

HOUSE FINANCE COMMITTEE
May 13, 2019
2:30 p.m.

2:30:05 PM

CALL TO ORDER

Co-Chair Wilson called the House Finance Committee meeting to order at 2:30 p.m.

MEMBERS PRESENT

Representative Tammie Wilson, Co-Chair
Representative Jennifer Johnston, Vice-Chair
Representative Dan Ortiz, Vice-Chair
Representative Ben Carpenter
Representative Andy Josephson
Representative Gary Knopp
Representative Bart LeBon
Representative Kelly Merrick
Representative Colleen Sullivan-Leonard
Representative Cathy Tilton

MEMBERS ABSENT

Representative Neal Foster, Co-Chair

ALSO PRESENT

Heather Carpenter, Deputy Director, Commissioner's Office, Department of Health and Social Services; Linda Polk, Contracting Officer, Department of Administration; Angela Rodell, Executive Director, Alaska Permanent Fund Corporation; Chris Maher, Alaska Travel Adventures, Juneau.

PRESENT VIA TELECONFERENCE

Robert Brewster, CEO, AK Club, Anchorage.

SUMMARY

HB 139 AK PERM. FUND CORP. PROCUREMENT EXEMPTION

HB 139 was REPORTED out of committee with four "do pass" recommendations and six "no

recommendation" recommendations and with one previously published zero note: FN1 (REV).

CSSB 16 (FIN)

ALCOHOL LIC:FAIRS,THEATRES,CONCERTS;BONDS

CSSB 16 (FIN) was HEARD and HELD in committee for further consideration.

CSSB 44 (FIN)

TELEHEALTH: PHYSICIAN ASSISTANTS; DRUGS

HCSCSSB 44 (FIN) was REPORTED out of committee with five "do pass" recommendations and five "no recommendation" recommendations and with one new fiscal impact note by the Department of Health and Social Services and one previously published fiscal impact note: FN1 (CED).

Co-Chair Wilson reviewed the agenda for the meeting.

#sb44

CS FOR SENATE BILL NO. 44 (FIN)

"An Act relating to the prescription of drugs by a physician assistant without physical examination; and providing for an effective date."

[2:30:39 PM](#)

Vice-Chair Johnston MOVED to ADOPT proposed committee substitute for CSSB 44 (FIN), Work Draft 31-LS0019\O(Fisher 5/9/19) (copy on file).

There being NO OBJECTION, it was so ordered.

Co-Chair Wilson invited Ms. Carpenter to discuss the changes to the committee substitute.

[2:31:21 PM](#)

HEATHER CARPENTER, DEPUTY DIRECTOR, COMMISSIONER'S OFFICE, DEPARTMENT OF HEALTH AND SOCIAL SERVICES, reviewed the changes in the committee substitute. She read from the Explanation of Changes (copy on file) document:

Page 1, lines 2 - 3: Expands the title of the legislation to include "relating to prescription drugs under the medical assistance program;"

Page 3, line 14 - Page 5, line 4: Adds a new section 5 that amends AS 47.05.012 to include the Medicaid Preferred Drug List and prior authorization medication list to material incorporated by reference via regulation.

(This means the lists can be adopted after each Pharmacy & Therapeutics and Drug Utilization Review Committee meetings occur each September, November, January and April. Changes will be publicly noticed stating the new list replaces the old list. The new adoption of changes will take about 60 days. This is a common practice for lists, codes, manuals or certain guidelines that are updated periodically from a previous version. Examples include the federal poverty guidelines for the state, the current procedural terminology for physicians published by the American Medical Association, and the consumer price index.)

Page 4, lines 5 - 13: Adds a new Section 6 that amends AS 47.07.065 to require the Department to capture cost savings and cost containment for prescribed drugs by adopting and updating the preferred drug list and the prior authorization medications list. Provides for a definition of the preferred drug list and lists specific types of cost savings and cost containment measures for the pharmacy program that can be utilized.

Page 5, Line 20: Applies the immediate effective date to Sections 5- 7.

