

**ALASKA STATE LEGISLATURE
HOUSE JUDICIARY STANDING COMMITTEE**

February 17, 2010
1:07 p.m.

MEMBERS PRESENT

Representative Jay Ramras, Chair
Representative Carl Gatto
Representative Bob Herron
Representative Bob Lynn
Representative Max Gruenberg
Representative Lindsey Holmes

MEMBERS ABSENT

Representative Nancy Dahlstrom, Vice Chair

COMMITTEE CALENDAR

CONFIRMATION HEARING(S)

Select Committee on Legislative Ethics

Gary J. Turner - Soldotna
H. Conner Thomas - Nome

- CONFIRMATION(S) ADVANCED

Board of Governors of the Alaska Bar

Donald McLean, D.D.S. - Wasilla

- CONFIRMATION(S) ADVANCED

Public Defender

Quinlan Steiner - Anchorage

- CONFIRMATION(S) ADVANCED

Violent Crimes Compensation Board

Nora G. Barlow - Anchorage

- CONFIRMATION(S) ADVANCED

HOUSE JOINT RESOLUTION NO. 42

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

- HEARD & HELD

PREVIOUS COMMITTEE ACTION

BILL: HJR 42

SHORT TITLE: CONST. AM: TRANSPORTATION FUND

SPONSOR(S): TRANSPORTATION

02/05/10	(H)	READ THE FIRST TIME - REFERRALS
02/05/10	(H)	TRA, JUD, FIN
02/09/10	(H)	TRA AT 1:00 PM CAPITOL 17
02/09/10	(H)	Moved Out of Committee
02/09/10	(H)	MINUTE(TRA)
02/10/10	(H)	TRA RPT 6DP 1NR
02/10/10	(H)	DP: JOHANSEN, MUNOZ, JOHNSON, T.WILSON, PETERSEN, P.WILSON
02/10/10	(H)	NR: GRUENBERG
02/17/10	(H)	JUD AT 1:00 PM CAPITOL 120

WITNESS REGISTER

GARY J. TURNER, Appointee

Select Committee on Legislative Ethics

Soldotna, Alaska

POSITION STATEMENT: Testified as appointee to the Select Committee on Legislative Ethics.

H. CONNER THOMAS, Appointee

Select Committee on Legislative Ethics

Nome, Alaska

POSITION STATEMENT: Testified as appointee to the Select Committee on Legislative Ethics.

DONALD McLEAN, D.D.S., Appointee

Board of Governors of the Alaska Bar

Wasilla, Alaska

POSITION STATEMENT: Testified as appointee to the Board of Governors of the Alaska Bar.

QUINLAN STEINER, Appointee

Public Defender

Anchorage, Alaska

POSITION STATEMENT: Testified as appointee to the position of Public Defender.

NORA G. BARLOW, Appointee
Violent Crimes Compensation Board (VCCB)
Anchorage, Alaska

POSITION STATEMENT: Testified as appointee to the Violent Crimes Compensation Board (VCCB).

REPRESENTATIVE PEGGY WILSON
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: During discussion of HJR 42, spoke as chair of the House Transportation Standing Committee, sponsor.

BECKY ROONEY, Staff
Representative Peggy Wilson
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: During discussion of HJR 42, responded to a question on behalf of the sponsor, the House Transportation Standing Committee, which is chaired by Representative P. Wilson.

FRANK RICHARDS, Deputy Commissioner of Highways & Public Facilities
Office of the Commissioner
Department of Transportation & Public Facilities (DOT&PF)
Juneau, Alaska

POSITION STATEMENT: Responded to a question during discussion of HJR 42.

BRIAN KANE, Attorney
Legislative Legal Counsel
Legislative Legal and Research Services
Legislative Affairs Agency (LAA)
Juneau, Alaska

POSITION STATEMENT: As the drafter, responded to a question during discussion of HJR 42.

KATHIE WASSERMAN, Executive Director
Alaska Municipal League (AML)
Juneau, Alaska

POSITION STATEMENT: Testified in support of HJR 42, and responded to questions.

