

SENATE FINANCE COMMITTEE

April 8, 2014

9:12 a.m.

[9:12:25 AM](#)

CALL TO ORDER

Co-Chair Meyer called the Senate Finance Committee meeting to order at 9:12 a.m.

MEMBERS PRESENT

Senator Pete Kelly, Co-Chair
Senator Kevin Meyer, Co-Chair
Senator Anna Fairclough, Vice-Chair
Senator Click Bishop
Senator Mike Dunleavy
Senator Lyman Hoffman
Senator Donny Olson

MEMBERS ABSENT

None

ALSO PRESENT

Angela Rodell, Commissioner, Department of Revenue;
Brittany Hutchison, Staff, Senator Bishop; Anne Carpeneti,
Assistant Attorney General, Legal Services Section-Juneau,
Criminal Division, Department of Law; Darrell Breese,
Staff, Representative Bill Stoltze; Amy Erickson, Director,
Division of Motor Vehicles, Department of Administration;

PRESENT VIA TELECONFERENCE

John McClellan, Appointee, Alaska Mental Health Trust
Authority Board of Trustees, Anchorage; Matt Fonder,
Director, Tax Division, Department of Revenue, Anchorage;

SUMMARY

SB 119 BUDGET: CAPITAL

SB 119 was SCHEDULED but not HEARD.

SB 201 CRIMINAL TRESPASS ON PRIVATE PROPERTY

CSSB 201 (JUD) was REPORTED out of committee with a "do pass" recommendation and with a new fiscal note from the Department of Administration, a new zero fiscal note from the Department of Corrections, a new zero fiscal note from Department of Law and with 3 previously published zero fiscal notes: FN1(ADM), FN4(DPS), FN5(DPS).

SB 178 PASSENGER VEHICLE RENTAL TAX

CSSB 178(FIN) was REPORTED out of committee with a "do pass" recommendation and with 2 letters of intent, individual recommendations, and a new indeterminate fiscal note from the Department of Revenue.

CSHB 19(RLS)(efd am)

PERM. MOT. VEH. REGISTRATION/TRAILERS

CSHB 19 (RLS) (efd am) was HEARD and HELD in committee for further consideration.

HB 263 EXTEND SENIOR BENEFITS PAYMENT PROGRAM

HB 263 was SCHEDULED but not HEARD.

Confirmation Hearing: Appointee John McClellan of Anchorage, Alaska Mental Health Trust Authority Board of Trustees

^Confirmation Hearing: Appointee John McClellan of Anchorage, Alaska Mental Health Trust Authority Board of Trustees.

[9:14:22 AM](#)

JOHN MCCLELLAN, APPOINTEE, ALASKA MENTAL HEALTH TRUST AUTHORITY BOARD OF TRUSTEES, ANCHORAGE (via teleconference), related that he had been managing companies for 35 years and had been involved in Alaska resource development as an engineer for many years. He expressed enthusiasm to serve as a trustee to the Mental Health Trust Authority Board in order to assist in resource development efforts, as well as adding to oversight of the mental health trust.

[9:16:27 AM](#)

Co-Chair Meyer inquired into Mr. McClellan's previous volunteer activities. Mr. McClellan responded that he had been the director of the American Council of Engineering Companies and was currently a board member of the District Export Council. He helped to found the Alaska Alpha Chapter of Tau Beta Pi, had been on the University Of Alaska School Of Business Advisory Board for approximately 7 years and had been on the University Of Alaska School Of Engineering Advisory Board for a number of years.

[9:17:17 AM](#)

Co-Chair Meyer inquired whether Mr. McClellan lived in Anchorage. Mr. McClellan replied in the affirmative, he added that he had resided in Alaska since approximately 1968.

[9:17:31 AM](#)

Senator Hoffman inquired whether Mr. McClellan had resided in any rural Alaskan communities. Mr. McClellan responded in the affirmative and relayed that he had lived in Fairbanks for several years while finishing his engineering degree then, upon graduation, he had joined the Department of Transportation (before it became public works) as one of the few engineers on the local service roads and trails program. He explained that he had spent an entire year living and working in rural communities. He claimed that as a firefighter for the Bureau of Land Management he had visited and spent time in every rural community in Alaska.

