

HOUSE FINANCE COMMITTEE
February 22, 2012
1:39 p.m.

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CALL TO ORDER

Co-Chair Stoltze called the House Finance Committee meeting to order at 1:39 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 Mark Neuman
Representative Tammie Wilson

MEMBERS ABSENT

Representative David Guttenberg
Representative Reggie Joule

ALSO PRESENT

Mike Sica, Staff, Representative Bob Lynn; Anne Carpeneti, Assistant Attorney General, Legal Services Section-Juneau, Criminal Division, Department of Law; Joe Michel, Staff, Representative Bill Stoltze; Representative Peggy Wilson, Sponsor; Representative Cathy Munoz, Sponsor; Bill Rotecki, Member, Ketchikan Gateway Borough Assembly; Alan Wilson, Chairman, Juneau Affordable Housing Commission; John Harrington, Member, Ketchikan Gateway Borough, Planning Commission and Economic Development Advisory Committee; Fred Morino, Manager, D.J.G. Development, Juneau; Dave Hanna, Owner, JLC Properties, Juneau.

PRESENT VIA TELECONFERENCE

Brian Balega, Fire investigator, Municipality of Anchorage and President, Alaska Association of Fire and Arson Investigators, Anchorage; John Bond, Deputy Fire Marshal and Vice President, Alaska Association of Fire and Arson Investigators, Anchorage; Jeff Tucker, Fire Chief, North Star Fire Department and Former President, Alaska State Fire Chiefs Association, North Pole; Leslie Houston, Director, Division of Administrative Services, Department of Corrections, Juneau; Douglas Moody, Public Defender Agency, Department of Administration, Anchorage.

SUMMARY

HB 56 INCLUDE ARSON IN CRIMES OF CONSPIRACY

HB 56 was REPORTED out of committee with a "no recommendation" and with one new indeterminate fiscal note from the Department of Corrections, one new zero fiscal note from the Department of Public Safety, and one new zero fiscal note from the Department of Law.

HB 216 REGULATIONS: INFORMATIVE SUMMARY/BILLS

CSHB 216(FIN) was REPORTED out of committee with a "do pass" recommendation and with one new zero impact fiscal note from the Office of the Governor.

HB 253 CATHINONE BATH SALTS

HB 253 was SCHEDULED but not HEARD.

HB 264 MUNI PROPERTY TAX DEFERRAL: SUBDIVISIONS

CSHB 264(CRA) was REPORTED out of committee with a "do pass" recommendation and with one new zero fiscal note from the Department of Commerce, Community and Economic Development.

HB 279 EXTENDING CERTAIN BOARDS & COMMISSIONS

CSHB 279(FIN) was REPORTED out of committee with a "do pass" recommendation and with four new fiscal impact notes from the Department of Commerce, Community and Economic Development, one new fiscal impact note from the Department of

Public Safety, and one new fiscal impact note from Department of Natural Resources.

HB 302 REPEAL PICK-CLICK-GIVE AUDIT REQUIREMENT

HB 302 was SCHEDULED but not HEARD.

#hb279

HOUSE BILL NO. 279

"An Act extending the termination dates of the Board of Nursing, the Board of Dental Examiners, the Board of Barbers and Hairdressers, the Big Game Commercial Services Board, the Alcoholic Beverage Control Board, and the Alaska Seismic Hazards Safety Commission; and providing for an effective date."

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Co-Chair Stoltze pointed to the fiscal notes related to each of the boards and commissions under the legislation.

Co-Chair Thomas MOVED to report CSHB 279(FIN) out of committee with individual recommendations and the accompanying fiscal notes. There being NO OBJECTION, it was so ordered.

CSHB 279(FIN) was REPORTED out of committee with a "do pass" recommendation and with four new fiscal impact notes from the Department of Commerce, Community and Economic Development, one new fiscal impact note from the Department of Public Safety, and one new fiscal impact note from Department of Natural Resources.

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AT EASE

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RECONVENED

#hb56

HOUSE BILL NO. 56

"An Act making arson in the first degree and arson in the second degree serious felonies for purposes of application of the crime of conspiracy."

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MIKE SICA, STAFF, REPRESENTATIVE BOB LYNN, explained that HB 56 added first and second degree arson to Alaska's conspiracy statute. The sponsors believed that the implementation of the bill closed a loophole in current law and would act as strong deterrent to the serious crimes. He provided a definition for conspiracy: "when two or more people agree to commit a crime with at least one overt act to further the conspiracy." He expounded that it would be considered an overt act if two or more people agreed to set fire to a building and one of the people bought a match to further the crime.

