

HOUSE FINANCE COMMITTEE

April 6, 2015

1:38 p.m.

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CALL TO ORDER

Co-Chair Thompson called the House Finance Committee meeting to order at 1:38 p.m.

MEMBERS PRESENT

Representative Mark Neuman, Co-Chair
Representative Steve Thompson, Co-Chair
Representative Dan Saddler, Vice-Chair
Representative Bryce Edgmon
Representative Lynn Gattis
Representative David Guttenberg
Representative Scott Kawasaki
Representative Cathy Munoz
Representative Lance Pruitt
Representative Tammie Wilson

MEMBERS ABSENT

Representative Les Gara

ALSO PRESENT

John Boucher, Deputy Commissioner, Department of Administration; Brodie Anderson, Staff, Representative Steve Thompson; Ben Brown, Commissioner, Commercial Fisheries Entry Commission, Department of Fish and Game; Jerry Burnett, Deputy Commissioner, Treasury Division, Department of Revenue; Representative Tammie Wilson, Sponsor; Remond Henderson, Deputy Commissioner, Department of Corrections; Kaci Schroeder, Legislative Liaison, Department of Law; Nancy Meade, General Counsel, Alaska Court System.

PRESENT VIA TELECONFERENCE

Carrie Belden, Director, Division of Parole in Probation, Department of Corrections.

SUMMARY

HB 135 PUBLIC EMPLOYEE ROTH CONTRIBUTIONS
HB 135 was REPORTED out of committee with a "do pass" recommendation and with one previously published zero fiscal note: FN1 (ADM).

HB 155 FEES; WAIVERS; CREDITS; DEDUCTIONS; TAXES
HB 155 was HEARD and HELD in committee for further consideration.

HB 15 CREDITS FOR TIME SERVED/GOOD TIME
HB 15 was HEARD and HELD in committee for further consideration.

Co-Chair Thompson reviewed the agenda for the day.

#hb135
HOUSE BILL NO. 135

"An Act establishing a Roth contribution program for the public employees' deferred compensation program; and providing for an effective date."

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JOHN BOUCHER, DEPUTY COMMISSIONER, DEPARTMENT OF ADMINISTRATION, was available for questions.

Co-Chair Thompson OPENED Public Testimony

Co-Chair Thompson CLOSED Public Testimony.

Representative Munoz MOVED to REPORT HB 135 out of committee with individual recommendations and the accompanying fiscal note(s). There being NO OBJECTION, it was so ordered.

HB 135 was REPORTED out of committee with a "do pass" recommendation and with one previously published zero fiscal note: FN1 (ADM).

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AT EASE

[1:43:58 PM](#)

RECONVEYENED

#hb155

HOUSE BILL NO. 155

"An Act relating to fees charged by the commercial fisheries entry commission; repealing an exploration incentive credit; amending the calculation of adjusted gross income for purposes of the tax on gambling activities aboard large passenger vessels; repealing the amount that may be deducted from the motor fuel tax to cover the expense of accounting and filing for the monthly tax return; repealing a provision allowing an investigation expense under the Alaska Small Loans Act to be in place of a fee required under the Alaska Business License Act; repealing the amount that may be deducted from the tobacco excise tax to cover the expense of accounting and filing for the monthly tax return; repealing the discount on cigarette tax stamps provided as compensation for affixing the stamps to packages; repealing the amount that may be deducted from a tire fee remittance to cover the expense of accounting and filing for the quarterly fee return; and providing for an effective date."

Co-Chair Thompson began his presentation from a prepared statement:

In the 28th Legislature, legislation was passed that defined Indirect Expenditure as foregone revenue. The legislation set forth a requirement that certain reports identify potential loss of foregone revenue. Earlier this session this committee received an overview of the Legislative Finance Indirect Expenditure Report identified certain credits, fees, discounts, and deductions that should be terminated. House Bill 155 (HB 155) repealed those indirect expenditures with an estimated increase of revenue by approximately \$450,000. The indirect expenditure repeal in House Bill 155 were selected for repeal for various reasons that range from the expenditure did not meet legislative intent, had limited benefit or usage, and were obsolete due to inactivity or replacement by electronic filings.