ACTION NARRATIVE

1:07:37 PM

CHAIR JAY RAMRAS called the House Judiciary Standing Committee meeting to order at 1:07 p.m. Representatives Ramras, Herron, Gatto, Gruenberg, and Holmes were present at the call to order. Representative Lynn arrived as the meeting was in progress. Representative Dahlstrom was excused.

CONFIRMATION HEARING(S)

Select Committee on Legislative Ethics

1:08:05 PM

CHAIR RAMRAS announced that the committee would first consider the reappointment of Gary J. Turner to the Select Committee on Legislative Ethics.

1:08:57 PM

GARY J. TURNER, Appointee, Select Committee on Legislative Ethics, relayed that he's just completed his first three-year term on the Select Committee on Legislative Ethics, has enjoyed it, and looks forward to serving another term. In response to questions, he noted that the Select Committee on Legislative Ethics does a lot of work - issuing opinions and providing informal advice in compliance with confidentiality requirements; that some issues are not so easily resolved; that although some of the ethics rules that legislators must abide by might be a bit onerous for legislators, those rules are based on the statutes that legislators themselves have passed; and that the Select Committee on Legislative Ethics would abide by any changes the legislature makes to those statutes.

REPRESENTATIVE HOLMES, remarking that she'd once served briefly on the Select Committee on Legislative Ethics, thanked Mr. Turner for his willingness to serve. Noting that informal advice provided by the Select Committee on Legislative Ethics is not binding, she asked Mr. Turner to comment on that issue.

MR. TURNER surmised that in order to make all advice legally binding and timely, it would require an increase in staff - both administrative staff and attorneys. In response to a further question, he indicated that in a situation wherein the Select Committee on Legislative Ethics issues formal advice that conflicts with previously-provided informal advice that a

legislator was following, the Select Committee on Legislative Ethics would take that into account, depending on the situation, should the legislator's actions later be called into question.

REPRESENTATIVE HOLMES asked Mr. Turner whether he has any suggestions for statutory changes that the Select Committee on Legislative Ethics would like to see.

MR. TURNER said that there is a proposed change to the statutes regarding definitions that might still need further work - for example, he has some suggestions for the proposed definition of what constitutes a constituent - and that the statute addressing [State-paid travel and collateral campaign activities] could also use some more work by the legislature.

[1:17:39 PM](#)

CHAIR RAMRAS, on the latter point, opined that the Select Committee on Legislative Ethics is ignoring or at least not grasping the fact that the statute regarding [State-paid travel and collateral campaign activities] that suits a legislator from urban Alaska does not have the same impact on or meaning for a legislator from rural Alaska and instead actually creates a considerable hardship for the rural legislator. He questioned why the Select Committee on Legislative Ethics couldn't provide a more equitable opinion about such travel and activities until the legislature has had an opportunity to change that statute.

MR. TURNER pointed out that Legislative Legal and Research Services had interpreted that statute, and the Select Committee on Legislative Ethics, in issuing opinions on the matter, was simply following that interpretation.

REPRESENTATIVE HERRON opined that the Select Committee on Legislative Ethics should also consider the spirit of that statute and use common sense when providing an opinion [on the issue of State-paid travel and collateral campaign activities].

REPRESENTATIVE GATTO, noting that Mr. Turner works as the director at the Kenai Peninsula College and Mr. Turner's wife works as an administrative clerk in the Capital Project Office of the Kenai Peninsula Borough, questioned whether that constitutes a conflict of interest.

MR. TURNER said it does not because he has no influence over the college's capital projects, which, in any case, fall under the

purview of the University of Alaska Anchorage (UAA) rather than the Kenai Peninsula Borough.

REPRESENTATIVE GATTO disagreed, and opined that there is a clear conflict of interest in this instance. He then suggested that [on the issue of State-paid travel and collateral campaign activities], for certain legislators, the Select Committee on Legislative Ethics should simply disregard what the statute says.

[1:31:06 PM](#)

CHAIR RAMRAS encouraged the Select Committee on Legislative Ethics to get a second opinion on the statute addressing [State-paid travel and collateral campaign activities] and also allow the legislature adequate time to fix that statute - perhaps by modeling it after a similar statute addressing executive branch employees - to address the disparity between rural and urban legislators.

