

**ALASKA STATE LEGISLATURE
HOUSE TRANSPORTATION STANDING COMMITTEE**

March 17, 2009

1:04 p.m.

MEMBERS PRESENT

Representative Peggy Wilson, Chair
Representative Craig Johnson, Vice Chair
Representative John Harris
Representative Kyle Johansen
Representative Cathy Engstrom Munoz
Representative Mike Doogan
Representative Max Gruenberg

MEMBERS ABSENT

All members present

COMMITTEE CALENDAR

HOUSE BILL NO. 155

"An Act relating to the authorization for the Department of Transportation and Public Facilities to participate in the American Recovery and Reinvestment Act of 2009; and providing for an effective date."

- HEARD AND HELD

HOUSE BILL NO. 127

"An Act providing that the Alaska Railroad Corporation is subject to the Executive Budget Act and providing that expenditures of the Alaska Railroad Corporation are subject to appropriation; and providing for an effective date."

- MOVED HB 127 OUT OF COMMITTEE

CS FOR SENATE BILL NO. 72(STA)

"An Act relating to use of child safety seats and seat belts."

- HEARD AND HELD

HOUSE BILL NO. 131

"An Act relating to use of child safety seats and seat belts."

- HEARD AND HELD

PREVIOUS COMMITTEE ACTION

BILL: HB 155

SHORT TITLE: AUTHORIZE ECONOMIC STIMULUS PARTICIPATION

SPONSOR(s): RULES BY REQUEST OF THE GOVERNOR

02/25/09 (H) READ THE FIRST TIME - REFERRALS
02/25/09 (H) TRA, FIN
03/17/09 (H) TRA AT 1:00 PM CAPITOL 17

BILL: HB 127

SHORT TITLE: ALASKA RAILROAD BUDGET

SPONSOR(s): REPRESENTATIVE(s) STOLTZE

02/13/09 (H) READ THE FIRST TIME - REFERRALS
02/13/09 (H) TRA, FIN
03/12/09 (H) TRA AT 1:00 PM CAPITOL 17
03/12/09 (H) Heard & Held
03/12/09 (H) MINUTE(TRA)
03/17/09 (H) TRA AT 1:00 PM CAPITOL 17

BILL: SB 72

SHORT TITLE: CHILD SAFETY SEATS & SEAT BELTS

SPONSOR(s): SENATOR(s) FRENCH

01/21/09 (S) READ THE FIRST TIME - REFERRALS
01/21/09 (S) TRA, STA
02/10/09 (S) TRA AT 1:00 PM BUTROVICH 205
02/10/09 (S) Moved SB 72 Out of Committee
02/10/09 (S) MINUTE(TRA)
02/11/09 (S) TRA RPT 5DP
02/11/09 (S) DP: KOOKESH, MENARD, DAVIS, MEYER,
PASKVAN
02/19/09 (S) STA AT 9:00 AM BELTZ 211
02/19/09 (S) Moved CSSB 72(STA) Out of Committee
02/19/09 (S) MINUTE(STA)
02/20/09 (S) STA RPT CS 5DP SAME TITLE
02/20/09 (S) DP: MENARD, FRENCH, MEYER, PASKVAN,
KOOKESH
02/25/09 (S) TRANSMITTED TO (H)
02/25/09 (S) VERSION: CSSB 72(STA)
02/27/09 (H) READ THE FIRST TIME - REFERRALS
02/27/09 (H) TRA, STA, FIN
03/17/09 (H) TRA AT 1:00 PM CAPITOL 17

BILL: HB 131

SHORT TITLE: CHILD SAFETY SEATS & SEAT BELTS

SPONSOR(s): REPRESENTATIVE(s) HOLMES

02/13/09 (H) READ THE FIRST TIME - REFERRALS
02/13/09 (H) TRA, STA
03/17/09 (H) TRA AT 1:00 PM CAPITOL 17

WITNESS REGISTER

MIKE BARNHILL, Senior Assistant Attorney General
Labor and State Affairs Section
Department of Law (DOL)
Juneau, Alaska

POSITION STATEMENT: Testified during the discussion of HB 155.

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

POSITION STATEMENT: Answered questions during the discussion of HB 155.

PATRICK GAMBLE, President, and CEO
Alaska Railroad Corporation (ARRC)
Anchorage, Alaska

POSITION STATEMENT: Testified and answered questions during the discussion of HB 127.

BILL O'LEARY, Chief Financial Officer
Alaska Railroad Corporation (ARRC)
Anchorage, Alaska

POSITION STATEMENT: Testified and answered questions during the discussion of HB 127.

RICK BARRIER, Executive Director
Commonwealth North
Anchorage, Alaska

POSITION STATEMENT: Testified during the discussion of HB 127.

REPRESENTATIVE BILL STOLTZE
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Testified as prime sponsor of HB 127.

SENATOR HOLLIS FRENCH
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Presented SB 72, as the prime sponsor of the bill.

REPRESENTATIVE LINDSEY HOLMES
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Testified as prime sponsor of HB 131.

LISA VALENTA, Staff
Representative Lindsey Holmes
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Testified on HB 131, on behalf of the prime sponsor of the bill, Representative Lindsey Holmes.

ACTION NARRATIVE

[1:04:04 PM](#)

CHAIR PEGGY WILSON called the House Transportation Standing Committee meeting to order at 1:04 p.m. Representatives Gruenberg, Doogan, Johnson, and Wilson were present at the call to order. Representatives Munoz, Harris, and Johansen arrived as the meeting was in progress.

HB 155-AUTHORIZE ECONOMIC STIMULUS PARTICIPATION

[1:04:44 PM](#)

CHAIR WILSON announced that the first order of business would be HOUSE BILL NO. 155, "An Act relating to the authorization for the Department of Transportation and Public Facilities to participate in the American Recovery and Reinvestment Act of 2009; and providing for an effective date."

[1:05:31 PM](#)

MIKE BARNHILL, Senior Assistant Attorney General, Labor and State Affairs Section, Department of Law (DOL), offered that on February 17, 2009, President Obama signed into law the American Recovery and Reinvestment Act of 2009 (ARRA), referred to as the federal stimulus bill. He explained that the administration decided on a two-fold approach to implement funding in Alaska. First, a bill or a panel of bills would provide authorization for state agencies to apply. He opined that state agencies are creatures of statute and the administration wanted to assure state agencies had explicit legal authority to apply for funding

from the federal stimulus bill. Secondly, a panel of appropriations bills would identify the funding and the specific projects. He reported that HB 155 is the first effort with respect to the authorization component. This bill would authorize the Department of Transportation & Public Facilities (DOT&PF) to apply for and participate in the funding provided by the federal stimulus plan.

