

HOUSE FINANCE COMMITTEE

April 12, 2011

8:34 a.m.

8:34:34 AM

CALL TO ORDER

Co-Chair Stoltze called the House Finance Committee meeting to order at 8:34 a.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 Peggy Wilson, Sponsor; Representative Paul Seaton, Sponsor; Representative Alan Austerman; Jay Livey, Staff, Senator Lyman Hoffman; Ron Kreher, Director, Division of Public Assistance, Department of Health and Social Services; Sheila Peterson, Staff, Representative Alan Dick; Larry Devilbiss, Mayor, Mat-Su Borough.

PRESENT VIA TELECONFERENCE

Bill Griffith, Facility Programs Manager, Division of Water, Department of Commerce, Community and Economic Development; Lindsay Wolter, Assistant Attorney General, Civil Division, Environmental Section, Department of Law, Anchorage; Jason Mayrand, Mayor of Nenana; Marty Parsons,

Deputy Director, Division of Mining, Land and Water,
Department of Natural Resources.

SUMMARY

HJR 4 CONST. AM: TRANSPORTATION FUND

HJR 4 was HEARD and HELD and referred to subcommittee consisting of Vice-chair Fairclough, Co-Chair Thomas, Representative Costello, Representative Doogan, Representative Peggy Wilson (adjunct member) for further consideration.

SB 102 AK AFFORDABLE HEATING PROGRAM PAYMENTS

SB 102 was HEARD and HELD in committee for further consideration.

HB 183 APPLICATION OF VILLAGE SAFE WATER ACT

HB 183 was HEARD and HELD in committee for further consideration.

HB 89 EXTRACTION OF BEDLOAD MATERIAL

CS HB 89 (RES) was REPORTED out of committee with a "do pass" recommendation and with one new indeterminate note from the Department of Transportation and one new indeterminate note from the Department of Natural Resources.

HB 103 POWER PROJECT; ALASKA ENERGY AUTHORITY

HB 103 was SCHEDULED but not HEARD.

#hjr4

HOUSE JOINT RESOLUTION NO. 4

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

[8:35:35 AM](#)

REPRESENTATIVE PEGGY WILSON, SPONSOR, provided a comprehensive overview of the Alaska Transportation

Infrastructure Fund (ATIF). She explained that HJR 4 would place a constitutional amendment before the voters to re-establish a dedicated fund for transportation infrastructure. She reported that HB 30 (DEDICATED TRANSPORT FUND/PUB TRANSPORT) and HB 31 (TRANSPORT INFRASTRUCTURE FUND APPROP) were the enabling and appropriating pieces of HJR 4. Together, the trio of bills created the Alaska Transportation Infrastructure Fund. The fund created by an endowment and seeded with \$1 billion [general fund appropriation] would grow through investment earnings. In addition, revenue from the motor fuel tax, vehicle registration fees, studded tire tax, and 50 percent of the vehicle rental tax compensated the fund. The legislature could direct other transportation fees and taxes into ATIF. The legislature would appropriate up to six percent of the market value of ATIF averaged over the previous five years and 50 percent of the revenue deposited the previous year. The fund was expected to generate \$100 million the first year and increase over \$3 million each subsequent year. She referred to a spreadsheet handout "ATIF Payout Rate 6.0%" (copy on file) developed by the Department of Revenue depicting estimated payout rates. The legislature would appropriate ATIF funds and its administrative costs in tandem with the budget cycle. Administrative costs would be deducted from by the fund. She envisioned ATIF exclusively funding transportation capital and deferred maintenance projects. The provision was included in the enabling statute (HB 30). She assured that in times of budget shortfalls legislative flexibility was built into the legislation. The legislature could appropriate ATIF funds for any Department of Transportation and Public Facilities (DOT) operations or transportation related project. The appropriation would require a change in the statute that defined ATIF use but not require a constitutional amendment.

[8:39:39 AM](#)

Representative Peggy Wilson announced that she did not commit any transportation taxes to ATIF's revenue stream that were dedicated for other uses.