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Ms. Carpenter relayed that the Department of Health and Social Services (DHSS) submitted a draft fiscal note that indicated a savings of \$1 million in FY 2020 and a savings of \$2 million each year from FY 2021 through FY 2025. She reminded the committee that the FY 20 savings were included in the governor's proposed budget. The governor proposed a \$225 million general fund (GF) reduction in Medicaid and the savings would help meet the targeted reduction. She

qualified that the amount was not included in the Phase One Medicaid savings reduction and was not included in the budget numbers being considered by the operating budget Conference Committee.

[2:34:27 PM](#)

AT EASE

[2:37:42 PM](#)

RECONVENED

[2:38:28 PM](#)

Vice-Chair Johnston MOVED to report HCSCSSB 44(FIN) out of Committee with individual recommendations and the accompanying fiscal notes.

There being NO OBJECTION, it was so ordered.

[Note: Neal Foster was not present when the bill was reported out].

HCSCSSB 44(FIN) was REPORTED out of committee with five "do pass" recommendations and five "no recommendation" recommendations and with one new fiscal impact note by the Department of Health and Social Services and one previously published fiscal impact note: FN1 (CED).

#hb139

HOUSE BILL NO. 139

"An Act providing an exemption from the state procurement code for the acquisition of investment-related services for assets managed by the Board of Trustees of the Alaska Permanent Fund Corporation."

Co-Chair Wilson reported that the committee had wanted to better understand the procurement process during the prior discussion on HB 139.

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LINDA POLK, CONTRACTING OFFICER, DEPARTMENT OF ADMINISTRATION, introduced herself. She relayed that she was prepared to answer questions from the list of questions she had received from the committee. She answered the question regarding when the procurement code was

established. She indicated that the code in AS. 36.30 was effective on January 1, 1988 and was based on the American Bar Association's (ABA) model procurement code. The ABA's code was established in 1979 after extensive work. It was one of ABA's most successful projects. She addressed a question regarding code revisions. She indicated that the ABA code was revised between 1997 and 2000 with input from the National Institute of Government Purchasing (NIGP) and the National Association of State Procurement Officials (NASPO). She furthered that SB 12 - Public Procurement [CHAPTER 59 SLA 13] adopted on June 26, 2013 modernized AS 36.30. She listed some of the changes to the code; i.e., allowing electronic bids, raising the small procurement threshold, bidders' preferences were consolidated and simplified, and the Alaska business license requirements were modified. She elaborated that initially, an Alaska business license was required to submit a proposal, which delayed vendors submissions and reduced competition. The change required an Alaskan license once the bid was awarded. She turned to why the procurement process took so long. She delineated that small procurement (\$100 thousand or less) was completed in a matter of days and up to a few weeks. Formal procurement took 3 to 6 months and sometimes longer. The procurement requests were required posting on the online public notices system for 21 days to ensure fairness. A procurement officer had the ability to reduce the public notice time if necessary. She furthered that bids were evaluated, and negotiations were conducted during the 3 to 6 month procurement period. She noted a question concerning the benefits of a procurement code. She delineated that the code increased consistency across agencies, informed the vendor community about the state's expectations, and provided equal treatment and fairness to vendors. She added that the Alaska Bidders Preference fell within the procurement code and gave in-state vendors an advantage. The code offered transparency, encouraged competition, and resulted in the best value for the state. She addressed the final question that had been posed regarding what code benefits would be forfeited if the Alaska Permanent Fund Corporation (APFC) was granted the exemption. She remarked that the answer depended on the type of procurement. However, in general competition, transparency, justification, Alaska preferences, vendor protests, and public trust would be lost with the exemption.

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Representative Carpenter asked if the whole procurement process had been evaluated for improvement purposes or were revisions addressed piecemeal. Ms. Polk responded that the code through the ABA was reviewed regularly. She noted that 16 states had adopted the code. She reported that the Department of Administration (DOA) did not regularly review the code but did make regulatory changes at times. Representative Carpenter asked about the 21-day review period waiver. Ms. Polk reported that the waiver was possible with any procurement under certain circumstances. She elucidated that an immediate need or very few vendors able to participate were reasons to shorten the public review period. Representative Carpenter asked if it was possible to achieve a 10-day waiver for the Alaska Permanent Fund Corporation. Ms. Polk indicated that there was "pre-work" that had to be done prior to posting but stated that a 10- day waiver was possible.