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MR. BARNHILL referred to page 2, lines 19 to 22, which provide explicit authority for DOT&PF to participate in the programs and funding of the federal economic stimulus bill. He related that the remainder of HB 155 is intent language. He explained that the intent language is intended to track the various sections of the federal stimulus bill. He referred to proposed Section 1, subsection (a), that DOT&PF would participate in the funding provided by Title VI, P.L. 111-5 of the economic stimulus bill which pertains to homeland security funding. Each agency within homeland security has line items in the federal stimulus bill for which the DOT&PF could apply. Subsection (b) tracks Title XII, P.L. 111-5 of the federal stimulus bill, and that section pertains to programs with funding provided by the U.S. Department of Transportation (U.S. DOT). He referred to page 2, lines 8-12, which identify the federal sub-agencies that have money available. Finally Subsection (c) is an intent section that expresses that DOT&PF seeks to maximize funding made available to the state in Title VI and XII of the federal stimulus bill, recognizing that federal agencies may have some discretion in the manner in which they allocate funds to the states.

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MR. BARNHILL recalled a prior question whether this bill is necessary. He affirmed that is a good question. He further opined that DOT&PF has ample authority to receive funds. However, he allowed that not all state agencies have explicit authority, and the attorney general advises that this bill provides consistency. He remarked that at some point a decision might be made to expand the scope of the bill to apply to all agencies.

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REPRESENTATIVE DOOGAN inquired as to whether this bill provides the authorization to receive funds that have been earmarked for

Alaska and the DOT&PF and/or if this bill also provides an authorization to obtain federal stimulus funding from other states that they cannot specifically use.

MR. BARNHILL related his understanding that the bill would cover both instances. He related that HB 155 is intended to authorize the DOT&PF to accept federal stimulus funding that is available. He further related his understanding that the DOT&PF could obtain competitive grant funds that are not earmarked for the state, and potentially other funds in Title VI and Title XII. Thus, the DOT&PF would like to maximize its receipt of funds.

REPRESENTATIVE DOOGAN related his understanding that the DOT&PF has developed a list of projects it anticipates using the stimulus funds for as well as a secondary list of projects that would be eligible if the state received additional funding. He inquired as to whether the committee would be signing off on the second list if HB 155 were passed.

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FRANK RICHARDS, Deputy Commissioner, Office of the Commissioner, replied that HB 155 would allow the DOT&PF to compete for funds, including any redistribution of funds that the DOT&PF could also capture that that legislature has provided authority to use. He related that the governor's bill provides a list of projects, both recommended and contingency projects. However, the legislature will select the projects that will ultimately be funded.

REPRESENTATIVE DOOGAN related his understanding that the DOT&PF will have to come back to the legislature "in another round" for anything not in the \$117 million list of projects.

MR. RICHARDS explained that the appropriations bill asked for contingency authority necessary in the event that a project "trips up" to allow the DOT&PF can shift to another project. Thus, the DOT&PF would like the flexibility to "slip in" another project.

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REPRESENTATIVE GRUENBERG allowed that he is not fond of intent language, and inquired as to whether subsection (a) and (b) are necessary.

MR. BARNHILL answered no. The language in subsections (a) and (b) are designed to give assurance to the legislature that it is the intent of the administration for the DOT&PF to apply for all available funding offered in Title VI and Title XII of the federal stimulus bill.

REPRESENTATIVE GRUENBERG referred to page 2, to lines 20 to 22, and related his understanding that the language does exactly what Mr. Barnhill just explained.

MR. BARNHILL replied yes.

REPRESENTATIVE GRUENBERG referred to page 2, lines 13 and 15 of subsection (c) up to the "," after "state" and offered his belief that language seems to be important intent language. However, he related that the language on page 2, lines 14-17 does not seem to be important.

MR. BARNHILL explained that the idea is to put people on notice that the state does not have complete control over how the U.S. DOT, in particular the Federal Aviation Administration is going to allocate the distribution of funds. He reiterated that this alerts people that funds are allocated subject to the discretion of the federal agency.

[1:17:36 PM](#)

REPRESENTATIVE GRUENBERG recalled that the bill might be expanded to include other agencies. He inquired as to whether that is likely to happen.

MR. BARNHILL related that a spectrum of options is available to the administration and the legislature with respect to authorization bills. One option is to expand the scope in HB 155 to provide explicit authority to ensure that state agencies have the authority to participate in the entire stimulus bill. Another option is to introduce another bill to provide authority for the remaining agencies to participate. He offered that another option is to not enact an authorization bill. He surmised that most states do not appear to be seeking explicit authorization. However, the Alaska Supreme Court has held on multiple occasions that state agencies are the "creatures of their statutes" and they can only exercise authority found within the statutes. He opined that the DOT&PF statutes are littered with authorization to participate in federal grant programs. He opined that \$100 million is available through the state fiscal stabilization fund through the federal stimulus

bill that requires the governor to apply for the funds. However, statutes to authorize participation are absent. Thus, the DOL recommends some sort of explicit authorization. Ultimately, if legislature does not deem that the authorization is necessary, the DOL "will live with that."

[1:20:08 PM](#)

REPRESENTATIVE GRUENBERG pointed out two competing policies. One, to ensure the administration has authority to apply for the funds. Secondly, he inquired as to whether the legislature would set precedent if it adopts language for explicit authority now.

MR. BARNHILL opined that the precedent has already been set since the DOT&PF already has five or six statutes that provide authorization to participate in federal grant programs.

REPRESENTATIVE GRUENBERG asked whether HB 155 should be expanded to a general authorization, given the timeframe of the 90 day session.

MR. BARNHILL conceded that the agency might wish to address this.

REPRESENTATIVE GRUENBERG agreed he would like other agencies to address this also.

MR. BARNHILL offered his belief that the issues will be taken up in the House Finance Committee.

[1:22:07 PM](#)

CHAIR WILSON stated that she would like to review the bill as it currently reads, and if another committee would like to amend the bill to expand it, that they can do so.