Mr. Sica explained that arson in the first degree was a class A felony; defined as an incident in which a person intentionally damages property by fire explosion and recklessly places another person, including the responders in danger of serious injury. He delineated that under the legislation conspiracy to commit arson would be a class B felony. He detailed that arson in the second degree took place when a person knowingly damages a building by fire or explosion and was currently a class B felony; under the legislation the crime would be changed to a class C felony. He relayed that the bill was strongly supported by Alaska fire departments, the Alaska Fire Chiefs Association, the Alaska Peace Officers Association, and the Alaska Association of Fire and Arson Investigators. The sponsors felt that it was important to align charges for the offense with other similar serious offenses.

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ANNE CARPENETI, ASSISTANT ATTORNEY GENERAL, LEGAL SERVICES SECTION-JUNEAU, CRIMINAL DIVISION, DEPARTMENT OF LAW, believed arson was a reasonable offense to add to the definition of serious felony for conspiracy because the act of making the agreement and intent to commit the crime made it more likely for a crime to take place.

Vice-chair Fairclough asked about the number of arsons committed annually. She wondered how the addition to statute would impact Court System caseload.

Ms. Carpeneti replied that arson and conspiracy were not common crimes. She referenced the decisions under the conspiracy statute that had been enacted in the early 1980s

and explained that there had only been two or three cases. She would follow up with the figure at a later time.

Vice-chair Fairclough hoped to understand the impact on the Court System and the correctional facilities. She pointed to incidents of personal property damage caused by arson related to domestic violence and sexual assault.

Ms. Carpeneti referred to data showing that there had been 111 occurrences in Anchorage in 2009.

Co-Chair Stoltze asked whether the occurrences represented suspicious fires or arsons. Mr. Sica responded that the figure had been listed as arson under the Anchorage crime rate statistics. Based on the figure he suspected there had been hundreds of cases throughout the state.

Representative Doogan asked whether the provision included under the bill would allow a person to be charged with conspiracy without having committed arson. Ms. Carpeneti replied in the affirmative. The conspiracy law allowed for a separate charge for conspiracy to commit a crime even though the target crime had not been committed.

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Co-Chair Stoltze pointed to the intent to commit murder as another crime where intent was punishable. Ms. Carpeneti agreed. She furthered that there were laws for attempt to commit murder and laws that prohibited solicitation to commit certain "unfinished" crimes. Current statute included attempt, solicitation, and conspiracy to commit crimes.

Representative Gara queried the difference between arson in the first degree and arson in the second degree. Mr. Sica replied that arson in the first degree involved recklessly placing another person in danger of serious physical injury.

Representative Gara asked for the definition of arson in the second degree. Mr. Sica communicated that arson in the second degree involved a person who knowingly damaged a building by starting a fire or causing an explosion.

Representative Gara wondered whether a group of kids that did not follow through with a crime after a conversation

about burning down an unoccupied house could be charged with arson in the second degree under the legislation.

Ms. Carpeneti replied in the negative. She did not believe the situation would fall under conspiracy either because there had been no culpable mental state, no overt act, and no furtherance of the conspiracy.

Representative Gara asked for verification that in order for a crime to be categorized as conspiracy there had to be discussion of a crime and at least one overt act towards committing the crime. Ms. Carpeneti agreed. She reiterated that there had to be discussion of a crime, intent, and an overt act in furtherance of the crime.

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Representative Wilson referred to the hypothetical situation presented by Representative Gara and asked whether all of the kids would be charged with conspiracy if only two out of the group followed through with the crime.

Ms. Carpeneti replied in the negative. She clarified that the culpable mental state for conspiracy required intention of the result. The act of talking about it or being present when others are talking about it did not meet the elements of conspiracy.

Vice-chair Fairclough asked whether HB 56 limited the definition of arson to buildings. Mr. Sica replied that arson in the first degree included any property. Under current law, arson in the second degree related to buildings only.

Ms. Carpeneti added that the statute relating to arson in the first degree had existed since 1983.

Co-Chair Stoltze referred to a case in which a person had lit a boat on fire that subsequently burnt down the adjacent 100-year-old church. Ms. Carpeneti replied that the incident fell under arson in the first degree.

Vice-chair Fairclough wondered whether the Department of Law had concerns that the definition of arson in the second degree was limited to buildings. Ms. Carpeneti was not aware of any concerns, but noted that there may be fire marshals with different opinions.

Co-Chair Stoltze noted there would be arson investigators testifying on the legislation.

Representative Costello wondered whether starting a forest fire applied to the law. Ms. Carpeneti responded that the land qualified as property and it would be arson in the first degree if the fire caused a person harm or the risk of serious physical injury.

Representative Costello asked whether a camp fire that resulted in a forest fire because it had not been properly extinguished would fall under the law.

Ms. Carpeneti replied in the negative; accidentally or negligently leaving a fire would not apply. She explained that for conspiracy the intent for a fire to take place was required, for arson in the first degree a person had to intentionally damage property, and for arson in the second degree a person had to knowingly damage a building.

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Representative Costello asked how the state dealt with minors who committed a felony.

