

SENATE FINANCE COMMITTEE

April 9, 2015

1:55 p.m.

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CALL TO ORDER

Co-Chair MacKinnon called the Senate Finance Committee meeting to order at 1:55 p.m.

MEMBERS PRESENT

Senator Anna MacKinnon, Co-Chair
Senator Pete Kelly, Co-Chair
Senator Peter Micciche, Vice-Chair
Senator Click Bishop
Senator Mike Dunleavy
Senator Lyman Hoffman
Senator Donny Olson

MEMBERS ABSENT

None

ALSO PRESENT

Gene Therriault, Deputy Director, Statewide Energy Policy Development, Alaska Energy Authority, Department of Commerce, Community and Economic Development; Emily Ford, Energy Policy and Outreach Manager, Alaska Energy Authority, Department of Commerce, Community and Economic Development; Kathy Wasserman, Alaska Municipal League, Juneau; Tim Lamkin, Staff, Senator Gary Stevens; Kristen Pratt, Staff, Senator Anna MacKinnon; Senator Cathy Giessel, sponsor; Laura Pierre, Staff, Senator Anna MacKinnon; Pat Pitney, Director, Office of Management and Budget, Office of the Governor; Mary Siroky, Director, Division of Administrative Services, Department of Transportation and Public Facilities.

PRESENT VIA TELECONFERENCE

Chris Rose, Executive Director, Renewable Energy Alaska Project (REAP), Anchorage; Daniel Moore, Treasurer, Municipality of Anchorage, Anchorage.

SUMMARY

SB 22 MOTOR VEHICLE REG. TAX: COLLECTION COSTS

SB 22 was HEARD and HELD in committee for further consideration.

SB 26 BUDGET: CAPITAL

CSSB 26(FIN) was REPORTED out of committee with a "do pass" recommendation.

SB 56 MUNI ENERGY IMPROVEMNT ASSESSMNTS/BONDS

SB 56 was HEARD and HELD in committee for further consideration.

SCR 1 CIVICS EDUCATION TASK FORCE

CS SCR 1(EDC) was REPORTED out of committee with a "do pass" recommendation and with one new zero fiscal note from the Senate Finance Committee for the Legislature.

SJR 2 CONST. AM: G.O. BONDS FOR STUDENT LOANS

SJR 2 was REPORTED out of committee with a "do pass" recommendation and with one previously published zero fiscal note: FN1 (GOV).

Co-Chair MacKinnon discussed the schedule.

#sb56

SENATE BILL NO. 56

"An Act adopting the Municipal Property Assessed Clean Energy Act; authorizing municipalities to establish programs to impose assessments for energy improvements in regions designated by municipalities; imposing fees; and providing for an effective date."

[1:56:43 PM](#)

GENE THERRIAULT, DEPUTY DIRECTOR, STATEWIDE ENERGY POLICY DEVELOPMENT, ALASKA ENERGY AUTHORITY (AEA), DEPARTMENT OF COMMERCE, COMMUNITY AND ECONOMIC DEVELOPMENT (DCCED), discussed SB 56, and explained that the bill would offer a

new mechanism to municipal governments to work with the commercial property owners to implement energy improvements to their facilities. He recounted that in 2010, the legislature set a goal for a 15 percent increase in energy efficiency in the state by the year 2020. He shared that AEA had been tracking the progress towards the goal, and evaluating areas in which the state was moving forward or not. He explained that AEA operated a program that assisted commercial property owners with energy audits of their properties. He recounted that AEA had done about 170 of the audits through the program across the state, and for properties that had subsequently moved forward with improvements they generally saw yearly energy savings of about 30 percent. He remarked on the sizable possible savings and expressed a desire that more businesses would do the audits and follow through with the improvements. Through a survey of energy audit participants, AEA had concluded that financing was one of the primary impediments for businesses to complete the improvements.

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Mr. Therriault related that through his interaction with a national energy association, he met with the participants from different states and looked at mechanisms other states were using in the same scenario. He identified that Property Assessed Clean Energy (PACE) financing was currently being used in about 31 other states. He directed attention to the presentation "SB 56 Property Assessed Clean Energy (PACE)" (copy on file), and emphasized the concept of "property assessed" within the financing mechanism.

Mr. Therriault detailed that by using PACE, a local government that assessed property tax could voluntarily engage a program under which they (through a revenue bond) would collect a pool of money or work with local lenders to lend to private business owners. The repayment of the loans was made by a voluntary assessment that was added to the individual property owner's yearly tax bill. Because the loan had the enforcement and collection power of the local government, the default rate was very low. He furthered that because of the low default rate, the loans were low-risk, could lead to lowered interest rates, and could allow the property owner to stretch the payments over a longer period of between 10 and 20 years.

Mr. Therriault stated that AEA's goal was to offer a low-cost source of capital with a long repayment period, so that on a yearly basis individual property owners could have net-positive cash flow through lowering their energy cost by more than the yearly loan repayment amount. He noted that the legislation was modelled after a bill passed in Texas a year previously, and SB 56 contained a number of protections that were offered in the Texas statute.

Mr. Therriault agreed to point out the various protections as the committee was viewing the remaining presentation, including those that pertained to local government, local business, and existing banks. He continued that he had worked with the Alaska Banking Association, and they were supportive of the legislation pending inclusion of a specific provision in the bill. Other supporters included the Alaska Municipal League and the Alaska Statewide Chamber of Commerce. He characterized PACE as a "common sense tool" for local governments to use in moving towards the goal of energy efficiency.

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EMILY FORD, ENERGY POLICY AND OUTREACH MANAGER, ALASKA ENERGY AUTHORITY, DEPARTMENT OF COMMERCE, COMMUNITY AND ECONOMIC DEVELOPMENT, presented slide 2, "What is Commercial PACE?"