Co-Chair Thomas asked whether the ATIF funds would solely cover all transportation capital expenses or require additional general funds as well. Representative Peggy Wilson expected that initially, general fund appropriation was necessary to preserve the ATIF funds for the back log of deferred maintenance. She anticipated that ATIF would

primarily cover transportation deferred maintenance, large high priority projects and projects related to safety.

Representative Neuman noted that much of the revenue allocated to ATIF was used to operate the Division of Motor Vehicles (DMV). He wondered how DMV would operate with lost revenue. Representative Peggy Wilson responded that ATIF funds would pay for DMV operations.

Representative Neuman asked if the legislation created a board to oversee distribution of ATIF funds. He did not see that in the current legislation. Representative Peggy Wilson explained that HB 30 created a 17 member board with two non-voting legislative members. The board supervised the fund. She furthered that the board acted in an advisory capacity, forwarding recommendations on to the governor and legislature.

[8:45:16 AM](#)

Representative Neuman asked whether the legislature had the final say. Representative Peggy Wilson replied in the affirmative.

Representative Gara stated that the sponsor had done a good job drafting the bill.

Co-Chair Stoltze announced that HJR 4 was referred to the same subcommittee established for HB 30 and HB 31, chaired by Vice-chair Fairclough, for interim hearings and activities.

HJR 4 was HEARD and HELD and referred to subcommittee consisting of Vice-chair Fairclough, Co-Chair Thomas, Representative Costello, Representative Doogan, Representative Peggy Wilson (adjunct member) for further consideration.

#sb102

SENATE BILL NO. 102

"An Act relating to certain payments made under the Alaska affordable heating program."

[8:47:16 AM](#)

JAY LIVEY, STAFF, SENATOR LYMAN HOFFMAN, explained that SB 102 amended the Alaska Affordable Heating Assistance Program (AHAP). The changes clarified language that allowed the Department of Health and Social Services (DHSS) to prorate benefits due to a shortage of funds. He summarized that in the prior year two of Alaska's heating programs were combined. The legislature combined the Low Income Heating and Energy Assistance Program (LIHEAP) and Alaska Heating Assistance Program to form the Affordable Heating Assistance Program (AHAP). The legislation [SB 220] that created the new program contained language that authorized DHSS to prorate benefits. The department was concerned that the language did not provide sufficient discretion needed for benefit pro-rationing. He emphasized that SB 102 was not a change in policy but a clarification of the proration language. Mr. Livey elaborated that the Senate Finance Committee had worked with DHSS on the legislation to address the concerns. The legislation contained two provisions to ensure clarification. The first change established that the department could calculate benefits differently from the customary calculations contained in statute if pro rationing was necessary. The second change added the words "on a pro rata basis" to clarify that pro rationing was allowed.

Co-Chair Stoltze surmised that the clarification was in anticipation of reduced federal funds. Mr. Livey believed that was a fair assessment. He was aware of federal budget proposals that reduced states shares of federal funds. He discussed that AHAP was comprised of general funds and federal money. In the event of a shortage of federal funds DHSS would prorate the reduction in benefits. Alternatively, the legislature could choose to appropriate additional general funds. Pro rationing would act as a stop gap until the legislature could act. Prorating gave the department flexibility in either scenario.

Representative Doogan referred to language on Page 2, line 7, of the bill. His interpretation was that the benefit would increase if there was extra money in the fund. He wondered whether the bill provided for pro rationing paying more in times of plenty. Mr. Livey informed that the bill language covered pro rationing in times of shortfall and when more federal funds were received than expected. The upward proration was necessary so no federal funds were left "on the table." He identified Page 1, lines 11-12, as

the department's ultimate concern; the clear authority for downward proration.

Representative Doogan asked about the amount that could be paid out on a pro rata basis. He inferred from the bill's language that upward proration was allowed with excess funds from any source. He wondered whether a floor or cap on benefit disbursement was established. Mr. Livey elaborated that the cap was reflected in the amount of federal funds authorized and state general funds appropriated. The previous bill, SB 220 was not written as an entitlement that authorized an absolute disbursement based on eligibility, making downward proration necessary. He elucidated that upward pro rationing authority enabled the state to spend less general fund dollars if additional federal funds became available.