Ms. Carpeneti replied that minors under the age of 18 who committed crimes were typically treated as juveniles; they were charged with delinquent acts and were not charged with or convicted of crimes. She relayed that there was an automatic waiver for 16 and 17-year-olds who committed very serious crimes.

Representative Gara queried whether minors were judged as delinquents if they committed a lower level crime such as a misdemeanor.

Ms. Carpeneti replied that for certain traffic offenses juveniles could be charged and convicted, such as driving under the influence; however, most offenses for kids under the age of 18 were delinquent acts and did not result in conviction.

BRIAN BALEGA, FIRE INVESTIGATOR, MUNICIPALITY OF ANCHORAGE AND PRESIDENT, ALASKA ASSOCIATION OF FIRE AND ARSON INVESTIGATORS, ANCHORAGE (via teleconference), voiced strong support for the legislation. He believed that arson

was a valid concern for public safety in the state. He stated that there were many cases in Alaska that were not properly identified as arson. There were hundreds of fires in Anchorage annually and because he was the sole investigator he was only able to investigate an average of 50 to 60 fires per year. He detailed that approximately 25 of his cases in 2010 and 50 of his cases in 2011 had been arson. He discussed that juvenile fire setting was a concern; he had arrested 16 juveniles for arson and wildland fires during the summer of 2009. He explained if two people conspired to burn a building and one encouraged the other to commit the crime, under current law it was probable that only the person actually setting the fire would be charged.

Mr. Balega believed that the legislation fixed a loophole in the system and would deter fires by holding all involved parties accountable for their actions. He opined that the crime of arson affected all residents of the state on a personal and financial level. In reference to a prior question by Representative Wilson he responded that he would look at holding the kids responsible for setting the fire accountable, but he would look to determine whether the other kids helped to plan or had participated in any other way; he stressed that an overt act would include them in the conspiracy. He thought the state's arson laws were narrow in their application, given that they specifically dealt with property and did not extend to cars and other items. He had recently talked with the association's vice president about modifying the arson in the third degree law; currently setting a vehicle on fire on state or municipal lands was a class C felony; however, if the vehicle was in a person's private driveway the offender could only be charged with something like criminal damage, criminal mischief, or vandalism. He stressed that his resources were limited and that there were many vehicle fires in Anchorage that he had to rely on fire department officers to deal with.

Mr. Balega explained that the issue of unattended camp fires turning into wildland fires would most likely be included in one of the crimes associated with forested lands currently listed in statute; depending on its severity the crime could reach the felony level. He detailed that forested lands had civil attachments that would allow for double restitution related to the suppression and other activities of a fire.

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Co-Chair Stoltze recalled a prior conversation with Mr. Balega and asked whether he believed the bill should be amended. Mr. Balega replied that there had been discussion about changing the law to apply to "propelled vehicles" instead of "motor vehicles"; however, there had been concern from a district attorney that the change may create constitutional challenges on prior convictions. He wondered whether DOL thought the law could be changed to read "motor vehicle and/or propelled vehicle."

Co-Chair Stoltze communicated that the bill would remain as it was. He communicated that work could be done to determine another route for the additional item. He asked whether Ms. Carpeneti concurred. Ms. Carpeneti agreed.

Representative Gara shared that he did not necessarily have a problem with the bill, given that arson seemed to be serious enough to fit in with conspiracy crimes. He referred to the crime of aiding and abetting. He surmised that a person was already covered under the aiding and abetting crime if they purchased materials and provided them to the arsonist. He surmised that conspiracy would apply to all of the individuals that talked about committing the crime; whereas, aiding and abetting covered the person who purchased the materials.

Ms. Carpeneti replied in the affirmative. She expounded that conspiracy applied to the individuals that talked about the crime and intended for it to take place. She explained that whether or not a person could be considered an accomplice depended on the facts. Other offences included solicitation and attempt. She discussed that the harm in conspiracy is that the act of making the agreement and intent to commit the crime make it more likely for a crime to take place.

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Representative Gara asked for verification that aiding and abetting resulted from an action, but that conspiracy occurred when a person just agreed that something should happen. Ms. Carpeneti replied that the explanation was correct in most circumstances.

JOHN BOND, DEPUTY FIRE MARSHAL AND VICE PRESIDENT, ALASKA ASSOCIATION OF FIRE AND ARSON INVESTIGATORS, ANCHORAGE (via teleconference), spoke in support of the legislation. He communicated that currently there was no way to charge a person who conspired to commit arson if they did not actually take any action related to the crime.

JEFF TUCKER, FIRE CHIEF, NORTH STAR FIRE DEPARTMENT AND FORMER PRESIDENT, ALASKA STATE FIRE CHIEFS ASSOCIATION, NORTH POLE (via teleconference), vocalized support for the bill. The association felt that the legislation closed a loophole in current statute and could provide a deterrent for individuals who may consider committing arson.

