

HOUSE FINANCE COMMITTEE  
February 22, 2011  
1:36 p.m.

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CALL TO ORDER

Co-Chair Stoltze called the House Finance Committee meeting to order at 1:36 p.m.

MEMBERS PRESENT

Representative Bill Stoltze, Co-Chair  
Representative Bill Thomas Jr., Co-Chair  
Representative Anna Fairclough, Vice-Chair  
Representative Mia Costello  
Representative Mike Doogan  
Representative Bryce Edgmon  
Representative Les Gara  
Representative David Guttenberg  
Representative Reggie Joule  
Representative Mark Neuman  
Representative Tammie Wilson

MEMBERS ABSENT

None

ALSO PRESENT

Representative Cathy Munoz, Sponsor; Representative Bob Lynn, Sponsor; Representative Lance Pruitt, Sponsor; Kendra Kloster, Staff, Representative Cathy Munoz; Jerry Luckhaupt, Assistant Revisor of Statutes, Legislative Legal Services; Kate Burkhart, Executive Director, Advisory Board of Alcoholism and Drug Abuse, Department of Health and Social Services; Thomas Reiker, Staff, Representative Bob Lynn; Mark Davis, Economic Development Officer, Alaska Industrial Development and Export Authority.

PRESENT VIA TELECONFERENCE

Orin Dym, Forensic Laboratory Manager, Department of Public Safety Scientific Crime Detection Lab; Whitney Brewster, Director, Division of Motor Vehicles, Department of

Administration; Erling Johansen, Assistant Attorney General, Department of Law; Mr. Jeffrey Mittman, Executive Director, American Civil Liberties Union of Alaska; Mr. Ted Leonard, Executive Director, Alaska Industrial Development and Export Authority.

SUMMARY

HB 7 SYNTHETIC CANNABINOIDS AS SCHEDULE IIA

HB 7 was HEARD and HELD in committee for further consideration.

HB 3 REQUIREMENTS FOR DRIVER'S LICENSE

CSHB 3 (STA) was REPORTED out of committee with a "do pass" recommendation and with previously published zero impact note: FN1 (DOA).

HB 119 AIDEA: PROCUREMENT; PROJECTS

CSHB 119 (EDT) was REPORTED out of committee with a "do pass" recommendation and with previously published zero impact note: FN1 (DCCED).

HB 19 SPECIAL REQUEST LICENSE PLATES

HB 19 was SCHEDULED but not HEARD.

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#hb7

HOUSE BILL NO. 7

"An Act classifying certain synthetic cannabinoids as schedule IIA controlled substances; and providing for an effective date."

REPRESENTATIVE CATHY MUNOZ, SPONSOR, discussed CSHB 7 (JUD). She delineated that synthetic cannabinoids were materials that contained hallucinogenic chemicals that were sprayed on leafy plant material. The materials were sold on the internet and in stores under a variety of names including K2 and Spice. To increase popularity and distinguish the product from drugs such as LSD, the products were marketed as a synthetic marijuana or incense. She had first heard about Spice or K2 from the parent of a

boy who had experienced a serious adverse reaction to the drug. She explained that within moments of inhalation the young man experienced severe vomiting, loss of reality, the inability to walk and talk, and violent outbursts. She read an excerpt from a letter written by the young man:

"I only had a small amount and in less than two minutes I was losing my perception of what was real in every way. I lost control of my legs and I couldn't walk. I couldn't talk. I can remember thinking to myself that I wasn't going to come out of this craziness and this might be how I end up dying. I remember telling my brother to call 911 and going to the hospital."

Representative Munoz relayed that many similar stories had surfaced since her office began working on the bill and that many states had enacted bans on the material. Synthetic cannabinoids were relatively new to the United States and were manufactured in China and Europe. Germany, Sweden, Russia and England had all banned the substance. Given the accessibility of the substance, its low cost, and its difficulty to drug test, popularity was increasing in the U.S., particularly among the youth population. She explained that the herbal and chemical compounds commonly produced a reaction similar to marijuana. The original legislation would have classified the substances as schedule IIA, which included compounds that contained hallucinogenic substances. With the advice of the Department of Law (DOL), the bill was amended to classify certain synthetic cannabinoids as schedule IIIA controlled substances. She asked a member of her staff to describe the legislation in detail.

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KENDRA KLOSTER, STAFF, REPRESENTATIVE CATHY MUNOZ, explained that they had worked with DOL and Legislative Legal to classify the product as a schedule IIIA controlled substance. Other synthetic THCs [tetrahydrocannabinols] fell under the IIIA category. The bill listed the different chemical compounds of the synthetic THC contained in the product that were determined by the DEA [Drug Enforcement Agency] and research conducted in other states. The Municipality of Anchorage supported the legislation and already had a ban on the substance. Sergeant Robert Thompson of the Fairbanks Police Department had provided a

written statement expressing the department's support of the bill (copy on file). The department had experienced a problem with a driver who had been under the influence of K2 and had experienced seizures. The department had been unable to charge the driver with an offence as the product was not classified as a controlled substance. The legislation was also supported by many constituents, the Advisory Board on Alcoholism and Drug Abuse, the Mat-Su Substance Abuse Prevention Coalition, the Alaska Peace Officers Association, the Alaska Association of Chiefs of Police, and the Women Police of Alaska.

Co-Chair Stoltze informed the committee that technical questions about the classification of the substance could be directed to the Department of Public Safety Scientific Crime Detection Lab (SCDL).

Representative Gara wondered if the effects of K2 or Spice resembled those of marijuana or hashish and whether the penalty should be similar to one of those substances.

ORIN DYM, FORENSIC LABORATORY MANAGER, DEPARTMENT OF PUBLIC SAFETY SCIENTIFIC CRIME DETECTION LAB (via teleconference), was not a toxicologist and could not speak to the effects of the substances. He explained that synthetic compounds were not natural products and had to be synthesized and that K2 or Spice was definitely a synthetic or "designer" drug. Marijuana was a plant material that naturally excreted THCs. He could not speak to how the product should be specifically classified.

