

HOUSE FINANCE COMMITTEE
March 22, 2020
11:33 a.m.

[Note: continuation of March 21, 2020 meeting.]

[11:33:59 AM](#)

CALL TO ORDER

Co-Chair Johnston called the House Finance Committee meeting to order at 11:33 a.m.

MEMBERS PRESENT

Representative Neal Foster, Co-Chair
Representative Jennifer Johnston, Co-Chair
Representative Dan Ortiz, Vice-Chair
Representative Ben Carpenter
Representative Andy Josephson
Representative Gary Knopp
Representative Bart LeBon
Representative Kelly Merrick (via teleconference)
Representative Colleen Sullivan-Leonard
Representative Cathy Tilton
Representative Adam Wool

MEMBERS ABSENT

None

ALSO PRESENT

Darwin Peterson, Staff, Click Bishop; Chad Hutchinson, Staff, Senate Majority; Senator David Wilson, Sponsor; Gary Zepp, Staff, Senator David Wilson; Elizabeth Rexford, Staff, Senator Donny Olson; Kris Curtis, Legislative Auditor, Alaska Division of Legislative Audit; Senator Donny Olson, Sponsor; Jasmin Martin, Staff, Senator Wilson; Nancy Meade, General Counsel, Alaska Court System.

PRESENT VIA TELECONFERENCE

Brent Goodrum, Deputy Commissioner, Department of Natural Resources; Ramona Monroe, Alaska Miners Association, Anchorage; Karl Hanneman, Alaska Miners Association, Anchorage; Albert Wall, Deputy Commissioner, DHSS, Juneau;

Jared Kosin, President and Chief Executive Officer, Alaska State Hospital and Nursing Home Association, Anchorage; Robin Minard, Mat-Su Health Foundation, Wasilla; Jon Zasada, Policy Integration Director, Alaska Primary Care Association, Anchorage; Don Black, Executive Director, Bethel Family Clinic, Bethel; Eric Boyer, Program Officer, Alaska Mental Health Trust Authority, Anchorage; Sevilla Love, Integration Coordinator, Alaska Primary Care Association, Anchorage; Prentice Pemberton, Counseling Solutions of Alaska, Anchorage; Gennifer Moreau-Johnson, Director, Division of Behavioral Health, Department of Health and Social Services; Melissa Hill, Administrative Operations Manager, Division of Health Care Services, Department of Health and Social Services; Charles McKee, Self, Anchorage; Representative Kelly Merrick.

SUMMARY

CSSB 55 (2nd JUD)

APPOINTMENTS TO COURT OF APPEALS

CSSB 55 (2nd JUD) was HEARD and HELD in committee for further consideration.

CSSB 115 (FIN) (efd fld)

MOTOR FUEL TAX; EV REG. FEE

CSSB 115 (FIN) (efd fld) was HEARD and HELD in committee for further consideration.

SB 134 MEDICAID COVERAGE OF LIC. COUNSELORS

SB 134 was HEARD and HELD in committee for further consideration.

CSSSB 155 (RES)

EXPLORATION & MINING RIGHTS; ANNUAL LABOR

CSSSB 155 (RES) was HEARD and HELD in committee for further consideration.

CSSB 172 (L&C)

EXTENDING THE STATE MEDICAL BOARD; AUDIT

CSSB 172 (L&C) was HEARD and HELD in committee for further consideration.

Co-Chair Johnston reviewed the agenda for the meeting.

#sb115

CS FOR SENATE BILL NO. 115 (FIN) (efd fld)

"An Act relating to vehicle registration fees; and relating to the motor fuel tax."

11:35:09 AM

Co-Chair Johnston indicated the committee would be hearing SB 115 first.

Co-Chair Johnston OPENED Public Testimony.

Co-Chair Johnston CLOSED Public Testimony.

DARWIN PETERSON, STAFF, CLICK BISHOP, provided a brief review of the legislation. SB 115 proposed to increase the highway motor fuel tax from \$.08 cents to \$.16 cents. The original legislation proposed to increase the marine fuel tax from \$.05 cents to \$.10 cents. The amendment that was added to the bill in the House Transportation Committee provided a refund for commercial fishermen. In order to receive a refund of \$.05 cents per gallon, fishermen would be required to send in their fuel receipts at the end of the year.

Mr. Peterson reported that the bill did not propose a change for aviation or jet fuel. He spoke about the off-road refund. In current statutes if a person purchased highway gasoline for off-road vehicles such as snow machines and 4-wheelers, they could send in their receipts for a refund of \$.06 per gallon. The legislation proposed to increase the refund amount for off-road vehicle fuel from \$.06 cents to \$.12 cents. He was directed by the sponsor to request that the committee consider amending the bill's effective date. Currently, the legislation reflected an effective date of July 1, 2020. Due to the current COVID-19 disaster, he respectfully requested the committee consider extending the effective date to January 1, 2021.

Co-Chair Johnston replied that the committee would be taking up amendments. She reported there were 4 amendments submitted for consideration.

11:38:32 AM

Vice-Chair Ortiz MOVED to ADOPT Amendment 1, 31-LS0895\E. 1
Nauman 3/17/20 (copy on file):

Page 2, following line 22:

Insert a new bill section to read:

* Sec. 3. AS 43.40.00S(a) is amended to read:

(a) Every dealer or user of refined fuels shall pay a surcharge of \$.015 [\$.0095] a gallon on refined fuel sold, transferred, or used in the state."