[9:18:46 AM](#)

Senator Hoffman asked what responsibility Mr. McClellan felt he should assume, under his role in the trust authority, to address the significant problem of domestic violence and substance abuse in the state. Mr. McClellan understood that fetal alcohol syndrome and suicide were prevalent in the state. He felt that the trust could team with existing medical programs in rural communities in order to provide mental health assistance.

[9:20:23 AM](#)

Vice-Chair Fairclough MOVED to ADVANCE the name of John McClellan for appointment to the State Assessment Review Board.

[9:20:34 AM](#)

AT EASE

[9:20:48 AM](#)

RECONVENED

[9:20:55 AM](#)

Vice-Chair Fairclough WITHDREW her previous motion.

[9:21:01 AM](#)

Vice-Chair Fairclough MOVED to ADVANCE the name of the John McClellan for the appointment to the Alaska Mental Health Trust Authority Board of Trustees. There being NO OBJECTION, the name of John McClellan was forwarded to the full membership of the legislature in a joint session for consideration and final vote.

Co-Chair Meyer stated that signing reports regarding appointments to boards and commissions in way reflected individual members' approval or disapproval of the appointees and that the nominations were merely forwarded to the full legislature for confirmation or rejection.

[9:22:07 AM](#)

AT EASE

[9:26:57 AM](#)

RECONVENED

#sb178

SENATE BILL NO. 178

"An Act relating to the application of the passenger vehicle rental tax; and providing for an effective date."

[9:28:09 AM](#)

ANGELA RODELL, COMMISSIONER, DEPARTMENT OF REVENUE, related that the work draft before the committee addressed previous concerns over the implementation of the tax. She believed

that the tax could be easily implemented by the Department of Revenue (DOR).

9:28:59 AM

Senator Bishop inquired whether Commissioner Rodell had perused the letter in intent attached to the bill. Commissioner Rodell replied that she had not.

9:29:22 AM

AT EASE

9:31:07 AM

RECONVENED

9:31:18 AM

Co-Chair Meyer requested Vice-Chair Fairclough to read the letter intent from the committee, as well as a letter of intent from DOR signed by Commissioner Rodell (copies on file).

9:31:34 AM

Vice-Chair Fairclough read the letter of intent for the committee(copy on file):

It is the intent of the Senate Finance Committee that the passenger vehicle rental tax described in SB 178, including the original law and the changes made by the committee substitute, should not be applied to Alaskan businesses doing business with other Alaskan businesses. The Department of Revenue (DOR) should not apply the tax retroactively to businesses it determines should be, or should have been, collecting the tax. However, if DOR is able to determine a business collected the tax but did not remit the tax to DOR, then DOR should charge back taxes, penalties and/or interest on those unpaid taxes.

In 2003, the legislature passed House Bill 271, a passenger vehicle rental tax intended to raise revenue from tourists renting passenger vehicles so that they could help pay for the wear and tear they inflict on the State's publicly-maintained roads.

Since the passage of HB 271, AS 43.52 has been amended three times; two of which were to exempt Alaskan businesses doing business with other Alaskan businesses. The third time was to exempt motorcycles.

The intent of SB 178 is to clarify, once again, which rental vehicles are to be covered by the tax and which are not. It is the committee's intent that only passenger rental cars, as described in AS 43.52.010, should be taxed.

[9:33:22 AM](#)

Co-Chair Meyer believed that the letter of intent accurately reflected the wishes of the committee. He clarified that the intent was that the vehicle rental tax be applied to short-term users on public roads; he thought that the bill's change to 28 days, from 90, reflected that intent.

[9:34:05 AM](#)

Senator Olson queried whether the committee was working with work draft version Y. Co-Chair Meyer replied in affirmative.