JERRY LUCKHAUPT, ASSISTANT REVISOR OF STATUTES, LEGISLATIVE LEGAL SERVICES, informed the committee that the Judiciary Committee had placed the synthetic THCs in with the other classified THCs. Currently schedule IIIA drugs included natural THC, the active ingredient in marijuana; and three synthetic THCs. The committee elected to place the drugs under the same category given their similarities and same classification.

Representative Gara asked about the penalty for a first conviction. Mr. Luckhaupt replied that the penalty for distribution or manufacturing was a felony. There was no major difference between schedules I, II, and III related to penalties for the manufacturing or delivery of a substance. Possession could be either a felony or a misdemeanor, depending upon the amount of the substance. He

explained that for schedule III substances the possession of less than three grams was a misdemeanor and above three grams was a felony. The possession of a schedule II drug was a felony in any amount.

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Representative Gara asked how three grams compared to the size of a marijuana joint. Mr. Dym responded that a typical marijuana cigarette weighed approximately 0.3 grams or one-third of a gram and that three grams equaled approximately nine to ten hand-rolled cigarettes.

Representative Guttenberg wondered how the substance was manufactured. He asked whether an organic product or chemicals for a lab were required to make the substance. Mr. Dym responded that the process involved an exotic chemistry that required quite a bit of knowledge, skill, and equipment. The process was not a typical backyard "clandestine" operation.

Representative Guttenberg asked whether there was a specific source that provided most of the product to Alaska. Mr. Dym replied that he did not have specific detail and that previous testimony had traced the production to a couple of overseas companies.

Representative Neuman asked what the prison sentence would be for the possession of 3 grams. Mr. Luckhaupt responded that the penalty for a class A misdemeanor was up to one year in jail and that the maximum sentence for a class C felony was up to 5 years in prison. There was no presumptive term for a class C felony and typically a person who was convicted would receive a prison sentence of less than one year.

Representative Neuman asked about the typical sentence for three grams of marijuana.

Co-Chair Stoltze noted that DOL and the Alaska Court System could probably provide more precise information. He had hoped to move the bill out of committee but there had been several fiscal note questions raised by Legislative Finance.

Representative Wilson asked how a police officer would be able to test whether a driver was under the influence of K2 or Spice.

Ms. Kloster replied that police departments would determine how tests should be conducted. She explained that the drug impacted people much differently than alcohol did. Current drug testing methods were not able to pick up K2 or Spice and tests for the drug were more invasive than tests for alcohol.

Representative Wilson wondered whether a blood test would be a reliable method to determine that a person was under the influence of the drug. Mr. Luckhaupt responded that the prosecution of a person who had been under the influence of a controlled substance was always problematic. Prosecutors attempted to prove a person's altered state based other factors such as, possession of drugs, a person's actions, and a blood test taken at the time of the offence. He relayed that currently a test was not available that would reveal the drug. The reason the person in Fairbanks admitted that he had taken the drug was because it had not been illegal.

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Representative Wilson wondered whether prosecution would be based on the possession of the substance rather than on its ingestion. Mr. Luckhaupt replied that proof that a person was driving under the influence (DUI) would still be required. He communicated that it was difficult but not impossible to convict a person for being under the influence of a controlled substance.

Representative Gara believed that in previous years the legislature had classified too many things as felonies. He stated that a misdemeanor was a serious crime and was the appropriate crime level in some cases. He was concerned about the practice of adding non-violent crimes to the felony list. He wondered whether there was a way to make the distribution of a significant amount of the drug a felony and to make the possession of a small amount a misdemeanor.

Mr. Luckhaupt responded that the Judiciary Committee tried to reduce the penalty so that the possession of a small amount would result in a misdemeanor. The distribution and

sale of a schedule III substance was always a felony. The sale of a schedule IVA substance would result in a misdemeanor. He stated that dropping the level to a schedule IVA would be problematic given that normal THC and the existing three synthetic THC's were classified as schedule III substances.

Representative Gara asked whether it was possible for distribution to remain a felony and for the possession of more than three grams to be classified as a misdemeanor.

Mr. Luckhaupt answered in the affirmative. He explained that a fourth or fifth degree of misconduct involving a controlled substance could be created and that a specific level could be specified for the synthetic THC's.

Representative Gara discussed that felony charges would be fought much harder than misdemeanor charges and that it was important to factor in the fairness and the costs of jail time, and prosecution.

Co-Chair Stoltze opened public testimony.

Vice-Chair Fairclough MOVED to ADOPT CSHB 7 (JUD) 27-LS0044\T.

KATE BURKHART, EXECUTIVE DIRECTOR, ADVISORY BOARD OF ALCOHOLISM AND DRUG ABUSE, DEPARTMENT OF HEALTH AND SOCIAL SERVICES, discussed that the board was created by statute to advise the executive and legislative branches on issues related to substance abuse. The board was located under the Department of Health and Social Services but did not speak for the department. She voiced the board's support of the legislation. She delineated that the chemicals used in K2 were created as part of a federally funded research project that studied the effects of THC on the human brain. The product was made in a highly sophisticated lab and was never intended for human consumption. The reported effects of the product were not similar to naturally occurring substances such as marijuana. She referred to testimony provided by a Juneau doctor that discussed the symptoms of a person who had been admitted to the intensive care unit. The American Association of Poison Control Centers had received over 3,000 calls regarding poisoning incidents in the prior year and 400 calls in January 2011. The substance was implicated in criminal activity, DUI's, violent crime, hallucinations, one known death in Alaska, and at least one

suicide. The product had potential social costs not only in the loss of life and injury, but in emergency room and medical costs as well. The board felt strongly that the substance should be regulated at a higher level than marijuana given the severity of the effects of the substance.

Co-Chair Stoltze asked whether the substance qualified under the medical marijuana statute that had been created by initiative.