- PACE was named one of the top 20 "world-changing ideas by Scientific American magazine."
- Commercial Property Assessed Clean Energy programs (PACE) allows property owners to finance qualifying energy efficiency improvements overtime through a voluntary assessment on the property tax bill.
- Voluntary participation by municipalities AND commercial property owners
- Mortgage holder consent is required before applications are approved and assessments are placed
- Improvements can include lighting upgrades, renewable energy, conversion to natural gas, high-efficiency boilers, and additional energy efficiency improvements
- The repayment obligation transfers with the sale of property

Ms. Ford discussed slide 3, "Benefits":

- Energy efficiency upgrades are financed with capital secured by a primary lien on the property, lower-interest capital and favorable repayment terms can be raised from the private sector
- Allows for longer repayment periods allowing the building owner to recognize immediate operating savings while repaying the debt
- Can use traditional lending sources
- In Alaska, provides consistency with state energy policy, energy efficiency and renewable energy goals

Ms. Ford presented slide 4, "Creating a PACE Program":

- 31 states have authorized PACE programs
- State legislatures must provide authority for local governments to establish and operate commercial PACE programs
- Municipalities to create the program and select financing models
- Resources: U.S. Department of Energy, PaceNow.org, C-Pace.com

Ms. Ford noted that there were multiple resources online for municipalities and businesses, including marketing tools and sample contracts.

Ms. Ford presented slide 5, "Potential PACE Models," detailing the wide spectrum of PACE programs that could be implemented on the local level:

- Local-government driven
 - Either property assessment office or a PACE office used as interface with commercial property owners and potential lenders
 - Bond financing
- Private-sector driven
 - Third-party administrator under contract with local government
 - Private financing
- Hybrid model
 - Smaller local governments can contract with other communities or regional organizations to administer the program
 - Identify all potential funding sources (bonds, revolving loan funds, private capital)

Ms. Ford discussed that the local-government-driven models for states with many energy efficiency programs and efforts had separate PACE offices and the government was responsible for the marketing and interfacing with the community. The private-driven or "main street" model was developed so the work was absorbed by the existing assessor's office and was reliant on the private sector to market the program. She related that most often there was a hybrid model where all sources of funding were used.

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Ms. Ford addressed slide 7, explaining that the subsequent slides would consist of a sectional analysis of the bill. She read from slide 7:

- Section 1 amends AS 29 by adding a new chapter: AS 29.49: Municipal Property Assessed Clean Energy Act
- AS 29.49.020 Would allow for a property tax assessment to be added for financing of qualified projects on real property.
 - Improvements may not be made to vacant lots or property undergoing development at the time of assessment
 - Not to finance purchase of temporary products or anything not permanently fixed to real property
- AS 29.49.30 Would require a written contract between the local government and record owner of the real property

Ms. Ford continued on slide 8:

- AS 29.49.040 Establishes the program
 - Local government may enter into a contract with a property owner to impose an assessment. Financing can be provided by the municipality or a third-party
 - If third-party financing is used, the municipality, third-party financier and real property owner must all enter into a contract
 - The assessment imposed may cover some costs for the commercial property owner, including permit and lenders fees, administration, and project development and engineering costs

- AS 29.49.050 Designates the Eligible Region
 - The municipality's governing body may designate one or more area(s) of the municipality (within its jurisdiction) as a PACE-eligible region(s)

Ms. Ford commented that the provision for designating the eligible region was consistent with land use policies, and was a tool for incentivizing commercial districts.

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Ms. Ford explained went over slide 9:

- AS 29.49.060 Defines the Procedure to Create the Program
 - If the municipality chooses to create a PACE program the governing body of a municipality must (in order):
 - 1) Adopt a resolution of intent that
 - shows that providing the PACE program serves a valid public purpose
 - includes a statement the municipality intends to make PACE available to commercial property owners
 - includes a description of qualified projects
 - describes the boundaries of the region
 - describes the available financing for qualified projects (i.e. bonds, local lenders, etc.)
 - describes the municipal debt servicing procedures if third-party financing is used
 - describes how the public can access the program report required by AS 29.49.070
 - identifies public contacts regarding the collection of the proposed contractual assessments

Ms. Ford continued on slide 10:

- AS 29.49.060 Defines the Procedure to Create the Program
 - The governing body of a municipality must:
 - 2) hold a public hearing with opportunity for public comment

- 3) adopt a resolution establishing the program, including terms consistent with the publicly-available program report required by AS 29.49.070
 - o the description of each aspect of the program can only be amended after another public hearing
 - o The program can only be amended by resolution
 - o A municipality may hire and set compensation for a program administrator, staff or contract for professional services
 - o A municipality may impose fees to offset the costs of administering the program, to include an application fee and/or a component of the interest rate

Ms. Ford turned to slide 11:

- AS 29.49.070 Requires a Publicly-Available Program Report
 - o The report must include:
 - a map of the program region boundaries
 - a form contract between the municipality and the property owner that specifies the terms of the assessment and any financing, including third-party and municipal
 - if appropriate a form contract between the municipalities and the third-party financier regarding the servicing of the debt through assessments
 - a description of qualified projects
 - a plan for ensuring sufficient capital
 - if bonds are used the report must include:
 - a maximum aggregate annual dollar amount for financing
 - a method for ranking requests from property owners
 - a method for determining the interest rate and maximum amount of an assessment
 - a method for ensuring the repayment period does not exceed the useful life of the qualified project

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Ms. Ford continued on slide 12:

- AS 29.49.070 Requires a Publicly-Available Program Report (continued)
 - The report must include:
 - a description of the application process and eligibility requirements
 - a method for ensuring qualified applicants can demonstrate financial ability to fulfill financial obligations and verify the applicant is the legal owner of the property, is current on mortgage and property taxes and is not insolvent or in bankruptcy
 - an explanation of the assessment and collection process
 - an explanation of the lender notice requirement provided by AS 29.49.080
 - an explanation of the review requirement provided by AS 29.49.090
 - a description of the marketing and education services to be provided
 - a description of quality assurance and antifraud measures
 - collection procedures
 - a requirement for an appropriate ratio between the assessment and property value
 - The report must be available online and at the municipal offices

Ms. Ford explained slide 13:

- AS 29.49.080 Notice to Mortgage Holder Required
- AS 29.49.090 Review Required
 - A third-party baseline energy audit and projected energy savings are required
 - Once a qualified project is complete, the municipality shall obtain third-party verification that the project was properly completed and operating as intended
- AS 29.49.100 Direct Acquisition by Owner
 - The property owner may be authorized to purchase directly the related equipment and materials or contract directly, including through lease, power purchase agreement or other service contract for the installation or modification of a qualified improvement

Mr. Therriault clarified that the required notice to the mortgage holder (AS 29.49.080) was one of the protections he had mentioned earlier. He discussed working with the Alaska Bankers Association, and noted that if a commercial business had a mortgage to a local bank, permission from the mortgage holder was required before initiating PACE financing. He explained that the PACE financing appearing on the property tax bill would become a superior lien and relegate the mortgage to a secondary position. He furthered that more banks across the nation were willing to do so, as the PACE financing was collateralizing the mortgages and making the associated businesses more financially viable. With the provision included, the bankers association supported the legislation.

Mr. Ford read from slide 14:

- AS 29.49.110 Contractual Assessment must be Noticed
 - Written notice of each contractual assessment shall be filed by the municipality in the real property records, including the assessment amount, legal description of the property, name of each property owner and the reference to the statutory assessment lien provided under this chapter
- AS 29.49.120 Contractual Assessments and any Interest or Penalties are Primary Liens on the Property
 - exceptions are municipal tax liens and special assessments
 - enforcement provided in AS 29.45.320-470
 - contractual assessment liens stay with the land and not eliminated by foreclosure
 - penalties and interest may be added to delinquent installments, as provided in AS. 29.45.250
 - municipalities may recover cost and expenses, including attorney fees to collect a delinquent installment
- AS 29.49.130 Collection of Assessments
 - Municipalities may contract with another governing body of another taxing unit to perform assessments collections

Ms. Ford noted that AS 29.49.130 was important to smaller communities that might not have the internal capacity to be able to administer a PACE program.

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Ms. Ford presented slide 15:

- AS 29.49.140 Municipalities may Issue Bonds or Notes to Finance Qualified Projects
 - These may not be general obligations bonds and must be secured by one or more of the following:
 - payments of the contractual assessments
 - municipal reserves from grants, bonds, or net proceeds and other lawfully available funds
 - municipal bond insurance, lines of credit, public or private guarantees, standby bond purchase agreements, collateral assignments, mortgages, or available means of providing credit support or liquidity
 - any other funds lawfully available for purposes consistent with this chapter
 - A municipal pledge of assessments, funds, or contractual rights in connection with the issuance of bonds is a first lien valid and binding against any other person, with or without notice
 - Bonds or notes issued must further an essential public and governmental purpose, including reducing energy costs, improving electrical reliability, reduction of energy demand on utilities, economic development, employment and enhancement of property values

Mr. Therriault pointed out that the section contained another of the aforementioned protections; general obligation bonds could not be utilized, and PACE could be a sub-unit of the borough. A revenue bond would entail money loaned out and paid back by the specific property owners that used the funds.

Ms. Ford moved to slide 16.

- AS 29.49.150 Joint Implementation
 - Any combination of municipalities may agree to jointly implement or administer a program or contract with a third party. A public hearing as outlined in AS 29.49.060 is required.
- AS 29.49.160 Prohibited Acts

- o A municipality that establishes a PACE region may not compel a property owner to use PACE or, make any permit, license, or authorization contingent on a property owner using PACE.
- AS 29.49.900 Adds Definitions of Program, Qualified Improvement, Qualified Project, Real Property and Region.
- AS 29.49.995 Adds the Short Title "Municipal Property Assessed Clean Energy Act."
- Section 2 Establishes an Immediate Effective Date

Mr. Therriault spoke to AS 29.49.160 of the bill, and stated that it was an important protection; if the local government chose to offer PACE, they could not coerce any business owner to use the mechanism. They could not withhold any license or permit, and it needed to be used by the business owner on a completely voluntary basis.

[2:12:02 PM](#)

Co-Chair MacKinnon thanked the testifiers for their concise and clear overview.

Senator Bishop asked if Sections 29.49.130 and 29.49.150 helped the hybrid model be conforming. He referenced the potential PACE models listed on slide 5 and thought that those sections of the bill made the hybrid model work. Ms. Ford agreed, stating that it pertained to the collection aspect of the model.

Co-Chair MacKinnon OPENED public testimony for SB 56.

[2:13:31 PM](#)

KATHY WASSERMAN, ALASKA MUNICIPAL LEAGUE, JUNEAU, testified in support of the bill. She stated that the municipal league was in favor of the bill, and related that she had talked at length with Mr. Therriault about the legislation. She supported the fact that the program was optional. She discussed cities and boroughs that might participate, and thought that the legislation could benefit the business owners as well as the municipalities. She stressed the importance that the bill allowed for a public process, so that the members of the community would know what the city was doing with the funds.

[2:15:01 PM](#)

CHRIS ROSE, EXECUTIVE DIRECTOR, REAP, ANCHORAGE (via teleconference), testified in support of the bill. He related that REAP was a statewide education and advocacy group for renewable energy and energy efficiency. The project had been promoting the idea of property-assessed clean energy for a couple of years. He considered it to fill a gap in the state to incentivize commercial building owners to do energy retrofits. He echoed Mr. Therriault's comments regarding the 30 percent increase in efficiency. He pointed out the advantage to communities of having more funds stay locally rather than being exported for energy costs without the increased efficiencies.

Senator Dunleavy asked Mr. Rose if his group would benefit from the legislation, and in what way. Mr. Rose responded that the project would not benefit from the bill.

Co-Chair MacKinnon CLOSED public testimony for the bill.

[2:17:01 PM](#)

Co-Chair MacKinnon asked about Section 29.49.070 of the bill, and whether community members were required to be in good standing with regard to their credit rating. She had observed there were some parameters, but did not notice one in relation to credit rating. Mr. Therriault did not think there was a specific requirement related to credit rating, and inquired if Co-Chair MacKinnon's concern pertained to securing a source of funds in the bond market or related to the credit rating of the individual property owner.