BRODIE ANDERSON, STAFF, REPRESENTATIVE STEVE THOMPSON, placed himself on the record and stated that HB 155 was the next step in addressing foregone revenue to the state

identified in the 2015 Indirect Expenditure Report. HB 155 repealed the following indirect expenditures as follows:

- Small Loan Company Business License Exemption
Pg. 3 of the 2015 Indirect Expenditure Report
- Commercial Fisheries Entry Commission (CFEC)
Reduced Permit Fees,
Pg. 48 of the 2015 Indirect Expenditure Report
- CFEC Reduced Application Fees
Pg. 50 of the 2015 Indirect Expenditure Report
- CFEC Reduced Expediting Fees
Pg. 51 of the 2015 Indirect Expenditure Report
- CFEC Reduced Transfer Fees
Pg. 52 of the 2015 Indirect Expenditure Report
- Exploration Incentive Credit
Pg. 97 of the 2015 Indirect Expenditure Report
- Tobacco Product Tax Deduction for Timely Filing
Pg. 141 of the 2015 Indirect Expenditure Report
- Cigarette Tax Stamp Discount
Pg. 142 of the 2015 Indirect Expenditure Report
- Motor Fuel Tax Timely Filing
Pg. 143 of the 2015 Indirect Expenditure Report
- Large Passenger Vessel Gambling Tax Deduction
Pg. 163 of the 2015 Indirect Expenditure Report
- Tire Tax Discount for Timely Filing
Pg. 167 of the 2015 Indirect Expenditure Report

Mr. Anderson provided a sectional analysis of the bill and read from a prepared statement:

Section 1: Adds a new section AS 16.43.100 to address the removal of the low income permit fees and require the (Commercial Fisheries Entry Commission) CFEC to issue permits at the same cost to all permit holders.

Section 2: Amended AS 16.43.160(a) requiring the commission to make each person pay the same fee with the exception of the non-resident surcharge. The non-

resident exemption was included to ensure compliance with the Carlson decision.

Section 3: Removed references to AS 38.05.180(i), the Exploration Incentive Credit from AS 41.09.010(a).

Section 4: Removed references to AS 38.05.180(i) from AS 41.09.010(b).

Section 5: Removed references to AS 38.05.180(i) from AS 43.20.043(g).

Section 6: Amended 43.55.210 to disallow the deduction for federal taxes for the purposes of calculating the state tax on large passenger cruise ship gambling activity.

Section 7: Amended AS 43.40.010(c) by removing language that allowed motor fuel dealers to retain a portion of the motor fuel tax due to cover expenses for filing motor fuel tax return.

Section 8: Removed references to AS 43.50.540 from AS 43.50590(a) to conform to the repeal of AS 43.50.540(c) in Section 12.

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Section 9: Removed references of the Exploration Incentive Credit from AS 43.55.011(m) to conform to the repeal of AS 38.05.180(i) in Section 12.

Section 10: Removed references to the Exploration Incentive Credit (AS 38.05.180(i)) from AS 43.55.023(a) to conform to the repeal of AS 38.05.180(i) in Section 12.

Section 11: Removed references to AS 38.05.180(i) from AS 43.55.023(l) to conform to the repeal of AS 38.05.180(i) in Section 12.

Mr. Anderson continued with Section 12 that contained the Statute Repealers:

- AS 06.20.030(c) was the subsection that allowed the license fee Small Loan Company License to replace the Alaska Business License.

- AS 16.43.160(d) was the subsection that established the reduced fee for low income permit holders within the CFEC.
- AS 38.05.180(i) was the subsection that established the Exploration Incentive Credit.
- AS 41.09.030 is the section that referenced the relationship of the Exploration Incentive Credit to Title 41 Chapter 9 (which is Title 41 - Public Resources / Chapter 09 - Oil and Gas Exploration Incentive Credits).
- AS 43.50.330(b) was the subsection establishing the filing deduction for the Excise Tax on Tobacco Products.
- AS 43.50.540(c) was the subsection that established the discount for the Cigarette Tax Stamps.
- AS 43.50.540(h) established a definition of the stamps that were eligible for the discount.
- AS 43.98.025(e) was the subsection that established the deduction for filing in the Tire Fees.