Renumber the following bill sections accordingly.

Co-Chair Johnston OBJECTED for discussion.

Representative Josephson explained the amendment added a tax of 55/100 cents per gallon to the purchase of refined fuel. The funds would be used for making the prevention account whole in the out years from the Spill Prevention and Response Division. He borrowed the concept from a bill offered in 2015 by Senator Micciche. The Senator had increased the tax by \$.0095 cents to support the division which received a significant amount of its revenue from the funding. The revenue had declined because cars were more efficient and because throughput had declined, which was another source of revenue for the department. He called it the "one latte" tax because it would cost about \$5.00 per year for the average driver. He was told by the sponsor and the administration that they were not opposed to the amendment.

Representative Carpenter asked how much revenue a tax of \$5.00 per year per person would generate each year. Representative Josephson responded that it would generate additional revenue of \$3.8 million.

Representative Knopp asked if the funding would go to the Department of Environmental Conservation (DEC) for spill response. Representative Josephson responded affirmatively. He noted that the concept had already been applied in the 2015 legislation he mentioned. If the amendment passed, the state would spend less to regulate and prevent spills. Otherwise, the money would have to come out of the state's treasury. Currently, the fund could not sustain the division past 2024. The fund would simply be depleted. He cited the example of class 2 tank farms. The administration wanted to terminate 7 positions, reduce training for

responders and staff, and reduce its regulation of long-term soil and water contamination among other things. The effect was already being felt.

Representative Knopp asked why the fund was in decline. Representative Josephson replied that it had to do with people purchasing hybrid cars and because of throughput declining from 550,000 to 480,000 barrels per day and falling.

[11:43:54 AM](#)

Vice-Chair Ortiz added that, with the gradual erosion of revenue, it had been projected that the spill response fund would be at zero by 2024.

Representative Knopp did not understand the correlation with throughput because it was not a refined product.

Representative Josephson understood that, starting in 1986 and adjusted after the oil spill in 1989, there was a \$.05 cent surcharge on throughput. One cent per barrel went into the spill response fund which was designed to be used for a massive Exxon-Valdez type of problem. The remaining \$.04 cents went into the spill prevention account. The amendment would supplement the prevention side.

Representative Wool wanted to make sure he understood the amendment and provided what he thought were the terms. He wondered about the total amount of refined fuel. Representative Josephson thought Mr. Peterson could respond. Mr. Peterson asked Representative Wool to repeat his question. Representative Wool restated his question.

Mr. Peterson indicated that the additional increase of \$.08 cents per gallon plus \$.05 cents for marine fuel would bring in an estimated amount of \$34 million. He thought a half-cent would bring in about \$3 million to \$4 million. Heating fuel was exempt from the tax. He indicated that there were additional exemptions as well.

Representative Wool thought the total revenue from the tax would be about \$2 million. Representative Josephson responded that it was \$3.8 million and the total gallons taxed was roughly 695 million gallons in Alaska.

Co-Chair Johnston WITHDREW her OBJECTION.

Representative Carpenter OBJECTED.

A roll call vote was taken on the motion.

IN FAVOR: Josephson, Knopp, LeBon, Ortiz, Wool, Johnston, Foster

OPPOSED: Merrick, Sullivan-Leonard, Tilton, Carpenter

The MOTION to ADOPT Amendment 1 PASSED (7/4).

[11:50:32 AM](#)

Representative LeBon MOVED to ADOPT Amendment 2
31-LS0895\E.3 Nauman 3/20/20 (copy on file):

Page 1, line 1, following "registration":
Insert "and registration"

Page 1, following line 2:

Insert new bill sections to read:

"* Section 1. AS 28.10.155(a) is amended to read:

(a) Except as provided in {c) of this section, the [THE] owner of a motor vehicle [, OTHER THAN A COMMERCIAL MOTOR VEHICLE,] that is required to be registered under this chapter may elect to register the motor vehicle permanently in lieu of registration under AS 28.10.108 if the vehicle is at least eight years old and the owner resides in the unorganized borough or in a municipality that elects, by passage of an appropriate ordinance, to allow the permanent registration of motor vehicles. The permanent registration expires when the owner transfers or assigns the owner's title or interest in the vehicle. A permanent registration may not be renewed. On receiving the proper application and fees, the department shall issue to the registered owner registration plates, tabs, and a permanent registration form.

* Sec. 2. AS 28.10.155 is amended by adding new subsections to read:

(c) The following vehicles are not eligible for permanent registration under (a) of this section:

- (1) commercial motor vehicles;
- (2) electric vehicles;
- (3) plug-in hybrid vehicles;

(4) vehicles powered by an alternative fuel and manufactured primarily for use on public roads.

(d) In this section,

(1) "alternative fuel" includes hydrogen and natural gas;

(2) "electric vehicle" and "plug-in hybrid vehicle" have the meanings given in AS 28.10.421(k)."

Page 1, line 3:

Delete "Section 1"

Insert "Sec. 3"

Renumber the following bill sections accordingly.

Co-Chair Johnston OBJECTED for discussion.

