

**ALASKA STATE LEGISLATURE
HOUSE JUDICIARY STANDING COMMITTEE**

March 25, 2011

1:05 p.m.

MEMBERS PRESENT

Representative Carl Gatto, Chair
Representative Wes Keller
Representative Bob Lynn
Representative Lance Pruitt
Representative Lindsey Holmes

MEMBERS ABSENT

Representative Steve Thompson, Vice Chair
Representative Max Gruenberg
Representative Mike Chenault (alternate)

OTHER LEGISLATORS PRESENT

Representative Pete Petersen

COMMITTEE CALENDAR

HOUSE BILL NO. 171

"An Act relating to arrests without warrants by peace officers for certain misdemeanors."

- HEARD & HELD

HOUSE BILL NO. 23

"An Act relating to criminal use of a computer."

- MOVED CSHB 23(JUD) OUT OF COMMITTEE

HOUSE JOINT RESOLUTION NO. 4

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

- HEARD & HELD

PREVIOUS COMMITTEE ACTION

BILL: HB 171

SHORT TITLE: ARRESTS FOR MISDEMEANORS

SPONSOR(S): REPRESENTATIVE(S) MUNOZ BY REQUEST

02/25/11 (H) READ THE FIRST TIME - REFERRALS
02/25/11 (H) JUD
03/25/11 (H) JUD AT 1:00 PM CAPITOL 120

BILL: HB 23

SHORT TITLE: COMPUTER PRIVACY

SPONSOR(S): REPRESENTATIVE(S) PETERSEN, HOLMES

01/18/11 (H) PREFILE RELEASED 1/7/11
01/18/11 (H) READ THE FIRST TIME - REFERRALS
01/18/11 (H) JUD, FIN
03/23/11 (H) JUD AT 1:00 PM CAPITOL 120
03/23/11 (H) Heard & Held
03/23/11 (H) MINUTE(JUD)
03/25/11 (H) JUD AT 1:00 PM CAPITOL 120

BILL: HJR 4

SHORT TITLE: CONST. AM: TRANSPORTATION FUND

SPONSOR(S): REPRESENTATIVE(S) P.WILSON, THOMPSON

01/18/11 (H) PREFILE RELEASED 1/7/11
01/18/11 (H) READ THE FIRST TIME - REFERRALS
01/18/11 (H) TRA, JUD, FIN
02/15/11 (H) TRA AT 1:00 PM CAPITOL 17
02/15/11 (H) Heard & Held
02/15/11 (H) MINUTE(TRA)
02/17/11 (H) TRA AT 1:00 PM CAPITOL 17
02/17/11 (H) Heard & Held
02/17/11 (H) MINUTE(TRA)
02/24/11 (H) TRA AT 1:00 PM CAPITOL 17
02/24/11 (H) <Bill Hearing Canceled>
03/08/11 (H) TRA AT 1:00 PM CAPITOL 17
03/08/11 (H) Moved CSHJR 4(TRA) Out of Committee
03/08/11 (H) MINUTE(TRA)
03/09/11 (H) TRA RPT CS(TRA) 6DP 1NR
03/09/11 (H) DP: JOHNSON, FEIGE, PRUITT, MUNOZ,
PETERSEN, P.WILSON
03/09/11 (H) NR: GRUENBERG
03/25/11 (H) JUD AT 1:00 PM CAPITOL 120

WITNESS REGISTER

REPRESENTATIVE CATHY MUNOZ
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: As the sponsor by request, presented HB 171.

KRIS SELL, Lieutenant
Juneau Police Department (JPD)
City & Borough of Juneau (CBJ);
President, Capital City Chapter - Juneau
Member, State Board of Directors
Alaska Peace Officers Association (APOA)
Juneau, Alaska

POSITION STATEMENT: Testified in support of HB 171 on behalf of the APOA.

EDWARD TALIK, Chief
Ketchikan Police Department (KPD)
City of Ketchikan
Ketchikan, Alaska

POSITION STATEMENT: Testified in support of HB 171.

TERRY VRABEC, Executive Director
Alaska Police Standards Council (APSC)
Department of Public Safety (DPS)
Juneau, Alaska

POSITION STATEMENT: Testified in support of HB 171 on behalf of both the APSC and the Alaska Association of Chiefs of Police, Inc. (AACOP).

JERRY NANKERVIS, Captain
Juneau Police Department (JPD)
City & Borough of Juneau (CBJ)
Juneau, Alaska

POSITION STATEMENT: Provided comments during discussion of HB 171.

LAREN J. ZAGER, Chief
Fairbanks Police Department (FPD)
City of Fairbanks
Fairbanks, Alaska

POSITION STATEMENT: Testified in support of HB 171.