[8:55:10 AM](#)

Representative Doogan did not see a limitation on federal funds in the bill. Mr. Livey replied that he was probably correct. He discerned that DHSS could continue upward pro rationing provided the federal government increased funding and the legislature authorized the expenditure.

Co-Chair Stoltze asked if the scenario was likely.

RON KREHER, DIRECTOR, DIVISION OF PUBLIC ASSISTANCE, DEPARTMENT OF HEALTH AND SOCIAL SERVICES, stated the scenario was fairly unlikely. He added that typically the federal government funding was not sufficient to keep pace with the statutorily required payout. He explained that the AHAP mandated benefit payout was based on the prior year's value of a barrel of North Slope crude oil per community heating point. The federal funding did not keep up with that level of payout.

Representative Wilson provided an example from personal experience in non-profit work. She remembered an upward proration benefit paid because less people applied for heating assistance than expected. The department aspired to help as many people as possible and held earlier payouts at anticipated levels of need. The pro rationing occurred after the April application deadline. Mr. Kreher concurred with her experience. The department does issue supplemental payments with excess funds at the end of the program year. He explained that occasionally, DHSS did receive excess

federal contingency funds and only a fixed percent were allowed to carry forward.

Representative Edgmon supported the legislation. He pointed out the program's significant importance for rural communities faced with exorbitant home fuel oil costs. The bulk of last year's AHAP benefits (\$29 million) went to Fairbanks, Anchorage, and the Mat-Su area. The program has positive statewide impacts.

[8:59:43 AM](#)

Mr. Kreher confirmed that 60 percent of the recipients lived in urban areas. He added that the payout per household was higher in rural areas because of the high heating cost.

Representative Edgmon revealed that in the Bristol Bay area the program served 440 households in FY 09 and increased to 653 in FY 10. The cost of heating fuel was \$6 per gallon in Dillingham. He believed the program was critical.

Representative Joule felt that the people who were eligible for the program were appreciative of the help. He received complaints that some recipients attempted to sell their benefits. He asked whether there was a mechanism to determine if a person was bootlegging from the program and if there was a way to deal with the problem. Mr. Kreher recalled that DHSS can prosecute fraud related to misrepresentation of need. He was uncertain if a statute related to the resale of benefited heating oil existed. He felt the problem was difficult to prove.

Representative Joule restated that his constituents and other rural citizens voiced concern about the re-sale problem. He noted that most recipients really appreciated the program. The problem was when people misused the benefit. He perceived that two issues needed definition to craft a solution: what constituted a report and violation and assigning consequences. He emphasized the importance of the issue. Mr. Kreher assured that DHSS will draft an appropriate regulation as part of the emergency regulations that were required for the legislation. Representative Joule requested a copy of the drafted language upon completion.

Vice-chair Fairclough wondered whether a legislative audit of the program was performed.

[9:05:15 AM](#)

Mr. Kreher affirmed that an audit was part of the annual review process. Vice-chair Fairclough wondered whether DHSS established annual heating fuel consumption per household data. She thought that the data could alert the department of suspicious use.

Mr. Kreher disagreed that suspicious use was easy to detect. He argued that AHAP was designed to meet only a portion of home heating costs. He opined that it would be extremely difficult to accurately monitor and maintain that information. He was uncertain how the department would know that the fuel was being redistributed.

Vice-chair Fairclough believed that it was a fairly simple calculation. She thought that the data was collected in the application process. She wondered whether DHSS monitored the average cost of energy per household in different regions of the state. Mr. Kreher answered in the negative.

Vice-chair Fairclough explained that a possible benefit ceiling might be established by figuring the average cost of energy and the percentage of household income spent to heat a home. She suggested a benefit approximate to the percentage of income spent to pay for the heating costs.

[9:08:53 AM](#)

Vice-chair Fairclough asked whether there was a statutory mechanism that automatically re-funded the program each year. Mr. Kreher replied that the statute originally intended that the Department of Revenue (DOR) establish the fund and a mechanism to refill the fund based on the prior year's price per barrel of crude oil. The structure was not established. The program received fixed general fund appropriations in past years.