[1:22:18 PM](#)

REPRESENTATIVE JOHNSON related that the intent language states to "seek to maximize" the funding made available to the state. He expressed concern about funding for programs that the state may be "stuck with" over time. He conceded that the DOT&PF is the least likely agency, but maintained his cautiousness about establishing programs that 18 months from now the state would need to appropriate general funds. He asked for assurances that nothing in HB 155 mentions funding for programs.

MR. BARNHILL offered his belief that nothing in the bill mentions program or obtains funding for program. The bill simply would permit authorization for the state to apply with intent to maximize receipt of funds. He recalled media articles that mentioned the governor shares Representative Johnson's views.

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REPRESENTATIVE JOHNSON referred to page 2, line 19, which reads, "(d) Notwithstanding any provision of state law, and to the extent not already authorized by state law, the Department of Transportation & Public Facilities is authorized to participate in the programs and funding enacted by Division A, Titles VI and XII, P.L. 111-5 (American Recovery and Reinvestment Act of 2009)." He stated that the language does not restrict the DOT&PF and could be a five-year program that "we're stuck with after three you're authorized under that to do this." He asked for clarification.

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MR. BARNHILL acknowledged that his question is a fair question. He related that the companion bill, HB 154, identifies all the funding, but not for programs since the bill relates to capital projects.

REPRESENTATIVE JOHNSON conceded that the DOT&PF is the least likely department, but also related his understanding that the bill may later be expanded to other agencies. He maintained his concern for funding programs with stimulus funding that might require the legislature to subsequently fund them with general fund dollars or be forced to cut the programs. He said, "I want to be on the record that is something I don't support. I think the governor is on the record, as well. So I do not want to inadvertently pass something that is contrary to what the governor and I happen to share a common belief in."

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MR. BARNHILL affirmed that he shares Representative Johnson's concern, as he believes the governor does also. He offered his belief that the companion bill will contain language that suggests funding received under the federal economic stimulus bill is one-time funding. He indicated that the purpose of the language in HB 155 is to put people on notice that this

situation is unique and not to expect future funding from the federal government.

REPRESENTATIVE JOHNSON inquired as to whether it would be appropriate to add specific language to this bill to further clarify that the funding is one-time federal funding.

MR. BARNHILL agreed that specific language could be added in this committee or the bill could be amended in the House Finance Committee.

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REPRESENTATIVE JOHNSON expressed confidence in the House Finance Committee. He maintained his concern that he does not support funding future programs with the federal economic stimulus funding.

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REPRESENTATIVE HARRIS stressed that he has full faith in DOT&PF. He said he would like to see additional maintenance funding. He opined that the crux of problem is who will authorize the expenditure of the funding. He recalled that under the constitution the legislature is empowered to appropriate funds. However, he opined that the legislature's power is eroded in a variety of ways. He expressed concern that the administration should not be allowed to spend funds without explicit direction from the legislature through the appropriation process.

MR. BARNHILL related that the concern is one that has been expressed to the administration several times over the past month. He offered that the administration attempts to address that concern by submitting the companion appropriation bill. He indicated that further language, probably in a separate bill, will identify the source of funds and how the funds will be expended. He pointed out that these bills reflect the administration's recognition that the legislature plays an important role in exercising its appropriation authority over the stimulus funds. He said, "And, ultimately, I think it's the administration's hope that there will be a meeting of the minds between the administration and the legislature as to how the economic stimulus funds will be expended." He remarked that as far as the administration can tell, other states are not seeking express authorization, other than Washington. He noted that Washington passed its appropriation bill two weeks ago for the transportation funds and that bill has been signed into law. He

said, "Given the legislature's express desire to have a role in the expenditure of these funds, the administration is seeking to accommodate them."

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REPRESENTATIVE HARRIS offered that the state has a constitutional provision that is implicit that the legislature has the authority as the entity which appropriates funds. He opined that the administration only has a role when the legislature authorizes it. He indicated that the legislature has given statutory authority to entities such as the Alaska Railroad Corporation to expend funds without legislature authorization. He emphasized that the administration does not have that right. He stressed that the legislature has not denied the administration the right to obtain all the money it can get. He recalled that the governor has expressed she might not want all the money since "strings might be attached." He acknowledged the governor's right to do so. However, he stressed that the administration needs an appropriation bill once it has accepted any federal stimulus funds since the constitution mandates it. He said, "I don't see any reason why we need this to give you authorization to go get any money. Go get all you can get; the more, the merrier." He acknowledged that some members have expressed concern some funding might "have strings attached" that attempt to bind the state in the future. He further opined that any authorization or appropriations bill the moves forward has a fiscal note attached to define funding sources. He said, "And if they don't we ought not to approve the expenditure. That's my whole point."

[1:31:24 PM](#)

MR. BARNHILL acknowledged that is a fair point. He maintained the administration submitted an appropriation bill to do just that. He indicated the reason for HB 155 is to ensure that explicit authorization is in law for state agencies to apply. He agreed that DOT&PF is the least likely agency to need the authority since it has statutory authorization. He maintained that other agencies do not which is the reason for consideration of this bill. He further acknowledged that the legislature may decide that such state authorization is not necessary. He highlighted that he cannot guarantee that someone will not raise the issue to the governor of the state's authorization to accept the federal stimulus funding, which may be an issue that needs to be dealt with later.

1:32:27 PM

REPRESENTATIVE HARRIS inquired as to whether the Department of Health and Social Service (DHSS) has that authorization since it routinely receives federal funding.

MR. BARNHILL said he has not reviewed the DHSS. He offered to provide that information to the committee. He recalled that several Alaska Supreme Court cases suggest state agencies need authority to exercise their power.

1:33:04 PM

REPRESENTATIVE HARRIS inquired as to whether any state has been sued due to lack of authorization for federal funds.

MR. BARNHILL said he did not know.

REPRESENTATIVE HARRIS asked for clarification of the concern that HB 155 would address.

MR. BARNHILL reiterated that the concern is that the state has authorization to accept federal funding for some state agencies such as DOT&PF, but not for all agencies. He acknowledged that the bill might address an overly cautious perspective. He offered that given the significance of the federal stimulus funding that the approach was that it "would be better to be cautious." However, if the legislature decides not to do that, there may not be any consequences, he stated.