LESLIE HOUSTON, DIRECTOR, DIVISION OF ADMINISTRATIVE SERVICES, DEPARTMENT OF CORRECTIONS (DOC), JUNEAU (via teleconference), relayed that DOC would monitor its database to determine whether there were any increases in arson offences going forward.

Co-Chair Stoltze queried whether DOC had any expectations or projections related to the indeterminate fiscal note. Ms. Houston answered that it was not possible for the department to have any projections at the present time. There were currently twelve people incarcerated for arson in the first degree, one person incarcerated for arson in the second degree, and two people incarcerated for attempted arson in the first degree. She explained that if the legislation passed, the department would monitor the incarceration rates to determine whether it led to any significant increases to the prison population.

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DOUGLAS MOODY, PUBLIC DEFENDER AGENCY, DEPARTMENT OF ADMINISTRATION, ANCHORAGE (via teleconference), did not believe the bill would have a significant impact on the department, given that there were not many arson or conspiracy cases. He confirmed that in most cases involving more than one arsonist the extra people involved were charged with accomplice liability or aiding and abetting. He did not expect additional cases if DOL made no changes to its practices because the crime of conspiracy would just get filed in with the arson cases. He acknowledged the potential for a case increase and the possibility that young people could get roped into conspiracy charges where the extent of their involvement was not clear. He believed

that it would be difficult for a kid to prove that they did not intend for a crime to actually happen after they had been present when the idea had been hatched. He relayed that proving intent was very difficult to discern because intent could only be inferred, unless both parties specifically stated that they planned to carry through with the crime. He discussed that in the case of wildland fires children could intend to start a fire, but not necessarily to start a wildland fire. He elaborated that conspiracy could just grow; there was the potential to apply the charge to a large group of kids that did not really mean to start a fire. He relayed that arson in the first degree was automatically waived for 16 and 17-year-olds. Arson in the second degree would only be automatically waived under certain conditions (e.g. if a person used explosives or had "priors").

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Representative Edgmon believed the bill might have more impact on the juvenile justice system than previously thought. He wondered whether there would be an impact to the fiscal note. Mr. Sica was not aware of the bill having an impact on the juvenile justice system.

Representative Edgmon pointed to prior testimony and thought there could be potential costs due to increased cases. He communicated that he could have been missing some of the information on the issue.

Co-Chair Stoltze noted that it was the departments' responsibility to provide fiscal notes if they believed a bill would cause a financial impact.

Ms. Carpeneti confirmed that arson in the first degree was an automatic waiver for 16 and 17-year-olds. She clarified that the bill should not have a disparate impact on juvenile justice procedures. She elaborated that there were not many conspiracy prosecutions in Alaska potentially due to a lack of evidence or conspiracies. She detailed that "chest beating" by young kids was not the same as intent for a crime to be committed. She agreed that it was unlikely that a significant number of prosecutions would result from the passage of the bill.

Representative Gara believed there were positive and negative aspects of the conspiracy law. The negative

component was that a child would have a hard time convincing a jury that they did not intend to commit conspiracy. The positive aspect was that it was more likely the prosecution would succeed if there was a conspiracy law, given that there was a larger pool of people to provide evidence.

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Mr. Moody explained that it all depended on the perspective. The advantage of a conspiracy statute was that it could be broad; the defendant did not have to be the person that committed the act; an agreement that could be inferred from conduct was all that was necessary. He did not know whether there would be a substantial advantage added related to "rolling individual defendants from the group." He believed that the police were effective investigators because they were capable of "rolling people" during the course of their investigations.

Ms. Carpeneti added that the prosecution had to prove that a person committed a crime beyond a reasonable doubt; the defendant did not have to say or prove anything.

Co-Chair Stoltze CLOSED public testimony.

Representative Wilson discussed that it was hard to know the impact of the bill when the number of arson cases were not readily available.

Ms. Carpeneti replied that she could follow up with the data. She referenced Leslie Houston's testimony that there were twelve individuals currently incarcerated for arson in the first degree and one incarcerated for second degree. She thought it was fairly clear that Alaska did not have many prosecutions for arson; the cases were difficult to prove because many times the evidence was destroyed in the fire.

Representative Wilson was concerned about the intent portion of the conspiracy law. Ms. Carpeneti replied that there was a provision in statute for renunciation of a crime, which was a defense against the crime of arson.

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Representative Doogan found it almost impossible that there was no legal recourse against someone who hired a person to burn a building down. He understood that it could be easier if the bill passed, but he opined that many things would be easier in the criminal justice system if the law allowed it. He believed the issue was a balancing act and discussed whether the benefit outweighed the gain to individuals' civil rights. He did not believe a solid case had been made for the proposed change. He discussed that the legislature had been stiffening up the penalties for many of the items it had been presented with. He believed that at some point the practice needed to be stopped and surmised that given the facts and numbers that had been presented perhaps the current bill was the place to start.