Ms. Burkhart replied that it did not. She emphasized that K2 was a manmade product that was applied to a natural plant base.

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Representative Edgmon asked whether there had been any accounts of the substance reaching rural Alaska and whether reports of the impact of the drug had been statewide. Ms. Burkhart replied that the board had only heard reports from urban areas of the state. The board was concerned about extensive reports of abuse in the military. She relayed that the U.S. Army had banned the substance and had court marshaled over one dozen service members in Alaska. The Navy had also experienced the same problem. The board was concerned that the drug might infiltrate into rural areas given the potential use of the drug among the state's National Guardsmen.

Representative Neuman asked whether there were other common drugs or substances with a similar chemical structure that could be confused with K2. Ms. Burkhart responded that the chemicals were very specific formulas. The bill would regulate five very specific chemical compositions. Due to the specificity of the bill, products that may be similar were not included. The board appreciated that the bill was tracking with the temporary federal regulation enacted by the Drug Enforcement Agency and was following regulation planned by the federal government and 13 other states. She believed that a chemist could manufacture a substance that was equally exciting and harmful with a different chemical composition that would not be controlled by the bill.

Co-Chair Stoltze closed public testimony.

Vice-Chair Fairclough communicated that she had a young constituent who had experienced an adverse reaction to the drug that had resulted in the girl's inability to move and subsequently in an emergency room visit. She was in support of the bill and wanted to make certain that it was done correctly. She believed that there were only two national labs that were able to test for the drug. One lab did urine analysis and the other tested blood. She wondered about economic opportunity and whether something could be marketed through SCDL for other laboratories throughout the state that would help fund the position and provide a safety net for Alaskans that were having a violent reaction to the drug. She referenced the fiscal note and wondered whether the state could provide an engine to help other states quantify people taking the drug. She opined that the issue at hand was one of safety and hoped that anyone who was having an adverse reaction to the drug would recognize what was happening immediately. She hoped that officers would ask the appropriate questions to identify that a person's reaction was different than anticipated and that medical treatment would be sought immediately.

Vice-Chair Fairclough discussed the corrected Department of Corrections (DOC) fiscal note #2 that had been changed from zero to almost \$200,000 per person. She explained that the range listed on the fiscal note was not very helpful to the committee. She wondered whether there was someone present from the department that could speak to the indeterminate note.

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Vice-Chair Fairclough asked Representative Munoz to contact DOC regarding the fiscal note.

Co-Chair Stoltze clarified that the co-chair staff would contact the department.

Representative Munoz agreed that the increased fiscal note #2 was unclear and that they would communicate with DOC.

Co-Chair Stoltze noted that David Teal, Legislative Finance, and James Armstrong, staff to Representative Stoltze would also participate in a discussion to determine the accuracy of the fiscal note.

Representative Costello pointed out that some of the documentation referred to the substance as a schedule IIA and in other areas as a schedule IIIA. She wanted to make certain it was shown consistently as schedule IIIA.

Representative Munoz clarified that the bill had been amended in the Judiciary Committee to change the classification of the substance from IIA to IIIA.

Ms. Kloster relayed that the fiscal notes would all be updated to reference the schedule IIIA classification.

Representative Costello appreciated that the legislation had been introduced. She emphasized that the drug had hit the streets of Anchorage with a tenacity that needed to be addressed.

Representative Munoz expressed that testimony from her community had moved and motivated her to help address the problem.

Vice-Chair Fairclough moved on to fiscal note #3. The note had a \$126,800 first year impact that was followed by \$106,600. She wondered whether the Department of Public Safety (DPS) could provide clarity on the appropriate testing mechanism for the product, the cost, and the expected turnaround time. Mr. Dym responded that there were two tests available. The first was a toxicology test that involved the analysis of blood or urine. The second test related to the analysis of solid material possession cases. The SCDL currently had no toxicology program and testing was outsourced to the State of Washington. A grant from the Alaska Highway Safety Office paid for the sample testing. He explained that Washington subcontracted the work in the case of synthetic cannabinoids because there were only a few places that were able to test for the drug. The fiscal note related to possession cases and funded the necessary workforce to handle the increased number of submissions and to ensure the laboratory maintained its rapid turnaround time.

Vice-Chair Fairclough asked for clarification on the meaning of rapid turnaround time. Mr. Dym replied that most drug cases moved to court from the time of incident in less than 60 days and more frequently in 45 days. The lab was turning 68 percent of the drug cases in less than 31 days and it worked to not exceed the 45-day to 50-day window.

Vice-Chair Fairclough appreciated the excellent turnaround time. She asked whether the fiscal note contained funding related to tests that were outsourced to the State of Washington. Mr. Dym replied that the fiscal note did not include funding related to outsourced tests. He explained that all driving offenses would be handled under the department's existing contract and grant money.

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Vice-Chair Fairclough asked whether the 480 cases supported by the fiscal note were only related to possession cases. Mr. Dym answered in the affirmative. The lab would be able to handle up to 480 samples before increasing the turnaround time.

Vice-Chair Fairclough asked whether the fiscal note focused only on distributors and did not cover people who experienced adverse safety implications. Mr. Dym answered in many cases a person suspected of driving under the influence was also in possession of illegal material. In such cases an analysis was conducted on a blood sample to test for the DUI and another analysis was conducted on the substance.

Vice-Chair Fairclough questioned whether a blood analysis for alcohol would identify the presence of K2. Mr. Dym replied that the test would not identify the substance. He added that when alcohol was suspected and the blood sample at the lab came back negative, the lab would send the sample out for toxicology analysis.

Vice-Chair Fairclough asked whether local hospitals had the ability to perform toxicology testing that would identify K2 in the blood of an admitted patient. Mr. Dym did not know. He doubted that they would be able to identify the substance given the rarity of expertise on the material.