Mr. Anderson cited the three Code repealers in Section 13:

- 20 AAC 05.250(b) was the code that established the reduced fee for low income permit holders within the CFEC.
- 20 AAC 05.425(e)(1)(2) was the code that established the reduced fee for expediting fees for low income permit holders within the CFEC.
- 20 AAC 05.1910(h) was the code that established the reduced fee for transfer fees for low income permit holders within the CFEC.

Mr. Anderson spoke to the final three sections:

Section 14: Provided transitional language related to the repeal of the Exploration Incentive Credit and CFEC low income transfers.

Section 15: Contained the effective date of January 1, 2016 for the gambling tax activities based off of the federal tax calendar year and the fact that the gambling tax was paid annually.

Section 16: Contained the effective date of July 1, 2015 for all other sections in order to comply with the State of Alaska fiscal calendar and all other related fees, discounts, deductions that were calculated monthly.

Representative Wilson shared that she supported the legislation.

Representative Kawasaki wanted to know whether HB 155 included all of the indirect expenditures recommended for termination in the Indirect Expenditure Report (copy on file).

Mr. Anderson responded that the report identified several indirect expenditures for termination having to do with corporate income tax. Other indirect expenditure regarding corporate income tax were recommended for policy review and reconsideration. He relayed that the sponsor thought the corporate income tax indirect expenditures needed to be further scrutinized and examined comprehensively as a whole and were not included in the legislation.

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Representative Kawasaki asked whether the finance analysis in the report was provided by LFD. Mr. Anderson confirmed that the recommendations came from LFD and added that the numbers were provided by the Department of Revenue (DOR).

Representative Kawasaki asked whether DOR had any comments regarding the recommendations from LFD.

JERRY BURNETT, DEPUTY COMMISSIONER, TREASURY DIVISION, DEPARTMENT OF REVENUE, indicated that the department had had discussions about the recommendations. He reported that the department supported the legislation.

Representative Kawasaki understood terminating the direct expenditures that had never been used or did not generate revenue. He wondered whether DOR was comfortable with terminating the credits that had a fiscal impact because the credits were rarely used or had a negligible benefit. Mr. Burnett responded affirmatively.

Co-Chair Thompson asked why the new DOR fiscal note contained an appropriation for \$50 thousand for updating tax forms and contractor work to program the changes into the Tax Revenue Management System (TRMS). He thought that the appropriation was high.

Mr. Burnett responded that he would have to review the estimate from the contractor. He added that each time changes were made to the system the contractor was required to update the system. He stated that the amount was the departments "best estimate" of the contractor's charges.

Representative Gattis referred to legislation regarding the Tire Tax [HB 88 Fees For Tires] and hoped that along with passage of HB 155 the tax system would only collect the taxpayers' information that was absolutely necessary.

Mr. Burnett stated that he had discussed the issue with the deputy director of the tax division and reported that the division was committed to reducing the amount of information required.

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Co-Chair Neuman cited the fiscal note and wondered whether the department had a contingency plan if the contractor costs were less than \$50 thousand.

Mr. Burnett replied that with passage of the legislation the fiscal note would appropriate the entire \$50 thousand to the department. He qualified that if the costs were less DOR would work with LFD and either lapse the funds or include them in the supplemental budget. Co-Chair Neuman commented that the fiscal note should be further examined.

Representative Guttenberg cited page 97 of the report regarding the Oil and Gas Production Tax, State Royalty credit and read the following:

Recommend termination. The credit appears obsolete and ineffective given that it hasn't been used in over a decade. The Alternative Credit for Exploration (AS 43.55.025 (a) (1-4)) appears to be a more attractive incentive.

Representative Guttenberg indicated that there were two incentives but only one was being used. He wanted to know how it was determined which incentive was the best one to remove.