PAGE DECKER, Assistant Chief
Juneau Police Department (JPD)
City & Borough of Juneau (CBJ)
Juneau, Alaska

POSITION STATEMENT: Provided comments during discussion of HB 171.

RODNEY DIAL, Lieutenant, Deputy Commander
A Detachment
Division of Alaska State Troopers
Department of Public Safety (DPS)
Ketchikan, Alaska

POSITION STATEMENT: Provided comments during discussion of
HB 171.

QUINLAN STEINER, Director
Central Office
Public Defender Agency (PDA)
Department of Administration (DOA)
Anchorage, Alaska

POSITION STATEMENT: Expressed concerns regarding HB 171.

ANNE CARPENETI, Assistant Attorney General
Legal Services Section
Criminal Division
Department of Law (DOL)
Juneau, Alaska

POSITION STATEMENT: Responded to a question during discussion
of HB 171.

DAVID BREMER, Staff
Representative Pete Petersen
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: On behalf of Representative Petersen, one
of the joint prime sponsors, explained the changes incorporated
into the proposed committee substitute (CS) for HB 23,
Version E.

REPRESENTATIVE PEGGY WILSON
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Speaking as one of the joint prime
sponsors, introduced HJR 4.

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

POSITION STATEMENT: Assisted with the presentation of HJR 4 on
behalf of one of its joint prime sponsors, Representative P.
Wilson.

TOM BRICE

Alaska District Council of Laborers
Juneau, Alaska

POSITION STATEMENT: Testified in support of HJR 4.

DON ETHERIDGE, Lobbyist

Alaska American Federation of Laborers - Congress of Industrial
Organizations (Alaska AFL-CIO)
Juneau, Alaska

POSITION STATEMENT: Testified in support of HJR 4 on behalf of
himself and both the Alaska AFL-CIO and the Teamsters Local 959.

RON AXTELL, Vice President

Laborers' Local 341

Wasilla, Alaska

POSITION STATEMENT: During discussion of HJR 4, testified in
support of the proposed change to the Alaska State Constitution.

KEVIN POMEROY

Laborers Local 942

Fairbanks, Alaska

POSITION STATEMENT: Testified in support of HJR 4.

ACTION NARRATIVE

[1:05:50 PM](#)

CHAIR CARL GATTO called the House Judiciary Standing Committee meeting to order at 1:05 p.m. Representatives Gatto, Keller, Pruitt, and Holmes were present at the call to order. Representative Lynn arrived as the meeting was in progress. Representatives Thompson and Gruenberg were excused. Representative Petersen was also in attendance.

HB 171 - ARRESTS FOR MISDEMEANORS

[1:06:18 PM](#)

CHAIR GATTO announced that the first order of business would be HOUSE BILL NO. 171, "An Act relating to arrests without warrants by peace officers for certain misdemeanors."

[1:06:37 PM](#)

REPRESENTATIVE CATHY MUNOZ, Alaska State Legislature, sponsor by request, explained that HB 171 would allow law enforcement officers to make an arrest without a warrant for certain misdemeanor crimes against a person when there is probable

cause. The concept of HB 171 was brought forth by the Juneau Police Department (JPD), and is endorsed by police departments across the state. Under AS 11.41 - offenses against a person - misdemeanor crimes include assault in the fourth degree, reckless endangerment, stalking in the second degree, custodial interference in the second degree, sexual assault in the fourth degree, sexual abuse of a minor in the fourth degree, and indecent exposure in the second degree. She mentioned that law enforcement representatives would be providing testimony regarding why legislation such as HB 171 is needed and how it would improve law enforcement's ability to effectively ensure public safety in Alaska's communities.

1:09:13 PM

KRIS SELL, Lieutenant, Juneau Police Department (JPD), City & Borough of Juneau (CBJ); President, Capital City Chapter - Juneau, Member, State Board of Directors, Alaska Peace Officers Association (APOA), after mentioning that she would be testifying only on behalf of the APOA, said that the APOA is supporting HB 171 as part of its agenda to promote victims' rights. She then shared an experience she'd had many years ago as a patrol officer in Juneau as illustrative of the need for HB 171. Back then, there was a man in the downtown area who liked to beat up people who were weaker than himself, especially drunk people because they were easy targets; he would just start punching other people simply because they drew his attention. One night, near the El Sombrero restaurant on Franklin Street, this man punched a much smaller/lighter man in the face. The victim, who either couldn't or wouldn't do much to defend himself, was young and had some mental-health problems but regardless had done nothing to deserve getting beaten. The victim was obviously injured by the time she arrived, she relayed, and witnesses pointed out where the perpetrator had gone, and knowing whom they were referring to, then-Officer Sell gave chase and caught up with him by the bank on Front Street.