Vice-Chair Fairclough recounted a story about a young woman who had been found unconscious. It had only been possible to determine what was wrong with the girl because another youth came forward with information about a substance that they had smoked that they had thought was marijuana. She explained that the hospital had run toxicology tests to identify the poison in the girl's bloodstream.

Representative Wilson asked whether the substance was routinely tested for when a person was pulled over for a DUI. She asked whether a sample that was sent for analysis would automatically be tested for everything. Mr. Dym explained that toxicology samples were initially screened for alcohol and were then passed on for further analysis. An officer or the prosecutor's office could request for a sample to undergo additional toxicology testing when a person suspected of impairment tested negative for alcohol. He noted that the lab had just received their first positive toxicology test.

Representative Wilson asked what it would cost to send all samples to the State of Washington for toxicology testing. Mr. Dym replied that the fiscal note only covered possession cases that would go to SCDL. The lab's contract covered up to 520 requests per year and it believed that there was enough room to cover potential DUI samples that could arise.

Representative Guttenberg pointed to Page 2, Sections 7-16 of the bill that described various compounds. In Section 16 the bill discussed ensuring that similar compounds were included. He communicated that the bill appeared to focus on specific definitions and also included language to prevent the exclusion of certain products with slightly altered chemical compositions. He wondered whether any other products could potentially be included under the description in the bill.

Mr. Dym answered that the bill included language on geometric or positional isomers. He explained core components had been identified that could be modified by chemists. Language about positional isomers took care of most items that could be similar. He noted that explaining the chemical terms and definitions would put a slight burden on the lab particularly in court. He delineated that the bill would not cover a new drug but it would cover cases in which there had been rapidly modified chemical tweaks.

Representative Guttenberg asked whether the focus was limited to the particular drug and did not include items that it did not intend, such as aspirin. Mr. Dym believed that the language in the bill was specific to the class of synthetic cannabinoids and others that were very closely related.

Ms. Kloster discussed that the bill updated language related to schedule III drugs that was similar to existing language for schedule II drugs. She discussed that the removal of one molecule would not have a significant effect on the substance.

Representative Guttenberg wanted to make certain that the bill did not include a substance that they did not intend to make illegal.

Representative Doogan cited concern about fiscal note #4. He discussed that the drug was probably not produced in Alaska, there was no test in Alaska to determine use of the substance, and only one positive test had been received from an outsourced lab. He did not understand how the fiscal note could be \$126,000 and was not inclined to add a position given the lack of evidence that there was a need. He explained that a position could always be added at a later time in the event that the substance turned out to be widespread.

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Co-Chair Stoltze remarked that there would be a conversation with his staff, the Office of Management and Budget (OMB), and the sponsor and regarding the fiscal notes.

Vice-Chair Fairclough hoped to communicate that there was a harmful substance in Alaska that looked similar to rolled marijuana and that people should be aware that products were labeled controlled substances for a reason. She relayed that people should be careful and that they were risking their lives by using the substance.

Representative Gara wondered whether prosecutions that would occur as a result of the legislation should be included in a fiscal note from the Public Defender Agency, DOL, or the Office of Public Advocacy.

Co-Chair Stoltze reported that DOL was following the issue and that there would be a conversation with OMB about the fiscal notes.

HB 7 was HEARD and HELD in committee for further consideration.

#hb3

HOUSE BILL NO. 3

"An Act relating to issuance of driver's licenses."

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Vice-Chair Fairclough moved CSHB 3 (STA) 27-LS0010\X.

REPRESENTATIVE BOB LYNN, SPONSOR, explained that the bill was very different from legislation that had been introduced the previous session. Currently a person in the country with a passport, visa, or green card that expired the following day could still get a driver's license in Alaska that would last for five years. He explained that HB 3 would allow the Division of Motor Vehicles (DMV) to issue a license that would match the term of the non-citizen's legal presence document. He stated that a visa that expired in six months time would mean that the driver's license would expire at the same time.

THOMAS REIKER, STAFF, REPRESENTATIVE BOB LYNN, explained that the Department of Homeland Security was responsible for determining whether a foreign national could stay in the U.S. and that it was important to ensure that legislation would not contradict any ruling made by the federal government. The bill would put an end to the contradiction by allowing the DMV to issue driver's licenses for less than five years when the length of a person's authorized stay was less than five years. The legislation would ensure that a person's license would expire on the same date as their legal presence. A person who was authorized to stay in the U.S. indefinitely would have a license that expired in one year and it would require annual renewal until they received a definite length of legal stay. Annual renewal fees would be waived and applicants could renew by mail for up to five years to prevent an overly burdensome process for people who had an indefinite length of authorized stay. The bill did not include ID cards which were controlled by regulation. The DMV had sufficient statutory authority to change the ID cards and intended to match the terms that would be implemented for licenses under the legislation. He emphasized that the bill did not make changes to the application process for driver's licenses and did not require a person to offer proof of their authorized length

of stay to obtain a license. However, a person who applied for a license with a visa, passport, or other immigration document would receive a license that was linked to the length of stay listed on the document.

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Representative Wilson wondered how the license extension process would work by mail. Mr. Reiker responded that a person would need to be physically present when they applied for their initial license and that renewals could be done by mail. He believed that a copy of extension paperwork provided by the U.S. Citizenship and Immigration Services would be sufficient documentation for a license extension by mail.

Representative Lynn clarified that the bill was primarily focused on visitors to the U.S., not immigrants.

Representative Wilson asked whether a person that received an extension on their length of stay could provide the same paperwork repeatedly to obtain future extensions of their driver's license. Mr. Reiker confirmed that an applicant would be required to send in documentation that provided a new authorized length of stay or that extended the indefinite period.

Representative Gara wondered whether a person could obtain a license if they had submitted a valid immigration application and were in Alaska because they were a victim of domestic violence.

Representative Lynn responded that a person could obtain a driver's license for the period of time they were authorized to stay. An indefinite status would allow them to receive a license for a one-year period. Mr. Reiker agreed.