Co-Chair MacKinnon commented that there was no language pertaining to good standing, and expected that a business owner should be in good credit standing in order to enter into a relationship with the municipality. She discussed other funds she had reviewed while chairing the Legislative Budget and Audit Committee, and wondered if there should be good standing language in the bill in order to be assured a business was handling its finances well. Mr. Therriault thought that there was language somewhere in the bill intended to make sure that businesses were in good standing and not in arrears, delinquent, or in bankruptcy; but was unable to point it out at the moment. He agreed to work with Co-Chair MacKinnon's staff to point out the relevant text in the bill.

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Co-Chair MacKinnon asked about AS 29.49.090, dealing with review requirements of the loan; and wondered whether there was a savings requirement or specific efficiency for a business to project in order to qualify. Mr. Therriault relayed that there was a requirement that a business get an energy audit, then show a plan demonstrating estimated savings after improvements. He highlighted the importance of a business showing it was capable of repayment through the savings.

Co-Chair MacKinnon elaborated that PACE was an optional program; and observed that in the "green" programs she had reviewed, it had been beneficial to set a minimum energy efficiency level. She thought people could start borrowing funds for improvements at a lower cost than was provided through the bill, resulting in increased debt for municipalities. She hoped that after the municipality incurred debt through the program, the goal of energy-efficient buildings would be met.

Mr. Therriault remarked that the bond owners would evaluate the savings achieved through the program to assess that the funds would pay back the revenue bond. He pointed out that the bill language specifically prohibited the funds from becoming a general obligation of the government, and the repayment stream for the loans were actually the repayment for the bonds.

[2:21:16 PM](#)

Senator Olson found it unusual that a mortgage holder would agree to be listed as a secondary. He thought that most banks wanted to retain the primary position, and wondered what would happen in the eventuality of a downturn in the economy. Mr. Therriault stated that individual banks would have to consider the factors, and would have the decision-making power to deny requests if the economy was not favorable. He clarified that PACE would still be available to any business that had no outstanding mortgage.

Mr. Therriault referred back to Co-Chair MacKinnon's question regarding the verification of good standing of the property owner, and pointed out the relevant text on the bottom of page 6 and the top of page 7 of the bill:

(b) The method for ensuring a demonstration of financial ability under (a)(9) of this section must be based on appropriate underwriting factors, including

(1) providing for verification that

(A) the property owner requesting to participate under the program is

(i) the legal owner of the benefited property;

(ii) current on mortgage and property tax payments; and

(iii) not insolvent or in bankruptcy proceedings; and

Ms. Ford added that bill also required an appropriate ratio between the assessed value of the property and the proposed improvements.

Co-Chair MacKinnon asked about AS 29.49.140 regarding bonds under notes. She inquired if municipalities would access the state municipal bond bank to provide backing for the loans. Mr. Therriault did not believe so, and clarified that the revenue bonds were backed by the program they were operating, rather than being a general obligation of the municipality.

Mr. Therriault relayed that the bill sponsors had worked with members of the other body on "small tweaks" to the bill, and advised that he would be amenable to working with Co-Chair MacKinnon's staff to make recommendations as she considered any changes to the bill. He agreed to provide the changes in writing.

SB 56 was HEARD and HELD in committee for further consideration.

#scr1

SENATE CONCURRENT RESOLUTION NO. 1

Relating to a legislative task force on civics education.

[2:24:42 PM](#)

Co-Chair MacKinnon stated that SCR 1 was previously heard and the public testimony had been opened and closed.

Vice-Chair Micciche discussed FN 2, explaining that there was a zero fiscal note on operating from FY 16 through FY 21. He explained that this revised fiscal note differed from the previous in that the \$5.9 thousand dollars in travel costs requested on the previous note would be absorbed, and it was truly a zero fiscal note.

Co-Chair MacKinnon asked for confirmation that the bill would be of no additional cost to the state.

TIM LAMKIN, STAFF, SENATOR GARY STEVENS, explained that FN 2 was indeed a zero fiscal note and the bill would have zero cost.

Senator Dunleavy stated that he had heard the bill in the Senate Education Committee and thought it was a good approach to trying to deal with an issue of civics that seemed to be a growing problem in the United States. He supported the legislation.

[2:26:53 PM](#)

Senator Olson wondered if the bill would be viewed by educators as an unfunded mandate. Mr. Lamkin related that it was not the intent of the sponsor to increase mandates or obligations for school districts. He thought the task force would be sensitive to the issue of unfunded mandates.

Senator Olson wondered if the sponsor had heard from any of the school districts as to whether they were in favor of the bill. Mr. Lamkin did not have anything in writing to demonstrate such support, but noted that school board members were listed in the resolution as part of the task force.

Vice-Chair Micciche MOVED to REPORT CSSCR 1(EDC) out of committee with individual recommendations and the accompanying fiscal note. There being NO OBJECTION, it was so ordered.

CSSCR 1(EDC) was REPORTED out of committee with a "do pass" recommendation and with one new zero fiscal note from the Senate Finance Committee for the Legislature.

[2:28:44 PM](#)

AT EASE

[2:30:38 PM](#)

RECONVENED

#sjr2

SENATE JOINT RESOLUTION NO. 2

Proposing an amendment to the Constitution of the State of Alaska relating to contracting state debt for postsecondary student loans.

[2:30:50 PM](#)

KRISTEN PRATT, STAFF, SENATOR ANNA MACKINNON, explained that she was available to go over the resolution or answer any questions from the committee.

[2:31:32 PM](#)

AT EASE

[2:31:56 PM](#)

RECONVENED

Senator Dunleavy discussed the fiscal note. He explained that the bill would put a constitutional amendment on the ballot, and the fiscal note was estimated at \$1500 to print ballots. He thought that the two page fiscal note indicated the cost could go up to \$22 thousand [he later corrected himself].