Co-Chair Stoltze remarked that the discussion was relevant.

Representative Gara referred to the federal government conspiracy law "RICO" that had been passed in order to get a person to come forward with information about a crime (specifically related to mafia crime). He believed that the legislature should take a look at the conspiracy law at some point in the future. He believed that arson was serious enough that it should fit under the conspiracy law. He wondered whether all property crimes were second degree felonies. He thought it could be possible to save money related to jail time and prosecution on the second degree arson cases.

Co-Chair Stoltze asked whether the charges related to the value of property and also the risk of life.

Representative Gara clarified that risk of life fell under arson in the first degree. He wondered whether the penalty for arson in the second degree could be reduced for properties that were worth a small amount.

Ms. Carpeneti replied that arson in the second degree dealt with damages to a building from a fire or explosion. Arson in the third degree related to exploding a vehicle and criminally negligent burning related to crimes that caused less damage. She communicated that statutes did not include monetary values under the various arson crimes. She furthered that criminally negligent burning in the second degree occurred when a person with "the culpable mental state of criminal negligence damages property by fire or an explosion," which was a class A misdemeanor. Criminally

negligent burning in the first degree applied to individuals who had a prior offence in the previous ten-year period. She believed a crime that involved a small amount of damage would be charged as a misdemeanor under criminally negligent burning.

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Co-Chair Thomas MOVED to report HB 56 out of committee with individual recommendations and the accompanying fiscal notes. There being NO OBJECTION, it was so ordered.

HB 56 was REPORTED out of committee with a "no recommendation" and with one new indeterminate fiscal note from the Department of Corrections, one new zero fiscal note from the Department of Public Safety, and one new zero fiscal note from the Department of Law.

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AT EASE

[2:34:50 PM](#)

RECONVENED

#hb216

HOUSE BILL NO. 216

"An Act relating to deadlines in bills directing the adoption of regulations and to the informative summary required for the proposed adoption, amendment, or repeal of a regulation."

[2:35:05 PM](#)

Co-Chair Thomas MOVED to ADOPT proposed committee substitute for HB 216, Work Draft 27-LS0701\S (Bannister, 2/22/12).

Co-Chair Stoltze OBJECTED for discussion.

JOE MICHEL, STAFF, REPRESENTATIVE BILL STOLTZE, explained that the CS made three changes to the original bill. On page 2, line 8 the words "furnishes or otherwise provides a," were inserted. Language had been removed from page 2 line 12 through 13 that stated "that is posted on the Alaska online public notice system or furnished in an

electronic format under AS 44.62.190 (a)." On Page 2, lines 14 through 16 the following language had been inserted:

"however, if under AS 42.62.190 (a) the notice is published in a newspaper or trade or industry publication or is broadcast, this subsection does not require that the brief description otherwise required by the subsection accompany the publication or the broadcast."

Representative Doogan asked for further explanation of the insertion and deletion on page 2.

Mr. Michel deferred the question to Representative Peggy Wilson.

REPRESENTATIVE PEGGY WILSON, SPONSOR, introduced her staff. She clarified that the addition required the department to provide a brief description of the regulation in layman's terms; however, the description would be excluded from newspapers, state publications, and radio announcements because charges were incurred on a per word, per line, and per minute basis respectively.

Representative Neuman thought that the point of the bill was to provide the public with a better understanding of the changes in regulations. He understood that there was a cost, but believed the public should be aware of changes in regulations that could potentially impact them.

Representative Peggy Wilson explained that the bill dealt with two frustrations relating to the process of creating or changing state regulations: (1) state agencies often did not write regulations in a timely fashion. She relayed that on occasion regulations had not been completed by the time the scheduled effective date arrived. She cited an example related to Alaska's Clear and Equitable Share (ACES) and explained that the regulations had not been finished five years after the legislation had been implemented; therefore, producers were not clear on what was required under the law and it had presented difficulty when looking at a proposed oil tax law (HB 110) the prior year. The bill would help legislators and members of the public to understand what the changes to proposed regulations meant; (2) the bill would ensure that all new regulations and changes to current regulations would be accompanied by a brief descriptive summary written in layman's terms. The

sponsor had worked with community members, legislators, and the Department of Law to develop clear and concise language. Section 1 specified that the deadlines for adopting and amending or appealing regulations were set by departments and agencies, which would be included on fiscal notes. She relayed that agencies would be held accountable for meeting the deadlines and would be required to report to a regulations review committee if the deadline was missed; they would also be required to set a new deadline.

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Representative Peggy Wilson discussed that state boards that met infrequently would not be subject to the regulation review committee requirement. She listed agencies that were required to meet the deadlines due to frequent interactions with the public and legislature: the Alaska Housing Finance Corporation, the Alaska Industrial Development and Export Authority, the Alaska Public Offices Commission, and the Alaska Oil and Gas Conservation Commission. Language had been inserted in Section 2 specifying that the brief description was targeted at emails and online notices. She reiterated that the bill had removed the newspaper, trade or industry publications, and broadcasting announcements from the requirements. She expounded that a significant amount of communication related to the issue was done via email and online.