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Representative Knopp asked about the difference between the small procurement process and the formal process. He deduced that the difference was the public notice period and the dollar amount of over \$100 thousand for formal procurement. Ms. Polk responded that the small procurement process had 3 levels: \$0 to \$10 thousand allowed a direct purchase, \$10 thousand to \$50 thousand required 3 price quotes, and above \$50 thousand required written quotes. She added that small procurement was exempt from any time frame requirements. Representative Knopp suggested that the state followed similar guidelines as local governments for small procurement. He asked whether the formal procurement process was implemented with purchases over \$100 thousand. Ms. Polk responded in the affirmative. Representative Knopp asked how sole source contracts worked for the state and whether the contracts followed the small procurement process. Ms. Polk answered that the state maintained a sole source procurement process. She conveyed that for small procurements it merely needed the commissioner's approval. Sole source formal procurements required approval by the agency's commissioner and the Chief Procurement Officer. She qualified that APFC was asking to be exempt from any outside oversight. Representative Knopp asked if the procurement officer's signature would be required. Ms. Polk responded in the negative and added that the AS 36.30 procurement exception exempted APFC from every code requirement. Representative Knopp asked whether the

procurement officer could reject a sole source contract. Ms. Polk answered in the affirmative.

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Representative Josephson purported that Ms. Polk had described the flexibility in current law. He asked her to repeat her answers regarding the minimum release time. Ms. Polk replied that the code required a listing on the Online Public Notice system (OPN) to be posted for 21 days. However, the timeline could be shortened if the procurement officer determined it was necessary. The officer had to place a written note in the file stating the need for the shortened period. The officer could shorten the time as needed as long as decent proposals were received. Representative Josephson noted that the committee had been given a list of allowable adjustments to the procurement code ["APFC Legislative Initiative: Procurement Streamlining" (copy on file)]. He asked what else could be adjusted. Ms. Polk replied that "quite a few things" could be adjusted depending on the scope of work required. She reported that there was no way to get around a 10-day protest period. She delineated that during the 10-day protest period, a Proposal Evaluation Committee reviewed the proposal. If the committee was quick, an approval could happen in a matter of days. However, sometimes the committee was busy, and review could take much longer.

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Vice-Chair Johnston suggested that her question might be unfair. She voiced that some procurements were very technical and noted that Ms. Polk stated that a timely review depended on how busy the evaluation committee was. She asked if procurement backlogs existed. Ms. Polk responded in the negative. She alerted the evaluation committee when to expect proposals and requested the committee to dedicate the proper amount of time for timely review. Vice-Chair Johnston recalled Ms. Polk's testimony to Representative Josephson about the times the committee was busy and not as able to be as responsive. Ms. Polk indicated she had provided an example of what could slow the process down. She voiced that a procurement officer was in control of the procurement and an officer would disallow a committee to draw out a timeline for a procurement for one that had to be rushed.

Co-Chair Wilson recalled that investment management contracts were currently exempt. She understood through Ms. Polk's testimony that the 10-day exemption was not really an issue. Ms. Polk replied in the affirmative. Co-Chair Wilson asked how often a procurement was protested and required a new solicitation. Ms. Polk answered that a solicitation was called a "draft RFP" (Request for Proposal). Often, vendor feedback caused an RFP to be amended before the closing date. She mentioned that protests happened and caused the process to take much longer than planned. Co-Chair Wilson asked if the protest happened immediately after closing or at the end of the protest period. Ms. Polk responded that a vendor could protest a solicitation 10 days prior to the solicitation closing. The solicitation could be fixed prior to the end of the solicitation period. Co-Chair Wilson asked for clarification regarding protesting a sole source award. Ms. Polk indicated that any sole source award could be posted within 10 days.

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Representative Carpenter asked for clarification concerning the 10-day period. Ms. Polk responded that a sole source contract was subject to the 10 day protest period. Representative Carpenter asked how long the sole source process took. Ms. Polk answered that it depended on how long the sole source justification documentation took and the required approvals by either the commissioner or both the commissioner and chief procurement officer. She maintained that small procurements could be approved within a day.

