

HOUSE FINANCE COMMITTEE

April 10, 2010

9:05 a.m.

[9:05:59 AM](#)

CALL TO ORDER

Co-Chair Stoltze called the House Finance Committee meeting to order at 9:05 a.m.

MEMBERS PRESENT

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

MEMBERS ABSENT

None

ALSO PRESENT

Peggy Ann McConnachie, National Federation of Independent Businesses; Representative Peggy Wilson, Sponsor; Becky Rooney, Staff, Representative Peggy Wilson; John MacKinnon, Executive Director, Associated General Contractors of Alaska; Mark Hickey, Juneau.

PRESENT VIA TELECONFERENCE

Christie Herrera, Director, Health and Human Services Task Force, American Legislative Exchange Council; Dave Roland, Attorney and Policy Analyst, Show-Me Institute, Missouri; Pat Luby, Advocacy Director, Alaska Association of Retired Persons, Anchorage; Maria Rensel, Fairbanks; Cam Carlson, Fairbanks; Randy Griffin, Fairbanks; Mark Regan, Fairbanks; Dennis Bailey, Attorney, Legislative Affairs; Bob Howard,

Fairbanks; Hugh Browne, Anchorage; Brian Kane, Legislative Legal Services; Whitney Brewster, Director, Division of Motor Vehicles, Department of Administration.

SUMMARY

HJR 35 CONST AM: HEALTH CARE

HJR 35 was REPORTED out of Committee with no recommendation and with previously published fiscal note: FN1 (GOV).

HJR 42 CONST. AM: TRANSPORTATION FUND

CS HJR 42(JUD) was REPORTED out of Committee with no recommendation and with previously published fiscal note: FN1(GOV).

HB 329 DEDICATED TRANSPORT FUND/PUB TRANSPORT

HB 329 was HEARD and HELD in Committee for further consideration.

HB 356 TRANSPORT. INFRASTRUCTURE FUND APPROP.

HB 356 was HEARD and HELD in Committee for further consideration.

[9:06:06 AM](#)

#hjr35

HOUSE JOINT RESOLUTION NO. 35

Proposing amendments to the Constitution of the State of Alaska prohibiting passage of laws that interfere with direct payments for health care services and the right to purchase health care insurance from a privately owned company, and that compel a person to participate in a health care system.

[9:07:00 AM](#)

REPRESENTATIVE MIKE KELLY, SPONSOR, presented an overview of the resolution. He emphasized the seriousness of the legislation, noting that health care involves everyone and that 36 states have the issue under consideration. He felt health care should be a state issue and not a federal one.

He claimed that 85 percent of Americans were happy with their healthcare system; there were a number of uninsured, usually illegal immigrants and the young. The real number of uninsured was close to 10 million; however, they were all able to receive treatment paid for by others.

Representative Kelly asserted that many were upset by recent legislation passed by Congress that they felt represented a dramatic step toward turning the healthcare system over to the federal government. He relayed that the proposed resolution would allow the people to vote on whether or not to participate, prohibit any fines or other punitive actions surrounding the personal decision, protect the right of the individual to purchase health care and the right of doctors to provide lawful medical services without government fines or penalties, and enshrine those rights in the state constitution.

Representative Kelly suggested that the legislation would turn Alaska against the federal government. He did not believe health care was provided for in the U.S. Constitution.

[9:12:30 AM](#)

CHRISTIE HERRERA, DIRECTOR, HEALTH AND HUMAN SERVICES TASK FORCE, AMERICAN LEGISLATIVE EXCHANGE COUNCIL (ALEC) (via teleconference), noted that ALEC was a non-partisan, national association of state lawmakers. She spoke in support of HJR 35, which was modeled after ALEC legislation enacted in 41 states, the Freedom of Choice in Health Care Act. She pointed out that the legislation was a national effort endorsed by the Wall Street Journal and that 59 percent of likely voters believed states should have the right to opt out of federal government programs.

Ms. Herrera stated three reasons why ALEC supported the bill: It would ensure continued access to health services; stop mandates that do not work, such as the Massachusetts mandate; and render unconstitutional any attempt by the state to require an individual to purchase healthcare coverage or state prohibition against direct payment for medical care. The legislation would also protect Alaska in a constitutional challenge of the new federal health reform law.

Ms. Herrera addressed several misconceptions that she felt had come up in other committee hearings about HJR 35. She assured the Finance Committee that the bill would not block people from taking advantage of the federal law, but would give citizens a choice. She dispelled the idea that prohibiting an individual mandate would exacerbate the "free rider" problem; she argued that people would continue to show up in emergency rooms for free health care even with the new federal mandate. She noted that the newly insured would still be paid for with subsidies; the new federal law dictates that a low-income family of four would qualify for more than \$20,000 in government subsidies through the new exchange. She encouraged passage of the resolution. She listed states where similar legislation has already passed, including Virginia, Idaho, Arizona, Alabama, Georgia, and Tennessee.

[9:17:30 AM](#)

Representative Gara commented that he was skeptical. He asked whether a cost analysis had been done related to how much it cost those who bought insurance (or the taxpayers) to make up for those who did not. Ms. Herrera responded that free riders would show up in the emergency room even if there was a requirement to buy individual health insurance. She claimed an individual mandate would exacerbate the free-rider problem. She offered to provide data showing that the primary free riders are people on Medicaid; doctors have been refusing to see new Medicaid patients because of the low reimbursement rate. The federal law would put most of the newly insured into the Medicaid program, which she felt delivered poor care.

Representative Gara asked whether Ms. Herrera had helped write the constitutional amendment. Ms. Herrera related that the resolution was modeled after legislation written by ALEC, an organization of state lawmakers from all 50 states.