Vice-chair Fairclough wondered whether Power Cost Equalization (PCE) was capitalized. Mr. Kreher responded that PCE was not operated by the department.

Mr. Livey interjected that the PCE program was endowed. The proceeds from the endowment contributed some of the annual

costs of the program. A general fund appropriation made-up the difference.

Vice-chair Fairclough offered that she was attempting to understand the revenue path into the AHAP program. She recapped that the PCE revenue structure had two streams of revenue. Mr. Livey agreed. He elaborated that the AHAP program consisted of two streams of federal funds: funds from LIHEAP and Affordable Heating Assistance Program combined embody the total amount of federal funding.

Vice-chair Fairclough wondered whether there was any overlap in who could qualify for each program and if DHSS monitored qualification. Mr. Kreher replied that the federal guidelines served households up to 150 percent of the poverty level and AHAP up to 225 percent. The state funds were used solely for the benefactors above 150 percent of the poverty level. He emphasized there was no overlap.

[9:12:54 AM](#)

AT EASE

[9:13:12 AM](#)

RECONVENED

Mr. Kreher continued to explain that general funds were used to augment the payment to the federally funded households. He reminded the committee that often the federal funding levels were insufficient to pay the same dollar value that was required under statute. Vice-chair Fairclough explained that she appreciated the program. She was endeavoring to understand how the program operated.

Representative Joule spoke to Vice-chair Fairclough's question regarding overlap. He shared that in Kotzebue a consumer would qualify for Power Cost Equalization but because of income not qualify for the heating assistance program. Some people qualify for both. He reminded the committee that PCE only covered up to 500 kilowatts per month.

Representative Gara requested a comprehensive answer related to Representative Joule's earlier concern about bootlegging. He offered DHSS existing statutes it could employ as a deterrent effect. He cited the "crime of unsworn falsification." He defined that it was crime to

sign for a benefit that was gained from a lie. He was uncertain the statute was applicable. He also suggested that a benefactor could sign a statement declaring the household of use; if the benefit was not used at the specified household that would constitute fraud. He qualified that DHSS should consult with the Department of Law (DOL). Mr. Kreher replied that the prosecution of unsworn falsification was standard in the Division of Public Assistance.

Representative Joule was uncertain the problem was rampant. He received complaints and wanted to shed light on the issue. He believed a mechanism was necessary to prevent fraud and abuse.

[9:18:49 AM](#)

Vice-chair Fairclough added that she was more supportive of the entire program when there was a monitoring process in place to ensure those entitled received the assistance. She appreciated Representative Joule's concern.

Representative Neuman asked what type of fuel sources were covered under the program. Mr. Kreher responded that all forms of heating fuels were included under the program. The department focused on the primary heat source and repaid the vendor.

Representative Neuman asked if a local firewood provider was considered a vendor. Mr. Kreher responded that the department made a direct payment to the homeowner if firewood was the main heating source.

Representative Neuman asked if the department ensured that the payments were spent appropriately. Mr. Kreher restated that the department made payments to the vendor whenever possible. Payments were made to households as a last resort. The Division of Public Assistance maintained lists of vendors.

Representative Neuman wanted to ensure that people who switched to alternative heating sources had access to the program. Mr. Kreher assured that was the case. He added that proof of heating costs were compulsory.

Representative Edgmon underscored that in the vast majority of cases the program provided money directly to the vendor.

Mr. Kreher agreed. He noted the rare exceptions. Homeowner payment occurred typically with wood heat.

[9:26:07 AM](#)

Representative Doogan clarified that his earlier concerns related to the amount that the legislature wanted to fund the program. He determined that the language in the bill mandated an upward pro rationing of excess funds. He thought that prohibited the legislature from establishing the level of funding. He requested that DHSS provide a history of payouts from the program that included pro rationing. He felt that the law provided the program very broad authority.

Vice-chair Fairclough wondered whether supplemental payments were provided to the vendor and if the supplemental benefit were passed on to the participant. Mr. Kreher indicated that supplemental payments were paid to the vendor for the participants account.

Vice-chair Fairclough OPENED and CLOSED public testimony.