LIEUTENANT SELL continued:

I got in front of him and told him he was detained as part of the investigation. He sized me up and down and said, "No, I'm not." I said, "Yes, you are," and drew my baton from the ring at my waist. He looked at me and thought for a second - I felt like I could almost see the smoke coming out of his ears as he pondered what might happen next - [and] I will admit to being relieved when he said, "Okay," and turned

around and put his hands behind his back to be handcuffed - he had a long history of assaulting people, both [domestic partners and others], ... and he knew the drill. I walked him back to the scene to the approval of the gathered crowd, and put him in the back of my patrol car, and spoke with the victim, the victim's friend, and other witnesses. They all agreed I had the right man and that he had viciously punched the much smaller man in the face. It also came out in officer interviews, there and other places, that the man had punched two other people within about 24 hours, one of whom had [come] ... into the police department with his eyes swelled shut.

1:12:12 PM

I got out a citizen's arrest report form and offered it to the people who ... saw the assault. No one would sign. They were afraid of him. I was frustrated, but I understood - he was a very scary man, even for us. None of the civilians in the area wanted to be the focus of this violent man's attention and retribution. I told the victim about how I was going to have to let the man go if no one would place him under arrest. This is exactly what happened - [I] took the man out of the car, took off his handcuffs, and let him go. You can imagine what this did for his reputation as someone who was going to do whatever he wanted and nobody, including the police, ... [was] going to stop him. The bully went on to harm additional people in his criminal career, until we finally saw him go to prison for a long period after he robbed a homeless man: a felony, where we didn't need anybody who was a witness to place him under arrest.

But I've always wondered how many of those assaults - how many of those criminal acts - could have been prevented if we could have held him accountable more severely and much quicker. I'm asking you to let the police protect citizens and to do so immediately after a citizen is violently attacked. We officers will put our names down on the piece of paper and take the responsibility for arresting those who hurt others. Please don't continue to put that responsibility on people who are frightened and who have every reason to be frightened. It is time to tell the bullies and

those who make a lifestyle of intimidating others that we are done with that behavior, and consequences for attacking even a stranger will now be immediate. Thank you - I appreciate your time and attention

LIEUTENANT SELL, in response to questions, reiterated that the APOA supports HB 171, and said she doesn't anticipate that the arrest authority granted by the bill would be used all the time, particularly given that even with probable cause, law enforcement officers often want to conduct additional investigation before actually arresting someone; instead, HB 171 would give law enforcement officers another tool with which to address violent behavior immediately. She pointed out, too, that an arrest would not be mandatory under the bill like it is under Alaska's domestic violence (DV) statutes. In response to further questions, she explained that law enforcement officers already have to determine whether an assault has actually taken place, whether there really is probable cause to arrest someone, who to arrest, and whether an arrest is going to be the best way of addressing the violent behavior or whether alternative steps could be taken, and the bill wouldn't change that; and that current law already requires mandatory arrest in situations involving DV regardless of whether the violence is witnessed by the officer, and thus the bill wouldn't be used in DV situations. Again, HB 171 would simply give law enforcement officers a tool with which to immediately address [non-DV-related] violent behavior in situations where no one wants to make a citizen's arrest and the officer hasn't witnessed the behavior.

[1:21:07 PM](#)

EDWARD TALIK, Chief, Ketchikan Police Department (KPD), City of Ketchikan, expressed support for HB 171, characterizing it as important legislation that would provide another tool for Alaska's law enforcement officers. He went on to explain that the KPD is a small police force, serving a population that doubles with the influx of seasonal workers and tourists, and thus there is a definite need for the KPD to keep public safety at the forefront of its efforts. If passed, he predicted, HB 171 would give KPD officers greater latitude to address some of the issues they face daily. Often, calls for service pertaining to [non-DV-related] assaults come after the fact, and currently law enforcement officers can't do much unless someone is willing to place the perpetrator under citizen's arrest. By allowing an officer that has probable cause to make an on-scene, warrantless arrest for one of the aforementioned misdemeanor

offenses against a person, HB 171 would go a long way towards helping the KPD protect its citizens, particularly given that many times officers end up responding to the same call several times during their shift; by providing the option of taking an individual into custody on the first call and thereby preventing folks from being further injured by that same individual, HB 171 would result in a more efficient use of law enforcement resources. Furthermore, it makes more sense to arrest a perpetrator of a violent crime immediately.