REPRESENTATIVE HARRIS highlighted that he would share the concern if the view was that litigation might arise. He indicated that he did not want to deny any state agencies the ability to obtain federal stimulus funds. He related that if the administration simply desires to have a blanket authorization to accept federal funding that he has no issue. However, he emphasized that when it comes to who authorizes the actual expenditure of the funds, the legislature is the authority. He reiterated that he does not have a problem with the administration seeking blanket funding authority to accept the federal stimulus funds.

1:35:07 PM

REPRESENTATIVE JOHANSEN echoed his frustration, similar to what Representative Harris stated. He stressed the legislature's constitutional right to appropriate funds. He said, "I would

hope that the next time you testify you are a little more careful in the way you characterize the powers of the legislature. It's very frustrating to me."

[1:36:48 PM](#)

REPRESENTATIVE DOOGAN related his understanding that the process is a three part process consisting of an authorization process and this bill attempts to give extra impetus of law, whether or not it is necessary so why not do it. He said, "Can't hurt, might help." The next process is the expenditure process and by constitution the legislature must be involved. Finally, the application process falls in between the authorization and appropriation process in which someone makes a decision as to whether to apply for the funds. He surmised the bill is lengthy, the funds are large, and the programs are diverse. Thus, he inquired as to how the administration views the application decision and what, if any, role the legislature has in the decisions.

[1:38:35 PM](#)

MR. BARNHILL answered that at the outset, the most important aspect is to have an awareness of the programs and the funding sources available, and to identify the timelines. He remarked that the administration must check the federal website recovery.org daily to identify any new requirements for timelines and application submissions. Thus, obtaining all the information is the first step. He highlighted the next step is to coordinate with state agencies to identify who will fill out the application, what information is necessary to support the application, and identify projects for an appropriation bill.

MR. BARNHILL mentioned the administration is currently gathering an extraordinary amount of information. He related his understanding that the information will be distilled in an appropriation bill of global magnitude for the legislature to consider. He emphasized that the administration will review all information and will decide whether to apply for every program. He acknowledged that some policy issues are rising as part of the information review. He further related his understanding that the governor plans to share the policy concerns with the legislature so it can weigh in on them. He surmised that some policy concerns to obtain funds will require statutory changes. He said, "The administration is working as hard and as fast as it can to gather that information, to distill it into a form that is understandable and bring it to your attention." He

opined that this set of bills, including HB 155, was designed to get the process going, primarily since the federal stimulus funding represents a lot of money. He stated it was a way to "get the ball rolling."

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REPRESENTATIVE DOOGAN related his understanding that the legislature has a larger role than to weigh in on funds the governor may not wish to accept. He opined that under the terms of the bill, the legislature can accept, by joint resolution say, "Ah, no, we want to take the money anyway."

MR. BARNHILL answered, "Yes, that is exactly correct."

REPRESENTATIVE DOOGAN asked if it is the intention of the administration to make its decisions not to accept funds in sufficient time to allow the legislature time to decide if it agrees with that decision.

MR. BARNHILL answered yes.

[1:42:19 PM](#)

CHAIR WILSON recapped the committee's comments. She related that the legislature is recognizing that some other states are not taking the same approach. However, she opined that the governor has more power than any other governor in the U.S. Thus, the legislature holds jealously its ability to appropriate. She said, "We don't want that taken away from us. Those are the facts and everyone needs to realize that. That's something we really hold dear."

MR. BARNHILL said:

Madame Chair, that point's very well taken. By sharing what is going on in other states was in no way intended by me or the administration to suggest that we're going in that direction. In fact, quite the opposite. We are going in the direction that we have laid before you. That is a two-fold approach with an authorization and an appropriation bill.

[1:43:15 PM](#)

REPRESENTATIVE GRUENBERG referred to page 1, lines 9 and 12, and page 2, lines 4 & 6, are both to apply for and expend. He

acknowledged that he did not have a problem with "apply for" but the expenditure could be read as authorization for programs that are not even in existence now. He stressed that he has considerable problems with that. He said he did not understand the necessity for authority to apply for money. He said it seems to him that the administration can do that anyway. He related his understanding that a number of states are moving forward to obtain the funds anyway. He inquired as to whether the other states have the authority to expend funds without legislature authorization. He said, "That's a blank check."

MR. BARNHILL answered that he cannot comment on the legal structure in other states. He offered to research and to provide the information at a later time. He pointed out that the language says subject to appropriation so the intent was not a blanket authorization to expend it, just a method to apply, subject to appropriation.

REPRESENTATIVE GRUENBERG answered that while it may be the intent, the language is broader. He referred to page 2, line 21, and stated the language is to participate, which he stated is an authorization. He opined that normally the authorization is held, then the appropriation. He said he thought this seems to be in place of an authorization.

MR. BARNHILL reiterated that this language is not intended to authorize an appropriation. He suggested that the committee may wish to consider an amendment to make it clear and he has no objections to an amendment.

REPRESENTATIVE GRUENBERG stated that he will consider the matter. He recalled Representative Doogan's question, and opined that nothing requires the governor to notify the legislature if she does not intend to apply for federal stimulus funds. Additionally, intent language provides power. He inquired as to whether language should be explicit in the bill that if the governor does not intend to apply for all funds, that the legislature should be given adequate notice to pass a resolution.

MR. BARNHILL offered that he has no objection to that type of amendment. He related his understanding that the administration intends to disclose exactly what stimulus funding it will and will not apply for so "cards will be on the table and there will not be any playing hide the ball."

REPRESENTATIVE GRUENBERG asked to place on the record his statement. He said, "I've known you. I know you are highly ethical. I know you are a very fine attorney. And I know there was no intent in anything than the highest professionalism here. I think that I commend you and the department."

[1:46:52 PM](#)

REPRESENTATIVE HARRIS related that the legislature could pass a joint resolution to apply for federal stimulus funds which would be subject to veto.

MR. BARNHILL said, "I believe that it is. I'm hoping we don't have to cross that bridge, Representative Harris."

REPRESENTATIVE HARRIS offered his belief that any expenditure of funds by the legislature is also subject to veto.

[1:47:55 PM](#)

REPRESENTATIVE GRUENBERG recalled Representative Doogan was suggesting a vehicle of resolution. He offered his belief that a resolution is read by the governor but there is not a right to veto.