Mr. Burnett was not prepared to answer the question. He believed there had been an ongoing discussion about what credits were necessary. He guessed that the credits included in AS 43.55.025 were the most recent and the one recommended for termination was outdated.

Representative Pruitt referenced Section 7, related to the motor fuel tax. He asked whether the bill was simply removing the incentive to file on time and no penalty was applied. Mr. Anderson was not able to answer the question.

Mr. Burnett stated that all taxes had penalties for late filing. He elaborated that penalties and interest were charged to late filers. Currently, filing taxes was much easier than when the incentives were initially implemented.

Representative Pruitt wanted to understand the tax system in a historical context. He confirmed that currently an incentive and a penalty was in place. He deduced that currently incentives were less necessary due to the ease of filing. Mr. Burnett responded in the affirmative.

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Representative Munoz asked what the amount of the gambling tax collected by the state was. Mr. Burnett responded that he would follow up with the answer. Representative Munoz asked what the amount of revenue was generated through the gambling tax. Mr. Burnett could not recall the exact amount and pledged to provide the answer.

Representative Munoz asked why the sponsor decided to remove the deduction of federal taxes from gambling proceeds. Mr. Anderson responded that typically, state taxes were deducted from federal taxes and not the other way around. He indicated that the change was suggested to

align with the state's tax structure. Representative Munoz asked if the state was assessing the tax on the federal portion of gambling proceeds as well. Mr. Anderson deferred to Mr. Burnett.

Mr. Burnett explained that DOR assessed a tax based on all of the revenues earned on gambling in state waters. Currently, the federal tax paid was deducted prior to determining the state tax. The legislation would levy the tax on the entire earnings and the federal tax would be levied on the revenue less the state tax, which was aligned with how the department collected most other taxes.

Representative Edgmon had questions regarding the Commercial Fisheries Entry Commission (CFEC). He cited page 48 from the Indirect Expenditure Report and asked where the 233 individuals eligible for the reduced permit fees were located in the state.

BEN BROWN, COMMISSIONER, COMMERCIAL FISHERIES ENTRY COMMISSION, DEPARTMENT OF FISH AND GAME, replied that he unaware of the specific geographic regions the individuals resided in and offered to provide the information. He guessed that many of the individuals resided in rural Alaska.

Representative Edgmon wondered what the impact of the additional costs of the permit fees would have on the areas where the individuals resided. He wondered what the reduced fee amounted to per individual.

Mr. Brown indicated that the reduction was 50 percent and fees ranged from \$75 to \$3000 depending on the statutory formula. Therefore, the reduction for a \$3000. fee was substantial. He believed that elimination of the fee reduction was "relative" and that collectively was "not that much for the department (\$17,921.) but could be a hardship for the individual.

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Representative Gara asked whether there was any other tax that operated like the gambling tax; allowing a deduction of federal taxes before paying state taxes. Mr. Burnett was not aware of any other tax similarly levied in the state.

Representative Gara stated that he was having difficulty understanding the statute references from the indirect expenditure report concerning exploration incentive credits and what credits were terminated in HB 155. He expressed confusion and wanted to ensure the wrong credit was not being eliminated. Discussion ensued among the committee members in an attempt to clarify the issue.

Co-Chair Thompson acknowledged that the issue was complicated and pointed out that his staff was available to answer committee member's questions.

Representative Gara asked for confirmation that AS 38.05.180 (i), the exploration credit designated for elimination in the bill had not been used in over a decade. Mr. Burnett responded in the affirmative.

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HB 155 was HEARD and HELD in committee for further consideration.

#hb15

HOUSE BILL NO. 15

"An Act relating to credits toward a sentence of imprisonment and to good time deductions."

REPRESENTATIVE TAMMIE WILSON, SPONSOR, discussed the intent of the bill. She announced that the bill dealt with the period of pre-trial; before possible conviction and sentencing. She explained that currently if an individual served the time awaiting trial in jail and was convicted credit was given for time served. The legislation would grant credit for time served under electronic monitoring. She read the following from page 1, beginning on line 10 of the bill:

...if the person has not committed a criminal offense while under electronic monitoring and the court imposes substantial restrictions on the person's freedom of movement and behavior while under the electronic monitoring program, including requiring the person to be confined to a residence...