Representative LeBon explained the amendment would exclude electric vehicles, plug-in hybrid vehicles, and alternatively fueled vehicles from being eligible for permanent registration, known as a Z-tag. The issue was brought to his attention by the American Automobile Association (AAA) who noted the disparity between vehicles powered by traditional motor fuel, such as gasoline and diesel, versus electric and hybrid vehicles. He continued that when contributing to the highway maintenance fund, since electric and hybrid vehicles would be purchasing less motor fuel at the pump the bill raised the bi-annual registration costs for the vehicles to ensure they were contributing to the highway maintenance as users of public roads. However, current law allowed a person to buy an electric vehicle that was more than 8 years old, purchase a permanent registration which would be \$200 for an electric or hybrid vehicle, plus a \$25 permit registration fee never again having to contribute towards highway maintenance. He argued that by excluding electric, hybrid, and alternative vehicles from permanent registration fees, highway maintenance costs could be recuperated. Prior testimony revealed that the life span of a battery in an electric vehicle was about 8 years. However, technology was anticipated to improve.

Representative Josephson relayed that the bill already treated hybrid and electric cars differently. He thought the bill was potentially double-dipping by treating them differently than other regular cars over 8 years old. He asked if he was accurate.

Representative LeBon was looking to not exempt a hybrid or electric vehicle just because it reached a certain age, if it was still on the road. The goal was to continue to collect a fee towards road maintenance even if a vehicle reached a certain age. He argued that an electric or hybrid vehicle should continue to contribute to road maintenance as long as they were on the road.

Representative Wool provided clarity regarding the amendment. He suggested that the basic average increase would be \$50 for a gasoline-powered car. The difference in the registration fee for a hybrid or electric car would be about \$50. He thought the bill addressed the inequity and leveled the playing field.

Co-Chair Johnston WITHDREW her OBJECTION.

Representative Carpenter OBJECTED.

A roll call vote was taken on the motion.

IN FAVOR: Knopp, LeBon, Ortiz, Sullivan-Leonard, Tilton, Wool, Carpenter, Josephson, Foster, Johnston
OPPOSED: Merrick

The MOTION to ADOPT Amendment 2 PASSED (10/1).

[11:56:18 AM](#)

Representative LeBon MOVED to ADOPT Amendment 3, 31-LS0895\E.4 Nauman 3/20/20 (copy on file):

Page 3, line 25:
Delete "1"

Page 3, line 27:
Delete "(A) [(1)]"
Insert "(1)"

Page 3, line 28:
Delete "(B) [(2)]"
Insert "(2)"

Page 3, line 30:
Delete "(C) [(3)]"
Insert "(3)"

Page 3, line 31:
Delete ";or"
Insert "."

Page 4, lines 1 - 3:
Delete all material.

Co-Chair Johnston OBJECTED for discussion.

Representative LeBon explained that Amendment 3 would remove the language inserted by the House Transportation Committee creating a \$.05 cent per gallon refund for marine fuel tax paid by licensed commercial fishing vessels. The bill raised tax on marine fuel from \$.05 cents to \$.10 cents per gallon. The refund would essentially exclude an entire industry from paying the increase in the tax which went to state and municipal port and harbor maintenance and upgrades which would directly benefit the fishing industry. He understood that the commercial fishing industry had experienced many economic challenges even before the state's current array of economic challenges. He continued that the increase from other fees was certainly part of the industry. However, he saw the amendment being about equity. He could see the argument for reducing the amount of the increase but not for excluding an entire industry from the increase in which it would be a direct beneficiary. He spoke with the sponsor's office and the sponsor was okay with the proposed change.

Representative Knopp asked for clarity on the amendment. He noted on page 4 that there was an exemption for the commercial fishing fleet. He asked about the items on page 3, lines 25, 27, and 28 regarding off-road users.

[11:59:01 AM](#)

Representative LeBon responded that the intent of his amendment was to address the favorable treatment that commercial fishermen would receive from the \$.05 cents per gallon exemption under the amendment passed by the House Transportation Committee. His understanding was that other users of marine fuel such as charter fishing operators, tourism operators, boating operators, barge operators, and ferry operators would pay the \$.05 cents per gallon surcharge. Commercial fishermen would enjoy the ability to apply for a refund by sending in their receipts. He posed the question whether commercial fishermen were receiving a

benefit. Currently, the way the bill was structured, commercial fishermen would receive a refund of the additional \$.05 cents per gallon. If the commercial fishermen were not going to receive a benefit, he wondered if other users such as charter boat operators, tourism operators would receive a benefit. He thought the commercial fishermen would benefit in some way and should pay the tax.

Vice-Chair Ortiz spoke against the amendment. The commercial fishing industry, under the current scenario with COVID-19, was facing a huge loss in profits. When considering a \$.05 cents exemption. However, getting out to the fishing grounds was costly in fuel. He did not agree with the amendment.

[12:02:11 PM](#)

Representative Knopp opposed the amendment. He reported that everything on page 3 reflected existing language applicable to off-road equipment including loaders, graders, and excavators used for road maintenance or at mining sites. He read from a portion of the bill starting on page 3, line 23. He concluded that the purpose of the motor fuel tax was to fund highway maintenance. The vehicles he was referring to were not used on highways. He also referred to the new language on page 4. There were many additional costs on the commercial fleet. He thought anything that could alleviate the pain would be desirable.

Mr. Peterson replied that in his view the amendment was deleting the sub numbers that were inserted because of the new language on page 4, lines 1-3 creating the refund for commercial fishermen. If the amendment sponsored by Representative LeBon were to pass, the refund for \$.12 cents per gallon for off-road use would still apply. The refund would apply for anyone who purchased fuel for vehicles used off-road. The amendment would delete the new language inserted by the House Transportation Committee on page 4, lines 1-3. If the amendment were to pass the commercial fishing industry would no longer have the option to apply for a refund for the additional \$.05 cents. However, the \$.12 cent per gallon off-road rebate would remain in the bill.