[9:20:15 AM](#)

DAVE ROLAND, ATTORNEY and POLICY ANALYST, SHOW-ME INSTITUTE, MISSOURI (via teleconference), described himself as an experienced constitutional attorney and discussed constitutional implications of the bill at both the state and federal levels. He referred to a countdown to an "unprecedented intrusion" into individual liberty. He

asserted that the individual health-insurance mandate recently passed by Congress would require citizens to purchase a product they may not want, a step never before taken. He maintained that the U.S. Constitution did not offer protection of personal freedoms; therefore, states could modify their constitutions to protect their citizens. He believed HJR 35 would give Alaskans a chance to speak up for freedom.

Mr. Roland acknowledged that questions had been raised about the effectiveness of the proposed amendment. There have been very few direct conflicts between a state's protection of individual liberty and a federal government demand. He highlighted a Missouri case; the federal government had required the use of public funds for educational purposes, but Missouri's constitution forbids the use of public funds. In response, the U.S. Supreme Court exhibited discomfort with applying the law because of the Missouri constitution. The law was interpreted so that there was no longer a conflict. He maintained that the same pattern had held true through a number of U.S. Supreme Court cases.

[9:24:37 AM](#)

PAT LUBY, ADVOCACY DIRECTOR, ALASKA ASSOCIATION OF RETIRED PERSONS (AARP), ANCHORAGE (via teleconference), testified in opposition to the resolution. He did not believe that the state constitution should be amended, except for very serious reasons. He argued that the federal government was not taking over health care. He noted that 85 percent of the population was content with current healthcare coverage. He spoke of new managed-care models, the importance of networking, and coordinated delivery of services. He added that in Alaska, Medicaid pays better than Medicare and maintained that providers see Medicaid patients. He believed cost containment was necessary and that something needed to be done about the uninsured. Currently, 17 percent of Alaskans between the ages of 50 and 64 have no insurance at all. They often go to the emergency room; those with insurance pick up the tab. The average cost of the uninsured for every Alaska family was \$1,900 annually. Employers, including the state, also pick up the cost of those employers who do not provide coverage to their employees. He emphasized that AARP wants to make sure all Alaskans participate in healthcare coverage in

order to end cost-shifting. The resolution would allow people to opt out of coverage.

[9:27:08 AM](#)

Representative Kelly opined that Mr. Luby did not represent all seniors. He had heard from seniors who disagreed with the sentiments expressed.

Representative Fairclough asked how AARP had reached consensus on the issue. Mr. Luby explained that the board of directors had taken a position on the measure. He maintained that the only way to bring down healthcare costs was to end cost-shifting. If people were allowed to opt out, the rest of the people would have to pay for them.

Representative Fairclough inquired whether the stated position was an Alaskan or national one. Mr. Luby replied that there was only one national board of directors; AARP is a national organization and the states do not take individual positions.

[9:29:32 AM](#)

MARIA RENSEL, FAIRBANKS (via teleconference), testified in support of the resolution. She reported that she had collected signatures of others who also strongly supported the resolution; the people she had talked to did not want to participate in the federal healthcare reform. She refuted some of Representative Gara's comments; she believed people should choose for themselves whether they want health insurance.

[9:32:10 AM](#)

CAM CARLSON, FAIRBANKS (via teleconference), testified in support of the resolution. She could not believe that a law could be passed that prohibited people from buying health services they wanted. She thought it important to protect the individual's and the state's rights against intrusions of the federal government. She did not think the federal government had expertise in health care and had not done well with Medicare or Medicaid. She disagreed with Massachusetts' healthcare plan.

RANDY GRIFFIN, FAIRBANKS (via teleconference), testified in support of the resolution challenging the federal government. He believed that the state already regulated

insurance companies. He had concerns about his insurance rates going up. He favored supporting those who could not afford health insurance, although he did not think the federal government should be involved. He distinguished between rights and acts of mercy. He did not want young people to develop a welfare mentality.

[9:38:36 AM](#)

PEGGY ANN MCCONNACHIE, NATIONAL FEDERATION OF INDEPENDENT BUSINESSES (NFIB), voiced concerns about the federal healthcare legislation. She spoke in support of HJR 35. She wanted the right to choose whether to participate in a health-insurance system. She did not want to be forced to pay fees imposed by the federal government if she did not choose to provide health insurance for her three companies. She felt the resolution would help protect Alaskans and Alaskan businesses and that Alaskans should have the right to vote on whether or not they were subject to the federal government's imposed healthcare restrictions. She noted that NFIB has taken a position against mandates. She urged the committee to pass the bill.

[9:41:38 AM](#)

Representative Fairclough asked whether NFIB's position was Alaskan or national. Ms. McConnachie stated that the position was an Alaskan one. She described NFIB as a group of small Alaskan businesses ranging in size from one individual to over one hundred. The businesses banded together because they employed many people and were concerned about federal mandates. Co-Chair Stoltze noted that he has met many members and had become more aware of the many businesses in the state.

[9:43:41 AM](#)

MARK REGAN, FAIRBANKS (via teleconference), spoke to concerns about HJR 35. He reported that he had worked on many lawsuits brought by Medicaid beneficiaries against the government during the past 20 years. He maintained that the language of the resolution would have an effect on existing as well as future state laws and on the federal government's authority to impose an individual mandate.

Mr. Regan discussed how the resolution might influence state law and court rules related to medical child support. A person with children who is divorced is supposed to have

a divorce decree stating who should purchase health insurance for the children. He maintained that the resolution would jeopardize the state medical child-support system that ensures insurance by court order.

Mr. Regan called attention to HB 423, which was amended in the Health and Social Services Committee to stipulate that the freedom of choice policy was not to undercut anything that was required or provided by the state (including by state court order); the committee was headed in the direction of allowing the systems to continue and be modified. He felt that HJR 35 would jeopardize the right of a state court to mandate health coverage for children. He thought the language used might confuse voters.