Representative Wilson specified that the bill changed the definition of residence from strictly a private home to a

halfway house, residential treatment center, or other type of residential rehabilitative housing.

Representative Wilson continued to read from page 1, line 14 of the bill:

- ...except for a
- (1) court appearance;
 - (2) meeting with counsel; or
 - (3) period during which the person is at a location ordered by the court for the purposes of employment, attending an educational or vocational training, performing community volunteer work, or attending a rehabilitative activity or medical appointment.

Representative Wilson communicated that very little opportunity to receive treatment existed during the pre-trial period and many individuals lost their jobs or homes. She elaborated that the bill had no effect on a person qualified for electronic monitoring. Conversely, HB 15 would not change the prohibition against allowing electronic monitoring for sex offenders. She provided a scenario regarding how the bill would work. An individual charged with a crime would appear in court and be placed on electronic monitoring and other conditions of pre-trial release. If subsequently convicted, and the individual was compliant during pre-trial credit would be received for time served. She believed that the scenario was preferable over placing the individual in jail pre-trial without receiving rehabilitative treatment or services.

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Vice-Chair Saddler wondered whether one day served under electronic monitoring was worth one day's credit against incarceration. Representative Wilson confirmed that the credit was a 1 to 1 ratio.

Co-Chair Neuman asked how a person who was technically not guilty during the pre-trial time but was subsequently found guilty could legally be granted the time served before sentencing.

Representative Wilson responded that the system already gave credit against time served before sentencing. When a person was charged with a crime and was jailed during pre-trial, the individual was collecting time served against

sentencing time. She shared that HB 15, under strict conditions metered out by judge, would allow counseling, employment, treatment, etc. during the pre-trial time under electronic monitoring and receive credit for it if sentenced. She opined that doing something constructive like counseling or employment was preferable over languishing in jail at much higher costs to the state. She reiterated that the bill allowed for pre-trial electronic monitoring under very strict conditions and that currently electronic monitoring was only permitted post sentencing.

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Representative Gara commented that the language in the bill mattered. He expressed concern over the words "[while under electronic monitoring and the court imposes] substantial restrictions on the person's freedom." He wondered what the definition of "substantial restrictions" was. He suggested that an individual who acted exemplary in carrying out his pre-trial conditions under electronic monitoring but was "just short of substantial restrictions" could be denied credit for pre-trial time served. He wondered what would happen to the person with "almost substantial restrictions." He wondered why the language was included in the bill.

Representative Wilson clarified that the court would determine the substantial restrictions placed on the individual; therefore, that the person would know exactly what conditions to comply with during the pre-trial period. She informed the committee that the Department of Law (DOL) suggested the substantial restriction language.

Representative Gara stated that it was not "good enough for him" that the language was inserted in the legislation under the direction of DOL. He believed that the department tended to be "harder" on defendants than other agencies. He provided an example of a person living at home with an ankle monitor working to get their GED, obtaining employment, and abiding by other conditions imposed by the court. He did not think that the scenario would meet the definition of substantial restrictions. He wanted the person under his scenario to receive credit for time served while monitored.

Representative Wilson understood that a previous court case set precedent that mandated substantial restrictions or the "equivalent of being in jail."

Representative Gattis agreed with Representative Gara. She thought that "people with bad behavior should be given the opportunity to "rehabilitate;" if the person reoffended then at least the opportunity was offered. She saw people in her district who had "made a mistake and recognized their mistake, but could not get out of the hole." She claimed that the state was not providing the opportunity for rehabilitation and inmates were merely "existing" in prison at high financial costs to the state. She wanted the system to help convicted "citizens" work their way into becoming productive members of society and "move forward." She believed that "sitting in jail was not the answer" nor was replicating jail because the current system was failing.

