

HOUSE FINANCE COMMITTEE

April 12, 2016

1:37 p.m.

1:37:46 PM

CALL TO ORDER

Co-Chair Thompson called the House Finance Committee meeting to order at 1:37 p.m.

MEMBERS PRESENT

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

MEMBERS ABSENT

None

ALSO PRESENT

Sean O'Brien, Director, Division of Public Assistance, Department of Health and Social Services; Monica Windom, Policy Chief, Division of Public Assistance, Department of Health and Social Services; Senator Gary Stevens, Sponsor; Tin Lamkin, Staff, Senator Stevens; Kent Sullivan, Assistant Attorney General, Civil Division, Department of Law; John Skidmore, Director, Criminal Division, Department of Law.

PRESENT VIA TELECONFERENCE

Jeff Laughlin, Trooper, Alaska State Trooper.

SUMMARY

HB 317 FORFEITURE:NO CIVIL IN REM; ONLY CRIMINAL

CSHB 317 (FIN) was REPORTED out of committee with a "do pass" recommendation and with two new zero fiscal notes from the Department of Administration, one new zero fiscal note from the Department of Law, and one new zero fiscal note from the Department of Public Safety.

SB 147 SENIOR BENEFITS PROG. ELIGIBILITY

CSSB 147 (HSS) was REPORTED out of committee with a "do pass" recommendation and with one previously published fiscal note: FN1 (DHS).

SCR 1 CIVICS EDUCATION TASK FORCE

HCSCSSCR 1 was REPORTED out of committee with a "do pass" recommendation and with one previously published fiscal note: FN3 (LEG).

Co-Chair Thompson reviewed the agenda for the day.

[1:38:41 PM](#)

#sb147

CS FOR SENATE BILL NO. 147(HSS)

"An Act relating to eligibility requirements of the Alaska senior benefits payment program; and providing for an effective date."

[1:39:34 PM](#)

SEAN O'BRIEN, DIRECTOR, DIVISION OF PUBLIC ASSISTANCE, DEPARTMENT OF HEALTH AND SOCIAL SERVICES, relayed that the bill was a result of an omission by error. The provision added qualifying criterion to the eligibility requirements specifying that an individual must be a citizen or qualified alien for the senior benefits program. The change aligned the eligibility requirements with all other programs in the Division of Public Assistance. He reported that approximately 16 individuals would be excluded from the program with adoption of the bill. He noted that the fiscal note showed a potential savings of \$43.2 thousand.

Representative Guttenberg asked about the bill's inception. He wondered how eligibility would be determined if the bill passed.

MONICA WINDOM, POLICY CHIEF, DIVISION OF PUBLIC ASSISTANCE, DEPARTMENT OF HEALTH AND SOCIAL SERVICES, responded that the Department of Health and Social Services (DHSS) was not required to collect citizen information on recipients of the program. She explained that the department performed a "cross match" with other programs where citizenship was required and discovered the 16 recipients in the senior benefits program were not eligible based on their ineligibility for the other programs.

Representative Guttenberg commented that the cost of the legislation was more than the savings the department would gain.

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Representative Kawasaki surmised that the saving would come from the elimination of the 16 disqualified persons. Ms. O'Brien affirmed the statement.

Representative Munoz was curious about the "status of the payment for the highest income bracket." Ms. O'Brien stated that a payment of \$47 per month for the highest income bracket went into effect on March 1, 2016. Representative Munoz asked about the 16 that would lose the benefits and asked what income bracket the individuals were in. Ms. Windom responded that there were some that fell in each of the brackets and she could not remember specifics.

Representative Gattis asked how many of the 16 individuals were on a fixed income. She stated concerns regarding seniors on a fixed income receiving little or no notice regarding the issue.

Representative Wilson interjected a point of order. She noted that eligibility was not the subject of the bill.

Representative Kawasaki asked whether any audits were done on eligibility. Ms. Windom answered that the program had an annual renewal policy and the department reviewed the recipient's qualifications each year. Since citizenship was not a qualifier the department never checked on status. Representative Kawasaki asked whether proof of citizenship such as a birth certificate was required in the future. Ms. Windom stated that DHSS verified citizenship in a variety of ways including an interface with the United States

Immigration and Naturalization Service (INS) and would become routine for the senior benefits program.

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Co-Chair Thompson OPENED public testimony.

Co-Chair Thompson CLOSED public testimony.

Mr. O'Brien appreciated consideration of the bill.

Co-Chair Thompson noted the fiscal note (FN2 (DHS)) attached to the bill.

Representative Kawasaki asked whether the 16 individuals received notification of their impending removal from the program. Ms. Windom replied in the negative. She stated that when the bill was adopted by the legislature the division would notify the individuals.