[1:48:28 PM](#)

MR. BARNHILL confessed that everyone is operating in some ignorance since the federal law recently passed. He offered his believe that Representative Harris stated that the governor has power to veto the appropriation. He referred to Section 67 (b) of the ARRA, which he opined states that if the governor does not certify that she will apply for and use funds provided for by the economic stimulus bill, the legislature has the right to accept the funds by resolution.

REPRESENTATIVE GRUENBERG inquired as to whether that would be constitutional. He offered that he does not need an oral answer. However, he pointed out that a joint resolution, according the Uniform Rules, aside from constitutional items, does not direct anyone to take an action. He stated that it simply expresses the intent or position of the legislature. He clarified that a joint resolution is directed externally, while a concurrent resolution is normally directed internally. He highlighted that the application is an issue that is normally outside the scope of a resolution. He inquired as to whether the legislature has the power, given the separation of powers,

or if the resolution would be governed under the supremacy clause under this unusual provision under federal law. He suggested that Mr. Barnhill may wish to provide something in writing for the legislature.

[1:50:26 PM](#)

MR. BARNHILL opined that Representative Gruenberg raised a fascinating question. He deferred answering the question. However, he recalled that the question was posed to the Congressional Research Service and it rendered a ten page memorandum on the subject. He said he was not sure he agreed with it, but would provide it to the committee.

[1:51:16 PM](#)

REPRESENTATIVE GRUENBERG further inquired as to whether the committee could also obtain a legal opinion on state constitution with respect to the separation of powers.

CHAIR WILSON reiterated the committee was seeking two legal opinions.

MR. BARNHILL inquired as to whether the matter could be deferred until the legislature faces the issue over it.

REPRESENTATIVE GRUENBERG withdrew his request. He suggested that the information from the Congressional Research would initially suffice.

[1:51:59 PM](#)

REPRESENTATIVE JOHANSEN inquired as to whether the legislature will have sufficient time to react to the governor's decision on whether to accept the federal economic stimulus funds. He pointed out that only two weeks remained until April 3, 2009. He inquired as to whether the legislature would have sufficient time to address the matter.

MR. BARNHILL referred to Section 67 (b) of the ARRA, and related that there is not a specific deadline. He related his understanding that some people have speculated that the legislature would have an April 3 deadline. However, he stated that he disagrees. He asserted that the federal ARRA does not have a deadline. He noted the administration has sought guidance from the federal Office of Management & Budget for any deadline. He offered his belief that the governor is preparing

to disclose what the issues are this week. He maintained that everyone is working as fast as they can to allow people to make decisions.

[1:53:34 PM](#)

MR. BARNHILL, in response to Representative Johansen, said he believes that the governor will make decisions this week. However, he related his understanding that is the timeframe although he could not offer total certainty.

[1:53:50 PM](#)

CHAIR WILSON stated that she would like to hold the bill.

[1:54:42 PM](#)

REPRESENTATIVE HARRIS inquired as to whether the companion bill, HB 154 is currently before the House Finance Committee.

MR. BARNHILL answered yes, and that it is scheduled for a hearing.

[1:54:56 PM](#)

The committee took an at-ease from 1:54 pm. to 1:55 p.m.

[1:55:19 PM](#)

REPRESENTATIVE GRUENBERG volunteered to assist in reviewing the language in the bill. He surmised that the resolution process was deliberate on the part of the Congress in order to allow the legislatures the ability to act on the matter if a governor did not. He opined the real question is whether that takes precedence over the constitution.

[1:55:44 PM](#)

CHAIR WILSON stated that the bill would be held over.

HB 127-ALASKA RAILROAD BUDGET

[1:55:50 PM](#)

CHAIR WILSON announced that the next order of business would be HOUSE BILL NO. 127, "An Act providing that the Alaska Railroad Corporation is subject to the Executive Budget Act and providing

that expenditures of the Alaska Railroad Corporation are subject to appropriation; and providing for an effective date." [Before the committee was Version A.]

[1:56:33 PM](#)

PATRICK GAMBLE, President, and CEO, Alaska Railroad Corporation (ARRC), stated the proposal to transfer the ARRC under the Executive Budget Act is clear. He offered to address the "why" today. He offered his belief that this issue is raised about every ten years. He opined that it is appropriate to do. He inquired as to what has changed that might require such action, which he said is exactly the right approach. He related that examining whether the framers of the Alaska Railroad Transfer Act of 1982 (ARTA) "had it right" and whether the properties are enduring properties.

[1:58:23 PM](#)

MR. GAMBLE stated that he reviewed the 38 pages of the corporate act, and as he thumbed through and highlighted any issues that might arise between the ARRC Act under AS 42.40 and the Executive Budget Act. He stated that he had about 50 items that would need to be clarified how the ARRC would operate under the Executive Budget Act. He said he agrees with Representative Gruenberg that it is a complex issue. He provided a history of the ARRC, that the legislature approved the ARRC transfer from the federal government after 70 years of federal government control. He offered that the legislature deliberated whether to take over the railroad, and many issues and legalities were discussed. He related that the legislature created an entity that was a business like entity, quasi-independent, and outlined the scope of the ARRC.

MR. GAMBLE recalled that the Corporate Act under AS 42 goes to great length to explain the purpose of the ARRC. He related the introduction states that it is the legislature's intent, the policy of the State of Alaska to foster and promote the long term growth of the state; and to foster and promote the development of the state land and natural resources. Thus, properties for business would be enduring properties; and the state does not have the authority to sell off land, he opined. He emphasized that cited at least a half a dozen times in the corporate act is an overriding concern as to the ARRC's solvency. Therefore, when it came to selling bonds, the legislature placed safeguards in at least six places, advising the ARRC that it cannot sell bonds without the proper authority.

2:01:51 PM

MR. GAMBLE continued by stating that ARRC is an "essentiality" of the state infrastructure in that the ARRC needed to be able to provide transportation without state approval. He opined that the state had confidence in the business case that was presented, that the business case would allow the ARRC to "pay its bill" meet its obligations, and contribute to a capital program, and as an independent operating agency not have to seek approval. He offered his belief that the model works. He welcomed the review to determine whether the ARRC is doing the best it can. He opined that if it is not, that it was time to reexamine the business case. He offered his belief that he is here to discuss the alternative and impact if the ARRC is to be placed under the Executive Budget Act. He admitted that he did not know exactly the implications of the change.