MR. TURNER agreed to consider Chair Ramras's suggestion. He pointed out, though, that some have argued that changing that statute to allow legislators to get reimbursed for traveling on State business while also attending campaign functions would give incumbents a monetary advantage over non-incumbents.

CHAIR RAMRAS acknowledged that point.

[1:36:36 PM](#)

CHAIR RAMRAS announced that the committee would next consider the reappointment of H. Conner Thomas to the Select Committee on Legislative Ethics.

[1:37:04 PM](#)

H. CONNER THOMAS, Appointee, Select Committee on Legislative Ethics, said he's enjoyed his time serving on the Select Committee on Legislative Ethics; would like to serve another term; believes it provides a good public service; and noted that since he first began serving in 1999, there has been an increase in the number of requests for committee input and activity. In response to a question, he said that it is often the case that the answer to a particular question is unclear, that this tends to generate a lot of debate among the members, and that it can take a lengthy amount of time to get to the end of the process. On the issue of applying common sense when ruling on a

particular situation, he pointed out that the problem with doing that is that people's idea of what would constitute a common-sense ruling differs, and so that's why - at least with regard to the issue of [State-paid travel and collateral campaign activities] - the committee has simply followed the legal opinion its already received. He said he believes that when making a decision, the Select Committee on Legislative Ethics does consider the impact the decision could have on various legislators; however, that shouldn't always be what drives the committee when making a particular ruling.

MR. THOMAS, in response to a question, said his intent when considering an issue is to do the right thing within the law, and if using common sense results in a ruling that goes contrary to the law, that won't meet the statutory obligations of the Select Committee on Legislative Ethics. In response to another question, he explained that the Select Committee on Legislative Ethics does consider the public's perception but it isn't the driving force when making decisions.

REPRESENTATIVE GATTO opined that following the statute regarding [State-paid travel and collateral campaign activities] results in unreasonable rulings, regardless that it is the legislature itself that made that law. He questioned whether the Select Committee on Legislative Ethics couldn't instead simply rule that in a particular set of circumstances, a particular legislator wouldn't have to follow the law.

[1:44:18 PM](#)

MR. THOMAS offered his belief that the Select Committee on Legislative Ethics is obligated to do what the law says, and if there is a legal opinion regarding a particular statute, he said he doesn't see how the committee could do other than make its rulings in compliance with that opinion and statute. Furthermore, if the Select Committee on Legislative Ethics were to instead apply an interpretation of the statute pertaining to [State-paid travel and collateral campaign activities] contrary to the aforementioned legal opinion, it could result in Select Committee on Legislative Ethics then being asked to do the same in all other situations regarding all other statutes that legislators must follow. In response to further comments and questions, he said that the aforementioned legal opinion has clarified the statute pertaining to [State-paid travel and collateral campaign activities], and so the Select Committee on Legislative Ethics didn't feel that it had the authority to stray off into a different interpretation.

Board of Governors of the Alaska Bar

[1:49:35 PM](#)

CHAIR RAMRAS announced that the committee would next consider the reappointment of Donald McLean, D.D.S., to the Board of Governors of the Alaska Bar.

[1:49:46 PM](#)

DONALD McLEAN, D.D.S., Appointee, Board of Governors of the Alaska Bar, relayed that he's enjoyed serving on the board for the last three years, and is seeking to be confirmed for another three-year term. In response to questions, he then spoke a bit about the Executive Juris Doctorate he is currently pursuing.

REPRESENTATIVE HOLMES thanked Dr. McLean for his service, and asked him to offer his thoughts regarding his first term of service.

DR. McLEAN said he finds the deliberation by the attorney members of the board to be very interesting and enjoyable, and remarked that although it's extremely important to hold attorneys accountable, the most difficult issues the board must face are those related to disciplinary actions against members of the Alaska Bar.

Public Defender

[1:57:09 PM](#)

CHAIR RAMRAS announced that the committee would next consider the reappointment of Quinlan Steiner to the position of Public Defender.