[12:06:12 PM](#)

AT EASE

[12:07:31 PM](#)

RECONVENED

Representative Knopp had not interpreted the amendment correctly. Although he had received clarification, he argued that some sectors of the commercial fishing industry needed some relief. He continued to oppose the amendment.

Representative Wool asked how many other states provided a different tax rate for marine versus highway fuel. Mr. Peterson responded that most all other states charged the same excise tax for marine fuel as they did for highway fuel. Alaska was unique in having two different tax rates.

Representative Wool asked if different rates had applied in Alaska for a significant period. Mr. Peterson responded that the last time the marine fuel tax was changed was in 1994. The highway fuel tax was changed last in 1970. In 1945, when Alaska was still a territory and the tax was created, he believed it was \$.01 cent for both fuel categories. He was unsure when the legislature separated highway fuel tax from marine fuel tax charging different rates. He suspected it was when the commercial fishing industry came into existence. He would have to research when the two taxes were separated.

Representative Wool understood the effects of the COVID-19 virus on several different industries. The sponsor of the amendment mentioned other industries that would not be exempt. He asked if a state aid package was in the works for the fishing industry. Co-Chair Johnston thought several relief avenues would be accessible in the near future.

[12:11:17 PM](#)

Mr. Peterson reported speaking with Jim Anderson, the operations manager for investments at the Department of Community and Economic Development (DCCED). Current statute provides the department the ability to defer loan payments and withhold penalties for the commercial fishing fleet through loans provided by DCCED. He also understood that the Alaska Commercial Fishing and Agriculture Bank (CFAB) had the statutory authority to do so as well. Interest would continue to accrue, but for the duration of the current disaster, the commercial fishing fleet could defer payments, particularly if the commercial fishing fleet was

not able to operate in the coming summer due to the canneries not opening. He noted that permits would not be seized as well.

Representative Wool asked about processors. He asked if the reduction would apply. Mr. Peterson asked if Representative Wool was talking about the amendment from the House Transportation Committee. Representative Wool responded affirmatively. Mr. Peterson responded in the negative. [Mr. Peterson was interrupted with an additional question from Representative Wool].

Representative Wool asked if the exemption would apply to ancillary vessels such as a tender or a floating processor. Mr. Peterson replied that the only people that could apply for the refund were licensed commercial fishermen who had a Commercial Fisheries Entry Commission (CFEC) license. He did not believe it would apply to processors.

Representative Wool asked if most CFEC licenses were issued to Alaska Residents. He wondered about the percentage of licenses issued to residents versus non-residents. Mr. Peterson confirmed there were non-residents who fished commercially in Alaska but did not know the percentage.

Co-Chair Johnston WITHDREW her OBJECTION.

Vice-Chair Ortiz OBJECTED.

Representative LeBon provided closing remarks on Amendment 3. He thought it was necessary to know how the \$.05 cent per gallon would benefit all payers or whether anyone was excluded. He suggested it was easy to connect the dots on the highway fuel tax improving highway maintenance such as timely snow removal and roads remaining open 24/7. He mentioned a Fairbanks family-owned trucking business that was not opposed to the additional tax. The company wanted the roads to be managed. He wondered if all parties were being treated fairly.

Vice-Chair Ortiz remarked that the captain of the fishing vessel had to fill out and submit the proper paperwork in order to receive a refund. He was unsure how many fishermen would actually submit the proper documentation. The amount of money the state would lose was not calculable. However, he felt granting the exemption was a statement about how much the industry contributed to Alaska's economy.

12:16:58 PM

AT EASE

12:24:10 PM

RECONVENED

Representative Tilton had not seen the amendments prior to the meeting. She appreciated the time to consult with other members.

A roll call vote was taken on the motion.

IN FAVOR: LeBon, Wool, Johnston

OPPOSED: Merrick, Ortiz, Sullivan-Leonard, Tilton,
Carpenter, Josephson, Knopp, Foster

The MOTION to ADOPT Amendment 3 FAILED (3/8).

12:25:54 PM

Co-Chair Johnston MOVED to ADOPT Amendment 4, 31-LS0895\E.5 Nauman 3/20/20 (copy on file):

Page 1, line 5, following "\$100,":

Insert "the owner of a vehicle powered by alternative fuel shall pay a special biennial registration fee of \$100,"

Page 1, following line 8:

Insert a new paragraph to read:

"(1) "alternative fuel" includes hydrogen and natural gas;"

Renumber the following paragraphs accordingly.

Representative Sullivan-Leonard OBJECTED for discussion.

Co-Chair Johnston reviewed the amendment. She noted there were other alternative fueled vehicles being introduced into the market. She indicated natural gas had been around for a significant amount of time and felt it should be included in the alternative fuel special biannual fee of \$100.

Representative Sullivan-Leonard asked if Representative Johnston had a figure of how much the amendment would

generate in revenue. Co-Chair Johnston responded in the negative. She explained that hydrogen-fueled vehicles were just reaching the market presently. They would be limited to markets in San Francisco and Vancouver. However, they would be coming. She continued that natural gas-fueled vehicles had come and gone. She wanted to ensure that both types of alternative fueled vehicles were included.

Representative Wool replied that since the legislature did not know what the tax structure was, he would be hard-pressed to increase it for a new type of technology not presently in existence. He asked if there was currently a natural gas tax refund related to gas at a residence.