Senator Olson stated that he was unable to find the where the letter of intent was referenced in Section 4 of the bill.

[9:34:24 AM](#)

Vice-Chair Fairclough noted that Section 4 of version Y only contained repealing language.

[9:34:37 AM](#)

Senator Olson understood that the intent letter read, "as described in Section 4 of SB 178"; however, Section 4 was repealed on Page 2, line 13.

[9:34:51 AM](#)

BRITTANY HUTCHISON, STAFF, SENATOR BISHOP, related that the "Section 4 of SB 178" should be taken out of the letter of intent. The reference to Section 4 was for the previous

version of the bill, in which that section redefined motor vehicles.

[9:35:31 AM](#)

AT EASE

[9:37:03 AM](#)

RECONVENED

Co-Chair Meyer noted the letter of intent from the committee would be revisited shortly. He requested Vice-Chair Fairclough to read the letter of intent from Commissioner Rodell for the record.

[9:37:35 AM](#)

Vice-Chair Fairclough read the letter of intent from DOR:

The purpose of this letter is to clarify the Department's position and interpretation of the definition of "passenger vehicle" in AS 43.52.099(2) for the purposes of our vehicle rental tax. Specifically, the Department has been asked how it interprets the phrase: "a motor vehicle ... that is driven or moved on a highway or public right-of-way in the state" contained in the definition.

For vehicle rental tax purposes, the Department's interpretation of this definition is based on access. If a member of the general public can freely drive on the road system without breaking any laws or having someone stop them and tell them they cannot go any further, they are on a highway or public right-of-way. For example, an individual can rent a vehicle in Anchorage, drive to Deadhorse via the Dalton Highway, and travel many places around Deadhorse and the North Slope in general. However, there are areas of the North Slope that are private or restricted that a member of the general public would not be able to drive to. Vehicle rental tax would apply to that transaction because the individual drove the rented vehicle on different highways and public rights-of-way.

If an Alaska business rents to another Alaska business located in an area of the state that is not accessible by the general public, and all of the vehicles the

business rents, regardless of rental period, are never driven on a road that can be accessed by the general public, then under our interpretation of the current statutes, those transactions would not be taxable. However, once that vehicle is driven on a highway or public right-of-way that is open to and accessible by the general public, and the rental period is less than 90 days, it becomes a taxable transaction under the current definition.

I hope that this helps clarify the questions that have recently arisen on this bill. If you have further questions do not hesitate to contact me.

Sincerely,
Angela Rodell
Commissioner

[9:40:22 AM](#)

Co-Chair Meyer reiterated that the current bill version Y changed the 90-day period to 28 days. He believed that the letter clarified issues regarding the tax on private and public vehicles.

[9:41:12 AM](#)

Senator Hoffman believed that the concern was that there were roads that were not maintained by the state that would not be taxed. He understood that roads that were privately maintained would not fall under the tax. Commissioner Rodell clarified that under existing law if a vehicle was rented and had access to the public roads in Deadhorse that were monitored by the North Slope Borough Police or Alaska State Troopers those transactions were taxable regardless of who maintained the roads.

Senator Hoffman thought that the sponsor had wanted a version of the bill that exempted vehicles outside of the maintained area in the North Slope. He asserted that the current bill version did not accomplish what Senator Bishop wanted. Commissioner Rodell replied that she would let Senator Bishop speak to that issue, but noted that DOR was struggling with the definition because the state maintained roads that it did not give public access to; furthermore, there were many definitions of what "public maintained"

meant, and DOR was looking at access as the defining factor.

[9:43:32 AM](#)

Senator Hoffman asserted that the work draft version needed to be modified in order to accomplish the intent of the sponsor.

[9:44:12 AM](#)

Co-Chair Meyer thought that part of the issue was with security check points that would not allow people on certain roads. Senator Hoffman stated that Commissioner Rodell's letter had addressed the issue with check points, but noted that those locations were farther north.