Representative Munoz MOVED to REPORT CSSB 147 (HSS) out of committee with individual recommendations and the accompanying fiscal note(s). There being NO OBJECTION, it was so ordered.

CSSB 147 (HSS) was REPORTED out of committee with a "do pass" recommendation and with one previously published fiscal note: FN2 (DHS).

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AT EASE

[1:51:47 PM](#)

RECONVENED

#scr1

CS FOR SENATE CONCURRENT RESOLUTION NO. 1(EDC)

Relating to a legislative task force on civics education.

SENATOR GARY STEVENS, SPONSOR, discussed the legislation. He questioned whether currently children were aware of the basic elements of democracy and what it meant to be a citizen and voter. He explained that the resolution established a task force to examine and improve awareness of the importance of civics education in the state. He

noted that currently, the federal Every Student Succeeds Act (ESSA), provided funding for non-profits to assist in the endeavor.

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Representative Wilson noted the zero fiscal note. She pointed to page 3, line 30 - 31 of the legislation and read the following:

...further resolved that members of the task force serve without compensation but be entitled to per diem and travel expenses authorized for boards and commissions...

Representative Wilson wondered how the fiscal note justified the provision in the bill.

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TIN LAMKIN, STAFF, SENATOR STEVENS, pointed to the analysis on the second page of the fiscal note. He relayed that the members of the task force would pay their own way. He provided the example of a task force member employed by the University of Alaska utilizing University per diem funds to attend. The intent was that members would be chosen from residents of the Anchorage area to keep travel costs to a minimum. Representative Wilson assumed the travel expenses would be covered by their organization or employer. Mr. Lamkin answered in the affirmative.

Representative Guttenberg commented that the legislature went through many "machinations" regarding the issue over the years. He recalled when he was in grade school he engaged in civics lessons and activities. He asked whether the sponsor accumulated information regarding how civics was currently taught. Senator Stevens responded that his views on the issue were predicated on his own anecdotal experience when visiting school classrooms. He observed that basic civics understanding and information in the schools was lacking. He was not aware of a specific study. Representative Guttenberg ascertained that the legislature needed to gain a better understanding regarding the exposure to civics Alaskan children was receiving in school. Senator Stevens provided an example of a program in Boston, Massachusetts that helped teachers teach students about civics and citizenship. He wished to see a similar outcome from the state's task force.

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Representative Gara appreciated the senator for bringing the legislation forward and felt that with the emphasis on STEM (science, technology, engineering and math) training other important aspects of education was being lost. He relayed a personal experience of being mistaken for a congressional representative.

Representative Munoz asked whether curriculum expansion would be a result of the bill. Senator Stevens confirmed that the curriculum would not change. He hoped that a separate civics class would be established but the goal was to attain results at low costs which required a different approach. Representative Munoz wanted to make sure that a result of the legislation was not mandating additional graduation requirements. Mr. Lamkin pointed to page 2, lines 14 through 20 in the current House Education Committee version of the bill that requested the task force to evaluate the merits and implementation of requiring a civics test. He shared that the test was the citizenship test that immigrants were required to pass. The test contained 100 questions and 60 percent was a passing grade. Statistics showed that 92 percent of immigrants passed the test versus 3 percent of graduating seniors in Arizona and 4 percent in Oklahoma. He thought that the results were indicative of the current problem.

Co-Chair Thompson invited questions for Michael Poliakoff, Ph.D., Vice President of Policy, American Council of Trustees and Alumni.

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Co-Chair Thompson OPENED public testimony.

[2:03:48 PM](#)

Co-Chair Thompson CLOSED public testimony.

Senator Stevens thanked the committee for hearing the bill.

Co-Chair Thompson spoke to the fiscal note FN3 (LEG) regarding travel costs that was zeroed out by the House Education Committee with the included remarks that anticipated the travel cost would be absorbed. He felt

uncomfortable that the bill still contained language entitling travel and per diem expenses.

[2:04:26 PM](#)

Representative Wilson voiced that the current fiscal note was only one page and supported the zero fiscal note with the absorption of travel related costs.

Co-Chair Thompson noted the zero fiscal note.

Representative Munoz MOVED to REPORT HCSCSSCR 1 (EDC) out of committee with individual recommendations and the accompanying fiscal note(s). There being NO OBJECTION, it was so ordered.

HCSCSSCR 1 was REPORTED out of committee with a "do pass" recommendation and with one previously published fiscal note: FN3 (LEG).

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AT EASE

[2:08:05 PM](#)

RECONVENED

#hb317

HOUSE BILL NO. 317

"An Act relating to forfeiture to the state; relating to criminal law; amending Rules 3, 4, 11, 12, 16, 32, 32.2, 32.3, 39, 39.1, and 42, Alaska Rules of Criminal Procedure, Rules 501, 801, and 803, Alaska Rules of Evidence, and Rules 202, 209, and 217, Alaska Rules of Appellate Procedure; and providing for an effective date."