Representative Gara communicated that a person with a pending application would not have obtained an authorized period of stay.

Co-Chair Stoltze asked whether the default was one year. Mr. Reiker replied that the term "indefinite" was slightly misleading. He explained that a more accurate word was "pending." A person would be able to obtain a license for one year if they could provide proof that they had applied

for authorized stay status. In order to extend the license after the one-year period the person would have to provide proof that their status had been adjudicated.

Representative Gara relayed that under the current bill only a person with an authorized stay would be permitted to obtain a driver's license. He believed the language would need to be changed if the goal was to include people who had a valid application underway. Mr. Reiker responded that the sponsor would be okay with changing the language from "indefinite" to "pending." He believed the change would address the concern that had been raised.

Representative Gara explained that the language would also need to be amended to say something other than "authorized" because a pending application would mean that it had not yet been authorized.

WHITNEY BREWSTER, DIRECTOR, DIVISION OF MOTOR VEHICLES, DEPARTMENT OF ADMINISTRATION (via teleconference), discussed that HB 3 allowed the DMV to promulgate regulations to shorten the length of time that it issued a driver's license for. The zero fiscal note reflected that the legislation would not impact the existing procedures of the DMV. The only change would be that the license would expire at a different time than the standard five-year period. Currently the DMV required proof of legal name, date of birth, resident address, and social security number (if one existed). Immigrants would typically present the DMV with a permanent resident card and international visitors typically provided a passport and accompanying visa. The documents were commonly seen at the DMV and under the legislation a license would expire at the time of the legal document expiration. She believed it was important to note that the DMV received and honored letters from the United States Citizenship and Immigration Services (USCIS) on a regular basis. The documents would continue to be honored by the division. She explained that there was a specific category for victims who were granted temporary legal stay while their cases were under investigation and that U.S. Immigration and Customs Enforcement and law enforcement were familiar with the process. She had met with the USCIS and U.S. Immigration and Customs Enforcement regarding the specific topic and felt satisfied that victims were protected and would not face immediate deportation.

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Vice-Chair Fairclough believed she had attended the same meeting. Ms. Brewster replied in the affirmative.

Vice-Chair Fairclough relayed that she had met with law enforcement and the federal government during the interim to discuss concerns she had expressed about the bill the prior session. She had been assured that a victim of domestic violence or sex trafficking would be given a valid residency status for a temporary period within 24 hours to 48 hours. She believed the particular issue had been sufficiently managed. She wondered why the State Affairs Committee had changed language in the bill from "shall" to "may." She also asked DOL about the definition of "indefinite" in regards to the bill.

Mr. Reiker noted that DMV had some concern that the five-year length of time was laid out in statute and that the division was not authorized to promulgate regulations for driver's licenses. The sponsor did not want to be restrictive of DMV and decided that the bill should read "may" and not "shall." Representative Paul Seaton and others had expressed concerns that the bill would be overly burdensome on people with an indefinite or pending authorized stay. In order to address the concerns language had been included to allow the division to waive renewal fees and to enable people to complete the renewal process by mail.

Vice-Chair Fairclough read from the original legislation, "If a period of authorized stay is indefinite the department may not issue the license with the validity of greater than a year." She explained that the original premise was for the DMV to have the ability to issue a license for anywhere up to a year and the current version of the legislation would give individuals a one-year license regardless of their length of stay in Alaska. Mr. Reiker replied that she was correct. Their office learned in a discussion with U.S. Immigration and Customs Services for the State of Alaska that the office provided 30-day to 90-day extensions to people with indefinite status. They did not want people in the middle of the process to be required to apply for a new license every 30 days. Additionally, they did not want the department to take on the cost of issuing a new license every 30 days.

Vice-Chair Fairclough emphasized that the department had expressed its need for flexibility around its ability to determine the length of time a license would be issued. She thought the intent of the bill was to match licenses to other documentation. She was not opposed to the language and she did not want a person who had applied for a valid stay in the U.S. to have to go through a hurdle every 30 days and did not want to burden the department, however, a mandate that required the department to issue one-year licenses would deny the it flexibility. She repeated her earlier question to DOL regarding the definition of the term "indefinite" for the purposes of the legislation.

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ERLING JOHANSEN, ASSISTANT ATTORNEY GENERAL, DEPARTMENT OF LAW (via teleconference), responded that in relation to the bill the term "indefinite" meant "non-finite" terms. A pending application and a continuing authorization were both examples of a non-finite term.

Vice-Chair Fairclough remarked that for Webster's the term meant continuing on and on, which was different than the definition that had been presented to the committee. The provided definition indicated that there was something pending that was awaiting an action that would determine when the indefinite period ended.

Mr. Reiker agreed with the interpretation. He also believed that their Webster's working definition for indefinite was "not definite." He understood that it could also be interpreted to mean "in perpetuity."

Representative Guttenberg noted the Department of Administration's zero fiscal note. He wondered what it would take to familiarize DMV employees with documentation and whether staff would phone the Immigration and Naturalization Service (INS) [now called United States Citizenship and Immigration Services] or go online in order to authorize the issuance of a new driver's license. He wondered how the department was prepared to handle the new procedures that would be required under the legislation.

Ms. Brewster responded that the DMV was currently receiving immigration documents and that there would not be a substantial change from the current process. The change would be to the expiration date of the license that would

match the date on the provided documents. The training that would be required would be minimal and could be absorbed in the current DMV budget. She elaborated that DMV had a strong relationship with USCIS and they would have no problem asking for assistance if necessary.

Representative Edgmon discussed that the bill could impact Alaskan communities like Sand Point, King Cove, Akutan, and Unalaska, in a way that had not been anticipated. He asked how the DMV would handle communities that did not have year-round DMV service. Ms. Brewster noted that Unalaska was the only community listed that had a year-round DMV. She did not believe a substantial change would occur in the areas where there were a number of cannery workers. She explained that the requirements to obtain a driver's license were in statute and would not change. The requirements included proof of legal name, date of birth, residence, and social security card (if one existed). The only significant change would be that a person's license would expire at the time of the legal stay listed on the authorization documentation.