Co-Chair Wilson provided a hypothetical scenario in which there was a small window of opportunity for the procurement. She deduced through Ms. Polk's testimony that the procurement process could meet a 10 day deadline and asked whether she was correct. Ms. Polk asked whether she was referring to an RFP or a sole source contract. Co-Chair Wilson answered that her question related to the bill and whether the process could be shortened from 54 days to 10 days. She recounted that APFC had to hire a third party and pay 20 percent of the investment profits to the entity in order to avoid a lengthy procurement process. She offered that none of the committee members wanted to lose 20 percent of the profits. Ms. Polk explained that merely shortening the public notice process did not shorten the

entire process to 10 days due to the 10 day protest period subsequent to the state choosing the vendor. She replied that a formal solicitation could not be completed within 10 days. Co-Chair Wilson ascertained that the protest period was the essence of the bill exemption. She determined that pre-work prior to solicitation had to be completed regardless of the process and that exempting the appeal period was the crux of the legislation. Ms. Polk responded that she was correct.

Co-Chair Wilson asked Vice-Chair Johnston to comment.

Vice-Chair Johnston replied that she generally agreed with Co-Chair Wilson. She added that a highly technical sole source contract process could cause a delay.

Co-Chair Wilson returned to the subject of sole source contracts which she thought mainly applied to the APFC. She asked how sole sourcing worked compared to procurement. Ms. Polk explained that APFC had to supply a justification regarding a sole source procurement. The procurement officer would examine the justification to ensure it met the sole source requirements. Her office typically approved them in the same day and the contract would be ready for the commissioner's signature.

Co-Chair Wilson asked Ms. Rodell to testify. She wanted to understand whether the bill primarily addressed sole source contracts. She thought that there were two issues; formal solicitations and sole source contracts.

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ANGELA RODELL, EXECUTIVE DIRECTOR, ALASKA PERMANENT FUND CORPORATION, explained that the bill only pertained to sole source investment related services and would no longer need the approval of the commissioner or general services prior to making an award.

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Representative Josephson asked for clarification around the term "sole source." He wondered if it meant the contracting party needed to argue that the vendor was the only one available to perform the service. Ms. Rodell answered in the affirmative and furthered that when the APFC prepared the justification they had to explain why the vendor should

be given the contract without having to go through the formal procurement process. If either the commissioner or chief procurement officer disagreed, APFC had to go through the formal procurement process. Representative Josephson asked if the exemption granted APFC carte blanche. Ms. Rodell responded that APFC would internally document the justifications for its selections and hiring. The corporation was subject to Legislative Audits and its own annual audits. She pointed out that the exemption applied to a limited set of procurements and was not a full procurement exemption. The corporation still preserved its justification process. The procurement would no longer need the approval of the commissioner and the procurement officer.

Co-Chair Wilson asked why Ms. Polk stated that the process would be less transparent under the exemption. Ms. Polk responded that the solicitation was exempt from public notification.

Vice-Chair Johnston asked if the ARM Board or the investment arm of the Department of Revenue (DOR) was required to go through the procurement process. Ms. Polk did not know the answer to the question.

[3:10:37 PM](#)

Vice-Chair Johnston asked if Ms. Rodell knew whether the ARM Board had to go through the procurement process. Ms. Rodell responded that the ARM Board had a complete exemption.

Representative Carpenter asked if the public notice period would impact APFC's solicitations. Ms. Rodell replied that it could prove problematic to enter into the investment if the investors discovered that APFC was seeking third-party advice. Sometimes the investments were highly confidential in cases of mergers, acquisitions, or initial public offerings. She indicated that if the corporation was "telegraphing" via a public notice that it was seeking investment advice, it could jeopardize the investment opportunity.

Vice-Chair Ortiz wondered what percentage of the corporation's total investments the exemption applied to. Ms. Rodell replied that the amount was roughly 12 percent. Vice-Chair Ortiz recalled her testimony that the earnings

from the 12 percent of investments totaled 30 percent. She responded in the affirmative. Vice-Chair Ortiz asked what the benefit of the procurement exemption was. Ms. Rodell responded that part of the corporation's responsibility was to make the best investments possible by lowering the cost of investments and ensuring that the largest number of investment opportunities were available to the fund. The highest need was to ensure the fund performed optimally.