[2:32:34 PM](#)

AT EASE

[2:33:15 PM](#)

RECONVENED

Senator Dunleavy corrected himself and explained that there was a zero fiscal note.

Co-Chair MacKinnon confirmed that the fiscal note was zero. She remarked that passage of the resolution would require a constitutional amendment to appear on the 2016 general election ballot.

Senator Dunleavy MOVED to REPORT SJR 2 out of committee with individual recommendations and the accompanying fiscal note. There being NO OBJECTION, it was so ordered.

SJR 2 was REPORTED out of committee with a "do pass" recommendation and with one previously published zero fiscal note: FN1 (GOV).

[2:34:01 PM](#)

AT EASE

[2:36:39 PM](#)

RECONVENED

#sb22

SENATE BILL NO. 22

"An Act relating to the collection costs for the municipal motor vehicle registration tax; and providing for an effective date."

[2:36:47 PM](#)

SENATOR CATHY GIESSEL, SPONSOR, introduced the bill. She explained that since the inception of the motor vehicle registration tax system in 1993, the cost to the state (in collecting taxes for municipalities) had been reduced considerably, while the rate charged to communities had not. SB 22 proposed to reduce the amount that the state collected from each community that signed on to the program. She directed attention to the second page of FN 1, and discussed the list of communities in which local motor vehicle taxes were collected and 8 percent was retained by the state. She pointed out that the communities did not incur 8 percent cost to conduct the tax collecting activity, and the bill proposed to reduce the administrative fee to 5.5 percent. The proposed amount was more closely calculated to the actual cost for the Division of Motor Vehicles (DMV). She emphasized that there were no new costs or fees to the state, and the bill left more money in the communities.

Co-Chair MacKinnon OPENED public testimony.

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DANIEL MOORE, TREASURER, MUNICIPALITY OF ANCHORAGE, ANCHORAGE (via teleconference), testified in support of the bill. He related that in 2012, the Municipality of Anchorage increased its rate schedule for the motor vehicle registration program, almost doubling the rates to match

the rates of Mat-Su. He described the disproportionate administrative costs of the tax collection after the dramatic increase in fees, despite the fact that the scope of work was unchanged. He estimated that the Municipality of Anchorage was paying the DMV about \$500,000 more per year than it had in prior years. He added that the Anchorage area had 45 percent of all registered vehicles in the state, and prior to 2012 it paid 45 percent of the administrative cost to DMV. Due to the rate schedule update, the municipality currently paid 59 percent of the administrative cost. By changing the statutory rate from 8 percent to 5.5 percent, the new payment amount would be proportionate and benefit the participating communities. He estimated the each community would gain about 3 percent additional revenue if the bill successfully passed into law.

[2:42:02 PM](#)

Co-Chair MacKinnon CLOSED public testimony.

Co-Chair MacKinnon reiterated that the committee was working on the capital budget, and would stand in recess until later in the day.

SB 22 was HEARD and HELD in committee for further consideration.

[2:42:55 PM](#)

RECESSED

[8:50:51 PM](#)

RECONVENED

#sb26

SENATE BILL NO. 26

"An Act making appropriations, including capital appropriations and other appropriations; making appropriations to capitalize funds; and providing for an effective date."

[8:51:19 PM](#)

Vice-Chair Micciche MOVED to ADOPT the committee substitute for SB 26, Work Draft 29-GS1781\I (Martin, 4/9/15). Co-Chair MacKinnon OBJECTED for discussion.

LAURA PIERRE, STAFF, SENATOR ANNA MACKINNON, explained the difference between the proposed committee substitute (CS) and the previous version of the bill, detailing that the committee cut the governor's proposed capital budget by \$40 million for a total capital budget of \$1,500,829,300. She specified that the budget was broken into an Unrestricted General Fund (UGF) total of \$108,318,036, a Designated General Fund (DGF) total of \$56,325,100, an "Other" fund total of \$61,233,800, and \$1,274,952,400 in Federal Receipts.

Ms. Pierre discussed the changes reflected in the CS. The new bill consolidated the allocations for the Municipal Harbor Facility Grant Fund, which would give the Department of Transportation and Public Facilities (DOT) more flexibility in how it could disperse the funds to municipalities and complete projects. She continued that the new bill funded the Alaska Donor Services Program for operational costs in the amount of \$75,000; and in order for the program to access the funds an allocation in the capital budget was required. The bill added a reappropriation of legislative appropriations in the amount of \$211,000 for the Senate Special Committee on the Arctic, for work to be conducted during the 29th Alaska State Legislature. Additionally, reappropriations were added to the Alaska Housing Capital Corporation (AHCC) account, brought forward by members who were lapsing.

Ms. Pierre continued that a \$45 million fund transfer was removed from the Alaska Capital Income Fund to the AHCC account. As a result, \$43,237,400 was added to the School Construction Grant Fund to build a new school for Kivalina per the consent decree and settlement agreement from the Kasayulie lawsuit [a 2011 settlement for the 1997 case of Kasayulie vs. State of Alaska pertaining to equity in education].

[8:54:38 PM](#)

Ms. Pierre specifically thanked Hilary Martin from the Legislative Legal Department and staff from the Legislative Finance Division.

Co-Chair MacKinnon WITHDREW her OBJECTION. There being NO further OBJECTION, it was so ordered.

Co-Chair MacKinnon MOVED to ADOPT Amendment 1, 29-GS1781/I.1, Martin, 4/9/15 (copy on file):

Page 33, following line 18:
Insert a new subsection to read:

"(e) The amount necessary for Dalton Highway disaster emergency repairs, not to exceed \$5,000,000, is appropriated from the general fund to the Department of Transportation and Public Facilities for that purpose."

Vice-Chair Micciche OBJECTED for discussion.

Co-Chair MacKinnon explained that the amendment had been brought to the committee by the administration. She mentioned that there was an emergency happening on the Dalton Highway.