[2:08:27 PM](#)

REPRESENTATIVE WILSON, SPONSOR, reviewed the bill. She stated that the legislation prohibited law enforcement from seizing property without pressing charges first. She reported that the explanation of changes from the previous version amended Section 09.55 to add a new subsection to abolish "in rem forfeiture" actions and provided for an effective date. She added that all other sections were deleted.

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AT EASE

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RECONVENED

Representative Kawasaki cited letters of opposition included in the bill packet (copy on file) and assumed they referred to previous versions of the legislation. He related a scenario where a person got stopped for a DUI [Driving Under the Influence] and wondered whether the individual was immediately charged. Representative Wilson responded in the affirmative. She confirmed that the letters referred to previous versions of the legislation. She characterized the bill as "simple." She exemplified a chair and explained that that she "could not arrest the chair and take it to court and expect it to testify." The bill mandated that charges had to be brought against a person and not their property. Representative Kawasaki indicated that civil asset forfeiture was typically used with drug offenses. He asked how the bill would impact civil asset forfeiture. Representative Wilson stated that many forfeiture laws existed and were not affected by the bill. She stated that the specific forfeiture contained in the legislation was a process not currently being used. The bill was initially much larger and encompassed all types of forfeiture but created costly fiscal notes for the affected departments. She commented that she was planning to work with the departments over the interim on the larger version of the bill and address the fiscal note issues. The bill was reduced to only include an idle statue.

Representative Gara liked the way the sponsor described the bill. He asked if he could direct a question to an attorney in the room.

Co-Chair Thompson answered in the affirmative. He mentioned an email from the Department of Law (DOL) [Cori Mills - dated April 12, 2016] (copy on file) that was distributed to members.

Co-Chair Thompson indicated he had received an email that stated that DOL had concerns about the bill and suggested amendment language.

JOHN SKIDMORE, DIRECTOR, CRIMINAL DIVISION, DEPARTMENT OF LAW, relayed that the original bill was much larger and

tried to change a number of statutes. Concerns developed regarding certain measures and the bill was scaled back to the single provision. He reported that the Criminal Division did not file charges against property and did not have any problems with bill. He noted that criminal charges were filed against an individual and if property was associated forfeiture actions would be taken. The civil division had identified some concerns during the process of revising the fiscal note.

KENT SULLIVAN, ASSISTANT ATTORNEY GENERAL, CIVIL DIVISION, DEPARTMENT OF LAW, understood the intent of the bill. He stated concerns about potential unintended consequences in civil law. He shared that he practiced civil litigation for roughly 20 years that included real property litigation, quiet title actions, condemnation actions, and probate. He communicated that many areas of civil law was involved in "in rem forfeiture" actions, which were actions against property that "might be construed" in some way to "constitute a civil forfeiture." A question remained whether the legislation impacted the types of actions he referenced. He suggested clarification by the courts. He provided a few examples. He pointed out that in Southeast Alaska it was not uncommon for the Department of Natural Resources (DNR) to find unoccupied float houses located on state tide lands. Permits were required for the situation. In the absence of a permit, DNR was authorized to remove the float house. If records identifying an owner or the owner itself was not discovered, DNR needed an avenue to deal with the float house. He revealed that a cause of action against the property itself could be instituted by the courts which granted authority over the property and allowed further notification of potential owners and further authorized the action to proceed against the property. The action granted time for a potential owner to claim the property and prove ownership. If ownership isn't proven or found the court engaged in in rem forfeiture proceedings, which allowed the state to take action disposing of the float house. He stated that in rem forfeiture applied to many other examples of civil law.

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Mr. Sullivan provided other examples where the forfeiture law applied such as finding abandoned property structures or equipment on an individual's private property or in probate proceeding in the absence of a will or heir where

property escheated to the state. In the examples provided the in rem laws allowed the claims to proceed in court against the property. He delineated that state statute allowed a quiet title action but statute did not define all of the parameters of quiet title actions. The details were filled in by common law. He was unsure about the extent of the impact of the bill. The department needed more time to further examine how the bill would impact the issues he discussed.

Representative Gara wanted to see the bill move forward and suggested developing appropriate amendment language to assist its adoption. He understood the concern raised by the civil division. He asked for a brief explanation of in rem forfeiture. Mr. Sullivan defined an in rem forfeiture as "a proceeding as against the property as opposed to the person." He informed the committee that there were "many, many instances where it was impossible to get a judgement against the person."

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Representative Gara did not mean a judgement against a person. He reiterated Mr. Sullivan's float house example. He suggested adding the following language: "common law, civil in rem forfeiture actions are abolished, unless there has been a final court judgement." He asked whether everyone's interest was satisfied.