[1:57:18 PM](#)

QUINLAN STEINER, Appointee, Public Defender, explained that the Public Defender Agency (PDA) was created by the legislature in 1969 to provide constitutionally mandated defense services to indigent clients in criminal cases, juvenile delinquency cases, child in need of aid (CINA) cases, and involuntary commitment proceedings. The PDA provides core services to its clients - communicating legal rights and legal process, and the charges

and evidence that have been presented; investigates allegations and viable case strategies; and represents clients whose cases lead to court proceedings. Attorneys working for the PDA represent clients before the Alaska Supreme Court, the Alaska Court of Appeals, the Alaska Superior Court, and the Alaska District Court. The PDA receives all of its [case] appointments via the Alaska Court System (ACS), and handles all the cases [appointed to it] except those that present a legal conflict of interest for the PDA. The PDA has offices in 13 communities, 4 of which are "on the road system" with the rest being "rural offices"; has three separate internal divisions - civil, criminal, and appellate; and employs approximately 100 attorneys and 70 staff.

MR. STEINER then recounted that he started out as a volunteer investigator with the PDA prior to attending law school; served as legal extern while attending law school; began employment with the PDA upon graduating from law school in 1998 - working primarily as an appellate lawyer but he also tried civil and criminal cases; and has served in his position as director of the PDA for approximately four years. This appointment would be his second.

MR. STEINER indicated that since his initial appointment, the PDA has expanded its training and recruitment programs; and was restructured in an effort to strengthen its case management, attorney performance, and cost management and resource allocation, and is now made up of regional supervision units. The goal of these changes was to better absorb the PDA's continuous and dramatic caseload increases, and the PDA has been successful in these efforts. Additionally, the PDA will be producing performance-measure results to better track resource deployment.

[2:05:44 PM](#)

REPRESENTATIVE GRUENBERG, noting that the public defender is responsible for testifying before the legislature on proposed legislation and budget proposals, asked Mr. Steiner how he has implemented that responsibility, how much testimony he has provided, who presents the PDA's budget, "how that works," and whether he has testified with respect to criminal law before this committee and other committees.

MR. STEINER said his practice has been to review all proposed criminal legislation that could have a significant impact on the PDA; attend the hearings on such legislation in order to answer

questions - though on occasion he has assigned that latter duty to a deputy director or appellate attorney if he himself is unable to attend; and provide all the testimony for the PDA's budget. His work with regard to criminal legislation has been challenging, he noted, because the legislative session moves pretty quickly, and so he has been attempting to expand participation in the review of and preparation of testimony regarding such legislation. He added, "It's my view that ... we're in a good position to discuss the impacts of legislation on the agency, agency's [indisc.], and ... criminal justice in general."

[2:07:43 PM](#)

REPRESENTATIVE GRUENBERG asked Mr. Steiner whether he has to clear his budget with a department head or anybody else.

MR. STEINER said the PDA's budget requests go directly to the Department of Administration (DOA), which then passes them on to the governor's office. He added that he has frequent contact with the DOA's commissioner's office, the commissioner, and the commissioner's staff with regard to the deployment of resources and resource requests.

REPRESENTATIVE GRUENBERG asked Mr. Steiner whether the PDA has to clear its testimony on substantive legislation with, or get permission from, a department head or anyone else.

MR. STEINER said no.

REPRESENTATIVE GRUENBERG asked Mr. Steiner how many bills he's testified on before the House Judiciary Standing Committee during this Twenty-Sixth Alaska State Legislature.

MR. STEINER said he does not have that statistic, but added that he's typically available via teleconference to answer questions "on all the big pieces of legislation." In response to a question, he offered his understanding that when he participates in meetings via teleconference, that his name is on the teleconference witness list the Legislative Information Office (LIO) provides the chair, and that it indicates that he is available for questions.

REPRESENTATIVE GRUENBERG noted that he's not seen or heard testimony from either Mr. Steiner or his staff very much, very often, [during the hearings], and said he is concerned [about this lack] because the committee hears a lot of testimony and

proposed legislation from "the prosecution." He questioned whether the PDA has proposed any legislation during the last several legislatures.