SB 102 was HEARD and HELD in committee for further consideration.

#hb183

HOUSE BILL NO. 183

"An Act relating to the Village Safe Water Act."

[9:30:26 AM](#)

SHEILA PETERSON, STAFF, REPRESENTATIVE ALAN DICK, explained CS HB 183 (CRA) and the proposed changes in the CS. She related that the Village Safe Water Act (VSW) provided grants for water and sewer in small communities in Alaska. The bill addressed issues of eligibility. She informed the committee that VSW defined a village as an unincorporated community, a second class city, and a first class city with less than 600 residents. The legislation modified the definition, modestly eased eligibility, and established accountability.

Ms. Peterson detailed that the City of Nenana, (population 370) applied for a VSW grant. The community worked with city officials to plan and design an upgrade to their

existing water and sewer system. The existing system was in use since 1970. The grant was awarded. The city subsequently learned that they were ineligible for the grant because Nenana was a "home rule" city organized under a charter. She delineated that a home rule city received their authority under an adopted charter rather than state statute. The bill added home rule municipalities with less than 1000 residents eligible for the VSW program. Under the provision, Nenana and Yakutat were eligible for VSW funding.

Ms. Peterson continued to discuss the legislation. The bill raised the population limit for eligibility for first class cities to 1,000. The legislation ensured that an "unincorporated community" with a governing body was eligible. She defined "unincorporated community" as a community that was not a home rule, first class, or second class city. Villages identified under Alaska Native Claims Settlement Act (ANCSA) qualified. The legislation intended that ANCSA villages would operate under governing bodies. She identified the problem. The Alaska Native Claims Settlement Act required that a village must form a non-profit or for profit corporation but did not mandate a governing body.

[9:34:15 AM](#)

Ms. Peterson indicated that the CS endeavored to include unincorporated communities. The CS required unincorporated communities to adopt governing bodies for VSW eligibility.

Vice-chair Fairclough asked whether Representative Dick supported the CS. Ms. Peterson affirmed.

Representative Wilson MOVED to ADOPT CS Work Draft HB 183 27-LS0601/I (4/11/11 Bullard) as a working document before the committee.

Representative Doogan OBJECTED.

Representative Doogan asked for a list of the eight first class cities that would benefit from the population limit increase. Ms. Peterson referred to an email addressed to her from Bill Griffith (4/11/11) (copy on file) distributed to the committee that listed the communities. She listed the eligible communities: Akiachak, Kipnuk, Yakutat, Klawock, Hoonah, Ninilchik, King Cove, and Sand Point.

9:37:27 AM

BILL GRIFFITH, FACILITY PROGRAMS MANAGER, DIVISION OF WATER, DEPARTMENT OF COMMERCE, COMMUNITY AND ECONOMIC DEVELOPMENT (via teleconference), in response to a question by Representative Neuman, explained that Talkeetna had water facilities operated and maintained by the borough not the city. The borough received funding through the municipal matching grant and loan program. Talkeetna was eligible for the VSW program.

LINDSAY WOLTER, ASSISTANT ATTORNEY GENERAL, CIVIL DIVISION, ENVIRONMENTAL SECTION, DEPARTMENT OF LAW, ANCHORAGE (via teleconference), affirmed Talkeetna's eligibility for VSW grants .

Representative Neuman commented that the City of Talkeetna imposed a tax for water and sewer services to help pay for the system the Mat-Su borough provided.

Representative Costello wondered about the change related to the definition of "unincorporated community." She anticipated unintended repercussions with the change in statute. Ms. Peterson replied that the definition of village only applied to the Village Safe Water Program. She pointed out that the CS removed the ANCSA list. She read the definition that replaced the ANCSA list related to eligibility from the CS, Page 1, lines 9-16:

(D) the Annette Island Reserve established by 25 U.S.C. 495 for the Metlakatla Indian Community;

(E) a community with a population between 25 and 1,000 that is represented by (i) a council organized under 25 U.S.C. 476 (sec. 16 of the Indian Reorganization Act);
(ii) a traditional village council recognized by the United States..