1:24:17 PM

MR. TALIK offered his belief that HB 171 would help protect victims from further violence and serve as a deterrent because perpetrators of violence would know that they're going to be arrested immediately when there is probable cause. There must be a balance between protecting the individual's rights and protecting the public at large, and HB 171 would be a small step toward achieving that balance, he opined, additionally offering his belief that HB 171 would survive a constitutional challenge because similar laws in other states have done so. In conclusion, he reiterated his belief that once adopted, HB 171 would help protect people in the community. In response to questions and comments, he stated that arrests should only be made when there is probable cause to make an arrest; pointed out that the bill, already, would only apply to misdemeanor offenses against a person, and that although there might be a cost associated with making more arrests under the bill, there is a huge cost to society and to victims when they are continually being abused, assaulted, or raped by the same perpetrators of violence; offered his belief that the authority granted by the bill would not be used that often, and that it would not be abused because officers are trained to follow the rules of arrest which require them to have probable cause before making an arrest; and surmised that changing the bill such that it would specifically list the crimes to which it could apply would still be in keeping with the spirit of the bill.

REPRESENTATIVE HOLMES questioned whether perhaps the bill ought to be changed to specify that it could only be used when the officer also has reasonable cause to believe a danger to the public exists if someone isn't arrested, but acknowledged that whether a person should be arrested under the bill could instead just be left up to the discretion of the officer.

MR. TALIK indicated a preference for having the bill be as simple as possible.

1:36:11 PM

TERRY VRABEC, Executive Director, Alaska Police Standards Council (APSC), Department of Public Safety (DPS), relayed that both the APSC and the Alaska Association of Chiefs of Police, Inc. (AACOP), support HB 171. In response to a question, he explained that from the very beginning, the training of law enforcement officers stresses the importance of learning what constitutes probable cause and of being able justify all arrests; and that it is the responsibility of the heads of Alaska's various law enforcement agencies to ensure that their officers are following proper procedure. He then offered his belief that HB 171 would be effecting a good law, and cautioned against tightening it up to the point where it would no longer be helpful.

1:39:05 PM

JERRY NANKERVIS, Captain, Juneau Police Department (JPD), City & Borough of Juneau (CBJ), shared an experience he'd had many years ago regarding a bar fight he'd responded to as illustrative of the necessity for and appropriateness of HB 171. Back then, when he arrived at the scene, the man who'd lost the fight was unconscious and so couldn't be interviewed, and although witnesses at the scene pointed out the perpetrator, none were willing to sign the arrest form, and therefore [then-Officer Nankervis] was unable to arrest the perpetrator because he had not witnessed the fight. Noting that as a police officer he is charged with public safety, he said he wasn't able to do his job that night, and characterized that inability as just being wrong. Passage of the bill would neither lower the standard requiring that there be probable cause before an arrest is made, nor increase the potential for false arrests; instead, what would change is that law enforcement officers would be better able to address public safety issues immediately under certain circumstances.

CAPTAIN NANKERVIS also noted that when an arrest is made, it doesn't necessarily mean that the person is actually put in jail; instead, law enforcement officers might simply take the perpetrator to the police station and issue him/her a ticket before releasing him/her. Expressing a preference for having the bill apply to all misdemeanor crimes so that it would also address [certain] property crimes, he, too, noted that an arrest would not be mandatory under the bill. Furthermore, there are already procedures in place to address abuses of law

enforcement's arrest authority, he remarked, and offered his belief that law enforcement officers already have a pretty good idea about what needs to be done in order to maintain public safety, and that HB 171 would assist in those efforts. In response to a question, he relayed that whether an assault warrants a misdemeanor charge or a felony charge depends on the severity of the injury sustained by the victim, and on the severity of assaultive behavior.

[1:51:50 PM](#)

LAREN J. ZAGER, Chief, Fairbanks Police Department (FPD), City of Fairbanks, ventured that proof of the value of HB 171 lies with existing law, specifically the laws pertaining to the crimes of domestic violence (DV) and driving under the influence (DUI); years ago, the legislature determined that the state needed to more effectively and more efficiently address situations involving DV and DUI, and so provided law enforcement officers with the authority to arrest in those situations based on probable cause. House Bill 171 would merely be an extension of that authority, and wouldn't require law enforcement officers to change their probable-cause standards, or interfere with their existing discretion to determine whether an arrest should be made in any given case. An arrest would not be mandatory under HB 171, and it has the potential for making law enforcement more efficient while also being of benefit to the public.