MR. STEINER said he, personally, has not submitted any criminal legislation to the legislature. He added, "There are many instances where we're available on line and have not been asked questions, and I don't know -- ... I know it's harder that I'm on the phone that I'm not immediately apparent, but I am there, consistently, on the major pieces of legislation - myself or someone from our staff, available."

REPRESENTATIVE GRUENBERG asked Mr. Steiner whether he believes there are any pieces of substantive legislation that the PDA feels the legislature should consider "from a defense point of view."

2:12:00 PM

MR. STEINER said it has been his position that the role of the PDA is to not take ultimate policy positions but rather to simply inform on the impacts of proposed legislation, and that if there were some procedural problem that needed to be fixed, that there wouldn't be some proposal coming from the PDA.

REPRESENTATIVE GRUENBERG pointed out that that has not been the policy of "the prosecution," and asked Mr. Steiner why he feels that "the defense" should not take policy positions even though "the prosecution" does.

MR. STEINER said he feels primarily that taking a policy position requires making a value judgment about what's right and wrong for society, whereas, in contrast, he thinks the PDA's mission is limited to representing clients who've been charged with criminal conduct. Making value judgments about what's right or wrong in terms of what should be criminal conduct, what should not be criminal conduct, or what the penalties for such conduct should be instead lies with the legislature and other elected officials. The independent role of the public defender, he opined, requires that he neither support nor oppose any particular substantive piece of legislation, or take direction from anyone to do so; he has therefore taken a position to simply not support or oppose legislation, but is happy to answer questions regarding his interpretation of "the statutes and its impacts."

REPRESENTATIVE GRUENBERG observed that that was not the position taken by Mr. Steiner's predecessors, who had regularly taken policy positions with "a defense" point of view. "This is a new position, a philosophical position, from yourself; this does not follow the agency's previous history," he remarked.

MR. STEINER concurred that his predecessor did take policy positions on substantive criminal legislation.

REPRESENTATIVE HOLMES said that as a lawmaker, she finds it difficult to have the Department of Law (DOL) - representing the prosecuting side - not only introduce legislation but take firm stands on it, but to not then also have either the PDA or the Office of Public Advocacy (OPA) presenting equal testimony as a counterbalance. Legislators are being presented with a very one-sided advocacy on legislation, and it's a great disadvantage, she remarked, to not have the benefit of being presented with a balanced advocacy.

[2:16:16 PM](#)

REPRESENTATIVE GRUENBERG said he is quite concerned about Mr. Steiner's answers. He asked Mr. Steiner whether, in view of legislators' comments, he would be willing to change his position and become more vocal in his testimony on, and advocacy of, legislative issues that come before the House Judiciary Standing Committee. Representative Gruenberg added, "I am sufficiently concerned that this will affect my vote on your confirmation."

CHAIR RAMRAS expressed satisfaction with Mr. Steiner's conduct.

MR. STEINER said he is not likely to change his position regarding supporting or opposing substantive legislation, and welcomes any inquiries about his interpretation of proposed legislation. In conclusion, he said, "I do, personally, review the legislation to see how it will be implemented and how it will be interpreted, ... and invite any questions, at any time, either on the record or off, about my view ... of legislation and its impacts on the agency, agency's budget, the justice system, or clients in general."

Violent Crimes Compensation Board

[2:18:31 PM](#)

CHAIR RAMRAS announced that the committee would next consider the appointment of Nora G. Barlow to the Violent Crimes Compensation Board (VCCB).

[2:18:41 PM](#)

NORA G. BARLOW, Appointee, Violent Crimes Compensation Board (VCCB), relayed that she has been an attorney since 1991; that she is seeking appointment to her first three-year term on the VCCB; and that one of the things she found very appealing about the prospect of serving on the VCCB was the subject matter, because she felt that some of her most important work as an attorney involved working in California addressing CINA cases and conservatorship cases for those with grave disabilities, and one of the several positions she'd held since returning to Alaska was that of assistant attorney general in the Office of Special Prosecutions & Appeals addressing cases involving victims of sexual assault and sexual abuse of a minor crimes. She said she feels that she has a lot of expertise [with regard to helping victims], that she was looking for an area of public service in which to participate, and has been told that her experience dovetails nicely with the work being done by the VCCB. In conclusion, she said she feels that she would be an appropriate choice [for the VCCB's attorney position].