Ms. Peterson reassured the committee that the definition only applied to the VSW program.

Ms. Wolter expressed uncertainty about the interpretation. She discerned that the language appeared to single out native or tribal governments eligible for the grants. She cautioned that possible constitutional concerns existed. She understood that DEC would like to have a local

government in place to administer the grant and operate the water and sewer system. She wanted assurance that mandating tribal governments to form a governing body would not present constitutional issues.

Representative Costello understood that a governing body for an unincorporated community was the legislature.

[9:44:12 AM](#)

Ms. Wolter stated that she was unaware of a statute that authorized the legislature as the governing body for an unincorporated community. She qualified that she was not familiar with the particular area of law. She understood from other statutes that the legislature empowered some unincorporated communities to accept grant funds. She indicated that the major concern behind the legislation was to ensure a responsible entity existed to account for the VSW funds. The solution consisted of a statute that defined the entity and conformed to the Equal Protection Clause. Representative Costello expressed concerns with having two different meanings for unincorporated community defined in statute. She thought that problems would arise.

Vice-chair Fairclough asked whether the definition included in the CS was specific to VSW or if it related to other portions of the law. Ms. Wolter confirmed that the definition of village only related to VSW.

Co-Chair Thomas related from personal experience that tribal governments waived their sovereignty in order to accept funds from the state, including VSW. Vice-chair Fairclough wondered whether that was a question for the Department of Law.

[9:48:10 AM](#)

Ms. Wolter was unable to confirm Co-Chair Thomas's statement. She stated she was new to the program and did not have further information.

Mr. Griffith confirmed that Co-Chair Thomas was correct. Tribal governments were required to sign a waiver of sovereign immunity to receive VSW funds.

Representative Guttenberg referred to Mr. Griffith's email (copy on file) to Sheila Peterson. He noticed the inclusion

of unincorporated communities inside of larger boroughs. He asked whether that was an issue. He wanted to understand how VSW defined unincorporated communities. Mr. Griffith identified that over 100 communities in the state were unincorporated and had no tribal government or governing body. Some were located within a borough and some were not. The program learned of their existence when the community contacted VSW to request funding. He was often uncertain what type of governing organization, if any, existed in the communities.

Representative Gara wondered whether the VSW was the only funding mechanism available for communities that were using outhouses and honey buckets. Mr. Griffith answered that the VSW was the primary program that funded most communities waste water improvements. Municipal matching grants and loans to larger communities and occasional legislative grants from Department of Commerce, Community and Economic Development (DCCEC) were available. He added that no established program existed to administer the DCCED grant funds.

Representative Gara asked how many communities in the state did not have sewer systems. Mr. Griffith acknowledged that there were roughly 40 communities where more than half of the homes were without running water and sewer. He mentioned that VSW had ongoing projects to provide services in half of the communities.

Representative Gara related that his only concern about expanding the program was that the communities with more serious problems had to compete against additional communities for the same pot of money. He wondered if VSW would prioritize communities with the most severe problems. Mr. Griffith replied that VSW used a prioritization process and scoring criteria to establish legislative funding for the program. The criteria determined need primarily based on the health impacts of the community. Communities without running water or sewer were prioritized higher.

[9:54:01 AM](#)

Representative Gara deduced that the communities most in need would still get priority under the bill. Mr. Griffith thought that was a fair assumption. He added that occasionally VSW funds projects that were not first time

water and sewer. Other criteria were also considered such as the ability to operate and maintain existing services.

Representative Neuman inquired about the meaning of "governing body." He mentioned the Legal Services Memo from the Division of Legal and Research Services (4/6/11 Cook) (copy on file). He referenced the community of Settlers Bay, located in the Mat-Su borough, governed by a covenant board. He wondered whether a subdivision would qualify for the VSW program. Ms. Wolter reminded the committee that the Department of Law (DOL) did not write the legal opinion. She discussed the legal opinion with DEC and ascertained that city councils were not unincorporated communities. She believed that the legal services definition of "governing body" needed revision.

[9:58:18 AM](#)

Representative Doogan WITHDREW his objection.

The CS Work Draft HB 183 27-LS0601/I was ADOPTED.