Co-Chair Johnston replied that in Anchorage there was natural gas and there had been vehicles fueled by natural gas including part of the municipality's fleet. One of the challenges with natural gas was the length of time it took to fill up a car. The municipality converted to natural gas then converted back. She did not think there was a natural gas tax beyond what was currently in place to heat residences and barbeques. She added that she did not believe there was a natural gas motor fuel tax.

Representative Knopp supported the amendment. He thought the sponsor had estimated about 600 alternative fueled vehicles on the road. He thought the fee was very appropriate and would help to pay for some of the state's road maintenance.

Representative Sullivan-Leonard MAINTAINED her OBJECTION.

A roll call vote was taken on the motion.

IN FAVOR: Josephson, Knopp, LeBon, Ortiz, Foster, Johnston
OPPOSED: Merrick, Sullivan-Leonard, Tilton, Wool, Carpenter

The MOTION to ADOPT Amendment 4 PASSED (6/5).

[12:31:22 PM](#)

Co-Chair Johnston MOVED to ADOPT a Conceptual Amendment to include an effective date of January 1, 2021 and to direct Legislative Legal Services to make any necessary technical and conforming changes.

Vice-Chair Ortiz OBJECTED for discussion.

Co-Chair Johnston explained that with current economic uncertainties, she did not think the bill should take effect in the current year. She also thought carve-outs should be avoided, as it was unclear which industries would be affected most.

[12:32:17 PM](#)

AT EASE

[12:32:41 PM](#)

RECONVENED

Co-Chair Johnston WITHDREW her motion.

Co-Chair Johnston restated her motion. She MOVED to ADOPT a conceptual amendment that would include an effective date of January 1, 2021 and to direct Legislative Legal Services to make any technical or conforming changes.

Representative Tilton OBJECTED.

Representative Tilton wanted clarification that without the amendment to change the effective date to January 1, 2021, the bill would take effect 90 days after the governor signed the bill if he chose to do so. She asked if she was accurate. Co-Chair Johnston replied, "That's correct."

Representative Tilton WITHDREW her OBJECTION.

Vice-Chair Ortiz OBJECTED for further discussion.

Vice-Chair Ortiz asked that if the amendment were to be adopted, he wondered how much revenue would be lost. He invited members to keep in mind the state's infrastructure and deferred maintenance costs.

Mr. Peterson responded that the effective date on the Senate side was July 1, 2020 but failed on the Senate floor. Currently, the bill would go into effect 90 days after the governor signed the bill or allowed it to become law without signature. It was difficult to know when the bill would go into effect, as it was up to the Senate President, once the bill passed in the Senate, when it would be transmitted to the governor. If the bill was transferred to the governor while the legislature was in

session, he would have 15 days, excluding Sundays to decide what to do with the bill. Should the governor sign it or allow it to become law without signature, it would be 90 days after that. The effective date of the bill without an effective date would be sometime in the summer rather than July 1, 2020. He anticipated that about \$16 million would be lost with a delayed effective date of January 1, 2021.

Vice-Chair Ortiz asked if Mr. Peterson thought the bill sponsor would be open to the amendment. Co-Chair Johnston interjected that she had spoken with the bill sponsor earlier in the day and he was open to the amendment. Mr. Peterson responded, "That's correct."

Representative Knopp asked that if the bill went into effect July 1, 2020 there would be more revenue lost because of activity in the summer. He believed Mr. Peterson was assuming that revenues would be equal throughout the year. He suspected that the summer months would generate more revenue than in the winter months. He asked if it was reasonable to think the state would be losing more than \$16 million in revenue by deferring the effective date.

Mr. Peterson responded that it was certainly possible. He assumed more revenue would be generated in the summer months with the increase in tourism and rental car business. He was providing a rough estimate of \$16 million to \$17 million by taking half of what the bill would generate in a year.

[12:37:32 PM](#)

Representative Wool thought any guess about fuel purchases in the following months would be just a guess. He wondered about the railroad. He commented that the Alaska Railroad bought a significant amount of diesel. Mr. Peterson guessed that the railroad would be exempt as a government entity similar to the ferry system.

Representative Carpenter was uncertain of revenue loss. However, it was also additional cash being taken from the economy. Cash was the most important thing to get people through the current situation.

Vice-Chair Ortiz WITHDREW his OBJECTION.

There being NO further OBJECTION, it was so ordered. The conceptual amendment was ADOPTED.

[12:40:07 PM](#)

AT EASE

[12:41:35 PM](#)

RECONVENED

#sb155

CS FOR SPONSOR SUBSTITUTE FOR SENATE BILL NO. 155 (RES)

"An Act relating to exploration and mining rights; relating to annual labor requirements with respect to mining claims and related leases; relating to statements of annual labor; defining 'labor'; and providing for an effective date."

[12:41:35 PM](#)

CHAD HUTCHINSON, STAFF, SENATE MAJORITY, introduced himself and indicated SB 155 was a mining rights bill. The bill was the product of a multi-year process in which the sponsor had been working with a number of stakeholders including the Alaska Miners Association Working Group. The working group was composed of several members including J.P. Tangeman, Ramona Monroe, Deanna Crockett, Karl Hanneman, and a number of small placer miners from Interior Alaska. The Department of Natural Resources (DNR) had been helpful in crafting the legislation. He noted that a couple of members of the Senate had taken a special interest in the bill over the years. He reported that the genesis of the bill started during the Walker administration.