CHAIR RAMRAS surmised that Ms. Barlow would be well suited for a position on the VCCB.

[2:22:55 PM](#)

REPRESENTATIVE HOLMES disclosed that she is a neighbor of Ms. Barlow's, and that they have similar elements on their resumes. Representative Holmes concluded by thanking Ms. Barlow for her willingness to serve, and noting that Ms. Barlow has an excellent reputation and so she thinks Ms. Barlow would do a great job.

REPRESENTATIVE GRUENBERG disclosed that he knows Ms. Barlow, expressed favor with her appointment, and noted that Ms. Barlow would be replacing LeRoy J. Barker, Esq.

CHAIR RAMRAS [although no formal motion was made] indicated that the nominations of all the aforementioned appointees would be advanced from committee.

[2:24:48 PM](#)

REPRESENTATIVE GRUENBERG noted that although he would be signing the advancement forms, he would be reserving his vote on Mr. Steiner.

HJR 42 - CONST. AM: TRANSPORTATION FUND

[2:25:02 PM](#)

CHAIR RAMRAS announced that the final order of business would be HOUSE JOINT RESOLUTION NO. 42, Proposing amendments to the Constitution of the State of Alaska creating a transportation infrastructure fund.

[2:25:33 PM](#)

REPRESENTATIVE HERRON moved to adopt the proposed committee substitute (CS) for HJR 42, Version 26-LS1411/S, Kane, 2/17/10, as the work draft. There being no objection, Version S was before the committee.

[2:26:37 PM](#)

REPRESENTATIVE PEGGY WILSON, Alaska State Legislature, speaking as chair of the House Transportation Standing Committee, sponsor, explained that passage of HJR 42 would place before the voters a proposed change to Article IX, Section 7, of the Alaska State Constitution in order to allow for a dedicated fund for capital transportation projects. She noted that for fiscal year 2010 (FY 10), 87 percent of Alaska's transportation budget comes from the federal government, and that the current federal reauthorization bill has expired and is only being extended on a month-to-month basis until new federal legislation can be passed. She relayed that she's heard, however, that that new federal reauthorization bill is going to be very unfavorable to those with small populations - like Alaska - because it's going to emphasize mass transit and green transportation.

REPRESENTATIVE P. WILSON remarked that with federal funding diminishing, Alaska is going to have to shoulder more responsibility for its transportation infrastructure. Although passage of HJR 42's proposed change to the Alaska State Constitution might impact the Department of Transportation & Public Facilities (DOT&PF), the proposed change is more about meeting all of Alaska's growing transportation needs. Transportation investment creates a competitive environment, attracting additional economic development. She noted that the House Transportation Standing Committee has researched the

issues surrounding Alaska's transportation needs and challenges, and has received input from interested parties from across the state as well as information from the National Conference of State Legislatures (NCSL) regarding what other states are doing to address their transportation infrastructure budget gaps. Furthermore, a House Finance Committee member's staff has compiled a list of the many different funding options available to address the fiscal shortfalls resulting from Alaska's long-range transportation plan.

2:28:59 PM

REPRESENTATIVE P. WILSON explained that HJR 42 is a culmination of all that research and input, and, if its proposed dedicated fund is added to the Alaska State Constitution by the voters, it would allow Alaska more opportunity to take advantage of the cost- and time-savings of State-funded projects while also addressing the state's growing transportation needs. The proposed dedicated fund would allow Alaska's transportation projects to be completed much faster because, as State-funded projects, they wouldn't have to follow lengthy, expensive, and time-consuming federal procedures; such projects would, however, still have to comply with federal construction standards. House Joint Resolution 42's proposed constitutional change is not intended to diminish the State's partnership with the federal government; instead, it is intended to provide a dedicated revenue stream that will allow more transportation projects to be completed faster and at less cost.