Vice-chair Fairclough OPENED public testimony.

JASON MAYRAND, MAYOR OF NENANA (via teleconference), spoke in favor of expanding the definition of "home rule." He expressed concerns that Nenana was precluded from VSW funding as a home rule municipality. He noted that the "home rule" definition escaped statute. The legislation attempted to remedy the situation. He explained that Nenana's original sewer and water system was installed in the 1970's by Public Health Services (PHS). In the 1990's, a sewer and water expansion project was constructed. The project was funded by a DEC matching grant. The match cost the community \$400 thousand. Four years ago, the community researched eligibility and applied for the VSW grant which provided 100 percent funding. He elaborated that Nenana was working to rehabilitate their water and sewer system. The piping experienced frequent cracks and required replacement. The PVC had a tendency to crack and fixing leaks underground was expensive and time consuming. Nenana was awarded VSW design and construction funds. The grant was subsequently revoked and the only option to fund the project was a capital appropriation. The community could not repay the exorbitant cost (\$1 million to \$2 million) in loans needed to replace the failing system. He stressed

that the community competently operated and maintained the existing system. He urged passage of the legislation.

Vice-chair Fairclough asked whether he had heard discussion on the CS. She invited the mayor to share his opinion on the CS. Mr. Mayrand referred to CSHB 183 (CRA) Section 1, line 2 that listed the definition of village as listed in statute 43 U.S.C. 1610 or 1615 and deleted "unincorporated community." He offered that the CS should include the statute and leave in "unincorporated community."

Representative Edgmon concurred with the mayor's suggestion. He wondered whether that idea was discussed. Ms. Peterson replied that the concern with the ANCSA definition was twofold. The ANCSA definition did not ensure a governing body. The Department of Environmental Conservation strongly urged inclusion of a governing body to ensure accountability. The second concern was related to conformity with the Equal Protection Act. She solicited the legal memo to determine the constitutionality of the definition. Legal Services suggested the definition focus on a governing body as opposed to Native status. The ANCSA definition was removed. She noted that DEC worked with DOL to develop the language in the current CS.

[10:06:32 AM](#)

Representative Edgmon discussed the legal opinion related to the Equal Protection Clause. He wondered about including Indian Reorganization Act (IRA) and village councils. He identified that federal tribal dollars were available that could enhance VSW grants. Vice-chair Fairclough requested the information at a later meeting.

Representative Gara asked if DEC led Nenana to believe that they qualified for funding. Mr. Mayrand replied in the affirmative. He detailed that in addition to the VSW design grant, DEC awarded Nenana construction funds appropriated by the legislature in 2008. Representative Gara opined that if the legislation was not passed this session the legislature should appropriate capital funds for the project on moral grounds. He believed the situation was wrong.

Vice-chair Fairclough asked if Nenana incurred outstanding costs due to the rescinded funding. Mr. Mayrand explained that the city was permitted to retain the design funding;

only the construction funds were withdrawn. Vice-chair Fairclough asked for the project's construction costs. Mr. Mayrand responded that the total cost was estimated at \$9.5 million over a period of 5 to 6 years.

Representative Gara asked if the city was "out-of-pocket" for costs associated with the project. Mr. Mayrand answered in the negative.

[10:11:11 AM](#)

Vice-chair Fairclough CLOSED public testimony.

HB 183 was HEARD and HELD in committee for further consideration.

#hb89

HOUSE BILL NO. 89

"An Act authorizing the commissioner of natural resources to offer bedload material for disposal for flood control purposes in exchange for a percentage of the profit from the sale of that material."

[10:12:02 AM](#)

REPRESENTATIVE PAUL SEATON, SPONSOR, explained the legislation. He related that the legislation authorized an alternative sale mechanism for certain gravel, sand, and rock associated with flood plain problems or disasters. The alternative sale must proceed in conjunction with a flood mitigation plan. He pointed out that the most persistent problem was the outflow of river gravel and sediments that built up in streambeds and caused overflow. The overflow tended to accumulate and rechanneled the river. The water travelled through people's properties causing damage. He expounded that current law required bedload material to sell at fair market value. The legislation allowed the commissioner of the Department of Natural Resources (DNR) to consider mitigation of state disaster expenses as part of the fair market value. The percent of profit calculation was set at a minimum of 12.5 percent. The material was not a good quality gravel source and not as desirable on the commercial market. The bill incentivized removal for commercial operators; and enabled the export of the gravel from the problem area. The gravel extractor was required to

have an extraction plan certified by a professional engineer.