Mr. Hutchinson began the PowerPoint Presentation: "Committee Substitute for Sponsor Substitute for Senate Bill 155 (CSSSSB155(RES)) (copy on file). He addressed slide 2 which discussed the purpose of the bill. The legislation was an attempt to correct perceived problems that had occurred throughout the mining industry over a couple of decades. The bill addressed due process and proper notice.

Mr. Hutchinson reported that Senator bishop had been approached by small miners from the Interior and small miners, in general, about paperwork violations causing them to have problems related to their mineral interests. In

some cases, miners experienced a de facto taking their mineral interests because of a typo in an Affidavit of Annual Labor or other required paperwork. Essentially, the bill was about mining rights. He thought the bill was timely because it would help to ensure that Alaska's mining laws would be adequately equipped for the future of the nation and Alaska. As the state was looking at a new economy it would be considering electric vehicles, the internet, a planned integrated electrical grid system, and smart homes, for example. The reality was that raw materials were needed for all of the things he mentioned. Alaska was a resource-rich state. He cited several of the state's resources. He remarked that the bill synced well with some of the goals at the federal level. Senator Murkowski was moving forward with the American Energy and Innovation Act. The importance of mineral security was one of the principles being considered in the act, as there was an increased focus on decreasing the United States' reliance on China. China produced a significant amount of rare earth elements including critical and strategic minerals related to national defense. There was a national appetite for the state to move in a different direction.

Mr. Hutchinson indicated that the foundation of the bill started with the Alaska Constitution. He cited Article 8, Section 1 that talked about the general policy of developing resources available for maximum use and being consistent with the public's interest. Article 8, Section 11 of the constitution dealt with mineral rights recognized at statehood. The rights continued based on statements or affidavits of annual labor. He explained that a miner was required to provide a document that stated that they were producing on the land and to pay royalties and rents on the land. He indicated there would be further discussion on how the state was ensuring that miners were in the best position to do what they did best - produce. The state was trying to give the benefit of the doubt to miners, as it was in the interest of the state, small businesses, and large businesses. The bill was also designed for miners in the field and based on real world experience. Much of the bill was directly based on an injustice that had likely occurred previously and had been relayed to the Alaska Miners Association.

Mr. Hutchinson moved to slide 3 which provided an example. He explained that a small miner in the Interior had a small typo on one of his filings related to his Statement of

Annual Labor. Even though the statement was filed properly with the recorder's office and the notary stamp contained the correct date, he was accused of abandoning the claim because he failed to put the date on his statement. It was a large problem for miners because they had invested time and money but did not have a guarantee that they would have a right to their claim in the future. The bill addressed the problem.

[12:48:27 PM](#)

Mr. Hutchinson continued to slide 4 which addressed qualifications in sections 1, 2, and 3. The bill was broken into large sections. Sections 1, 2 and 3 addressed qualifications. Currently, a person had to be a U.S. citizen and 18 years old. A U.S. Corporation qualified as an interest. Guardians of minors also qualified. The bill would add a few provisions that occurred in real life that the working group recommended for 2020. He read the list from the slide:

Section 1 - AS 38.05.190(a) is amended -
Qualifications

Adds that mining rights can be acquired by:

- Conservators of minors or incapacitated adults;
- Individuals at least 18 years of age or older who have declared their intentions to become citizens of the United States;
- Limited Liability Companies (LLCs);
- Registered trusts (with a qualified trustee)

Mr. Hutchinson noted that the word "persons" was changed to "individuals" in the bill. Also, the language as it pertained to declaring intentions to become a citizen of the United States went back to the federal mining law of 1872.

Mr. Hutchinson turned to slide 5 which addressed Section 2 of the bill. The section had to do with due process and proper notice. Senator Bishop wanted to make sure that miners were given the ability that if there was a typo or some sort of error, they would be given proper notice, given time to cure the issue, and allowed to move forward with production. If an unqualified person received notice, they might become qualified or transfer their interest

within 90 days after due process and written notice and before the department made a "void" declaration.

Mr. Hutchinson moved to slide 6 which addressed Section 3 dealing with qualifications specific to process. The written notice was very important to Senator Bishop. There were two levels of notice that existed in the bill. The first was written notice via certified mail. The second was a notice via regular mail. He explained that many miners in the field were away from civilization. If a miner failed to rectify the issue, the result would be void.

[12:53:29 PM](#)

Mr. Hutchinson discussed additional measures of Section 3 on slide 7:

- (f) - If the unqualified person fails to cure the defect within 90 days after the department sent written notice, the department may declare the exploration or mining interest "void" and open to location. There shall be no third-party location or judicial action within those 90 days.
- (g) - "qualified to do business in this state" means holding a certificate issued by the Commissioner of Commerce, Community, and Economic Development (necessary to do business in the state).

Mr. Hutchinson indicated Section 4 and Section 5 dealt with mining claims on slide 8. He explained that deposit rights were established in the State of Alaska by using a system called the Meridian Township, Range, Section, and Claim (MTRSC) System. It was suggested that a valid MTRSC system location presumptively established the rights of the deposits in the section that a miner filled out.

Mr. Hutchinson displayed slide 9 which showed a form completed by miners. He reviewed the form contents including the area for a claims sketch. The example was done on a computer. However, he had seen forms with hand drawn maps with x's denoting location.