[9:44:27 AM](#)

Vice-Chair Fairclough asked whether the tax would be triggered by the rental of a vehicle in an area patrolled by law enforcement even if the primary use of the vehicle would be in a restricted area. Commissioner Rodell replied in the affirmative. She added that the reduction of the rental period in the current work draft addressed the concern.

[9:45:31 AM](#)

Vice-Chair Fairclough noted that she had seen different laws interpreted using different criteria. She furthered that if a vehicle had traveled in the right-of-way, access was available and the tax should be paid. She thought that larger vehicles in Prudhoe Bay that were driven directly into restricted areas should be considered. Commissioner Rodell agreed that the tax placed the burden on the rental companies to track where the vehicle was taken while rented. She related that the tax was passed through the rental company and paid by the renter of the vehicle. She believed that an audit requirement would be need to be put into place that required rental companies to document evidence that the vehicle was kept within the restricted areas. She stated that, to date, the department had been unable to document that evidence.

[9:47:30 AM](#)

Vice-Chair Fairclough offered that the sponsor was proposing a commercial rental to another licensed commercial business. She noted that tourists did not carry commercial business licenses when they came to rent vehicles, but that the state wanted to collect a tax from tourists to help pay for maintenance on Alaska roads. She wondered if the committee could consider taxing on a wholesale level. She furthered that if the tax was a qualified business expense for the entity that was renting the vehicle for work activity that would benefit the state. She inquired whether language could be drafted that would place the onus on the vehicle renter, which was where the actual expense would be generated. Commissioner Rodell responded that under current law commercial vehicles were exempt from the tax. She deferred the question to Matt Fonder.

[9:49:01 AM](#)

MATT FONDER, DIRECTOR, TAX DIVISION, DEPARTMENT OF REVENUE, ANCHORAGE (via teleconference), stated that the commercial vehicle exemptions in the current statute applied to the very large busses and vehicles that were over 26,000 lbs. Other potentially exempt vehicles were moving trucks. He believed that the commercial wholesale transaction had been discussed and that the Department of Law had expressed concern over commerce clause constitutional issues.

[9:50:39 AM](#)

Senator Hoffman understood that the department's interpretation had been that the vehicles rented on the North Slope, on privately maintained roads, would continue to be taxed; those beyond the security checkpoints would not. He reiterated that the Y version of the bill did not speak to the crux of the sponsors concern.

[9:51:35 AM](#)

Senator Bishop stated that the letter from DOR very clearly stated that the regardless of the rental period, the vehicles that were driven on a road not accessible by the general public would not be taxed. He referenced the map in members' packets and noted that it was a half mile from the rental agency to the restricted road gate on the North Slope. He asked whether language could be written to clarify the intent of DOR as was written in the

department's letter of intent. Commissioner Rodell replied that she did not have an answer on this issue. She asserted that she was striving for fairness in administering the tax.

Senator Bishop that the vehicles could be hauled the additional half mile on a high-deck trailer to the guard shack, therefore bypassing the tax. Commissioner Rodell replied in the affirmative.

Vice-Chair Fairclough MOVED to AMEND the letter of intent from the Senate Finance Committee:

DELETE

"The intent of SB 178 is to clarify, once again, which rental vehicles are to be covered by the tax and which are not. It is the committee's intent that only passenger rental cars, as described in Section 4 of CSSB 178 should be taxed under AS 43.52.010."

INSERT

"The intent of SB 178 is to clarify, once again, which rental vehicles are to be covered by the tax and which are not. It is the committee's intent that only passenger rental cars as described in AS 43.52.010 should be taxed."

Senator Hoffman wondered whether the drafters of the bill could provide language to specify that only vehicles within the Prudhoe Bay unit boundary that drove on restricted roads would not be subject to the tax.

Co-Chair Meyer understood that the language pertained to all North Slope activity, including Kuparak. Commissioner Rodell replied that the tax applied statewide and that the concern was how to carve out specific areas that would create a tax exemption for one regional area and not for other regional areas.

Co-Chair Meyer noted that the letter stated "private roads."