Mr. Regan addressed the relationship between national health reform and the individual mandate. The text of the measure says that no law should be passed which is aimed at the Alaska legislature and Alaska state law, and has no necessary effect on anything that happens at the federal level. He believed that the federal mandate was likely to take effect without being challenged by HJR 35. He speculated that the resolution was designed before the federal law passed to prevent the state from requiring people to purchase insurance the way Massachusetts requires people to purchase insurance, to prevent a single-payer or other mandatory contribution system at the state level. He did not think the text was aimed (in spite of what the sponsors intended) at federal healthcare reform individual mandates, but at the state legislature and the state courts to prevent a state law.

Mr. Regan spoke to what HJR 35 would do: Because of the way federal way is structured, the resolution would take the state out of a role of protecting Alaska citizens in terms of the health-insurance exchanges through which people might get subsidized health insurance from private companies. He explained that the federal law stipulated that starting in 2014 the health-insurance exchanges were to be regulated by the states if the states signed on, and regulated by the federal government directly or by some non-profit if the states did not sign on. Each individual state was given a choice. He suspected that if the language was passed and enacted by the voters, the main effect it would have on federal healthcare reform would be that the state could not operate the exchanges. The state would then

no longer be engaged in healthcare regulation; the federal government would run the exchanges.

Mr. Regan compared the situation with the federal government's relationship to subsistence regulation. The state is able to regulate under the Alaska National Interest Lands Conservation Act (ANILCA) if it has laws that do a certain set of things, but if the state does not have those laws or if the laws are unconstitutional, as the Alaska Supreme Court has found them to be, the federal government does the regulating on federal land. He claimed that the proposed constitutional amendment would put the state in the same position. The state would be taking itself out of the health-insurance business, and the state would not be able to protect Alaskans through regulating the exchanges.

Mr. Regan argued that if there is a constitutional challenge to the individual mandate and to the exchanges, it would not be assisted or undercut by passage of the constitutional amendment.

[9:52:27 AM](#)

Representative Fairclough asked whether the amendment would prohibit a parent mandated by the court to provide for health insurance for a child in a custody situation. She also wanted a response regarding the issue of taking Alaska out of the role of making regulatory decisions.

DENNIS BAILEY, ATTORNEY, LEGISLATIVE AFFAIRS (via teleconference), agreed that the first issue could be a potential interpretation of the language in Section 2 of the bill. He was not certain, but believed the second issue also appeared to be correct: the federal government or non-profits could run the programs if the state did not run the exchange programs; then they could be run by non-profits or by the federal government.

Co-Chair Stoltze queried the phrase "potential interpretation." Mr. Baily replied that the language said that it would prohibit the state from penalizing a person for making a particular healthcare choice. For example, if the state requires a parent to provide health insurance for a child under a divorce decree, the constitutional amendment could be interpreted to prohibit a penalty on the

choice of the individual not to do what the court says. He opined that a conflict would be presented.

[9:56:48 AM](#)

Representative Austerman requested that Mr. Regan put his testimony in writing. Mr. Regan agreed to do so.

Representative Kelly commented that the same questions were being addressed in 36 states and suggested that there would be many questions like the ones posed by Mr. Regan.

Representative Fairclough stated that she was supportive of the legislation, but wanted to examine its unintended consequences. She wanted to build a record for the courts to look at. The intent of the resolution was that the national government should not tell states what to do regarding healthcare coverage in the state.

Co-Chair Stoltze also wanted to look at all possible consequences of the federal mandate.

Representative Kelly agreed with the statements. He said the bill process was just beginning and the committee's comments would be on the record.

Representative Fairclough explained that she commented about the intent on the record because the court uses meeting minutes to consider legislative intent.

[10:00:44 AM](#)

BOB HOWARD, FAIRBANKS (via teleconference) urged support of a constitutional amendment to protect Alaskans from the federal government's overreaching legislation. He stated that whether the amendment passed or not, the federal law already existed. He requested strong language on other possible federal mandates besides health care. He hoped for a broader statement through a constitutional amendment that would prohibit passage of any law that would compel a person or an employer to purchase any good or service, or that levied any penalty, tax, or surcharge on a person or employer for failing to purchase any good or service.

[10:03:15 AM](#)

Representative Doogan asked who Mr. Howard was speaking for. Mr. Howard replied that he was speaking on his own behalf.

HUGH BROWNE, ANCHORAGE (via teleconference), opposed the bill because he thought spending time fighting the President or the federal legislation was a waste of time. He agreed with statements made by Mr. Regan and the state lawyer about possible unintended consequences. He was against spending resources to fight a federal law that had already been passed; the resolution would affect the state and not the federal government. He maintained that the bill could take liberties from Alaskans and that there were beneficial things in the federal healthcare bill. He was concerned that the bill would cause a constitutional fight over health care. He thought the result would be ineffectual since the language in the resolution says that no law shall be passed; he emphasized that the federal law had already been passed.

[10:09:16 AM](#)

Representative Kelly acknowledged that the passage of the federal healthcare bill had stirred up discussion. He reiterated that 36 other states had taken stands against the federal bill. He noted that Alaska had been counseled to proceed carefully and thoughtfully. The process was underway in Alaska with the governor and the attorney general looking at it. He pointed to additional legislation related to the issue: HR 14 and HB 423. He maintained that the issue would not go away. He stated that "America is on the march" and maintained that the legislature must pay attention. He urged considering unintended and intended consequences. He concluded that the legislature should not give up.

[10:11:53 AM](#)

Representative Gara offered to help make the resolution a better piece of legislation. He believed that people should get the medical care they needed, but he thought the provision would work against people getting it. His major concern was that he did not believe in creating false expectations among the people who elected him. He stated that the resolution was unenforceable and unconstitutional.

Representative Gara pointed out that there were people who disliked other federal programs, such as the space program, environmental regulations, and the federal tax system, but in the end, Americans "get what they get" from Congress and the President; if they don't like it, they can elect new Congress people and a new president. He disagreed with Alaskan legislators pretending to be Congressmen on television and trying to change a congressional law with a piece of state legislation, which he thought created false expectations among the public.