Representative Peggy Wilson highlighted that Section 2 clarified that individuals could not take action against an agency if they misunderstood the brief description that had been provided. Sections 3 and 4 stated that the requirements applied only to legislation filed after the effective date of July 1, 2012.

Co-Chair Stoltze WITHDREW his OBJECTION. There being NO further OBJECTION, Work Draft 27-LS0701\S was ADOPTED.

Representative Neuman discussed that many members of the public received their information about regulation changes from the media. He cited a specific case in his district related to changes to animal cruelty regulations. He wondered how people would know whether they were in compliance with the law or how it would impact them.

Representative Peggy Wilson responded that people would be informed much like they were currently, given that

newspaper and broadcast announcements would be required to specify where the description was located. She added that unfortunately the bill did not solve the problem entirely because some areas did not have internet access. She thought that individuals without internet could potentially contact their legislators to receive the description.

Representative Neuman surmised that the point of excluding the brief description from newspapers, state publications, and radio announcements was to save the departments money.

Representative Peggy Wilson replied in the affirmative. She explained that the description could get lengthier dependent upon the subject matter, which could become expensive to publish. She explained that they had not been able to determine the exact cost, but the goal was to keep the cost to a minimum. She added that the departments already articulated the intent internally and adding the description to the public notices should be relatively simple.

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Co-Chair Stoltze CLOSED public testimony.

Representative Doogan thanked Representative Peggy Wilson for bringing the bill forward. He supported legislation that made government business more accessible to the public.

Representative Neuman believed that the intent of the legislation was to ensure that the public was informed. He was concerned that the departments did not have to provide the description in print. He opined that the change was a step backwards.

Representative Peggy Wilson reiterated that the departments would be required to provide the description online and in emails and that the exclusion only applied to broadcast information due to costs. The goal was to provide the public with a better understanding of any changes.

Representative Neuman supported the bill, but believed that the information should be included in the broadcast announcements and print media as well.

Representative Tammy Wilson asked for a brief description between print versus email.

Representative Peggy Wilson replied that there were three exceptions including, newspapers, trader industry publications, and broadcast. The description would be included in emails and in published documents sent by mail. The goal was to save the state money by not requiring the departments to pay for publishing the description.

Co-Chair Stoltze supported the legislation.

Representative Peggy Wilson responded that the bill would have to go through the Senate as well and she would change the bill if the Senate was receptive to the idea of including the description in print media.

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Co-Chair Thomas MOVED to report CSHB 216(FIN) out of committee with individual recommendations and the accompanying fiscal note. There being NO OBJECTION, it was so ordered.

Co-Chair Stoltze discussed the zero impact fiscal note from the Office of Management and Budget.

CSHB 216(FIN) was REPORTED out of committee with a "do pass" recommendation and with one new zero impact fiscal note from the Office of the Governor.

[2:55:51 PM](#)

AT EASE

[2:56:36 PM](#)

RECONVENED

#hb264

HOUSE BILL NO. 264

"An Act allowing a deferral of municipal property taxes on the increase in the value of real property attributable to subdivision of that property; and providing for an effective date."

[2:57:06 PM](#)

REPRESENTATIVE CATHY MUNOZ, SPONSOR, explained that HB 264 would give municipalities the option to provide an incentive to develop land for housing by deferring for up to five years a property tax increase directly related to the subdivision of a piece of property into three or more lots. She elaborated that there was a limited land base in Juneau, which resulted in limited new housing opportunities. She detailed that when a developer purchased a piece of land and began the subdivision process as soon as the surveying and planning paperwork was filed the property was reassessed at a rate that could be between 5 and 10 times the predevelopment cost before any work had occurred on the property. She stressed that the issue was an incredible disadvantage and disincentive for new housing development especially in communities faced with limited housing opportunities.

Representative Munoz continued to explain the legislation. The bill would provide municipalities the flexibility to defer increases in property taxes on subdivided parcels until a lot was sold or until a residential or commercial building was constructed on a plot of land. The local government would be allowed to adopt an optional deferral for all or a portion of the subdivided property and could decide the terms of paying the tax deferral. She communicated that supporters of the legislation believed that it would provide an incentive for developing privately owned property by holding taxes at the undeveloped land value until improvements occurred that led to the development or sale of the parcel. The land would then be more valuable and capable of generating more revenue for the local community.

Representative Munoz delineated that the purpose of the bill was to encourage land development and more housing opportunities and to let local governments decide whether a property tax deferral would benefit the community. She was sensitive to the concerns of local municipalities related to exemption legislation and the passing on of unfunded liabilities to cities; the bill would not impose the burden on local municipalities. The sponsor had worked closely with the Alaska Municipal League (AML). She expounded that the deferral was optional and that property taxes would ultimately be due when the property was sold or developed. She informed the committee that the assistant state assessor and others were available to testify.