REPRESENTATIVE P. WILSON said that the resolution's proposed transportation infrastructure fund would grow as investment returns compound. The goal is to seed the endowment with \$1 billion, and it is anticipated that it will then grow by another \$65 million the first year as the result of investment returns and motor fuel tax and registration fees, and by another \$5 million to \$6 million each year thereafter. She noted that members' packets contain graphs created by the Legislative Finance Division illustrating the proposed dedicated fund's balance and the amounts that would be available for appropriations from it each year - from FY 11 through FY 30.

REPRESENTATIVE P. WILSON offered her understanding that in one of his speeches, former Governor Hickel indicated support for the Alaska State Constitution being changed to provide for a dedicated transportation fund. She remarked that Alaska needs to take action now; that the future of the economic and social wellbeing of Alaska's citizens is critically dependant on a

reliable transportation system; and that HJR 42's proposed change to the Alaska State Constitution, allowing for a dedicated transportation fund, is needed to create and maintain a reliable transportation system for Alaska. She then explained that under Version S, the proposed transportation infrastructure fund would begin receiving revenue from the motor fuel tax and registration fees after of July 1, 2011 - the beginning of FY 12 - and appropriations from that fund would be limited to only those capital projects for transportation and related facilities that are designated by law - in other words, those approved by the legislature.

[2:34:11 PM](#)

REPRESENTATIVE GRUENBERG, in response to comments, mentioned that although he won't hold the resolution up, he doesn't support it for constitutional reasons, and pointed out that it's difficult to address the resolution's constitutional issues separate from its fiscal issues because the prohibition on dedicated funds outlined in Article IX, Section 7, of the Alaska State Constitution is based on the fiscal policy that the framers imbedded in the Alaska State Constitution. His feeling, he relayed, is summarized in a handout he's provided from the publication, Alaska's Constitution; A Citizen's Guide, as it pertained to Article IX, Section 7.

REPRESENTATIVE HERRON asked whether HJR 42 would prevent the governor from suspending Alaska's motor fuel tax.

REPRESENTATIVE P. WILSON offered her belief that it would not; instead, the proposed dedicated transportation fund would simply grow more slowly when it wasn't receiving revenue from that tax.

REPRESENTATIVE HOLMES said she doesn't see any constitutional problems with HJR 42, expressed favor with Version S's stipulation that appropriations from the proposed dedicated fund could only be for capital projects for transportation and related facilities that are designated by law, but questioned whether the legislature could appropriate monies from the fund for transportation infrastructure maintenance and operational costs.

REPRESENTATIVE P. WILSON indicated that the language of the proposed constitutional change might be broad enough to allow for that, though not for the normal operating costs of the DOT&PF. In response to another question, she indicated that several organizations have expressed favor with HJR 42 and its

proposed dedicated transportation infrastructure fund. In response to other questions, she explained that any appropriations from the proposed dedicated fund would be limited to State-funded transportation projects.

[2:43:31 PM](#)

BECKY ROONEY, Staff, Representative Peggy Wilson, Alaska State Legislature, in response to questions and comments, explained on behalf of the sponsor, the House Transportation Standing Committee, which is chaired by Representative P. Wilson, that HJR 42 doesn't address any of the other suggestions outlined in the handout titled "Alaska Transportation Finance Study; Final Report", and would not be instituting any new taxes.

REPRESENTATIVE P. WILSON again relayed that several organizations have expressed favor with HJR 42 and its proposed dedicated transportation infrastructure fund, and surmised that it's because they know that Alaska's economic development cannot happen without an adequate transportation infrastructure.

REPRESENTATIVE HERRON questioned whether anyone has expressed opposition to HJR 42.

REPRESENTATIVE P. WILSON said no. In response to another question, she acknowledged that because the language on page 2, lines 3-5, says, "Each year, the legislature may appropriate a percentage of the average market value of the fund as established by law for capital projects for transportation and related facilities that are designated by law", that that percentage, once it's established in statute, could be as high as 50 percent. However, she pointed out, language in another piece of legislation pertaining to this proposed constitutional dedicated fund currently stipulates that it would be 6 percent of a five-year average.