Representative Gara maintained that he did not want to write something blatantly unconstitutional into the state constitution. He likened it to trying to change the First Amendment through language in the state constitution, or putting language into the state constitution removing the right to freedom of religion. He argued that America does not work that way. He did not want to pretend to the Alaskan public that a measure like HJR 35 could change something.

Representative Doogan voiced his opposition to the resolution. He related that his father had helped write the Alaska Constitution. Like any living document, it has been amended several times. He believed that the resolution went beyond being a sensible amendment and was purely a political statement. He was opposed to enshrining political statements in the state constitution, the basic document governing who Alaskans are and what they do. He did not know enough about law to know what consequence the resolution could have in the end, but he did not want to put a "passing political fancy" into the state constitution.

[10:16:40 AM](#)

Representative Austerman inquired whether the chair was planning to move the bill. Co-Chair Stoltze responded that he preferred to have all 11 members present before doing so.

Representative Kelly appreciated the committee's comments. He believed that 70 percent of Americans were upset and seeking ways to "unscrew the screwing." He acknowledged that the process was fraught with difficulty, but he did not believe people would back off. He thought the resolution was one method that Americans could use to

change the situation or at least send a message. He predicted change in the upcoming elections. He maintained that he was not acting in order to be re-elected, but because he believed in what he was doing. He believed he was not alone and that the people were not done.

HJR 35 was set aside until later in the meeting.

[10:19:54 AM](#)

AT EASE

[10:39:56 AM](#)

RECONVENED

#hjr42

HOUSE JOINT RESOLUTION NO. 42

Proposing amendments to the Constitution of the State of Alaska creating a transportation infrastructure fund.

#hb329

HOUSE BILL NO. 329

"An Act relating to the transportation infrastructure fund, to local public transportation, to motor fuel taxes, and to the motor vehicle registration fee; and providing for an effective date."

#hb356

HOUSE BILL NO. 356

"An Act making a special appropriation to the transportation infrastructure fund; and providing for an effective date."

[10:40:15 AM](#)

REPRESENTATIVE PEGGY WILSON, SPONSOR, pointed out that the Alaska Transportation Infrastructure Fund (ATIF) required three separate pieces of legislation in order to put the fund into practice. The first, HJR 42, would put a constitutional amendment on the ballot to allow for a dedicated transportation fund. Next, HB 329 would create the fund, define how it would be used, and how the appropriations would be dispersed. The third, HB 356, would appropriate \$1 billion seed money for the fund.

Representative Wilson maintained that Alaska needed to shoulder more of the responsibility for its own

transportation costs. She relayed that the previous year the state had received 87 percent of its transportation funding from the federal government, more per capita than any other state. A new federal highway reauthorization bill was anticipated, with less money for states with low populations. She argued that Alaska needed a dedicated transportation fund. State-funded projects do not have the same stringent requirements that the federal government has, but they still need the same construction standards.

Representative Wilson reported that the House Transportation Committee had met during the previous session regarding improving the transportation infrastructure in geographically-diverse Alaska. The committee traveled to villages and urban areas to see firsthand the challenges faced, including safety corridors, congested areas, and roads in need of repair. The committee heard from the Alaska Municipal League (AML) and the Mat-Su Borough, who teamed together to contract an independent study of the fiscal challenges of transportation in the state. Larry Persily, a committee aide, had completed an extensive study of the fiscal options for funding transportation infrastructure upgrades. There was a full day of hearings on issues from the national level down to the local level, and discussion of optimal solutions to the problems. She maintained that the bill was the culmination of all the hearings, travel, and hours of research.

Represented Wilson emphasized that she did not take changing the state constitution lightly. Two dedicated funds had been grandfathered into the constitution already, including one for transportation. She asserted that the time was right to put the fund into place in order to plan solutions to transportation problems. A dedicated fund would provide known funds and the ability to provide a long-term plan for capital improvements and major maintenance. She believed the voters would be in favor of the dedicated fund.

[10:44:53 AM](#)

BECKY ROONEY, STAFF, REPRESENTATIVE PEGGY WILSON, briefly described the two other transportation bills. She explained that HB 329 would cover all modes of transportation, including aviation, roads, surface transportation, bike paths, ferries, harbors, and municipal assets. The bill would take the revenue from the fuel tax and vehicle

registration fees and put them into a fund. The Department of Revenue (DOR) would manage the fund, looking to provide 6 percent of market value (POMV) average over five years. Each year, appropriations into the fund would consist of the 6 percent POMV plus 50 percent of the revenues from the fuel tax and vehicle registration fees. The legislation would set limits on how much could be appropriated across the modes of transportation and would create an advisory council with representation from the legislature, the public, and the Department of Transportation and Public Facilities (DOT/PF). The advisory council would assign a numeric value to the proposed projects to define which would be done in a given year. The bill would allow for Division of Motor Vehicle (DMV) operations, retain all specialty license-plate appropriations set forth in statute to date, and retain funds from the aviation fuel tax for municipal airports. The governor and the legislature would approve the capital appropriations recommended by the advisory council; the capital items would go through the regular budget process.

Ms. Rooney reported that HB 356 would be an appropriation bill for the \$1 billion for seed money.

[10:47:25 AM](#)

Representative Gara commended the work done on the bills, although he was skeptical about dedicated funds. He noted that he had been told about a provision that interested him. He believed other areas of the capital budget should be dealt with in the same manner as school construction, with some sort of ranking process. He asked whether there was a version of a Statewide Transportation Improvement Program (STIP) process included in one of the bills. Representative Wilson replied the process was in the enabling bill (HB 329).

Representative Austerman stated that he had had some reservations about the proposal at first because it would take funds that are already being used in the budget process and dedicate them to a different use. He thought there was enough time to address the issue before a vote. He queried a change related to a date on page 1, line 9.