MR. ZAGER then pointed out that there is a distinction between arresting a person and charging a person; one could be arrested but not charged, and one could be charged but not arrested. Under HB 171, a law enforcement officer would be allowed to establish whether a particular person is going to be a danger to himself/herself or others, and then, if the existing probable-cause standards are met, put the person in handcuffs and take him/her to jail; the bill wouldn't affect law enforcement's ability to charge the person with a misdemeanor, but it would sure affect law enforcement's ability to take the perpetrator out of play for whatever period of time is necessary to ensure the safety of the public. In conclusion, he said he supports HB 171, though he wishes it applied to "virtually all misdemeanors."

[1:55:32 PM](#)

PAGE DECKER, Assistant Chief, Juneau Police Department (JPD), City & Borough of Juneau (CBJ), relayed that he has worked as a

police officer in other states that have had laws similar to that being proposed by HB 171, and considers such laws to be great tools, adding that he has not seen them abused, surmising that that's due to the training law enforcement officers receive and the internal systems that are in place to deal with abuses. He then provided members with a handout listing those similar laws. Characterizing the law proposed by HB 171 as a critical tool, he opined that Alaska's law enforcement officers need it in order to succeed in their mission of keeping the peace. Without the ability to bring control to disorderly-conduct incidents without the assistance of a willing citizen, communities can't be assured that their law enforcement officers will be effective when called upon for help, particularly given that in such [misdemeanor] cases, law enforcement officers have no more authority than any other citizen to arrest a perpetrator of violence. Without adoption of HB 171, there will continue to be no immediate consequence for those who choose to [violently misbehave].

[1:58:51 PM](#)

RODNEY DIAL, Lieutenant, Deputy Commander, A Detachment, Division of Alaska State Troopers, Department of Public Safety (DPS), said that officially, the DPS is neutral on HB 171, though it agrees with the comments made by the previous testifiers. Regardless that HB 171 might slightly increase the number of arrests made by law enforcement officers, the DPS anticipates that the additional time required to make those arrests would be offset by a reduction in the officers' workloads because they would no longer need to be continually responding to the same scene, and by a reduction in the number of subpoenas and warrants issued. Law enforcement officers in rural areas of the state would also benefit by the adoption of HB 171 because it's not always possible for them to contact a judicial officer immediately [in order to obtain a warrant].

[2:00:15 PM](#)

QUINLAN STEINER, Director, Central Office, Public Defender Agency (PDA), Department of Administration (DOA), said that HB 171 raises concerns for the PDA because the bill in essence bypasses any review of the arrest decisions made in [certain misdemeanor] cases, even those with no exigency requiring immediate arrest. He predicted that under the bill, arrests without sufficient probable cause would occur. Furthermore, as currently written, HB 171 would apply to some very low-level misdemeanor offenses against a person, and this, too, is of

concern to the PDA, he indicated; for example, the crime of reckless endangerment could [perhaps] involve something as simple as driving too fast on an icy road and not being able to stop at a stop sign.

[2:02:57 PM](#)

ANNE CARPENETTI, Assistant Attorney General, Legal Services Section, Criminal Division, Department of Law (DOL), in response to a question, said that the DOL's concerns regarding HB 171 - as expressed in a letter dated February 7, 2011 - have been significantly alleviated by the bill's limited application to only the aforementioned misdemeanor offenses against a person instead of to all misdemeanors. She said she shares the PDA's concern that the bill would allow an arrest for an offense committed outside the officer's presence even in cases that don't involve exigent circumstances. In conclusion, she acknowledged, though, that the examples such as the one shared by Lieutenant Sell illustrate how legislation such as HB 171 could provide a useful tool for law enforcement.

CHAIR GATTO indicated a belief that with very few exceptions, most law enforcement officers, given all their training, probably wouldn't abuse the bill.

CHAIR GATTO, after ascertaining that no one else wished to testify on the bill, closed public testimony, and relayed that HB 171 would be held over.

HB 23 - COMPUTER PRIVACY

[2:05:50 PM](#)

CHAIR GATTO announced that the next order of business would be HOUSE BILL NO. 23, "An Act relating to criminal use of a computer."

REPRESENTATIVE KELLER moved to adopt the proposed committee substitute (CS) for HB 23, Version 27-LS0172\E, Luckhaupt, 3/24/11, as the working document. There being no objection, Version E was before the committee.

[2:06:29 PM](#)

DAVID BREMER, Staff, Representative Pete Petersen, Alaska State Legislature, on behalf of Representative Petersen, one of HB 23's joint prime sponsors, explained that under Version E:

the title has been narrowed to now say, "**An Act making the installation, enabling, or use of keystroke loggers or other devices criminal use of a computer.**"; the language of proposed AS 11.46.740(a)(2) has been divided into a proposed paragraph (2) and a proposed paragraph (3) in order to clarify that the bill addresses both the installation/enabling/use of keyboard logger hardware or software, and the accessing of keystroke information remotely; there is no longer a provision establishing an affirmative defense for the owner of the computer; and the word, "uses" has been added to the language of proposed paragraph (2) in order to address situations in which the person who used the keystroke logger to obtain someone else's personal information was not the same person who installed or enabled the keystroke logger.