2:03:55 PM

MR. GAMBLE reiterated that the statutes defined the details of the ARRC operations. He reiterated that he is not sure of changes in the ARRC operations under the Executive Budget Act. He expressed concern to offer opinions on hypothetical questions, given the ambiguity of how the ARRC would need to operate under the Executive Budget Act.

MR. GAMBLE referred to the ARRC operations in the past 24 years that the ARRC has been in existence. He related that the capital contributions are well in excess of \$900 million, and the ARR earnings all are invested in capital programs, which he stated are jobs, contracts, opportunities for employees, and the trickle down effect. He opined that effect is growing at a 14 percent compound annual growth rate for last 23 years, although he cannot say that for this year. He reported assets of \$22 million have grown to almost \$900 million. He opined that the ARRC has been considered a model, that in fact, China asked him to speak on the regional model since China is working to segment its large railroad into regions.

2:06:09 PM

MR. GAMBLE related that Commonwealth North in its report "Putting Alaska's Assets to Work for Alaskans" cited the ARRC as a good model of an operating entity. He reported that 24 hours per day somewhere in the system "a wheel is turning." He reported that the ARRC has its own liabilities and employees,

which are funded from its earnings. He identified that it links responsibility and accountability within its model. Thus, if the ARRC receives board approval for capital expenditures, which are then accomplished within the organization, the ARRC reviews it. Therefore, he observed that he is not sure he understands the current deficiencies. He conceded that perhaps it is not deficiencies, but the prospect of a better business enterprise model. He expressed a willingness to review the current ARRC model. He stated that if the ARRC can improve its profitability for the state's economic development, it needs to do so.

MR. GAMBLE opined that HB 127 does not provide this option. He recalled that some people have asked him "what is broken." He offered his belief that nothing is broken but the ARRC has an obligation and responsibility to ensure the ARRC is still doing what the legislature intended it to do. He speculated if the issue is not whether the business is performing, but instead is a constituent issue in which the ARRC has taken action in certain constituent matters, that is a legitimate concern. He recalled the ARRC personnel were called arrogant by some legislators. He said this upset him since the majority of the public comments refute that statement. He observed that if this is a constituent issue that he needs to identify and address the matter.

[2:09:18 PM](#)

MR. GAMBLE identified that ARRC's Strategic Plan and five year plans emphasize the need to work at the grassroots level with individuals, entities, and municipalities to in order to fulfill the mission of the ARRC. He highlighted that the statement was developed especially for ARRC's employees. Thus, he would appreciate knowing of instances in which employees are perceived as arrogant or who are not willing to address issues. He stressed if employee attitudes are the issue that it is not necessary to change the current ARRC model. He reiterated his interest in identifying constituent issues.

[2:10:18 PM](#)

MR. GAMBLE offered his belief that the ARRC's overall record is clear. He recalled similar statements when he initially began working for the ARRC. He observed that he has not heard complaints about arrogance in three or four years. He shared the ARRC public affairs department distributes surveys and reported that approval ratings are up from 65 to over 80 percent statewide. He specified in Fairbanks, despite "tough issues"

that the ARRC's favorable rating is over 90 percent. Thus, he concluded that the public has trust in the ARRC.

2:11:40 PM

MR. GAMBLE recalled a prior hearing he was unable to attend. He offered to comment on several matters that arose. He related that the ARRC has employees who are members of five unions. He conveyed that of those, two are currently unhappy over work which has been contracted out. He detailed that the two unions have 10,000 and 7,000 hours of backlog, respectively. He reported that he contracted out one segment of the backlogged work, especially since the ARRC's busiest season will soon start. He mentioned that this is a one-time contract and this is the first time he recalls that he has had to contract work out. He related that he discussed this with union leadership.

2:12:59 PM

REPRESENTATIVE GRUENBERG inquired as to the specific unions that are affected.

MR. GAMBLE replied that one union is the Transportation Communication Union (TCU), comprised of about 46 employees. He mentioned that the ARRC is in the process of hiring four more journeymen. He described the task as replacing wooden planking on flatcars, after 30 to 40 years use. He characterized the work as "grunt work" and not skilled labor, yet it is work that must be finished by summer since the flatcars would otherwise be deemed unsafe. He remarked that the ARRC has hired local business to rip and replace the planks while the rest of the ARRC team is doing "winter work" to ready the passenger coaches for summer. He surmised that when employees are not happy they will complain. He acknowledged that he anticipates the complaints. However, he also respects the employee's rights to represent their union, even if it means complaining to legislators. He recalled difficulties with the United Transportation Union (UTU) six years ago. He related that through informal discussions he was able to assist and negotiate a contract. He speculated it is possible that the UTU may well support the ARRC's position with the current issue, although he emphasized that he cannot speak for the union. In response to Representative Gruenberg, Mr. Gamble related that the union represents the locomotive engineers, firemen, and brakemen.

2:16:07 PM

MR. GAMBLE speculated that the unions may support the ARRC's leadership since the perception is if the ARRC fell under the Executive Budget Act that members fear they would have 60 managers instead of the ARRC, when contemplating pay raises or work rules. He reported he has successfully negotiated 11 contracts thus far without a strike, although he recalled that he has reached impasse at times. He offered that in those instances he has intervened and has been successful. In response to Representative Harris, Mr. Gamble pointed out the International Association of Machinists (IAM) represent the machinists, currently working on a technology project as a result of a Congressional mandate that is about a 7,000 man hour. He related that the installation piece was contracted out. While IAM members would like to do the work, he pointed out that he cannot double the workforce in order to accommodate the union. Thus, given the short timeframe, he has contracted out the one-time installation segment and members are not happy, he reiterated.

[2:18:38 PM](#)

MR. GAMBLE then turned to Flint Hills Resources Alaska (Flint Hills). He explained that the ARRC could not purchase the Flint Hills refinery without involving the legislature in numerous issues. He said, "It's my opinion that the answer to that question is no, we could not go out and buy Flint Hills." He surmised that the capital investment alone would require the state to step in. He replied that the ARRC would receive federal economic stimulus funding through a formula based on the number of passenger coaches and passenger miles. He emphasized that the funding is strictly for "rail" and is based on 60 percent of the miles, which has been set at \$26 million. He allowed that he has not yet taken proposals to the ARRC board, but related the federal rules are explicit. He outlined the categories are all related to passengers. He recalled that one is the technology project previously mentioned. Another is to provide funding to rebuild main line to Fairbanks and Seward. The third category is for passenger equipment. He noted that the ARRC is on the same timelines as the Department of Transportation & Public Facilities (DOT&PF) must adhere to for the economic stimulus funding.