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Representative LeBon asked whether APFC had lost some investment opportunities because of the procurement timeline. Ms. Rodell explained that when the corporation felt strongly about an investment, they had chosen an alternative route to secure the investment. However, when the corporation proceeded with the procurement process it was not as fervent about the investment to warrant going through an alternative process. Representative LeBon did not think many other states had something similar to the Alaska Permanent Fund. Ms. Rodell responded that there were about 10 states that had something similar and over the past 10 years the amount of countries with sovereign wealth funds rose from 30 to 60. She observed that awareness was growing regarding creating a financial asset from a non-renewable asset, which offered a tremendous benefit to the population.

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Representative LeBon asked if she had a feel for whether Alaska had an advantage or disadvantage when competing with the other states for investments. Ms. Rodell retorted that Alaska had more of an advantage because of the age and size of the fund. She noted that North Dakota established its fund 6 years ago and that the fund was worth \$6 billion dollars. The fund was run similarly to the Alaska Permanent Fund. Representative LeBon suggested the state needed to be competitive with the national and global market for the types of investments. He did not think the corporation was asking for the exemption if it did not believe that some investment opportunities could be lost. Ms. Rodell replied in the affirmative.

Co-Chair Wilson RECESSED the meeting to a Call of the Chair.

3:18:23 PM

AT EASE

4:12:25 PM

RECONVENED

Co-Chair Wilson discussed the process for the remainder of the hearing.

4:14:10 PM

Vice-Chair Johnston MOVED to report CSHB 139(FIN) out of Committee with individual recommendations and the accompanying fiscal notes. There being NO OBJECTION, it was so ordered.

HB 139 was REPORTED out of committee with four "do pass" recommendations and six "no recommendation" recommendations and with one previously published zero note: FN1 (REV).

#sb16

CS FOR SENATE BILL NO. 16(FIN)

"An Act relating to certain alcoholic beverage licenses and permits; relating to the bond requirement for certain alcoholic beverage license holders; and providing for an effective date."

4:14:37 PM

Vice-Chair Johnston MOVED to ADOPT proposed committee substitute for CSSB 16 (FIN), Work Draft 31-LSS0283\C (Bruce, 5/13/19) (copy on file).

Representative Josephson OBJECTED for discussion.

Co-Chair Wilson reviewed the sectional changes. She reported that Section 1 amended AS 04.11.210 that related to the types of licenses and permits. The section added a fair license and performing arts license to the list. Section 2 added a new section to AS 04.11.205 pertaining to a performing arts theatre license. She noted that the section defined the license. The license currently existed in regulation and the section moved it into statute. She indicated that Section 3 added a new subsection to AS 04.11.210 (d) that grandfathered in previously licensed entities under the recreation site license if they were

valid on December 31, 2018, were operating in accordance to the terms of their license, and were disqualified by the Alcoholic Beverage Control Board (ABC). She moved to Section 4 and explained that the new section referred to Fair licenses. The section defined the type of license and established a biennial fee of \$800. She related that Section 5 amended AS 04.11.330 (d) to require performing art theatres and recreational site licenses to use their license at least once in two calendar years in order for renewal. She reported that Section 6 included existing language that limited entry to individuals under 21 years of age to be accompanied by a parent or individual over 21 years of age. The individual was permitted entry under a club license issued under AS.04.11. (g) or otherwise provided under (c), (d), or (g), or (i) of the section. Section 7 added provisions for conditions which minors could be permitted on a licensed premise, performing arts theatre or golf course with alcohol service. Section 8 amended AS 04.21.065 (a) that required posting a notice of the license on the premise. Sections 9 through 11 amended AS 43.60.040 relating to the administration and enforcement of taxes. The provisions provided incentives for on-time filing for the most recent three years. She specified that the provisions removed a \$25 thousand surety bond requirement if all other requirements were met. The remainder of the bill added effective dates sections which included retroactivity.

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Co-Chair Wilson OPENED public testimony.

Co-Chair Wilson indicated that the committee would hear additional public testimony the following morning.