REPRESENTATIVE HOLMES, speaking as one of HB 23's joint prime sponsors, expressed satisfaction with Version E, venturing that it addresses all the concerns raised during the bill's last hearing.

CHAIR GATTO, after ascertaining that no one else wished to testify, closed public testimony on HB 23.

[2:09:39 PM](#)

REPRESENTATIVE KELLER moved to report the proposed CS for HB 23, Version 27-LS0172\E, Luckhaupt, 3/24/11, out of committee with individual recommendations and the accompanying fiscal notes. There being no objection, CSHB 23 (JUD) was reported from the House Judiciary Standing Committee.

The committee took an at-ease from 2:10 p.m. to 2:13 p.m.

HJR 4 - CONST. AM: TRANSPORTATION FUND

[Contains brief mention of HB 30 and HB 31, which address the funding and other necessary statutory changes related to HJR 4's proposed transportation infrastructure fund.]

[2:13:25 PM](#)

CHAIR GATTO announced that the final order of business would be HOUSE JOINT RESOLUTION NO. 4, Proposing amendments to the Constitution of the State of Alaska creating a transportation infrastructure fund. [Before the committee was CSHJR 4(TRA).]

[2:13:50 PM](#)

REPRESENTATIVE PEGGY WILSON, Alaska State Legislature, speaking as one of the joint prime sponsors, explained that [if passed by the legislature,] HJR 4 would place before the voters a proposed amendment to the Alaska State Constitution establishing a dedicated fund - in the form of a transportation infrastructure fund - that would be used to fund Alaska's transportation projects. In fiscal year 2010 (FY 10), 87 percent of Alaska's transportation budget came from the federal government, but the current federal reauthorization legislation has already expired and been extended many times, and so those federal funds are only going to be available through September of 2011. Furthermore, the new federal reauthorization is rumored to be quite a bit smaller, and is considered to be unfavorable to states with small populations due to its emphasis on mass transit, high-speed rail, and "green" transportation. Therefore, as federal funding continues to diminish, Alaska will have to shoulder more financial responsibility for its transportation infrastructure. Investment in the state's transportation infrastructure creates a competitive environment that attracts additional economic investments, which translate into jobs for Alaskans. House Joint Resolution 4 is intended to provide for Alaska's ever-growing transportation needs.

REPRESENTATIVE P. WILSON noted that over the last couple of years, the House Transportation Standing Committee has been seeking and receiving testimony from the Department of Transportation & Public Facilities (DOT&PF), "grassroots organizations," and transportation companies regarding the challenges of transportation in Alaska resulting from its geographical diversity, and has visited rural and urban communities across the state, learning about their airports and basic transportation infrastructures, and the challenges they face regarding safety, [traffic] congestion, and deferred maintenance. Furthermore, the Alaska Municipal League (AML) and the Matanuska-Susitna (MAT-SU) Borough arranged for an independent study to be conducted regarding the fiscal challenges of transportation; the National Conference of State Legislatures (NCSL) provided information regarding what other states are doing to address their transportation-infrastructure budget gaps; and the federal coordinator for Alaska natural gas transportation projects provided a list of all funding options available to address the fiscal shortfalls that Alaska's long-range transportation plan has outlined.

REPRESENTATIVE P. WILSON relayed that HJR 4 is the culmination of all that research, and is not intended to diminish Alaska's

relationship with the federal government. Instead, the intention is to provide for a dedicated revenue stream that would allow more transportation projects to be completed more quickly and for less money. Alaska needs to take advantage of both the cost- and time-savings afforded by state-funded projects in order to address the state's growing transportation-infrastructure needs. It is anticipated that the proposed transportation infrastructure fund would move projects along much faster, from conception to completion, because state-funded projects do not have to follow the federal government's highly-prescriptive and lengthy procedures - which are often expensive and time consuming - thereby allowing constituents to enjoy the benefits of such projects much sooner. For example, because state funds were used for the Elmore Road extension, that project was completed in less than three years rather than the seven to ten years it would have taken had following federal procedures been required.