BRIAN KANE, DRAFTER, LEGISLATIVE LEGAL SERVICES (via teleconference), explained that the question referred to a conforming change needed because the constitutional section

has not been amended since it was ratified. He added that the real change to the section was the addition of Sections 15 and 18 as allowable dedicated funds; putting the date in was a clean-up measure.

[10:50:44 AM](#)

Representative Wilson asked whether the appropriate committee substitute was before the committee. She noted that the bill should be version \C.

[10:51:12 AM](#)

AT EASE

[10:53:25 AM](#)

RECONVENED

Co-Chair Stoltze explained that there was a proposed CS and the chair preferred to offer a constitutional amendment instead, which would allow a dedicated fund.

Representative Wilson felt that the issue could be taken care of in the enabling bill.

Representative Joule directed attention to HB 356 (related to the appropriation). He asked whether the numbers were strictly from the 6 percent POMV or from that amount plus the other money available. He wondered what would be available for transportation funds in the future. Ms. Rooney referred to the chart "Available Funds From ATIF" (in the packets for HB 356) with two scenarios. Scenario one assumed the \$1 billion appropriation seed money for the fund; all of the revenue from the vehicle registration fees and the motor fuel tax would go into the fund and accumulate. The only thing available for appropriation would be the 6 percent POMV averaged over 5 years.

Ms. Rooney continued with the second scenario, the seed money plus 50 percent of the previous year's revenue from vehicle registration fees and motor fuel taxes; she indicated that the total appropriation was shown on the right-hand side in the last column.

Representative Joule queried the difference between the two scenarios. He noted that in FY 12, about \$36 million would be available for projects statewide. Ms. Rooney responded in the affirmative.

Representative Joule questioned the out-years and the changing numbers. Ms. Rooney replied that the numbers

reflected the compounding of all of the motor vehicle fees and motor fuel tax in scenario one; the funds would continue to be put into the savings account and compound; it would catch up at about year 2018. The choice would be between spending the money up-front or saving it to spend in the out-years.

[10:58:41 AM](#)

Representative Gara speculated that the amount available would start in the high \$50 million range and then grow to \$100 million. Ms. Rooney agreed. Representative Wilson clarified that he was referring to scenario one.

Representative Gara understood the need for a healthy transportation budget. He was concerned that in the early years, the fund would spin off less than was already spent on transportation. He was worried about declining state revenue and availability of funds, which could result in budget cuts. The legislation would not allow transportation funding to be cut any lower than the designated amounts, which was his problem with the dedicated fund. He wondered what would happen if the state found itself in a situation where something needed to be slashed. Supporters of the dedicated fund would be protecting transportation from being cut, but people advocating for schools would not want school funding cut, healthcare advocates would not want health care cut, and so on. The legislature would be forced to slash something big, and he did not know why one area of need should be protected more than another. Representative Wilson responded that if the legislature found itself in the described situation, the economy of the state would be in dire straits. She asserted that no matter what was cut, jobs and economic development would be important in such a situation. She maintained that the measure would ensure some economic development for the state.

Ms. Rooney added that Representative Gara's description of the smaller amount was why the enabling statutes would be changed to allow expenditure of 50 percent of the revenues so that something substantial would be seen immediately.

Representative Gara thought a lot of work had to be done to address as many considerations as possible.

[11:02:40 AM](#)

Representative Joule shared Representative Gara's concerns; however, the other part of the discussion related to moving forward with transportation infrastructure in the state. Often, the challenge in Alaska is developing modes of transportation (surface or otherwise) that would allow access to resources that the state might want to develop. He thought development could help avoid the challenges described.

Representative Fairclough asked where the described funds [collected from motor vehicle fees and motor fuel taxes] were currently going and what they were being used for. She thought the funds went to other state entities, which would need general fund dollars [if the measure passed]. Representative Wilson replied that the intent of the CS was to ensure that the state would not take any of the funds used currently and that nothing would be taken out of the general fund; the assurance could be put in enabling legislation. The sponsors did not want to change anything happening currently with the receipts from vehicle registration fees and fuel taxes. Some of the receipts go to different communities for airports; she asserted that they did not want to touch that funding.

[11:05:45 AM](#)

Ms. Rooney added that there were [receipts from] specialty license plates that go through the general fund to specialty organizations such as veterans and Special Olympics; the sponsors did not intend to take that money. She noted that there were receipts from taxing aviation fuel that went to municipal airports.

Representative Fairclough pointed to page 1, Section 18, line 14 and read: "from any sales tax on fuel for the propulsion of motor vehicles, aircraft, and watercraft, less refunds, credits, and collection costs provided by laws, and from a registration fee of motor vehicles, not special registration fees." She asked whether money would be put into a fund from some state-revenue sources or taxation already in place. Ms. Rooney answered in the affirmative.

Representative Fairclough asked whether the money put in the dedicated fund would result in less money going to the places where the money currently went. Ms. Rooney replied

that the funds went into various holding accounts within the general fund and then were appropriated.

Representative Fairclough queried the total that would have to be backfilled with general funds. Ms. Rooney answered \$76 million per year.

Representative Austerman asked whether the current gasoline motor tax went into a dedicated fund. He referred to a dedicated fund that had been grandfathered in. Representative Wilson responded that the fund was grandfathered in, but when the legislature raised the fuel tax, they were told that the dedicated fund would have to go.

Representative Austerman pointed to 11 years out using scenario one, when there would be a little over \$2 billion in the fund. He wondered whether the legislature could use the money for anything other than transportation if a situation of need occurred as described by Representative Gara. Representative Wilson responded that the enabling legislation would be in statute and that the statute could be changed if needed.

[11:09:45 AM](#)

Ms. Rooney clarified that the legislature could not use the money for other things without changing the constitution because the amendment would stipulate that the fund must be used for transportation capital funds.