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Vice-Chair Saddler asked about the meaning of "substantial restrictions on movement" and asked how the language was interpreted. He inquired whether it was confined to what was listed as allowable in HB 15 or whether the court could impose other activities or restrictions. Representative Wilson answered that the court system would decide what restrictions on movement to impose within the provisions listed in the bill.

Co-Chair Neuman observed that different judges imposed different sentences for the same crime and "was not a fair system." He wanted a clear definition of "substantial restrictions." He suggested that the bill list what substantial restrictions were as opposed to leaving the definition open to interpretation.

Representative Wilson pointed out the difficulty in achieving consensus among the Department of Corrections (DOC), public defenders, district attorneys, and the Court System when crafting the legislation. She shared that the bill was a compromise between the entities within the confines of the court case precedent. She expressed concern over the public's safety and thought that sufficient restrictions were needed to safeguard the public. She agreed that having the definition in writing would help but wanted to wait and see how HB 15 would play out in the

courts, if adopted. She surmised that substantial restrictions would act as a deterrent for the individual under electronic monitoring while allowing the opportunity for reform.

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Representative Guttenberg stated his concern about the definition of substantial restrictions. He was also concerned about court imposed restrictions that were not criminal offenses i.e., restricting drinking or smoking marijuana, and wondered how the bill was dealing with those restrictions.

Representative Wilson referred to lines 11 through 12 on page 1 and interpreted the language to mean that during the period of electronic monitoring a person may not commit another crime and receive credit for time served. She cited that the definition of substantial restrictions was listed on page 2 and that the court would impose definitive restrictions around where and when the person was expected to be at all times.

Representative Gara understood the bill to read that the allowances listed on page two: court appearances, employment, rehabilitative activity, etc., were exceptions to court restrictions.

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Representative Gara interpreted the legislation to mean that the items listed on page 2 were exempted from substantial restrictions and wanted to clarify the interpretation for the committee.

Representative Wilson responded that she understood the bill to read that unless the monitored person was at one of the locations listed in the bill they would be restricted to their place of residence.

Representative Gara opined that it was "mind boggling" that someone who committed a minor crime would be denied credit for time served if they were not placed under substantial restriction than a person who committed a more serious crime and remained in jail during pretrial and received credit for time served. He added that he was certain the list on page two contained exemptions and not restrictions.

Representative Wilson agreed that the term "substantial" made the bill "more difficult to understand." She restated that the term was necessary due to a court case the state lost that determined that in order to allow pretrial monitoring the restrictions had to be equivalent to being in jail. The bill attempted to define what that equivalent meant.

Vice-Chair Saddler requested to hear from DOL or DOC to answer the question whether electronic monitoring was more restrictive than confinement in jail presentencing whether it was known how many people were eligible for monitoring and took advantage of the opportunity.

REMOND HENDERSON, DEPUTY COMMISSIONER, DEPARTMENT OF CORRECTIONS, reported that 457 people were on electronic monitoring post-sentencing and that currently 1875 people were in pre-trial status. He did not know how many of the pre-trial individuals would be eligible for electronic monitoring. He detailed that the department's goal was to move more post-trial convicts onto monitoring when possible.

Representative Wilson interjected that most of the monitoring was performed by private entities.

Vice-Chair Saddler asked how many people post-conviction were eligible for electronic monitoring and accept it versus those that choose incarceration. He wondered whether convicts viewed electronic monitoring as an easier sentence than confinement.

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CARRIE BELDEN, DIRECTOR, DIVISION OF PAROLE AND PROBATION, DEPARTMENT OF CORRECTIONS (via teleconference), declared that she could not answer the question because it was a matter of the convict's personal preference and capability to accept electronic monitoring.

Representative Wilson indicated that it was not possible to compare post-trial to pre-trial. She explained that if a person in jail during pre-trial was convicted the credit they received for time served was called "good time" versus a person choosing electronic monitoring who would receive day for day credit. Presently, more incentive existed to remain in jail post-conviction than choose electronic

monitoring. She stated that her bill was attempting to "even out" the incongruity.