Mr. Hutchinson moved to Section 5 of the bill on slide 10. Section 5 dealt with mining claims and changes in locations and amended notices. The bill eliminated some unnecessary language that, because of changes made later in the bill,

was no longer relevant. There was a reference to AS 38.05.200 which indicated that notices could be amended at any time to correspond to amended locations, as long as it did not interfere with the rights of others. It allowed the miner to amend and correct, providing more freedom and flexibility as long as the document was recorded in the same manner as the original form.

Mr. Hutchinson returned to the theme of making sure miners were producing and that every benefit of the doubt was given to them to ensure that they would bring raw materials to market.

Mr. Hutchinson advanced to slide 11 which showed an Affidavit of Annual Labor. He indicated sections 6, 7, 8, and 9 dealt with annual labor. Annual labor was one of the things under the state constitution the miner had to do to show that he was producing on the land. The sheet shown on the slide was an example of a form miners had to complete. The form showed who, what, when, and why details. The form demonstrated that the ground was being worked. He reviewed each section of the form. The most important section was at the bottom of the form where a labor description was provided. It explained the activities of the miners including moving dirt, building roads, or exploration. The form had to be completed every year and submitted to DNR.

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Mr. Hutchinson explained that Section 6 of the bill on slide 12 outlined the guidelines of performance of annual labor. The bill included a few new provisions that mirrored more of what happened in reality. Sometimes there were mineral interests, boundaries of federal or private Native regional corporation land or state land. The bill sponsor wanted to make it clear that one Statement of Annual Labor and the performance occurring on the land could also include the adjacent federal and private mineral interests that might be in close vicinity.

Mr. Hutchinson noted that in the labor portion he included what it looked like as it related to the amount miners might have to pay if they did not work the grounds. The rates included \$100 for each claim and \$400 for each quarter section. If miners were not producing, they could choose to pay a monetary fee. One of the provisions included in the bill was that a miner could not pay in lieu

of producing or conducting labor on the ground for not more than five consecutive years. The state did not want miners sitting on grounds paying nominal amounts and not producing raw materials.

Co-Chair Foster asked that if a miner with 10 claims or 10 quarter sections which were all adjacent to each other (all touching) would only have to complete one affidavit rather than one for each. He queried the fee and asked about claims nearby. Mr. Hutchinson responded that as long as there was a common plan for development in the areas, only one Statement of Annual Labor would be required. The purpose of the bill was to reduce paperwork for miners and to make sure they were producing.

Co-Chair Foster asked if they would qualify if the claims were 1 mile away rather than adjacent to each other. Mr. Hutchinson presumed they would be touching. However, he indicated there was someone online to answer the question.

Co-Chair Foster was comfortable with the answer. He also asked for clarification about the ability to pay a fee if a miner did not work the land. Mr. Hutchinson responded that a miner could currently pay a fee. The bill would provide particulars to the labor itself. The bill would also allow a miner to pay without producing. However, a cap was being inserted which would not allow payment beyond five consecutive years.

Co-Chair Foster thought that as long as a miner worked once every five years, they would be able to make payments for five years. He provided an example and asked if he was correct. Mr. Hutchinson deferred to Brent Goodrum from DNR who was online.

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BRENT GOODRUM, DEPUTY COMMISSIONER, DEPARTMENT OF NATURAL RESOURCES (via teleconference), reported that currently in state regulations miners were able to pay in lieu of labor. The bill sought to define the limit in statute to no more than five consecutive years.

Representative Josephson assumed that the point of the five-year cap was to put a claim in service and produce it, rather than for someone to only talk about it for several years. Mr. Hutchinson responded in the affirmative.

Representative Josephson referenced Co-Chair Foster's example of 10 adjacent claims. He wondered whether all ten claims would be satisfied if the claim holder only worked one of them. Mr. Hutchinson deferred to Mr. Goodrum. Mr. Goodrum responded that if they were to work one particular claim and held the other claims in common the labor on the one claim would satisfy the other claims.

Representative Josephson asked if the new provision was more generous than in current law where there was a more overreaching expansive effort. He asked if he had made a fair assessment. Mr. Goodrum replied that it was the current practice as well with any affidavits of labor. Labor that was conducted on claims that were held in common could be attributed to all of the claims and covered them. It was consistent with how DNR was currently doing things.

Representative Josephson asked that if he had a claim on state land which was adjacent to federal land, a miner would have to have a joint plan of development with the federal claim owner. He wondered if he was correct. Mr. Goodrum responded that Representative Josephson was correct. Currently, in a situation where an adjacent mineral interest was federal or private, it was a slightly different nuance being captured in the bill.

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Representative Josephson asked Mr. Hutchinson if the removal of the word "affidavit" would influence the document being a sworn statement.

Mr. Hutchinson responded that it would not have the same legal effect as an affidavit. The reason for the removal of the word and replacing it with "Statement" was because there had been errors on the affidavits in the past. However, it proved to be factually inaccurate. He suggested that it was a real-world issue, particularly with small family mines. The sponsor thought it would be better to declare it a Statement of Annual Labor rather than an affidavit that would be filed with the court. It would be slightly different. The obligation and the expectation were for a person to tell the truth. Technically, it would be a statement rather than an affidavit.

Co-Chair Foster asked about miners submitting affidavits for claims that were scattered and inaccessible by road. He asked if there was any enforcement in terms of making sure miners actually did the labor that they reported.