[10:16:10 AM](#)

Representative Seaton furthered that the Department of Transportation and Public Facilities (DOT) and DNR would review the plan for approval. The review would ensure safe material extraction. The idea of the legislation was to reduce a hazard by encouraging safe elimination of sediment buildup. He recapped that the bill allowed an alternative mechanism for valuing extracted gravel. The state will still receive value for the bedload material but may consider the value removal offered for disaster mitigation.

Co-Chair Thomas supported the legislation. He favored allowing a private entity to remove the gravel instead of the state. He discussed his experience with gravel and river shifting. He asked whether salmon streams were protected. Representative Seaton assured that the legislation would not preclude any Department of Fish and Game (DFG) or DEC processes and permitting.

Representative Neuman inquired about the destruction of spawning beds. He wanted assurance that the involved agencies supported the legislation. Representative Seaton repeated that all permits would remain in place under the legislation. He noted that the state was currently authorized to sell bedload material. The sale based on a gross up-front per yard fee was cost prohibitive for commercial operators. The bill allowed the alternative sale of bedload material at 12.5 percent of the profit.

[10:20:29 AM](#)

Vice-chair Fairclough OPENED public testimony.

Representative Gara queried whether the bill would reduce any standards that were required to protect habitat in a fish stream.

MARTY PARSONS, DEPUTY DIRECTOR, DIVISION OF MINING, LAND AND WATER, DEPARTMENT OF NATURAL RESOURCES (via teleconference), responded in the negative. He reassured the committee that the legislation does not reduce any DFG requirements.

LARRY DEVILBISS, MAYOR, MAT-SU BOROUGH, voiced that the borough supported the legislation. He believed the legislation would help mitigate the borough's flood problems.

Vice-chair Fairclough CLOSED public testimony.

Representative Guttenberg asked about the cost calculation for extraction. He wondered whether the extraction was contracted with standard calculations or site specific calculated costs. Representative Seaton replied that the sale calculations were site specific. The bill related very specifically to bedload material extracted due to flood mitigation. Representative Guttenberg related a problem in his district that led to competition between two commercial entities extracting gravel. The business that operated under state permits extracted gravel at significantly lower costs than the private entity.

Vice-chair Fairclough asked whether the bedload sale was competitive. Representative Seaton replied that both competitive and non-competitive sales were allowed under current law.

[10:26:08 AM](#)

Co-Chair Stoltze did not believe the legislation presented a loss of revenue for the state. He thought that HB 89 was a win-win situation. The legislation provided important flood mitigation and incentives for private operators.

Co-Chair Stoltze MOVED to report CS HB 89 (RES) out of committee with individual recommendations and the accompanying new fiscal notes.

CS HB 89 (RES) was REPORTED out of committee with a "do pass" recommendation and with one new indeterminate note from the Department of Transportation and one new indeterminate note from the Department of Natural Resources.

#hb103

HOUSE BILL NO. 103

"An Act relating to the procurement of supplies, services, professional services, and construction for the Alaska Energy Authority; establishing the Alaska

Railbelt energy fund and relating to the fund; relating to and repealing the Railbelt energy fund; relating to the quorum of the board of the Alaska Energy Authority; relating to the powers of the Alaska Energy Authority regarding employees and the transfer of certain employees of the Alaska Industrial Development Export Authority to the Alaska Energy Authority; relating to acquiring or constructing certain projects by the Alaska Energy Authority; relating to the definition of 'feasibility study' in the Alaska Energy Authority Act; and providing for an effective date."

HB 103 was SCHEDULED but not HEARD.

ADJOURNMENT

The meeting was adjourned at 10:28 AM.

[10:28:35 AM](#)