Representative Gara asked whether the bill was limited to individuals prior to conviction and sentencing or also applied to offenders post-sentencing.

KACI SCHROEDER, LEGISLATIVE LIAISON, DEPARTMENT OF LAW, responded that the legislation applied to pre-trial sentencing.

Representative Gara asked whether Section 1 and Section 2 of HB 15 only applied to pretrial sentencing. Ms. Schroeder responded in the affirmative. She added that a post-trial offender was under the jurisdiction of DOC. The department decided on convicts placements, which could include electronic monitoring with restrictions.

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Representative Gara described a scenario where an individual was sentenced pre-trial with an ankle monitor and conditions that fell short of substantial restrictions on freedom of movement. He questioned why the individual would not receive credit for time served.

Ms. Schroeder indicated that the language, "substantial restrictions on the person's freedom of movement and behavior" was derived directly from case law. Case law defined criteria "like incarceration" and the judge would be familiar with the criteria. She cited AS.12.55.027, which was not included in the bill that referred to residential treatment and delineated the restrictions necessary to qualify for jail credit.

Representative Gara asked whether including or removing "substantial" was a policy call for the legislature. Representative Wilson understood that if substantial restrictions was removed the law would be challenged in court. She reiterated that the bill was shaped through compromise between the four entities. She emphasized that "substantial restrictions" was a big issue in drafting the HB 15. She wanted the legislation to be effective and utilized.

Representative Gara directed the question to DOL and wondered whether removing substantial restrictions would render the policy invalid.

Ms. Schroeder explained that pre-trial jail credit was "very well fleshed out in the court system." Additionally, many cases support disallowance of time served under pre-trial electronic monitoring. However, the bill was countering the precedent by stating that electronic monitoring could be the equivalent to jail under the conditions specified in the bill. The language in HB 15 reflected a policy shift and nothing prohibited the legislature from making another policy call, which eventually would be considered in the courts.

Co-Chair Thompson invited Nancy Meade to testify clarifying the judge's role in pre-trial sentencing.

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NANCY MEADE, GENERAL COUNSEL, ALASKA COURT SYSTEM, explained that judges refrain from ordering electronic monitoring "per se." Pre-trial defendants received specific bail conditions; one condition required a third party custodian. Therefore, some defendants cannot find a suitable custodial guardian. Subsequently, the defendant can hire a company that provided custodial guardianship via an ankle monitor. She voiced that the defendant must convince the judge the method was appropriate under the bail conditions and the company must establish its capability of responsible guardianship. She reported that DOC was not involved in pre-trial monitoring. Upon the judge's approval, an order specifying the defendant's monitoring conditions was written by the judge, who was placed on notice by the defendant that he would request credit for time served under monitoring when sentenced.

Representative Gara asked whether substantial restrictions must be imposed in order to receive credit for time served. Ms. Meade thought that the substantial restriction language was included specifically for receiving credit for time spent in residential treatment. She related that the court's position was that the legislature could create any policy it wanted in regards to pre-trial time served and electronic monitoring and the court would apply it.

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Representative Gara thought that a defendant who did not have a drug and alcohol problem and was placed on pre-trial electronic monitoring but was not subject to substantial restrictions on his freedom of movement should gain credit for time served. He asked for Ms. Meade's thoughts.

Ms. Meade responded that bill did exclude the person in the described scenario and reiterated that the committee could include any type of policy call it desired in regards to the issue and the court would apply the law.

Vice-Chair Saddler asked what percentage of people placed on electronic monitoring complied with the restrictions. Ms. Meade replied that she did not have the exact statistic but compliance was "quite high." She elaborated that the defendant was paying a high fee for the monitoring service. The electronic monitoring companies acted swiftly to file a petition when a defendant transgressed and were trusted by the courts.

Representative Wilson maintained that the bill was a change in policy and reminded the committee that Alaska's prisons were at "101 percent" capacity and she hoped the legislation was a first step to stop the "revolving door" of incarceration.

HB 15 was HEARD and HELD in committee for further consideration.

ADJOURNMENT

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The meeting was adjourned at 3:07 p.m.