Co-Chair Stoltze appreciated the process that had led to the bill. He had been slightly disappointed that the bill only included a deferral, but he understood that it had been crafted carefully.

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Vice-chair Fairclough MOVED CSHB 264(CRA) as a working document before the committee.

BILL ROTECKI, MEMBER, KETCHIKAN GATEWAY BOROUGH ASSEMBLY, spoke in support of the legislation. He discussed that the issue had come up as a suggestion when the borough had done an economic development survey that included the housing industry. He explained that local builders would be more inclined to subdivide parcels before selling them if taxes could be deferred for five years or until the property was sold. He relayed that Ketchikan would face a housing shortage if the local shipyard was awarded the contract to build new state ferries or if new mining opportunities arose. He elaborated that building housing to meet the needs of any of the possibilities would take time. The borough did not want individuals moving to the community to have to commute from another location due to a lack of housing options. He opined that under the legislation the municipality would most likely gain rather than lose. He furthered that the community could not lose tax revenue that it did not already have, but the revenue would be generated if the subdivision of property occurred.

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ALAN WILSON, CHAIRMAN, JUNEAU AFFORDABLE HOUSING COMMISSION, voiced support for the bill. He relayed that the Juneau Assembly had established the Juneau Affordable Housing Commission in 2007 to address local housing issues. The commission had worked on multiple items including comprehensive planned issues, density overlays, free gravel for site improvement, and other. He relayed that the commission had looked at tools utilized by communities in the Lower 48 that allowed them to develop a region or to target specific types of housing; the deferral of property taxes had been a strategy used by other communities. Carrying costs over time was a burden to developers and could result in a loss of property.

Mr. Wilson communicated that HB 264 was the first tool in the toolbox that private developers could utilize directly. The commission viewed the tax deferral as an economic development tool versus a housing tool; however, anything that would help address Juneau's housing vacancy rate that was currently less than 1 percent would be beneficial.

Co-Chair Stoltze thought the problem was about a cash flow issue; builders did not want to put out cash prior to making money. Mr. Wilson replied in the affirmative.

Vice-chair Fairclough asked whether the commission had asked the city assessor's office why the price of property was increased immediately after it was subdivided and whether it would consider stair-stepping the tax increase.

Mr. Wilson answered that the commission had asked the local assessor why tax costs could not be deferred. The response had been that according to state statute all property must be valued fairly. He explained that a ten acre parcel could be valued below a one acre parcel, but once the ten acre property was subdivided the value and desirability of the parcels increased.

Co-Chair Stoltze noted that there were a number of strong state assessor laws. Mr. Wilson agreed.

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JOHN HARRINGTON, MEMBER, KETCHIKAN GATEWAY BOROUGH, PLANNING COMMISSION AND ECONOMIC DEVELOPMENT ADVISORY COMMITTEE, spoke in favor of the legislation. He relayed that the entities had interviewed local business sectors who had been developing economic development action plans. The borough assembly had adopted approximately one-third of the plans, one of which was the same proposal encompassed in the bill. The assembly had been told that the proposal was not legal under current law; therefore, the introduction of the bill had received broad support.

Co-Chair Stoltze asked whether the borough had separate property tax levies from the Cities of Ketchikan or Saxman. Mr. Harrington replied in the negative.

Vice-chair Fairclough believed that the legislation impacted several groups including the homebuilders and the homeowners. She surmised that the homeowner would pay a

smaller amount of taxes depending on how quickly they purchased a lot on a subdivided property and created a different type of ownership from one where liens would be placed on each lot based on tax deferred by the year. She provided a scenario in which a ten acre lot was divided into 10 parcels; only one of the lots sold in the first year. She asked whether under the scenario the homeowner would only be responsible for one year of deferred taxes in their purchase price.

Mr. Harrington replied in the affirmative.

Vice-chair Fairclough had concerns about how the repercussions of a developer that went bankrupt would impact homestead property owners that carried the note themselves. In the event of the bankruptcy she wondered whether the homesteader would be responsible for any deferred taxes on the subdivided parcel. She was concerned that if a bank was responsible that it would be second in line to the government take.

Mr. Harrington replied that he was not the appropriate person to answer the question. He added that the situation in the Ketchikan Gateway Borough involved landowners interested in subdividing their properties. He explained that the typical situation involved remaining land on subdivided property that was developed at a later time and did not match the look of the prior development. He believed that it made much more sense to allow the landowner time to implement a plan for the entire development and to proceed systematically.

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Vice-chair Fairclough agreed, but surmised that the homeowner could have \$10,000 of additional costs built into a property they were purchasing depending on the amount of the deferred property tax. She understood that the bill made the process easier for developers and that cities would receive their share as well, but she had questions remaining related to the homeowner.