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MR. JEFFREY MITTMAN, EXECUTIVE DIRECTOR, AMERICAN CIVIL LIBERTIES UNION OF ALASKA (via teleconference), testified that the union's concern was related to the potential for differential treatment of immigrants. The union believed that the bill raised constitutional issues related to the equal protection rights of immigrants. Immigrants were a suspect class under most federal discrimination law and would receive a different and second-class type of license. There could be a reasonable government interest in providing the differential class of license in the event that the term of stay was related to a person's safety, ability to drive, or the DMV mandate of issuing licenses. He explained that because the purpose of a driver's license was to identify that a person was a safe driver the idea of a second-class type of license raised significant concerns that a court may have contention with.

Representative Gara was concerned that a person who had a valid application in for legal presence in the U.S. would not be covered under the bill's "authorized stay" language. Mr. Mittman responded that the union believed that there were some language problems with the bill and the problem at hand put the DMV in the position of making a

determination that would be best made by a federal INS or immigration agency. He explained that it was an open question that did not relate to a person's ability to safely drive a vehicle or understand road laws. The union believed that the new law would deny an individual the right to obtain a license under a procedure that all other individuals were entitled to.

Vice-Chair Fairclough wondered whether Mr. Mittman saw any reference to the immigration issue in the legislation before the committee. Mr. Mittman responded that the issue was related to an individual's length of stay. Information had been provided that pertained to lawful presence requirements that many states could constitutionally implement. However, the union believed that it would be a reasonable assumption that a differential type of license would be related to a person's immigration status. He explained that presumably every U.S. citizen was able to stay in the country for an indefinite period that was until their death. Presuming the intention of the bill was to provide differential licenses to people who may not be citizens or lawful permanent residents the presumption would be that the majority of the people would be in some sort of immigrant status.

Vice-Chair Fairclough discussed that DMV was specifically required to provide a license for five years and that there were reasons that the division might want to limit a driver's license that were outside of immigration issues. She explained that the law before the committee was taking a step to meet the specific need and that she had also introduced a piece of legislation that worked to provide DMV with the flexibility to issue a license for a period that was different than five years. Mr. Mittman answered that there could be a constitutionally appropriate and non-discriminatory reason for having a differential license. His concern was that as HB 3 was currently drafted the bill was susceptible to discriminatory treatment that could violate federal constitutional standards.

Representative Wilson did not understand why there would be an objection to the issuance of licenses for a different period of time. She recognized that it would be one thing to issue a license that looked notably different from the standard license, but that everyone in the room had a different expiration date on their license.

Mr. Mittman replied that the change made by the State Affairs Committee that lessened the burden on renewing a license was an improvement on the original bill. The differential treatment was related the more burdensome process that individuals who could be of immigrant status would have to undergo on an annual basis. Additionally, there was concern about regulatory processes that may provide discretion for a DMV employee to require a person who they thought looked like an immigrant to provide differential documentation.

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Representative Joule asked whether a citizen in the United States had a bit more of an advantage than a non-citizen. Mr. Mittman remarked that there were constitutionally permissible instances where citizens had certain rights, privileges, or opportunities that non-citizens did not. The union believed that the federal government would not find it appropriate to treat an immigrant differentially in the case of the issuance of a driver's license.

Vice-Chair Fairclough wondered whether a driver's license was a right or a privilege. Mr. Mittman replied that in many states a driver's license was a privilege. However, once a state instituted policies or procedures for individuals obtaining licenses, there could not be inappropriately discriminatory processes for providing the privilege.

Vice-Chair Fairclough believed that driving in the state of Alaska was a privilege.

Representative Wilson noted that a problem was created because a driver's license was used as a legal document for things unrelated to driving.

Co-Chair Stoltze closed public testimony.

Representative Gara asked whether a person that fled a domestic violence situation or persecution in their home country and had a valid application in for legal presence in the U.S. would be covered under the bill's "authorized stay" language.

Mr. Johansen understood that a person who was in the U.S. legally that experienced trouble providing proof of

identity could go to the appropriate federal agency for temporary authorization or application pending paperwork that would be accepted by the DMV. He explained that his understanding was in part based on a meeting he attended with state and federal agencies earlier in the year.

Ms. Brewster understood that under the legislation a person that applied for legal status from USCIS would receive a pending letter and that the DMV would issue a license for one year as required in the indeterminate section of the bill.

Representative Gara was happy provided that the department made a commitment to its understanding of the issue. Ms. Brewster replied that was her commitment to the committee.

Co-Chair Stoltze discussed the zero fiscal note.

[3:10:55 PM](#)

Co-Chair Thomas MOVED to report CSHB 3 (STA) out of committee with individual recommendations and the accompanying fiscal note.

CSHB 3 (STA) was REPORTED out of committee with a "do pass" recommendation and with previously published zero impact note: FN #1 (DOA).

#hb119

HOUSE BILL NO. 119

"An Act relating to the procurement of supplies, services, professional services, and construction for the Alaska Industrial Development and Export Authority; relating to the definition of 'own' for the economic development account; relating to the definitions of 'development project', 'plant', 'facility', and 'project' for the Alaska Industrial Development and Export Authority; and providing for an effective date."

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MARK DAVIS, ECONOMIC DEVELOPMENT OFFICER, ALASKA INDUSTRIAL DEVELOPMENT AND EXPORT AUTHORITY, discussed that HB 119 worked to modernize the Alaska Industrial Development and Export Authority (AIDEA). The bill allowed the agency to

have the same procurement provisions as other public corporations in the state, including the Alaska Housing Finance Corporation. The agency would also be permitted to own a percentage of a project it developed through the means of a corporation or a limited liability company (LLC). The previous year the legislature had allowed AIDEA to own a percentage of a project; however, DOL determined that the percentage did not clearly provide the agency with the power to be a member of an LLC.