CHRIS MAHER, ALASKA TRAVEL ADVENTURES, JUNEAU, provided his testimony. He elaborated that the company was in business for 40 years and operated the Gold Creek Salmon Bake. The salmon bake served beer and wine for 40 years under the recreational site license, which also allowed them to provide music for its guests. They were given notice three years prior that their license would be revoked, and they purchased a restaurant license. In order to obtain the restaurant license, he had to surrender to recreational site license. He explained that the current version of the bill limited music to the hours of 3:00 p.m. to 11:00 p.m. The prior version of the bill allowed music from 11:00 a.m.

to 7:00 p.m. He had hoped to request an extension to 8:00 p.m. but was astonished to find that he could not play music for his lunch guests. He requested an amendment that would enable him to regain his recreational site license.

Co-Chair Wilson deduced that if his license was reinstated, would he be able to play music at lunch time. Mr. Maher responded in the affirmative. Co-Chair Wilson appreciated the testimony. She was unaware that some of the grandfathered licenses were surrendered.

Representative Merrick asked for the hours of operation for the salmon bake. Mr. Maher responded that the hours varied depending on the cruise ship schedule but was roughly 10:30 a.m. to 9:30 p.m. He hoped that music would be allowed from 11:00 a.m. to 11:00 p.m. The timeframe would encompass all his customers.

Co-Chair Wilson reiterated her surprise upon hearing some businesses had to surrender their prior license in order to comply with the board's new regulatory interpretation. She pledged to address the issue.

[4:24:45 PM](#)

ROBERT BREWSTER, CEO, ALAKSA CLUB, ANCHORAGE (via teleconference), spoke in favor of the bill. He indicated that the club had a recreational site license for 8 years. He related that the club complied with all aspects of the license and operated their business model to include serving beer and wine. The ABC board forced the club to stop serving alcoholic beverages for 11 months while the issue was under appeal. An administrative judge reinstated their license. The judge ruled that the club's constitutional rights to equal protection was violated and was inappropriate for the license to be revoked while the issue was under appeal. He noted that he was once again informed that his license would not be renewed. He feels that his and other businesses were subjected to "devastating results" due to the board's change in licensing. He stated that his and other businesses applied for the license and operated responsibly and in good faith. He asked the committee to correct the situation regarding non-renewals that "served no valid public purpose" while harming responsible businesses. He asked the committee to pass the bill.

Co-Chair Wilson asked whether the committee substitute (CS) version of the bill would rectify his situation. Mr. Brewster responded in the affirmative.

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Representative Knopp asked if the language that allowed music from the hours of 3:00 p.m. to 11:00 p.m. was eliminated from the CS. Co-Chair Wilson was unaware that certain businesses had surrendered their licenses. She thought that if language was added to include reinstatement of the surrendered licenses it would cover all the activities that were previously allowed. She conveyed that if the activity under the license changed then the licenses would not be renewed. However, she understood that the current situation involved reinterpretation by the ABC Board that caused the businesses to lose their license and the licensees were operating in compliance with the license. Representative Knopp wanted to offer an amendment that would allow music from 11:00 a.m. to 11:00 p.m. He thought that the 3:00 p.m. to 11:00 p.m. language was limiting and nonsensical. Co-Chair Wilson concurred with the amendment. She also wanted to address the surrendered license issue.

Representative Merrick cited Mr. Maher's testimony regarding a 9:30 P.m. end time. She wondered whether the 9:30 p.m. end time was more appropriate in case the location was in a residential area. Mr. Maher responded that the company had been in business at the current sight for over 25 years without any problems. He believed that noise ordinances regulated the concern. Representative Merrick did not want to cause any problems.

Co-Chair Wilson relayed that city ordinances trumped state statute.

[4:32:59 PM](#)

Vice-Chair Ortiz asked about the amendment process for SB 16.

Co-Chair Wilson announced that amendments were due by the following morning's meeting. She discussed the amendment process.

CSSB 16(FIN) was HEARD and HELD in committee for further consideration.

Co-Chair Wilson reviewed the agenda for the following day's meeting at 9:00 a.m.

#

ADJOURNMENT

[4:35:01 PM](#)

The meeting was adjourned at 4:35 p.m.