REPRESENTATIVE GRUENBERG surmised, then, that the legislature could pass legislation in the future allowing it to empty out this proposed dedicated fund if it felt it needed to.

REPRESENTATIVE P. WILSON acknowledged that that is a possibility.

REPRESENTATIVE GRUENBERG - with regard to the term "transportation infrastructure fund" - questioned whether under the proposed constitutional change, some of the monies in that

fund could be appropriated to "a specialized type of revenue sharing that's used only for municipal roads."

REPRESENTATIVE P. WILSON acknowledged that that, too, is a possibility.

2:50:06 PM

FRANK RICHARDS, Deputy Commissioner of Highways & Public Facilities, Office of the Commissioner, Department of Transportation & Public Facilities (DOT&PF), in response to a question, indicated that the DOT&PF has no position on HJR 42.

REPRESENTATIVE GRUENBERG questioned whether HJR 42's proposed change to the Alaska State Constitution really does provide for a true dedicated fund.

2:53:15 PM

BRIAN KANE, Attorney, Legislative Legal Counsel, Legislative Legal and Research Services, Legislative Affairs Agency (LAA), speaking as the drafter, offered that it does in that the proposed constitutional change provides that all of the monies from the fees listed therein and the State's motor fuel tax would go into the proposed transportation infrastructure fund and could then only be spent on a limited number of projects.

REPRESENTATIVE P. WILSON added that the funds that could be appropriated under HJR 42 in any given year would be limited.

2:55:13 PM

KATHIE WASSERMAN, Executive Director, Alaska Municipal League (AML), noted that the aforementioned handout titled "Alaska Transportation Finance Study; Final Report" was prepared for the AML and illustrates that among other things, the State needs to identify some way to fill the financial gap that will be left as a result of the anticipated decrease in federal funding. She indicated that the AML would be happy to support HJR 42, surmising that other interested organizations would be as well. In conclusion, she relayed that the AML is in full support of HJR 42.

REPRESENTATIVE GATTO surmised that the monies from the proposed dedicated fund could be appropriated for Alaska's railroads.

REPRESENTATIVE GRUENBERG, referring to the sponsor's statement that the goal is to seed the proposed dedicated fund with \$1 billion and add Alaska's motor fuel tax and registration fees to it, questioned whether taking that much in GF funding off the table initially is supported by the AML, given that taking those funds off the table could affect such things as revenue sharing, education funding, and other things for which funding is needed now.

MS. WASSERMAN relayed that the AML is aware that there will be some tradeoffs with HJR 42's approach, but is still in favor of it.

REPRESENTATIVE GRUENBERG asked Ms. Wasserman what she would propose in order to address any [initial] budget shortfall that results from so seeding the proposed dedicated fund.

MS. WASSERMAN relayed that she is unable to answer that question.

[2:59:21 PM](#)

REPRESENTATIVE GRUENBERG opined that before HJR 42 is passed by the legislature, it will be essential for the legislature to know how local governments intend to make up for any budget shortfall that could result from the proposed constitutional change. He said he could envision that ratification of the proposed constitutional change by the voters could result in there being less money for the capital budget, less money for municipal revenue sharing, and less money for education funding, particularly because \$1 billion is a lot of money. Furthermore, he predicted, the proposed constitutional transportation infrastructure fund could be just the first of many dedicated funds to be proposed.

REPRESENTATIVE GATTO said, "You might consider that we could bond for infrastructure, and use the dedicated fuel tax funds to pay the bonds?"

MS. WASSERMAN acknowledged that the legislature could take such an approach.

REPRESENTATIVE GRUENBERG offered his belief that there are various other ways of paying for the state's transportation needs besides adopting HJR 42.

CHAIR RAMRAS, after ascertaining that no one else wished to testify, closed public testimony on HJR 42. In response to comments, he relayed that HJR 42 [Version S] would be held over.

3:04:04 PM

ADJOURNMENT

There being no further business before the committee, the House Judiciary Standing Committee meeting was adjourned at 3:04 p.m.