[8:56:01 PM](#)

PAT PITNEY, DIRECTOR, OFFICE OF MANAGEMENT AND BUDGET, OFFICE OF THE GOVERNOR, explained Amendment 1. She stated that on March 13, 2015; there was an ice jam on the Sag River (mile 390 to 410 of the Dalton Highway near Deadhorse) which created an ice floe/flood over the road and stopped traffic. The road had been closed for some time and when open was limited to one lane of traffic. She recounted that she had shared photos of the ice jam and highway blockage with Co-Chair MacKinnon's office earlier in the day. She related the DOT Commissioner Marc Luiken was on site, and highlighted the importance of getting the road open. She continued that industry members had been working closely with state personnel to provide contractors to help clear the road. The previous day there was a disaster declaration for the flooding on the road, which put the state into a faster procurement role. She furthered that the amendment would provide up to \$5 million to continue to mitigate flooding and keep traffic passing through the area.

Vice-Chair Micciche wondered if there was any potential for federal aid to offset the costs of cleanup and repairs. Ms. Pitney replied that she was optimistic that the federal government would offer financial aid based on the state's disaster declaration. She related that the Federal Highway Administration (FHWA) would be coming to assess the

flooding to determine whether it fit within the rules for federal response. She specified that if criteria were met, some of the federal response would be funded at 100 percent, and other work would be funded at the 90 - 10 federal rate. There were items that would not qualify for federal response, however the administration was "cautiously optimistic" that there would be some federal aid. She reiterated the importance of getting the road open, and estimated that at a minimum the state would be responsible for \$700,000 in up-front costs. She explained that until the threshold was passed, there would be no sharing of costs.

8:59:19 PM

AT EASE

8:59:44 PM

RECONVENED

Vice-Chair Micciche wondered if the funds in the amendment were only a contingency, and the state would not end up using the \$5 million being requested. Ms. Pitney replied that there would be a minimum of \$700,000 used. She agreed to share Commissioner Luiken's eyewitness account of with Vice-Chair Micciche after the meeting; and related that the commissioner was optimistic there would be federal funding. She related that the commissioner had been amazed by the size and amount of ice.

Co-Chair MacKinnon wondered if there was any comment from DOT/PF with regard to use of the funds, and perhaps assurance as to how they would be used.

MARY SIROKY, DIRECTOR, DIVISION OF ADMINISTRATIVE SERVICES, DEPARTMENT OF TRANSPORTATION AND PUBLIC FACILITIES, shared that DOT had officially notified FHWA of the intent to seek emergency response funding. The department had various conversations with regional federal representatives, and she thought there had also been conversations at a higher level. She shared that the department was optimistic that FHWA would participate in the disaster relief efforts. She discussed the concern over what the FHWA would consider "fundable" and what the state considered necessary to get the road open. She remarked that there may be more severe infrastructure damage to the road, once the flooding was under control and ice was removed.

Ms. Siroky continued that the department had a plan in place, had contractors on site, and hoped to have at least one lane open by the following day.

9:02:39 PM

Senator Olson wondered if any occurrences of the same magnitude had happened in the area in the past. Ms. Siroky replied that there had never been anything of the same magnitude before. She described photos of the site as amazing, and stated that it was impossible to discern where the overflow ice started and ended. She reiterated that Commissioner Luiken had been astounded at the sight.

Senator Olson asked if there were plans in place to prevent a recurrence. Ms. Siroky replied that there were already two projects for raising the roadbed on the Dalton Highway that were already in the funding queue. She added that the projects were anticipated to start the following summer.

9:04:00 PM

Co-Chair MacKinnon WITHDREW her OBJECTION to Amendment 1. There being NO further OBJECTION, Amendment 1 was ADOPTED.

Senator Olson MOVED to ADOPT Amendment 2 (copy on file). Co-Chair MacKinnon OBJECTED for discussion.

Senator Olson explained the amendment, which would fund the Kivalina road at \$2.5 million. He remarked that there was funding in the budget for the Kivalina school for approximately \$43 million, but a road was needed before the school could be built. He remarked that there were several estimates on the cost for the road. The \$2.5 million in the amendment would provide seed money in order to try and secure federal funding from the Bureau of Indian Affairs (BIA), Indian Reservation Roads Program (IRR). He commented that the governor was in support of the amendment. He and pointed out that the amendment in no way obligated the state to fund the remainder of the road, and referred to a relevant memo from the Division of Legal and Research Services dated April 9, 2015 (copy on file).

Senator Dunleavy also objected to the amendment. He remarked that there were various issues with moving the amendment forward. He did not think the state should get involved in building a road that may lead to later

obligations of moving the town of Kivalina [as erosion would necessitate]. He did not feel that the state should take on the construction of the road.

Co-Chair MacKinnon handed the gavel to Vice-Chair Micciche.

9:06:53 PM

AT EASE

9:07:19 PM

RECONVENED

Co-Chair MacKinnon shared that the committee was currently reviewing several pieces of correspondence from Department of Education and Early Development (DEED) Commissioner Michael Hanley regarding the litigation associated with the Kivalina school, and did not believe that the road was part of the resultant Kasayulie settlement.

Senator Dunleavy MAINTAINED his OBJECTION.

Senator Olson shared that the amendment had been an element of concern due to costs associated with the road. He discussed the Kasayulie settlement, and recognized the need for the road. He referred back to the letter from the legal department that indicated that the state was not necessarily liable for its construction. He asked for support of the amendment.

A roll call vote was taken on the motion to adopt Amendment 2.

IN FAVOR: Olson

OPPOSED: Kelly, Bishop, Dunleavy, Hoffman, Micciche, MacKinnon

The MOTION FAILED (6/1).

Senator Dunleavy MOVED to ADOPT Conceptual Amendment 3. He described the amendment as legislative intent regarding the Kivalina School:

- a. The legislature declines to fund the Kivalina K-12 School renovation/addition under the 2011 consent decree and settlement agreement in Kasayulie vs. State (3AN-97-3782CIV September 1st, 1999) because of

concerns about erosion and viability of the school site.

b. The legislature declines to fund a Kivalina replacement school at the new school site because of concerns about erosion and viability of the new school site.

c. The settlement terms of the January 7, 2015 letter from the Citizens for the Educational Advancement of Alaska's Children are unacceptable to the legislature.