Co-Chair Stoltze recalled the last dedicated fund established by the voters in 1976. There was a revenue stream and the legislature augmented the fund "far beyond." He summarized that the idea was to have the legislature be able to send the gas tax, any other tax, or an amount in a special appropriation to the constitutionally-protected transportation fund instead of the general fund.

[11:11:05 AM](#)

Representative Gara referred to the chart depicting the historical amount of state spending on transportation projects, with a general fund part, a federal part, and other. He asked whether the fund would be used only for non-federal transportation projects or if it would be available for state transportation spending. Representative

Wilson replied that the enabling legislation would limit how much could be spent on federal projects, but it would allow spending on federal projects. She preferred to do the projects as state projects because they tended to be much cheaper and faster. However, they did not want to limit use of the fund to only state projects; up to 10 percent could be used on federal projects, such as for a federal match.

Representative Gara wanted to know how much of the state money has gone to state projects and how much has been matching money for federal projects. Representative Wilson replied that DOT/PF would provide the information.

Vice-Chair Thomas asked why all three pieces of legislation were being considered at one time. Representative Wilson responded that she would be happy if the resolution got through and they waited to do the other ones. She noted, however, that many people wanted to know the overall thought process.

Vice-Chair Thomas commented that the large sum of money (\$1 billion) could worry people and distract from the resolution itself. He stated that he liked the idea.

[11:13:38 AM](#)

Representative Austerman asked for clarification regarding the conceptual amendment. Ms. Rooney responded that the amendment would allow for the use of some of the fund for the operations of the DMV; the enabling legislation stipulates that the state must appropriate for those operations, so they wanted it in the constitutional resolution.

Representative Wilson added that the program was currently handled in the way described; receipts were used to run the DMV and the sponsors did not want to change that. They wanted to avoid people coming to the legislature for the funds.

[11:15:12 AM](#)

Representative Austerman commented that he would not support the idea. He opined that all revenue from the DMV should go to the general fund and then be appropriated through the legislature so the legislature would know what was going on. Representative Wilson responded that the

funds would still go through the usual process, through the subcommittees and so on.

Representative Austerman stated that he did not like the idea of the DMV being funded through the constitution.

Representative Kelly asked whether the legislature would have the flexibility of spending 100 percent state funds and whether the current system of matching funds would still be in place. Representative Wilson responded yes, except that 10 percent could be used for federal match (although it does not have to be used for federal match).

Representative Kelly summarized that the current system of matching across the board would be permitted but not required.

[11:16:49 AM](#)

Representative Fairclough asked which bill was being addressed in public testimony. Vice-Chair Thomas responded all three bills.

JOHN MACKINNON, EXECUTIVE DIRECTOR, ASSOCIATED GENERAL CONTRACTORS OF ALASKA (AGC of Alaska), stated that the organization represented over 650 businesses around Alaska. He provided testimony regarding HB 329; he did not have an opinion on either the appropriation or the constitutional amendment. He noted that Alaska had relied on federal transportation and construction funding for many years. The federal highway program had used the federal fuel tax, which has been around since 1916. He thought it was one of the best programs developed. Alaska did not get to participate in the program until statehood.

Mr. MacKinnon detailed that for the federal gas tax collected in Alaska (at \$0.184 per gallon), the state received a return of about six-to-one; for every \$1.00 collected the state received \$6.00 back. He emphasized that most states get only \$0.90 back for every dollar collected. He warned, however, that the return may not be allowed much longer. The federal highway program was a six-year program, and re-authorization was overdue. He relayed that the federal administration wanted to hold back, although the federal committee chair wanted to move ahead; the [re-authorization bill] has been referred to as the "transit bill" instead of the transportation bill, and was expected

to favor urban areas with higher populations. He expected less to come to Alaska as a vast state with limited population.

Mr. MacKinnon maintained that general-fund appropriations for transportation projects have been generous in past and current capital budgets. Over the years, the ability to spend state funds has greatly speeded up the process. He noted that one federal dollar was worth about \$0.75, compared to the worth of a state dollar. Federal dollars were harder to spend as there were more rules and procedures; state dollars have the same construction and environmental standards, but could be used more concurrently instead of consecutively. He pointed out that there were numerous examples of faster projects.

Mr. MacKinnon stated that AGC of Alaska has been on record for many years supporting a state-funded transportation plan. He thought the proposed plan had gone through a long and thoughtful process and had made great headway. He believed a key element of any successful program was a predictable and steady flow of funding; living from one year's appropriation to the next, through highs and lows, makes it difficult to have an efficient system. He believed directing the state motor fuel tax of \$0.08 per gallon and the vehicle registration fees constituted a user fee going toward the various modes of transportation being used. He thought the proposed advisory committee resembled the transportation boards or commissions that most other states had; the system has worked well in other states.

Mr. MacKinnon concluded that HB 329 would provide a very good framework for a successful state-funded transportation program.

[11:22:58 AM](#)

WHITNEY BREWSTER, DIRECTOR, DIVISION OF MOTOR VEHICLES, DEPARTMENT OF ADMINISTRATION (via teleconference), spoke to HB 329. She explained that currently, almost all DMV appropriations (including capital and operating) were funded via receipt-supported services; the division lived off receipts, and the extra was deposited into the general fund. The DMV budget went through the appropriation process, but the funding source was receipt-supported services.

Ms. Brewster furthered that HB 329 would allow for 3 percent of the appropriation of the transportation infrastructure fund to be available for DMV's operating costs. She referred to a letter from the division to the committee [April 6, 2010, copy on file] outlining the details. She thought the DMV would have enough funds for FY 12 in terms of operating expenses; but looking forward, it could possibly have budgetary problems that would result in the DMV requesting supplemental funding from the legislature. The vehicle registration fees listed in HB 329 would be transferred into the transportation infrastructure fund; there would be insufficient funds left to fund the DMV operations. None of the funds would be capital funds. She stated that the division did not conceptually oppose the bill, but wanted to see the language changed dealing with the 3 percent being available to the DMV. She thought the language should basically state that anything in excess of needs for operations would go into the transportation fund.