[2:17:53 PM](#)

REPRESENTATIVE P. WILSON explained that the proposed transportation infrastructure fund, in addition to being seeded with \$1 billion and receiving yearly revenue from Alaska's motor fuel taxes, vehicle registration fees, studded tire taxes, and vehicle rental taxes, would continue to grow as its investment returns are compounded. Under HJR 4, in any given year, the legislature could appropriate up to 50 percent of its yearly revenue, and up to 6 percent of its market value averaged over the previous five fiscal years. According to a handout in members' packets developed by the Department of Revenue (DOR), the proposed transportation infrastructure fund is anticipated to generate approximately \$103 million the first year, and to increase every year after that by between \$3 million and \$3.5 million. The legislature would use the same process to appropriate money from the fund as it currently uses for the capital budget.

REPRESENTATIVE P. WILSON indicated that there are three pieces of legislation that together would enable the establishment of the proposed transportation infrastructure fund: [HJR 4 would place the proposed change to the Alaska State Constitution before the voters, HB 31 would provide for the appropriation of the initial \$1 billion to the fund, and HB 30 would provide the other necessary statutory changes]. As currently outlined in the legislation, appropriations from the proposed transportation infrastructure fund could be used for any transportation-related needs such as capital projects and large deferred-maintenance

projects. And should the legislature later choose to, it could make further statutory changes such that appropriations from the fund could also be used for DOT&PF operations, thereby ensuring that the legislature has the flexibility to use the appropriated funds as it sees fit.

[2:20:32 PM](#)

REPRESENTATIVE P. WILSON relayed that those who've testified before the House Transportation Standing Committee on this issue agree that the state needs a reliable revenue stream that won't fluctuate from year to year, and proffered that HJR 4 would provide just that; with such a reliable revenue stream in place, the state would be able to implement a transportation plan that would be independent from the federal government. Historians, she proffered, write that the drafters of the Alaska State Constitution were concerned that providing for dedicated funds would impair future legislatures from responding to evolving public needs. However, 24 states have constitutionally-required dedicated funds, and the public need for dependable and efficient transportation has only grown since the Alaska State Constitution was written. She offered her understanding that in one of his speeches, former Governor Hickel indicated support for the Alaska State Constitution being changed to provide for a dedicated transportation fund.

REPRESENTATIVE P. WILSON went on to explain that under a change made by the prior committee, the proposed transportation infrastructure fund would no longer include revenues from [airport leases] due to a federal requirement that such revenues be returned to the airports they were collected from.

[Chair Gatto turned the gavel over to Representative Keller.]

REPRESENTATIVE P. WILSON mentioned that members' packets include a list of those who support HJR 4 and would be seeking its passage in the November 2012 general election. In conclusion, she opined that Alaska must provide for and maintain a modern, reliable transportation system in order to ensure the economic and social wellbeing of its citizens, and that the constitutional change provided for via HJR 4 - establishing a dedicated transportation fund - would allow the state to do just that.

REPRESENTATIVE HOLMES - referring to language on page 1, lines 14-15, of HJR 4 regarding aviation fuel taxes, and to a memorandum by Legislative Legal and Research Services dated

February 25, 2011, [commenting on federal law as it pertains to such taxes] - questioned whether, if HJR 4's proposed constitutional change is approved by the voters, any future changes to Alaska's aviation fuel taxes would require an additional constitutional change.

[Representative Keller returned the gavel to Chair Gatto.]

[2:25:24 PM](#)

BECKY ROONEY, Staff, Representative Peggy Wilson, Alaska State Legislature, on behalf of Representative P. Wilson, one of HJR 4's joint prime sponsors, offered her belief that any changes the legislature wishes to make in the future regarding the appropriation of aviation fuel taxes could be addressed via a statutory change rather than via another change to the Alaska State Constitution, and mentioned that under current law, 60 percent of aviation-fuel tax revenue must be refunded to the municipality responsible for the airport from which the tax revenue came, and that [the aforementioned HB 30 would additionally allow] a portion of the appropriations from the proposed transportation infrastructure fund to be used for aviation-related projects. In response to another question, she indicated that use of the phrase, "other transportation-related fees and funds designated by the legislature" on page 2, lines 2-3, is meant to provide the legislature with the [constitutional] flexibility to address such fees and funds should any be established in the future.

REPRESENTATIVE HOLMES surmised, then, that use of the phrase, "transportation and related facilities that are designated by law" on page 2, lines 9-10, is meant to provide the legislature with similar [constitutional] flexibility regarding what appropriations from the proposed transportation infrastructure fund could be used for.

REPRESENTATIVE P. WILSON concurred. In response to another question, she ventured that allowing for up to 6 percent of the market value of the proposed transportation infrastructure fund averaged over the previous five fiscal years to be additionally appropriated would provide the legislature with sufficient flexibility, and pointed out that the legislature could choose to appropriate less than 6 percent. In response to a question, she offered her understanding that currently the fees referenced in HJR 4 are deposited into the general fund (GF).