Co-Chair Stoltze noted that subdivision costs were a big revenue generator for the Municipality of Anchorage.

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FRED MORINO, MANAGER, D.J.G. DEVELOPMENT, JUNEAU, supported the legislation. He believed the bill would provide a positive economic impact statewide for homeowners, municipalities, and developers.

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DAVE HANNA, OWNER, JLC PROPERTIES, JUNEAU, voiced support for the bill. He referred to communication with representatives from several banks who saw the bill as a great incentive for development. He had worked with multiple homebuilding associations including Alaska General Contractors and everyone had been in favor of the proposal. He addressed that AML had concerns but the entity believed that given the bill's flexibility the proposal was tailored to suit every city's needs; communities could use the deferral as a tool to encourage development. The bill was more than a cost saving measure; it could be used to steer the desired development. He detailed that the incentives could be offered to a developer who was willing to create the lot sizes the city wanted or to include features like a bus stop or a park.

Mr. Hanna believed the bill would help developers who were "hanging out to dry." He explained that the development of a subdivision was a drawn out, expensive process. He communicated that people typically did not enter the business without a good incentive and a healthy demand for lots. He pointed to building cycles that occurred and relayed that some developers looking to take advantage of a good market were experiencing a significant financial burden because the subdivision process was lengthy and the market and demand fell before the lots could be sold. The taxes were a tremendous disincentive for development and he believed lessening the burden would be good for the economy. He had submitted an example showing that if a subdivision had been bought two years earlier than it normally would have, it would be a net revenue increase to the municipality because taxes were higher on houses than on raw land.

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Vice-chair Fairclough asked which financial institutions had been communicated with. Mr. Hanna replied that the institutions included Alaska Pacific Bank, True North Federal Credit Union, and First Bank in Ketchikan.

Co-Chair Stoltze remarked there had been a large housing development planned in one of his precincts until the economy had taken a downturn. He observed that the bill had far reaching impacts.

Vice-chair Fairclough was supportive of the concept before the committee, but she reiterated her concern about homeowners in her district that were dealing with the ramifications of a bankruptcy. She believed the proposal was an excellent idea and that the sponsor had created flexibility in the way the state would pass the law; however, she wanted a more detailed understanding of the bankruptcy process in order for municipalities to factor it into their implementation of the law.

Mr. Hanna relayed that based on conversations with the state and local assessor's offices he understood that municipalities could take a second position if desired. He elaborated that the tax liability by law could stay with the owner of record, but the municipality could also choose to defer the liability to prevent it from transferring to another person in the event of a bankruptcy.

Vice-chair Fairclough understood that the flexibility existed, but she guessed that in her municipality the government would take its cut first. She shared that when the government took its cut on a foreclosure or bankruptcy it meant that the Anchorage property tax payers would be accepting the burden and risk. She believed the state framework in the bill worked fine, but the devil was in the details related to who the responsible party was if the developer went bankrupt.

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Co-Chair Stoltze CLOSED public testimony.

Representative Munoz read from a letter she had received from Juneau commercial banker Jerry Kromer:

From a lending perspective the increased cash outflow needed to carry the property taxes on the full final value of the lots without being matched to the timing of the cash inflow when the lots are sold creates greater risk to the lender. Risk is compensated in two ways: higher rates for borrowing and/or lower loan

amounts, each of which adds to the costs to the end purchaser of the lot and higher housing or commercial prices without real increased benefit to the developer or to the lender. Through the higher costs and reductions in the amount of development that could have been done, the taxing authority is in my opinion getting less revenue through less eventual development.

Representative Wilson asked whether the tax deferral stopped at the beginning of a housing project or upon completion. Representative Munoz answered that the tax liability would be due when the lot sold within the initial five year period or it would require the building to be completed if there was not a building permitting process.

Representative Wilson noted that there was not a permitting process in Fairbanks and asked for verification that the developer would not pay the deferred tax until the house was completed.

Representative Munoz replied that either the sale of the lot or the construction of the building would occur before the tax deferral ended.

Co-Chair Stoltze referred to the zero fiscal note.

Co-Chair Thomas MOVED to report CSHB 264(CRA) out of committee with individual recommendations and the accompanying fiscal note. There being NO OBJECTION, it was so ordered.

CSHB 264(CRA) was REPORTED out of committee with a "do pass" recommendation and with one new zero fiscal note from the Department of Commerce, Community and Economic Development.

#hb302

HOUSE BILL NO. 302

"An Act repealing certain audit requirements for entities receiving contributions from permanent fund dividends."

HB 302 was SCHEDULED but not HEARD.

#hb253

HOUSE BILL NO. 253

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

HB 253 was SCHEDULED but not HEARD.

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ADJOURNMENT

3:28:23 PM

The meeting was adjourned at 3:28 PM.