Senator Hoffman noted that the carving out regional areas would be a policy decision that the legislature would make and not DOR.

[9:57:15 AM](#)

AT EASE

[9:58:58 AM](#)

RECONVENED

[9:59:14 AM](#)

Co-Chair Meyer thought that the letter of intent from the department was clear.

[9:59:26 AM](#)

Vice-Chair Fairclough MOVED to REPORT CSSB 178(FIN) out of committee with 2 letters of intent, individual recommendations, and the accompanying fiscal note. There being NO OBJECTION, it was so ordered.

[10:00:30 AM](#)

CSSB 178(FIN) was REPORTED out of committee with a "do pass" recommendation and with 2 letters of intent, individual recommendations, and a new indeterminate fiscal note from the Department of Revenue.

[10:00:41 AM](#)

AT EASE

[10:02:47 AM](#)

RECONVENED

#sb201

SENATE BILL NO. 201

"An Act relating to the crime of trespass."

[10:04:07 AM](#)

Co-Chair Meyer noted that he had legal concerns with the bill regarding whether the landowner would be liable if a trespasser was injured on the owner's property.

[10:04:36 AM](#)

ANNE CARPENETI, ASSISTANT ATTORNEY GENERAL, LEGAL SERVICES SECTION-JUNEAU, CRIMINAL DIVISION, DEPARTMENT OF LAW,

deferred the question to the Civil Division of the department.

[10:05:12 AM](#)

Vice-Chair Fairclough noted that Ms. Carpeneti was retiring. She acknowledged that Ms. Carpeneti had served the state well for many years. Co-Chair Meyer echoed her sentiments.

[10:06:10 AM](#)

Vice-Chair Fairclough highlighted that the bill before the committee was in response to concerns from the general public that certain public law enforcement officers had violated the public trust by working under the assumption that trespass laws did not apply to them. She queried whether the bill decreased the state's ability to advocate for the rights for the property owner; conversely, could a person who trespasses unknowingly be penalized due to the passage of the legislation. Ms. Carpeneti replied that the current version of the bill repealed sub-section C in the definitions for criminal trespass. It would remove the requirement that in order to prosecute someone for criminal trespass a notice would have to be posted at every obvious entry onto the land. The bill version also removed the requirements for the size of the notice. She understood that by repealing the sub-section prosecution could be carried out more swiftly.

[10:09:00 AM](#)

Vice-Chair Fairclough thought that the bill spoke to the issue of how property owners were expected to let the public know that the property was private. She believed that there was no way that a private property owner could post a no trespassing sign on every entry to the property. She offered her support for moving the bill out of committee.

[10:10:41 AM](#)

Senator Dunleavy thought that the issue was regarding conducting activities on someone else's property and not with people simply passing through private property. He inquired how the bill could address this issue. Ms. Carpeneti replied that if only sub-section C were repealed

people would still be allowed to pass through property that appeared unused, provided the property owner did not verbally tell the person not to enter. She believed that hunting on private land would still be against the law.

[10:13:10 AM](#)

Senator Dunleavy hypothesized that if Section C was removed a person approaching a fence while hiking in the woods would have to assume they were coming upon private property. Ms. Carpeneti replied that a fence would indicate that the property was private.

[10:13:36 AM](#)

Senator Dunleavy inquired if someone could trap on the land if the land looked like it had not been improved. Ms. Carpeneti replied that she would have to check with Department of Public Safety.

[10:14:17 AM](#)

Senator Dunleavy wondered if the current law were not to change, people could access private property if a "no trespassing" sign were absent. Ms. Carpeneti replied that if the land was unimproved and apparently unused, a person could pass through the property.

[10:14:55 AM](#)

Co-Chair Meyer noted that Co-Chair Kelly had joined the committee.

[10:15:05 AM](#)

Co-Chair Meyer noted that the bill had a zero fiscal note.