[2:21:15 PM](#)

MR. GAMBLE referred to the fiscal note and recalled questions about the ARRC issuing dividends, which he says comes up periodically. He clarified that he testified in Senate Finance

Committee several years ago about dividends. He opined that federal law prohibits the ARRC from issuing dividends. However, he related that since the legislature gave bonding authority to the ARRC it has accelerated the ARRC's building program by about ten years. He further related that the ARRC is in its fourth year of the six-year upgrade to rebuild the line. Thus, he opined that the ARRC may have discretionary capital dollars available. He is under discussions with DOT&PF about instances in which the railroad has commonality with roads and bridges. He speculated that it is possible the ARRC could cooperatively work with DOT&PF to apply capital dollars and those dollars could stretch the DOT&PF funding. He opined that would be a way to contribute to another department's needs with capital excess while still following the federal guidelines. He further opined that could amount to several million dollars a year for the state.

[2:23:40 PM](#)

MR. GAMBLE related that legislative oversight of federal projects could represent a method to successfully work on such cooperative projects. In response to Chair Wilson, Mr. Gamble related that the fiscal note is \$1.3 million, with subsequent funding of \$247,000.

[2:24:38 PM](#)

BILL O'LEARY, Chief Financial Officer, Alaska Railroad Corporation (ARRC), referred to the fiscal note. He stressed that the fiscal note was difficult to prepare since significant uncertainty exists with respect to the proposed ARRC transfer under the Executive Budget Act. He related that page 2 of the fiscal note refers to five bullet points in the analysis section. He further related that items one and two were unquantifiable at this time since the ARRC structure is unknown. He explained it is possible that the ARRC could suffer loss of revenue due to the more rigid budget guidelines. Additionally, in discussions with financial entities, the ARRC believe that any debt subject to appropriation could impact pricing on future debt depending solely on the amount of debt issued. He indicated that the current ARRC financial system is not designed to accommodate legislative appropriation control of the state's accounting system. He related that initial discussions to modify the current system "have not been promising." Thus, the ARRC anticipates a significant increment to maintain appropriate level of control. He identified the ARRC would anticipate additional staffing in order to comply with the Executive Budget

Act. Finally, the ARRC anticipates additional costs would be incurred to travel to Juneau to coordinate with the Office of Management & Budget and the Department of Commerce, Community, & Economic Development during the legislative session.

[2:27:34 PM](#)

REPRESENTATIVE HARRIS remarked on his earlier comments about arrogance, which he described as comments from third parties were passed on to him. He related comments were not directed at Mr. Gamble personally. He opined the ARRC has a pretty good record. He indicated the ARRC is an entity solely owned by the state. He suggested since the ARRC is tax exempt, that it competes with the private sector but not necessarily on a "fair playing field."

MR. GAMBLE offered his belief that it would depend on who was asked. However, he affirmed the ARRC does compete with the private sector. In further response to Representative Harris, Mr. Gamble agreed the ARRC does not pay property taxes.

REPRESENTATIVE HARRIS inquired as to how much land the ARRC owns that is not currently being used.

MR. GAMBLE estimated that the ARRC owns 36,000 acres, with half unusable land. He related that approximately 18,000 acres is the ARRC plant. He opined that about 8,000 acres are leasable.

[2:29:41 PM](#)

REPRESENTATIVE HARRIS related his understanding that about 18,000 acres are not leasable. He inquired as to whether the ARRC can sell the land.

MR. GAMBLE replied that while the ARRC does not prohibit sale, that it requires legislative approval. He said, "The legislature over the past 23 years has been very loathe to consider outright sales, fee simple type sales."

REPRESENTATIVE HARRIS recalled that the ARRC owns 18,000 acres that has not been earning any money.

MR. GAMBLE said, "No necessarily." He described a scenario, about 25 miles north of Talkeetna, in which the ARRC has discovered high quality granite at a site where the road ends but the rail continues into the backcountry. He mentioned that the ARRC save \$700,000 year by not buying the fill. He opined

that the process of setting up the granite mine used up the majority of the 5,000 acres at Curry. However, he acknowledged that other areas, somewhat along the rail could be identified as not being used. He mentioned that the ARRC has 85 acres in Valdez, with a right-of-way to the ocean used during the pipeline construction phase to store pipe, transfer the pipe to trucks for transport. He opined that the 85 acres has been dormant but recently the pipeline companies are discussing the possibility of using the land for the gasline. He surmised that over the long run this represents the fluctuation of parts of the land endowment depending on development.

[2:32:18 PM](#)

REPRESENTATIVE HARRIS inquired as to whether the ARRC is amenable to sell land.

MR. GAMBLE indicated this may be one of the things the legislature wants to review, and if so, the ARRC certainly could not say no without defense. He characterized the ARRC as stewards of the state land. He stressed that if the legislature gives the ARRC that direction, that it will take it. He commented that the ARRC board will certainly want to provide its input.

[2:33:12 PM](#)

REPRESENTATIVE HARRIS remarked that he had an uncle who was an engineer stationed in Curry years ago.

[2:33:22 PM](#)

RICK BARRIER, Executive Director, Commonwealth North, stated that he has studied the ARRC since the mid-80s transfer. He said, "We have concluded that the structure that's currently in place for this enterprise seems to be working in an very effective way to manage this property." He affirmed that it is an operating business that needs to have ability to be flexible to respond quickly. He offered his belief that the ARRC has done a pretty good job. He reported that Commonwealth North does not see a need for HB 127 unless there is an issue that has not yet been raised. However, he opined that the ARRC seems to be functioning well and Commonwealth North does not see bringing it under the state's Executive Budget Act would be beneficial to the railroad or the state.

[2:35:20 PM](#)

CHAIR WILSON, after first determining no one wished to testify, closed public testimony on HB 127.