Mr. Davis discussed that the agency also sought to expand the types of projects it could undertake. Currently AIDEA could do natural resources, energy, tourism infrastructure, and industrial development projects. The agency was provided the opportunity to invest in a health care facility that would be leased to the federal government; however, DOL determined that AIDEA was not authorized to invest in a health clinic. Additionally, AIDEA was asked to construct a facility that it would build and lease to the Coast Guard, but it was denied the ability to build a federal facility. Other expansions would be for community public purpose, transportation, and prototype commercial applications. The agency had conducted a survey of other economic development authorities throughout the U.S. and had discovered that most of the agencies had the ability to support new technologies or new prototypes as a way to use state development capital to promote the diversification of the state economy. The legislation added clarification that AIDEA could build roads. The current statute allowed the agency to build a road to a natural resource development, such as the DeLong Mountain Transportation System for the Red Dog Mine; however, it was not clear whether it could build a road that was not directly lined up with a project. He explained that if the agency could get revenues from the road it would do so. The caveat was that anything built on the transportation of roads would need to pay for itself, be a project that was bondable, and would have to meet economic development goals; therefore it could not be used for general transportation.

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Vice-Chair Fairclough moved CSHB 119 (EDT) 27-GH1745\M.

Representative Gara asked whether the legislation would allow AIDEA to underwrite and fund something like the Knik Arm crossing. Mr. Davis did not believe that it would. The

agency's current reserves limited bonding for any particular project to between \$250 million and \$300 million. He believed that the bridge would be much more expensive. The agency's intent was to build economic development projects; therefore, the transportation of the roads it would build would lead to an economic development project that would be tied to one of the agency's stated purposes.

Representative Gara referred to the "omnibus energy" bill passed in the previous session that created a revolving loan fund to help private businesses upgrade their energy efficiencies. He believed that the fund had been placed under AIDEA but not under the Alaska Energy Authority (AEA) that governed energy efficiency matters. He wondered whether AIDEA would have any objection to moving the revolving loan fund over to AEA. Mr. Davis replied that the fund belonged under AEA and that AIDEA was not concerned with the energy conservation efforts that were conducted by its sister agency.

Representative Gara wondered why AIDEA should be exempt from the state procurement code. Mr. Davis replied that the agency was not looking for a total exemption. The board could adopt regulations through a public process when the agency worked on a development project with another entity like the Alaska Housing Finance Corporation. A person who had a disagreement with the procurement would be required to file a protest with the board of AIDEA and not with the Departments of Transportation and Public Facilities or Administration. The process would be faster given that the board would have the expertise on what it wished to purchase. He believed that the streamlined system was better for the agency and for protestors.

MR. TED LEONARD, EXECUTIVE DIRECTOR, ALASKA INDUSTRIAL DEVELOPMENT AND EXPORT AUTHORITY (via teleconference), discussed that the bill worked to provide AIDEA with more tools that would help it to be effective when it worked on development projects with the private sector.

Representative Neuman liked the type of legislation. He referenced the Alaska Administrative Procedure Act and procurement codes. He wondered about the "basic sideboards" of the maximum funding that was available. Mr. Davis responded that AS 36.30.170(b) referenced on Page 2, Line 11, would require a bidder to have business license as

proof that they conducted business in the state. The bill dealt with procurement for development finance and required an agency to request bids when they wanted to purchase items such as computers or desks. He relayed that there would not be changes to the prevailing wage requirements.

Representative Neuman asked whether there was a maximum amount of money that AIDEA could spend to develop a corporation. Mr. Davis replied that the limits were based on the amount of available cash for a project and could vary depending upon the amount of reserve cash. He discussed that there was an open process and the board was required to approve spending. The current buying authority was approximately \$250 million. Additionally, the agency was required to seek legislative approval for any bond over \$10 million and approval from local communities for any bond over \$6 million. There was a \$400 million annual limit on the number of bonds AIDEA could issue.

Representative Neuman was glad to hear AIDEA had at least \$150 million. He asked whether manufacturing would fall under the "project" definition on Page 3, Section 6, which read "a plant or facility used or intended for use in connection with making, processing, preparing, transporting or producing..." He wondered whether manufacturing was a factor when AIDEA looked at different development plants and the development of Alaska's resources. Mr. Davis responded that AIDEA was formed as an industrial development authority and had always been focused on job development under AS 44.88.010. He expressed that manufacturing was one of the agency's goals when it was available.

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Representative Doogan asked about the cash limit of the agency. Mr. Davis replied that there were two ways to look at the cash limit. First, under AIDEA's Loan Participation Program, loans were capped at a maximum of \$20 million per loan. The amount the agency could invest in a particular project was based on its cash reserves and it was required to seek legislative approval for any bond over \$10 million. Additionally, the agency was required to obtain board approval, hold a public hearing, file a finance plan, and to obtain the approval of local communities for any bond exceeding \$6 million.

Representative Doogan understood that there were legal definitions about how the LLCs would work. He was concerned about the state's legal and factual liability in the event that a project under one of AIDEA's LLCs went "belly-up."

Mr. Davis replied that AIDEA's bonds for a project were not moral obligations of the state by statute. Any recourse on a bond would go to AIDEA or to the project itself if it were a revenue bond. The use of an LLC to effectuate a development project would mean that anyone seeking recourse would go against the assets of the LLC first and would have to show there was an ability to go beyond that by "piercing the corporate veil." Usually when an LLC went bankrupt the assets were those of the LLC. The agency was seeking to coordinate with other investors to leverage its funds and as they looked at determining what percentage of a project they would undertake, the developers notified AIDEA that they would need a legal structure in order to conduct business with the agency. The LLC would be the same as any other LLC on the market and the intention of the agency was to work with other investors. He elaborated that there would also be insurance on an LLC, therefore, there would be various pots of money available to potential creditors.