Co-Chair Stoltze appreciated information about the technical difficulties, but said that he preferred to consider the constitutional amendment without having to figure out all the funding mechanisms.

Vice-Chair Thomas commented that the Commercial Fishery Entry Commission was fully funded by the fishermen and that the surplus went automatically to the Department of Fish and Game to supplement its budget. He thought a similar mechanism could be used to make sure the DMV was fully funded each year, with the surplus going to the dedicated fund.

[11:27:43 AM](#)

Representative Gara commented about moving ahead on the constitutional amendment. He also wanted to go forward on another statute to evaluate and rank projects to limit spending and dedicate money to the most important things. He described the current process related to transportation, with each district fighting for its own projects. He thought the capital budget needed to be reformed to rank projects. He wanted the process to be written into the proposed transportation fund.

Representative Fairclough suggested limiting the discussion to HB 42 in order to facilitate the process. She was

concerned that discussion about funding possibilities could result in losing the overall focus on whether to create a dedicated transportation fund. She argued that education and emergency medical services would also benefit from dedicated funds for transportation.

MARK HICKEY, JUNEAU, noted his 30 years of experience working on transportation issues in Alaska, including as commissioner of DOT/PF. He testified in strong support of the bills, particularly a dedicated transportation fund. He believed all former DOT/PF commissioners would support the idea as well. He thought the state needed a reliable and predictable way to fund transportation, especially the user-fee concept, since the state did not have a state-funded program. Alaska was the only state that did not, which caused considerable problems on the federal level. He thought the real problem was that the state was not meeting its transportation needs. The municipalities were forced to make federal programs meet a variety of needs, which did not work and was an inefficient use of federal money.

Mr. Hickey informed the committee that at statehood, Alaska had dedicated taxes from both motor-craft and water-craft fuels, as well as the school fund (using tobacco tax). The purpose for the motor-craft and water-craft fuel taxes was related to operations and maintenance, such as repairs.

[11:34:09 AM](#)

Mr. Hickey continued that in 1961, the motor-fuel tax was changed from \$0.04 to \$0.08 because the state needed the revenue. At the time, the Department of Law (DOL) provided what turned out to be incorrect advice that if there was a change to a tax that had been dedicated, such as increasing the amount, the dedicated fund would be lost. Based on the advice, the Title 19 statute still on the books stipulated how the money would be used. The legislature amended the statute to say "may be used" and therefore eliminated the dedicated-fund status. He did not know whether DOL had issued a new opinion since that time. When the tobacco tax was put in place in the mid-1990s, it was demonstrated that the DOL advice was incorrect. There was a long discussion about what would happen to the dedicated funds if the rate of taxation was changed in the future. The members of the constitutional convention all agreed that since need changes, the rate can be changed. To lose the dedication, the tax would have to be eliminated and then brought back,

or the purpose of the tax would have to be changed. As a result, the tobacco tax was increased for the school fund, which was still in place and had never been challenged.

Representative Austerman queried the relationship between HB 42 (Section 18) and HB 356 and how the fund could work without the \$1 billion appropriation. Mr. Hickey replied that it was complicated to look at all the pieces required. He believed HB 329 also needed to be considered; it was designed to supplement the programs in place already and focus on state-funded capital. He referred to Representative Fairclough's question about what money would get displaced; the \$76 million was accounted for in the budget in the highway account as well as being essentially appropriated to maintenance support along with other general funds. House Bill 329 would take the money and put it into the capital side (which could participate in some federal money but was mostly designed to augment the federal). There would be a need for additional general funds to deal with funding for maintenance costs. He continued that the concept as a whole would require both the appropriation of a meaningful amount of funds and user fees sufficient enough to have a program; \$20 million or \$30 million spin-off each year would not be meaningful, but \$50 to \$70 million in addition to a way to grow the fund would be meaningful. He thought user fees were important and had to be looked at. He noted polls showing strong support for increasing the motor fuel tax as long as the money raised was used appropriately.

Mr. Hickey opined that the dedicated fund and its mechanisms would not work very well without some initial, significant appropriation into the fund. He thought the foundation was created at statehood with user fees. He recommended protecting the user fees and then supplementing then.

[11:40:11 AM](#)

Representative Austerman pointed out that putting \$76 million each year into the fund would not grow it. He wanted a fund that would grow, and thought that would take a significant endowment by the legislature.

Mr. Hickey responded that it would depend on what the funds were used for. He agreed with the concept in HB 329 of keeping half of it (or some other amount) to grow the fund

more with the resulting interest deposits. He noted that putting the money into state-funded transportation projects represented a significant change from current practice. The problem of what the \$76 million was used for would still have to be worked out. The need for a state-funded program had been discussed since 1986 or 1987, when the price of oil went down to \$9 per barrel. Projects were still funded, but haphazardly. Transportation projects need investment over time on a programmatic basis, because of environmental requirements and so on. In the current system, a little bit of money was acquired at a time, and each subsequent bit had to be fought for. He acknowledged that the endowment part was important, but the added benefits of the user fees focused on state-funded capital in a programmatic way with a ranking mechanism would represent a significant change from the current process.

Representative Austerman agreed that something needed to be done, but stated concerns regarding HB 329 and how to appropriate the money; with percentages at 188 percent of the fund and funding sources (page 3), he thought there would be a lot of competition. Mr. Hickey explained that there was a not-to-exceed amount that would create some equity between modes. He explained that Alaska was unique in terms of the multi-modal challenges, including ports and harbors as well as aviation.

Representative Gara stated that he was beginning to be convinced, but he saw a reverse problem that might require an amendment. He did not want to overspend, to require the legislature to spend money that it does not need to spend. He felt a dedicated fund meant that the money had to go only to transportation funding, but he did not think transportation funding would be the same in all years. He noted that the fund would soon have \$60 million per year, but in FY 10, only \$35 million was spent on transportation projects. He questioned what would happen with extra money during times of less need. He suggested that the bill stipulate that at the end of the fiscal year, the excess not spent on transportation (of spin-off money, not principal) should be put into the general fund.