MS. ROONEY added that under HJR 4, appropriations from the proposed transportation infrastructure fund could be used for costs related to motor vehicle licensing and registration that are designated by law. In response to another question, she offered her understanding that under [HB 30,] certain specialty-license-plate fees would be exempt from inclusion in the proposed transportation infrastructure fund.

REPRESENTATIVE P. WILSON, in response to further questions, offered her understanding that the federal funding of Alaska's FY 10 transportation budget totaled approximately \$400 million, and explained that under [HB 30, a 19-member Transportation Infrastructure Fund Advisory Council] would be established that would prioritize eligible transportation-related projects and then submit a report to the governor and the legislature making recommendations regarding which projects should receive funding from the proposed transportation infrastructure fund.

[2:34:51 PM](#)

TOM BRICE, Alaska District Council of Laborers, relayed that the Alaska District Council of Laborers supports HJR 4, and is always interested in ensuring long-term, stable funding sources for Alaska's transportation projects, viewing HJR 4 as one of the instruments that would help accommodate such. He concluded by saying that the Alaska District Council of Laborers encourages the committee to move forward with the resolution, and looks forward to [promoting] the adoption of the proposed constitutional change.

[2:36:17 PM](#)

DON ETHERIDGE, Lobbyist, Alaska American Federation of Laborers - Congress of Industrial Organizations (Alaska AFL-CIO), relayed that both the Alaska AFL-CIO and the Teamsters Local 959 support HJR 4, and look forward to [promoting] the adoption of the proposed constitutional change, adding that he, himself - as a seasonal maritime captain - supports HJR 4, and is looking forward to having something like [the proposed transportation infrastructure fund in place] to help out with the state's harbor needs, particularly given the atrocious state of disrepair some of the harbors are in, and given the current limitations of the "municipal grant fund."

[2:37:45 PM](#)

RON AXTELL, Vice President, Laborers' Local 341, said that as someone who's worked in the "heavy highway sector" for many years, he strongly supports [HJR 4's] proposed change to the Alaska State Constitution establishing a transportation infrastructure fund. Regardless that the state does its best to maintain its roads and highways, Alaska will always be lagging behind unless it can find a way to fund maintenance and development, and the recent receipt of American Recovery and Reinvestment Act of 2009 (ARRA) monies illustrates the effect of not having such a funding plan in place, he ventured. Alaska's major highways are in terrible shape, with rutting from studded tires. How long will Alaskans have to wait before their highways are repaired? This, he opined, is just one example of the many problems with Alaska's existing transportation infrastructure. As a young Alaska moves forward, it will be forced to pick up the funding burden as the federal deficit grows and federal monies to states decrease. With financial uncertainty looming on Alaska's horizon, not moving forward with [HJR 4's] proposed constitutional amendment could very well produce a greater strain on future state budgets.

MR. AXTELL offered his belief that the proposed transportation infrastructure fund would help the state resist the influence of outside organizations that would prefer Alaska to remain undeveloped, and predicted that with the establishment of such a fund, Alaska would have more control over which projects to proceed with. With many jobs and businesses reliant upon transportation projects, completing such projects in a timely and efficient manner would be a win-win for everyone, and it would be a large disappointment for the state to have to tell its citizens that it would like to do more development and improvement but it just can't seem to find the money. In conclusion, he asked the committee to support HJR 4 and bring the proposed constitutional amendment before the voters.

[2:40:24 PM](#)

KEVIN POMEROY, Laborers Local 942, said he supports HJR 4 and agrees with the sponsor that Alaska isn't going to be able to continue relying upon federal funding, and characterized [HB 31's \$1 billion in seed money] as a wonderful investment at a time when the state has a little bit of money to spend - unlike some states in the Lower 48. Alaska is going to have to become more accountable with regard to where it obtains funding, particularly given that because Alaska has such a small population, other states are more likely to receive any available federal funding. For the state to invest in its own

development is a great idea, he opined. Consider, for example, that many discussions often revolve around ways to enhance/promote tourism and bring development to the state, and yet one of the first things visitors to the state see when they arrive is the condition of the state's airports, ferry terminals, and roadways - Alaska's transportation infrastructure - and so it's important for the state to be able to illustrate that it's capable of taking care of its own infrastructure, which, in addition to promoting development, is used daily by Alaskans for a variety of reasons. In conclusion, he reiterated his support for HJR 4.

CHAIR GATTO, after ascertaining that no one else wished to testify on the resolution, closed public testimony, and relayed that HJR 4 would be held over.

[2:43:12 PM](#)

ADJOURNMENT

There being no further business before the committee, the House Judiciary Standing Committee meeting was adjourned at 2:43 p.m.