Representative Doogan remarked that there was a fish plant in his district that had been substantially financed by state funds and had essentially gone through the same process. He wasn't certain what the project cost the State of Alaska. Mr. Davis responded that the fish plant cost the state approximately \$50 million and was liquidated. He explained that the occurrence was exactly the reason for the legislation. The purpose of private partners in a development project was to determine whether other people in the industry were interested in investing their own capital in a project because they believed there would be a financial gain. The agency was required by statute to make a return on the invested capital and an LLC structure would ensure that AIDEA would be working with other partners. He opined that one of the reasons the seafood plant had been unsuccessful was due to the absence of sufficient partners.

Representative Doogan wondered whether it would still be possible for AIDEA to venture into operations like the fish plant or whether the legislation would require the participation by private individuals under an LLC. Mr. Davis answered that under the legislation AIDEA would retain the ability to build a development project on its

own. The agency's strategic plan also called for it to work with private capital. The legislation would allow AIDEA to create an LLC in order for it to own a percentage of a project with other private capital. The goal of the agency was to leverage its funds to do the most that it could. He believed the ability for AIDEA to work with private partners moved in the direction that Representative Doogan wanted.

Representative Doogan was trying to ensure that there would not be an eventuality in which the same mistake or enhanced mistakes were made by the introduction of other financial structures. He did not believe that was being offered in the legislation. He believed that AIDEA had specified that although it had the ability to work alone that it would prefer to work with other partners.

Mr. Davis responded that it was necessary to look each particular financial situation. For example, the board could discern that it was good for the economy and that a partnership was not necessary for it to invest in a small and inexpensive development project that had new technology. As the risk level and cost went up it was prudent to use another legal vehicle such as a corporation or an LLC and to have other partners as well. He believed the safety valve was in the seven-member board. The tool would help to mitigate risk, increase leverage, and achieve results.

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Representative Edgmon asked whether the AIDEA board would always be the board of directors in a partnership situation. Mr. Davis replied that members could be in control of the LLC or they could elect a managing partner that would make them more passive investors. In most cases the agency would take on a more passive roll and would elect a managing member from the private sector that had expertise in the specific type of project. Corporate governance would allow members to place managing restraints on the managing member related to spending caps, what could be done on the project, and any major structural change to the project.

Representative Joule discussed that Alaska was in a relatively good financial position compared to the rest of the U.S. He referenced potential military and coastal

infrastructure that may need to happen through the Department of Defense or other. He wondered whether the state's strong financial position encouraged the federal government and other businesses to look to Alaska as a good business opportunity. Mr. Davis responded that AIDEA floated some bonds in December 2010 for \$60 million and he had received calls from several interested brokers in other states. He explained that AIDEA's bonds had a AA rating, which was currently rare. Secondly, AIDEA had been in contact with a bank in New York the prior week that was potentially interested in doing business with the agency. He believed that the interest demonstrated that Alaska was a good place to do business based on the national landscape.

Co-Chair Thomas provided a hypothetical example of a mine that was unable to afford an access road. He wondered whether financing through an AIDEA LLC would entitle it to partial ownership of the mine. Mr. Davis responded that AIDEA would need to determine what the appropriate structure would be for the project. The bill would provide more options, however, the project could potentially be structured like the public Red Dog Mine road that was controlled and owned by the agency. In other cases it may have been prudent to share the risk of the entire project. The bill provided the agency with the flexibility to make the appropriate decision for public policy and financial reasons.

Co-Chair Thomas noted that there were always "political monsters in the closet" that had undisclosed interests. He opined that under the guise of good public policy a road could be built that just happened to go directly by a mine that was unable to afford to build its own road. Mr. Davis replied that AIDEA's goal was to look for financial return, therefore, when it built a road that was used by other people it was important to determine how they would contribute to the cost in a way that was consistent with what the agency helped them with.

Co-Chair Thomas hoped that people would be honest with the agency. He saw the potential for there to be the state funded development of roads that led to resources that may provide no benefit to the state. He opined that there were legislators that thought mineral royalties were low and that the state should build "road favors." He was concerned about the potential for a similar scenario to occur.

Mr. Davis discussed that AIDEA would have to be certain that a road could pay the bonds or they would not build the road.

Co-Chair Thomas appreciated the upfront detail. He referred to a Department of Transportation (DOT) road development that had a "golden goose" in the form of a mine along the road.

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Representative Guttenberg could see the benefits that could come as a result of the legislation. He asked whether there was potential for conflict to occur with the existing planning processes of DOT, STIP [Statewide Transportation Improvement Program], or a local community. He wondered whether the bill required AIDEA to ensure that it would not interfere or be in conflict with another statewide planning process for an energy project, road, or other.

Mr. Davis responded that there were three constraints. First, statute required the agency to obtain the consent of a local community. Secondly, the board of AIDEA had to meet and agree on a project in a public process. Thirdly, bond investors wanted to make certain that a project had support and that it was not in conflict with any other plans that would cause the bond market to react negatively.

Representative Doogan referred to an earlier comment related to financing roads. He wondered what was meant by "a road that might not line up." Mr. Davis explained that the DeLong Mountain Transportation System supported a specific development project because it was directly connected to the Red Dog Mine. Without the legislation it was unclear whether AIDEA would be allowed to build a road that supported an oil drilling area that did not connect directly with each rig.

Vice-Chair Fairclough MOVED to report CSHB 119 (EDT) out of committee with individual recommendations and the accompanying fiscal note. There being NO OBJECTION, it was so ordered.

CSHB 119 (EDT) was REPORTED out of committee with a "do pass" recommendation and with previously published zero impact note: FN 1 (DCCED).

#hb19

HOUSE BILL NO. 19

"An Act relating to special request registration plates; and providing for an effective date."

HB 19 was SCHEDULED but not HEARD.

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ADJOURNMENT

The meeting was adjourned at 3:42 PM.