Senator Dunleavy explained that the amendment would remove the funding for the Kivalina School project. He argued that the decree specifically provided for the legislature to decline funding which would not trigger a reopening of the case. The amendment also put the findings on permanent record as to avoid future misunderstanding.

9:11:00 PM

AT EASE

9:11:42 PM

RECONVENED

Co-Chair MacKinnon brought up the aforementioned legal memo pertaining to the Kivalina School construction, and shared that she would speak in opposition to Conceptual Amendment 3 based on advice from the Attorney General's office, as well as the memo. It was her belief that the state was responsible for some amount of money to Kivalina, although the matter was still in dispute and not final as to whether the project should be a renovation (for much less funds) or a new school entirely.

Senator Olson referred to the consent decree and stated there was strong evidence that it was not up to the legislature to fund or not fund; rather, the funding had been mandated and therefore he wondered about the validity of the conceptual amendment to withstand legal challenge.

9:13:32 PM

AT EASE

9:17:28 PM

RECONVENED

Vice-Chair Micciche queried what conditions were on the previously appropriated funds for the Kivalina School. Co-Chair MacKinnon replied that there was a direct appropriation for the Kivalina School in compliance with the settlement.

Ms. Pierre announced that the appropriation was to the School Construction Fund, and would lapse after five years if unspent (like any other capital project).

[9:19:00 PM](#)

Senator Dunleavy directed the committee's attention to page 1, second paragraph of the memo. He read the passage:

Note, as a preliminary matter, that the consent decree specifically provides that the parties cannot bind the legislature.

Senator Dunleavy pointed out the words "legislature" and "state", and reminded the committee that the legislature was the fiduciary or funding arm of state government.

Senator Dunleavy directed the committee's attention to page 2, first paragraph of the memo. He read the passage:

(Consent decree, p. 6.) The consent decree is slightly ambiguous in this regard...

Senator Dunleavy remarked that he was attempting to clear up any ambiguity, so that the legislature (as opposed to the state) was not liable for future obligations toward the "whole Kivalina concept."

[9:20:49 PM](#)

Senator Dunleavy directed the committee's attention to page 2, second paragraph of the memo. He read the passage:

The consent decree requires that the state include the "Kivalina K-12 school renovation/addition" in the governor's proposed capital appropriations budget bill. (Id.) The consent decree also provides that "if the Legislature declines to fund, or places contingencies on the Kivalina school project because of concerns about erosion or viability of the school site, the lack of funding or contingencies will have

no effect on the settlement, and cannot be used by plaintiffs to reopen the litigation."

Senator Dunleavy stated there was an issue with the terminology used in the memo, and considered the use of "legislature" and "state" to be incorrectly differentiated. He argued that the legislature was part of the state. He suggested that the administration had put the legislature in an obligation, to some degree, regarding the school. He recognized that there was a legitimate issue in the Northwest Arctic in the town of Kivalina. He pointed out that the project had originally been a settlement on a school to do a renovation on-site, starting with a cost \$14 million. He expressed concern that the state inadvertently would be responsible for a much larger obligation.

Senator Dunleavy referred back to the legal memo, and pointed out that the document referred to "state" and "legislature" and rarely mentioned "administration."

Senator Dunleavy directed the committee's attention to page 2, third paragraph of the memo. He read the passage:

Further, under the consent decree, the legislature can decline to fund the Kivalina K-12 school project if it has concerns about erosion or viability of the existing school site.

Senator Dunleavy further explained Conceptual Amendment 3. He reiterated that the purpose would be to remove the school funding, and stated that he would not have objected to funding the school and having the funds be put into escrow or contingency funds that isolated the monies specifically for the Kivalina School. He hoped the end result was that the funding would remain school-focused rather than being used for road or town site projects, which he thought should be separate discussions. He thought there were ambiguities (as the letter mentioned) and that the legislature was singled out as not being obligated to fund the school. He continued that there was discussion in the memo implying that the state was obligated. He reiterated that the purpose of the amendment was to isolate the school funding to keep it designated only for the particular school.

[9:25:32 PM](#)
AT EASE

9:26:00 PM

RECONVENED

Senator Dunleavy asked for the support of the committee for Conceptual Amendment 3.

Co-Chair MacKinnon directed the committee's attention to page 3, paragraph 4 of the legal memo. She read the passage:

Failure to appropriate any funding does not, however, resolve the state's constitutional obligations.

Co-Chair MacKinnon MAINTAINED her OJECTION.

A roll call vote was taken on the motion to adopt Conceptual Amendment 3.

IN FAVOR: Dunleavy

OPPOSED: Olson, MacKinnon, Bishop, Hoffman, Micciche, Kelly

The MOTION FAILED (6/1).

9:27:09 PM

Senator Dunleavy offered Conceptual Amendment 4:

Any funds appropriated for this project shall be placed in a joint escrow account to be spent only for direct construction/design for a school structure serving Kivalina. These funds shall automatically, without further action by either party, be swept back into the state general fund if construction is not yet commenced prior to April, 2022.

Senator Dunleavy characterized the amendment as an attempt to safeguard the public funds for the issue of the Kivalina School. He reiterated that the idea was to focus solely on funding the school rather than a road, relocation, or a new site.

Co-Chair MacKinnon OBJECTED for discussion.

Co-Chair MacKinnon found the amendment to be "intriguing" and thought that it had merit. She remarked that the previous amendment also had merit for the purposes of

discussion and reducing the state's liability in a piece of legislation and litigation that was before the legislature. She expressed a commitment to working towards making sure the children of Kivalina saw direct benefit from the appropriation and allocation being considered for the Kivalina School. She opposed the amendment and believed the committee should work with the legislative legal department to ensure there was compliance with the decree. She wanted to review the relevant language and work with Senator Olson.

Senator Olson inquired how Senator Dunleavy came up with a construction commencement deadline of 2022.

