. Ms. Lewis shared that gift cards are a small part of the unclaimed property trust fund. Representative Fairclough asked if the department had a principle value of unclaimed property that is not distributed to the general fund. Ms. Lewis replied that the department has a trust account that is mandated by statute. The working balance is kept on an active account. Some unclaimed funds are transferred to the general fund. Representative Fairclough surmised that if the state were to hold the funds in perpetuity, the fund should

grow. Ms. Lewis maintained that the funds would be available for the consumer in perpetuity.

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Co-Chair Stoltze wanted more information about interstate commerce conditions concerning gift cards/certificates. Ms. Lewis explained that the laws of the state where the card is purchased are applicable to the card.

Representative Austerman relayed that he would prepare a motion to have the words "in perpetuity" removed from the language of the bill.

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Representative Fairclough maintained her concern as to how the bill would complicate donations for non-profits.

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Co-Chair Stoltze replied that if the process of donating to non-profits grows more complicated, people will be less inclined to get involved.

HB 64 was HEARD and HELD in Committee for further consideration.

ADJOURNMENT

The meeting was adjourned at 3:53 PM