[10:15:28 AM](#)

Vice-Chair Fairclough MOVED to REPORT CSSB 201(JUD) out of committee with individual recommendations and the accompanying fiscal notes. There being NO OBJECTION, it was so ordered.

CSSB 201 (JUD) was REPORTED out of committee with a "do pass" recommendation and with a new fiscal note from the Department of Administration, a new zero fiscal note from

the Department of Corrections, a new zero fiscal note from Department of Law and with 3 previously published zero fiscal notes: FN1(ADM), FN4(DPS), FN5(DPS).

[10:15:45 AM](#)

AT EASE

[10:20:28 AM](#)

RECONVENED

#hb19

CS FOR HOUSE BILL NO. 19(RLS)(efd am)

"An Act relating to permanent motor vehicle registration in the unorganized borough and in a municipality that has elected to allow permanent registration; relating to the registration fee for noncommercial trailers and to the motor vehicle tax for trailers; and providing for an effective date."

[10:21:21 AM](#)

Co-Chair Meyer requested clarification on the definition of "trailers" as it pertained to the legislation.

[10:21:40 AM](#)

DARRELL BREESE, STAFF, REPRESENTATIVE BILL STOLTZE, replied that the bill spoke to any type of non-commercial, personal use trailers. He noted that statute excluded campers and residential mobile homes.

[10:22:42 AM](#)

Co-Chair Meyer queried why the bill spoke specifically to 8 year-old cars. Mr. Breese responded that the 8 year-old age was selected based on the motor vehicle registration tax; after 8 years the tax did not decrease or increase from year to year, which would make it easier for the Department of Motor Vehicles (DMV) to implement the program.

Senator Bishop clarified that the bill would allow people to register a trailer once and then not have to do it again, ever. Mr. Breese replied in the affirmative.

[10:24:47 AM](#)

Co-Chair Meyer inquired how the bill would impact cities that required I/M testing (emissions testing). Mr. Breese responded that there were currently no cities in the state that required I/M testing. He furthered that should the state implement I/M testing, the issue would need to be revisited.

[10:26:01 AM](#)

Co-Chair Meyer asked how the legislation would impact the state financially.

[10:26:22 AM](#)

AMY ERICKSON, DIRECTOR, DIVISION OF MOTOR VEHICLES, DEPARTMENT OF ADMINISTRATION, replied that since the bill had been amended to allow municipalities to opt into the program, it was difficult for DMV to determine the future impact. She said that if a municipality chose to opt in, a person could pay the \$25.00 for the registration and never return to the DMV to renew, which would result on lost revenues.

[10:26:49 AM](#)

Co-Chair Meyer understood that when a person registered their car the state and the city shared in those revenues. Ms. Erickson responded that the motor vehicle registration tax was collected by the DMV and then returned to communities. She gave the example of the \$70 registration for an 8 year-old car in Anchorage would be given to the community minus 8 percent. The 8 percent was the DMV processing fee which, in turn, was put into the General Fund in order to benefit the entire state.

[10:28:12 AM](#)

Co-Chair Meyer queried the DMV's position on the legislation. Ms. Erickson replied that the department did not have an official position on the legislation, but that the department could implement the program without difficulty.

[10:28:51 AM](#)

Co-Chair Meyer OPENED public testimony.

Co-Chair Meyer CLOSED public testimony.

10:29:05 AM

Co-Chair Meyer noted the indeterminate fiscal note. He asked how the sponsor determined the \$25.00 fee. Mr. Breese replied that \$25.00 had seemed a reasonable fee to charge.

10:29:42 AM

Co-Chair Meyer understood that the program was optional for municipalities. Mr. Breese replied yes.

10:30:38 AM

AT EASE

10:32:33 AM

RECONVENED

10:32:39 AM

AT EASE

10:32:49 AM

RECONVENED

Co-Chair Meyer discussed housekeeping.

SB 119 was SCHEDULED but not HEARD.

HB 263 was SCHEDULED but not HEARD.

#

ADJOURNMENT

10:33:22 AM

The meeting was adjourned at 10:33 a.m.