Co-Chair Thompson asked whether Representative Gara referred to the potential language amendment recommended in the department's email. Representative Gara replied in the affirmative and declared that the proposed amendment was vague.

Mr. Sullivan supposed that the language Representative Gara was suggesting might work. He was concerned whether a judgement existed in all instances. He stated in issues concerning probate proceedings, disclaimers of property, and disavowing a property a judgement was not given. In addition, requiring a judgment was putting the last legal piece of the process first.

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Representative Gara suggested the language "without a court order" instead. Mr. Sullivan agreed that both of the

representative's amendment proposals might work. He referred to the language proposed in the email:

Sec. 09.55. 700. In rem civil forfeiture actions abolished. Common law civil in rem forfeiture actions are abolished if used instead of a criminal proceeding.

Representative Gara responded that the language sounded "really vague." He believed that the department's suggested language required justification why the in rem forfeiture action was chosen instead of criminal proceedings. He felt that the language was unclear and his language regarding a valid court order was more definitive. Mr. Sullivan asked whether he was suggesting not using DOL's recommended language. Representative Gara replied in the affirmative. He contended that his suggested language clarified that the property could not be seized without a court order. Mr. Sullivan remarked that he was being asked to respond quickly. He maintained a concern that the language allowed a court order in a criminal proceeding and defeated the intent of the bill. He indicated that if the intent of the language was to only abolish the use of civil forfeiture unless there was a court order, the amendment might work. However, if the intent was to abolish the use of civil in rem forfeiture even when used in the context of criminal procedure it would not achieve the desired result. Representative Gara thought that the bill sponsor's intent was to eliminate forfeiture without a court order. Mr. Sullivan deduced that his language "may address the concern from the civil side" of the issue.

Representative Gara suggested alternative language as follows: "Common law civil in rem forfeiture actions are prohibited unless there had been a court order."

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Representative Munoz referred to Mr. Sullivan's example of a house boat. She wondered whether a court order was necessary to remove the structure. Mr. Sullivan responded affirmatively. He expounded that a court process similar to a quiet title action that provided notice to the public applied.

Representative Gara wondered whether there was any illegal circumstance where a trooper would seize someone's property without a court order.

JEFF LAUGHLIN, TROOPER, ALASKA STATE TROOPER (via teleconference), responded in the negative. He relayed that troopers never seized any property in the absence of criminal charges. Representative Gara understood criminal forfeiture. He was referring to civil cases but was uncertain how to phrase the question.

Co-Chair Thompson agreed that everyone was familiar with forfeiture that was unreasonable and thought that the bill was attempting to address the issue. He provided an example of someone driving through a state with a lot of cash in order to purchase a car. The individual was stopped by police and the money was seized on the suspicion of drug dealing. He guessed that a similar situation had not happened in Alaska.

[2:33:10 PM](#)

Co-Chair Thompson OPENED public testimony.

[2:33:26 PM](#)

Co-Chair Thompson CLOSED public testimony.

Co-Chair Thompson wanted additional clarification from DOL.

[2:33:58 PM](#)

AT EASE

[2:37:57 PM](#)

RECONVENED

Representative Wilson MOVED to ADOPT Conceptual Amendment 1 that would delete the word "abolished" and inserted "prohibited unless there is a court order." There being NO OBJECTION, it was so ordered.

Representative Kawasaki suggested that the title needed to change.

[2:39:12 PM](#)

AT EASE

2:40:07 PM

RECONVENED

Co-Chair Thompson stated that the conforming language would apply to the title.

Co-Chair Thompson reviewed the fiscal notes. He noted the new zero fiscal note for the Department of Administration (DOA) appropriated to Legal and Advocacy Services allocated for the Office of Public Advocacy and the new zero fiscal note for the Department of Administration (DOA) appropriated to Legal and Advocacy Services allocated for the Public Defender agency. He mentioned the new zero fiscal note for DOL appropriated for Administration and Support allocated to Office of the Attorney General and finally, the indeterminate fiscal note from the Department of Public Safety (DPS) appropriated for Statewide Support and allocated to the Commissioner's Office.

Representative Munoz MOVED to REPORT CSHB 317 (FIN) as amended out of committee with individual recommendations and the accompanying fiscal note(s).

CSHB 317 (FIN) was REPORTED out of committee with a "do pass" recommendation and with two new zero fiscal notes from the Department of Administration, one new zero fiscal note from the Department of Law, and one new zero fiscal note from the Department of Public Safety.

Co-Chair Thompson reminded members that formal decorum was necessary during committee. He reviewed the agenda for later in the afternoon of the same day.

#

ADJOURNMENT

2:43:03 PM

The meeting was adjourned at 2:43 p.m.