2:35:48 PM

REPRESENTATIVE HARRIS referred to a handout titled "COMMENTS ON HB 127, Executive Summary, submitted by the Alaska Railroad Corporation (ARRC)" dated 3/10/09. He then referred to a bullet point that stated making the ARRC subject to the Executive Budget Act may violate the federal Alaska Railroad Transfer Act (ARTA), which specifically provides that the ARRC is to retain control of its funds. He inquired as to whether any effort to sell the Alaska Railroad Corporation would violate the ARTA.

MR. GAMBLE related that the ARTA was fully approved by the legislature. He said, "It is my understanding that the legislature giveth and the legislature taketh away. Therefore, in my opinion if the legislature wanted to make a fundamental change, it certainly could." He surmised that the current federal and state act requires the ARRC to retain earnings. He surmised that it might be necessary to go to Washington DC to change the federal law. He said, "It's not that it couldn't be done." However, if the federal law was not changed, the ARRC may be in violation of a federal statute.

2:37:58 PM

REPRESENTATIVE HARRIS related his understanding that the ARTA is a federal act. Thus, if the legislature passed something different, that it would need Congressional modification of the ARTA.

MR. GAMBLE related that this is complex. He offered his belief, items such as the one just raised would be addressed at that level. He remarked that he does not have a way to answer the question at this time. He acknowledged it could be flagged as an as an issue, but he does not have "a quick answer."

2:38:34 PM

REPRESENTATIVE HARRIS related that Wells Fargo Bank is listed as a major customer. He inquired as to what dealings the ARRC has with Wells Fargo Bank.

MR. GAMBLE related his understanding that the ARRC has a line of credit with Wells Fargo Bank. In further response to

Representative Harris, Mr. Gamble agreed it was a financial deal.

2:39:18 PM

REPRESENTATIVE BILL STOLTZE, Alaska State Legislature, opined as prime sponsor of HB 127, that the impact of the Executive Budget Act has been far overstated. He related that several other corporate entities such as the Aerospace authority, AIDEA, and the AHFC. He indicated that this is not about a constituent issue. He emphasized that he has always been a fan of the ARRC. He reiterated his family history with the ARRC and his personal history of land adjacent to the railroad. He offered the reason for the bill is to address a broad policy issue, to lift the corporate veil of secrecy. He opined that he would like the ARRC to be part of a broad budget process. He related that positive things have happened simply by introducing the bill, such as the Flint Hills purchase. He related that having the issue raised solves one of his concerns. He reiterated that this bill is to address a broader policy issue. He opined that aloofness is a better term than arrogance. He recalled rumors that this is a nuisance bill, which he finds an affront to the legislature process. He related this is an institutional change but emphasized that he is not out to destroy the ARRC, that he wants it to prosper and sees the ARRC as an important part of the transportation network and the state's economy.

2:44:35 PM

REPRESENTATIVE DOOGAN commented that although other agencies are under the Executive Budget Act, but he was not aware of any corporations in direct competition with the public. He offered that the ARRC competes with private sector. He offered his belief that under the Executive Budget Act the ARRC would have less flexibility to operate in the environment, which he said does not strike him as a good thing to do. He offered that it would be difficult for him to support the bill.

2:46:34 PM

REPRESENTATIVE HARRIS moved to report HB 127 out of committee with individual recommendations and the accompanying fiscal notes.

REPRESENTATIVE Doogan objected.

2:47:00 PM

A roll call vote was taken. Representatives Gruenberg, Johnson, Harris, Johansen, Munoz, and Wilson voted in favor of moving HB 127 from the House Transportation Standing Committee. Representatives Doogan voted against it. Therefore, HB 127 was reported out of the House Transportation Standing Committee by a vote of 6-1.

SB 72-CHILD SAFETY SEATS & SEAT BELTS

2:47:50 PM

CHAIR WILSON announced that the next order of business would be CS FOR SENATE BILL NO. 72(STA), "An Act relating to use of child safety seats and seat belts."

2:48:21 PM

SENATOR HOLLIS FRENCH, Alaska State Legislature, as the prime sponsor of the bill read a portion of his sponsor statement, as follows: [original punctuation provided]

Booster seats save lives. Of the 61 children under the age of eight injured in auto accidents in Alaska between 2001 and 2005, only five were considered properly restrained by federal standards. Nearly two thirds of those 61 children were between the ages of four to eight, making the injured too large for a child safety seat but too small for an adult seat belt.

Current Alaska law requires the use of proper safety devices for children under the age of 16 as approved by the US Department of Transportation. The National Highway Traffic Safety Administration recommends that children under 80 pounds and under 57 [inches] use a child safety seat or a belt positioning booster seat.

SENATOR FRENCH explained that the booster seats basically lift the child so that the seatbelt strikes them at the "right part of their body" where their muscular skeleton can stop the impact of a crash. He concluded by stating that is the basic overview of the bill.

2:50:03 PM

CHAIR WILSON announced that SB 72 will be held over.

HB 131-CHILD SAFETY SEATS & SEAT BELTS

2:50:14 PM

CHAIR WILSON announced that the final order of business would be HOUSE BILL NO. 131, "An Act relating to use of child safety seats and seat belts."

2:50:34 PM

REPRESENTATIVE JOHNSON moved to adopt the proposed committee substitute (CS) for HB 131, Version 26-LS0372\C, Luckhaupt, 3/6/09. There being no objection, Version C was before the committee.

2:51:00 PM

REPRESENTATIVE LINDSEY HOLMES, Alaska State Legislature, stated her staff would provide an overview of the bill.

2:51:01 PM

LISA VALENTA, Staff, Representative Lindsey Holmes, on behalf of the prime sponsor of HB 131, Representative Lindsey Holmes, stated that this bill has the same goals as the prior bill, SB 72. The bill is focused on education of parents so that parents are informed of the specific child safety restraint for their child based on the child's height and weight.

2:52:01 PM

REPRESENTATIVE HOLMES offered that states might be eligible to apply for approximately \$200,000 in federal funding this year, but the funding might not be available next year.

2:52:11 PM

REPRESENTATIVE HARRIS inquired as to whether the sponsor would have any problems to incorporate proposed changes to SB 72.

REPRESENTATIVE HOLMES offered her support for SB 72, the Senate version of the bill as the vehicle since it has passed the Senate.

[HB 131 was held over.]

2:53:10 PM

ADJOURNMENT

There being no further business before the committee, the House Transportation Standing Committee meeting was adjourned at 2:53 p.m.