[9:29:40 PM](#)

AT EASE

[9:29:50 PM](#)

RECONVENED

Senator Dunleavy explained that the date specified in the amendment was an estimate based on seven consecutive construction seasons.

Senator Dunleavy WITHDREW Conceptual Amendment 4. There being NO OBJECTION, it was so ordered.

Senator Dunleavy MOVED Conceptual Amendment 5. He explained that the amendment would remove all references to the figure of \$43,237,400 for the Kivalina School and replace it with \$14,724,714 [the original capital improvement project (CIP) amount for major maintenance] adjusted for present day value from July 1, 2012. He explained that the amounts in question pertained to language in the decree on the CIP list when the funds were earmarked for that date for renovation of the school.

Co-Chair MacKinnon OBJECTED for discussion.

[9:31:12 PM](#)

Vice-Chair Micciche stated that he supported \$43,237,400 in school funding for Kivalina in order to prevent the state from being at risk for litigation being reopened and subsequently being responsible for the purchase of an entire school at a much higher cost (nearing \$100 million).

Vice-Chair Micciche referred to page 5 of the legal memo, which discussed a limit to the state's liability. He specified that the cost of the replacement school for Kivalina was based off of the 2013 CIP process. He referred to the second paragraph on page 5, and read the following passage:

Because the consent decree specifically provides that the amount of the appropriation would be determined through the 2013 CIP process, the consent decree places the risk of a project that exceeds the budget on Kivalina. If the project exceeds the costs estimated in the 2013 CIP, the state may not be required to provide additional funding. If the legislature takes this approach, the state will have met its obligations and CEAAC would not have a strong argument for reopening the litigation.

Vice-Chair Micciche reiterated his concern that the state could be responsible for greatly increased costs if it did not meet its responsibility to fund the school as planned.

Senator Olson agreed with Vice-Chair Micciche that there was a possibility of litigation over the Kivalina School being reopened. He respectfully asked Senator Dunleavy to withdraw his amendment.

Senator Dunleavy expressed appreciation for Senator Olson's words, but wanted the committee to vote on Conceptual Amendment 5.

[9:33:41 PM](#)

Co-Chair MacKinnon expressed appreciation for an opportunity to discuss the issue and the children of Kivalina, who had waited for 15 years while the issue of the school was debated. It was her view that the state should meet its obligation to take care of the children and students of Kivalina.

A roll call vote was taken on the motion to adopt Conceptual Amendment 5.

IN FAVOR: Dunleavy

OPPOSED: Micciche, Olson, Kelly, Bishop, Hoffman, MacKinnon

The MOTION FAILED (6/1).

[9:34:24 PM](#)

Senator Dunleavy expressed appreciation for the discussion. He agreed with Co-Chair MacKinnon that the children of Kivalina deserved a school and a great education. He reminded the committee that he had spent 13 years near Kivalina, much of it as an educator and administrator. He relayed that he had visited Kivalina on numerous occasions, and looked forward to the fact that the children would be getting a new school. He emphasized that he would like continued discussion pertaining to constraining the funding in some way so it did not morph into funding something other than a school. He referred back to the legal memo, and claimed it "betrays a weak link in our situation." He opined that the state was responsible for things the administration had agreed to, and for that reason he wanted to pursue further discussion.

Co-Chair MacKinnon brought up the aforementioned letters from DEED and concurred that the department had exceeded its authority in some of the language that was used for the Kivalina School appropriation.

Vice-Chair Micciche shared the concerns of Co-Chair MacKinnon and Senator Dunleavy. He highlighted protecting the state from additional expenses and possible reopening of litigation over the Kivalina School.

[9:37:28 PM](#)

Co-Chair MacKinnon made a statement:

In 1999 *Kasayulie vs. State* a superior court found that the legislature had not met its constitutional obligations to maintain, by general law, a system of public school open to all children of the state. In response to the superior court order, and to meet the state's obligation under the consent decree, we entered in to resolve the litigation. The legislature had previously provided appropriations for school construction projects in Emmonak, Koliganek, Nightmute, Kwethluk. Through the capital improvement project grant program and passed legislation to equalize funding for rural and municipal school construction needs, in this budget the legislature is appropriating \$43,237,399 for school construction in

Kivalina. Kivalina is the last of the five-school construction project the state agreed to request funding for in the Kasayulie consent decree. By this appropriation the state is providing rural schools with the assurance of adequate facilities, funding under the capital improvement project grant program and meeting its constitutional obligations to establish and maintain a system of public schools open to all children in the state. With this appropriation, the legislature intends to resolve the Kasayulie litigation and further the goal of providing for equal education opportunities and adequate facilities across the state.

Vice-Chair Micciche MOVED to REPORT CSSB 26(FIN) out of committee with individual recommendations. There being NO OBJECTION, it was so ordered.

CSSB 26(FIN) was REPORTED out of committee with a "do pass" recommendation.

[9:39:53 PM](#)

AT EASE

[9:41:03 PM](#)

RECONVENED

Senator Dunleavy thanked the committee for the discussion and working hard on the budget. He referred back to the Kivalina School, and foresaw the need for future discussion about education and other items that were constitutionally mandated by the state. He thought it was important to ponder the different ways of doing education, and thought it was possible to do it differently while providing a quality education for all kids.

Senator Hoffman thanked Co-Chair MacKinnon and her staff for providing leadership to continue to reduce the capital budget. He stressed that many people in Alaska did not fully comprehend the magnitude of the financial problems the state was faced with. He recognized the needs of the constituency, and the difficulty of trimming a budget further than what the governor had proposed.

[9:43:09 PM](#)

Vice-Chair Micciche commended Co-Chair MacKinnon and the co-chair of the operating budget for persevering in a difficult and unpleasant process. He recognized the pressure the co-chairs were under, and opined that Co-Chair MacKinnon was consistent and fair.

Senator Bishop said "good job."

Co-Chair MacKinnon thanked the committee for their efforts.

#

ADJOURNMENT

9:46:24 PM

The meeting was adjourned at 9:46 p.m.