[11:45:12 AM](#)

Mr. Hickey replied that any expenditure was subject to appropriation; the legislature annually controlled what funds were spent, although the money in the dedicated fund

could only be spent as prescribed. He underlined that the backlog for transportation needs were excessive; between deferred maintenance and capital projects, the need was more than ten times the amount that would be available. He emphasized that the user fees collected would not have to be spent in any given year, if there were not projects that it made sense to fund. He believed the money would be protected. He was not sure how a sweep structure could work within a constitutional amendment.

Representative Gara commented that leaving the money in the fund would mean it could only be spent for transportation. He wanted to consider some kind of sweep provision that would happen after the legislative session was over in a given year. Mr. Hickey detailed that DOT/PF had a \$20 billion backlog in transportation projects. He emphasized that the costs of the projects were very high. He referred to one project that cost \$70 million. In a good year, he conjectured the fund could pay for five or six projects, and thought two or three projects each year was more likely.

[11:47:58 AM](#)

Representative Fairclough asked whether public testimony was closed.

Vice-Chair Thomas closed public testimony.

[11:48:37 AM](#)

RECESSED

[6:59:40 PM](#)

RECONVENED

Co-Chair Stoltze continued discussion on HJR 35.

#hjr35

HOUSE JOINT RESOLUTION NO. 35

Proposing amendments to the Constitution of the State of Alaska prohibiting passage of laws that interfere with direct payments for health care services and the right to purchase health care insurance from a privately owned company, and that compel a person to participate in a health care system.

[7:01:14 PM](#)

AT EASE

[7:02:05 PM](#)

RECONVENED

Representative Kelly MOVED to report HJR 35 out of committee with individual recommendations and the accompanying fiscal note.

Representative Doogan OBJECTED. He stated that he was against the resolution. He WITHDREW his OBJECTION.

[7:03:00 PM](#) AT EASE

[7:03:25 PM](#) RECONVENED

There being NO further OBJECTION, it was so ordered.

HJR 35 was REPORTED out of committee with no recommendation and with previously published fiscal note: FN 1 (GOV).

#hjr42

HOUSE JOINT RESOLUTION NO. 42

Proposing amendments to the Constitution of the State of Alaska creating a transportation infrastructure fund.

Representative Kelly MOVED to ADOPT conceptual Amendment 1:

Page 2, beginning of line 4:

Insert "state fuel taxes and registration fees received by the fund in that year and a percentage of the"

Renumber accordingly.

Representative Fairclough OBJECTED. There was discussion about the version being considered; it was determined that the version was \P.

Representative Fairclough WITHDREW her OBJECTION.

Co-Chair Stoltze MAINTAINED his OBJECTION.

BECKY ROONEY, STAFF, REPRESENTATIVE PEGGY WILSON, SPONSOR, explained that conceptual Amendment 1 would allow for a percentage of the fuel tax and vehicle registration fees to be appropriated each year. She reminded the committee that a graph had been shown in testimony related to HB 329 that would define the amount as 50 percent; the legislature would have the latitude to change the percentage.

Co-Chair Stoltze stated that he opposed the amendment. He thought there was an adequate vehicle in the proposed measure for establishing a dedicated fund. He did not think it fit as well into a constitutional amendment package and could detract from the discussion.

Co-Chair Hawker stated that he was opposed to the amendment. He thought the legislation was simple, elegant, and appropriate without the additional amendment.

Representative Gara stated that he did not support the amendment. He thought there were two problems: First, whether there would be enough money in the fund, and second, he did not want it all spent in years when there was more than enough. He was concerned that by adding the other two sources of revenue, there would be more money than the legislature would otherwise appropriate for transportation projects.

[7:08:04 PM](#) AT EASE
[7:08:24 PM](#) RECONVENED

Representative Kelly WITHDREW conceptual Amendment 1.

Co-Chair Hawker MOVED to report CS HJR 42 (JUD) out of committee with individual recommendations and the accompanying fiscal note.

Representative Gara OBJECTED.

Representative Gara stated that he objected to the legislation because of the unevenness of needs for transportation. He did not want a dedicated fund for transportation in years when there was more money. He wanted the extra interest earnings to revert back to the general fund in some years. He maintained that whenever the legislature was given more money to spend than needed, the money was spent.

Representative Fairclough pointed out that there were many transportation needs in the state and the fund had no money in it. She maintained that the state needed a dedicated fund established in the state constitution. She emphasized that without a road system and transportation, people were stranded without access to food or other emergency needs. The fund would help in all areas of the state. She believed in the process. She was concerned about the large and aging

transportation infrastructure in Alaska and wanted the state to begin taking responsibility for it.

Representative Doogan supported movement forward on transportation issues and commended the work done. He stated concerns about the concept of a dedicated fund. He wondered what would be next after the dedicated fund for transportation; everyone would like their project enshrined in the constitution. He referred to California, where all the money was tied up and the voters have to decide to allow any extra funding.

[7:14:27 PM](#)

Co-Chair Stoltze agreed with some of the policy discussion. He referred to historical discussion about the issue and thought the topic was relevant.

Representative Gara WITHDREW his OBJECTION.

There being NO further OBJECTION, it was so ordered.

Representative Wilson commented that the numbers being discussed were only relevant if \$1 billion dollars was put into the fund. The amendment would have made it flexible.

CS HJR 42(JUD) was REPORTED out of committee with no recommendation and with previously published fiscal note: FN1 (GOV).

HB 329 was HEARD and HELD in Committee for further consideration.

HB 356 was HEARD and HELD in Committee for further consideration.

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ADJOURNMENT

The meeting was adjourned at 7:18 PM.