Mr. Goodrum responded that currently the affidavits of annual labor were prima facie evidence that the labor had, in fact, taken affect. As the legislature went forward with the legislation designed to help clarify and prove some of the deficiencies that were currently in statute, DNR would also have to look at what regulations would help clarify how DNR would work with the statutes. He suggested that some of the work could be done. For instance, a miner in a geographic area flying lidar or performing some other activity that might encompass all of the claim properties, would likely be contributing to the labor necessary to a particular claim. He suggested that additional work would be required of DNR moving forward with the legislation.

Representative Wool asked to return to slide 9. He referenced the squares [Representative Wool was referring to the squares in the claim sketch]. He asked if each square with a number was an individual claim. Mr. Hutchinson believed the answer was yes.

Representative Wool suggested that for any work of \$100 on one of the 10 claims that were touching would count for all 10 claims. He asked if the reason for including the requirement of labor was to ensure that the person was actually working the claim. He thought it was more valuable to the state for someone to work the claim rather than paying \$100 to the state. Mr. Hutchinson stated that the representative was correct. He explained that the reason the bill included a 5-year threshold was to avoid someone simply sitting on the resource rather than mining the interest. The bill was attempting to remedy the problem.

Representative Wool asked how long the fee had been \$100. Mr. Hutchinson would have to look up the information. To his knowledge the amount had not changed significantly over the course of the mining industry.

Representative Wool suggested that the fee of \$100 could have been in effect in 1970. Mr. Hutchinson indicated the amount had been around for a while. He would have to double check the specific date.

1:12:15 PM

Mr. Hutchinson continued to Section 7 on slide 13 which dealt with the information found on the Statement of Annual Labor. The bill would make things crystal clear to the miners what the expectations were of the state. He read the list from the slide:

Section 7 - AS 38.05.210(b) Clarifies the information found in a Statement of Annual Labor

Added:

- Individual signs the statement to certify that it is true and correct to the best of the individual's knowledge.
- The statement must include:
 - The assessment work year
 - The name and land administration number assigned by the department
 - Every meridian, township, range, and section in which the mining claim is located
 - The recording district
 - The total amount of work required
 - A description of the labor performed
 - The value of the labor performed (including excess labor value from previous year)
 - The name and mailing address of the owner designated to receive notices

Mr. Hutchinson moved to slide 14 dealing with annual labor and paper requirements as stipulated in Section 8 of the bill. He restated that the benefit of the doubt was being given to the miner. The bill encouraged miners to produce and take minerals from the ground. The bill would also remove some of the restrictions having to do with paperwork violations. The provision in Section 8 would allow miners to correct their Statement of Annual Labor at any time before DNR declared that the interest was invalid. He read from the slide:

Section 8 -AS 38.05.210(c) -Allows for statements of annual labor to be corrected at any time (before "invalid" declaration)

Added:

- The Statement of Annual Labor, whether recorded before or after the effective date of this Act, may be corrected or amended before the 90-day cure period.
- The corrected Statement of Annual Labor shall be recorded like the original.
- A corrected statement may not be applied against labor required to be done during a subsequent year.
- A corrected statement shall be recorded in 90 days.

Removed:

- 2-year threshold has been removed. In other words: There had to be a correction within two-years.

Mr. Hutchinson elaborated that one of the things that had been a problem for some of the mineral interests was that there could not have been a correction of a Statement of Annual Labor that went beyond a 2-year period. The bill would open the limited window to anytime.

Mr. Hutchinson moved to section 9 on slide 15 which added new provisions. The provisions had to do with some of the technicalities related to statements of annual labor. He restated many of the provisions including certified mail, proper notice, and a 90-day threshold.

Mr. Hutchinson continued to slide 16. The information was added in statute (AS 38.05.215 - AS. 38.05.235) and applied to an instance where there were two co-owners and one of them had to forfeit their interest. The process involved publication, going through the proper process of recording in the recording district. He as happy to answer questions regarding the specific topic at a later time.

Mr. Hutchinson continued to Section 10 which defined labor on slide 17 and slide 18. He read the list beginning on slide 17 and continuing on slide 18:

Section 10 -Labor includes:

- Work performed in good faith on a mining claim, leasehold location, or mining lease that is directly related to exploring for, developing, or producing minerals, including:
 - Excavating, tunneling, drilling, or clearing land
 - Constructing or maintaining roads, trails, and landing strips
 - Extracting or producing ore
- Performing metallurgical analyses, environmental studies, economic feasibility studies, engineering, and permitting
- Constructing settling ponds, water supplies, and other utilities
- Providing worker housing
- Performing reclamation activities under a reclamation plan
- Transporting workers and equipment in the state to or from a mining site (not to exceed 50% of the total value of labor in the Statement of Annual Labor for the assessment year)
- Conducting a geological or airborne survey by a qualified expert and verified by a detailed report that sets out:
 - The location of the survey
 - The nature, extent, and cost of the survey
 - The name, address, and professional background of the person conducting the work

Mr. Hutchinson noted that a qualified expert was previously defined in AS 38.05.242(6).

Mr. Hutchinson continued to slide 19, Section 11 which dealt with the abandonment of a claim. It tied in with a previous example of a typo scenario. He elaborated that the issue of abandonment of a claim would arise if no labor occurred, no rent was paid, or no royalties were paid. Under such circumstances another miner could work the ground.

Mr. Hutchinson explained that the heart of the legislation was removing the provision that if a Statement of Annual Labor did not accurately set out essential facts it would become void and would have no effect. Essentially, a typo on a Statement of Annual Labor would no longer be a back-breaker as it related to a miner's ability to continue to

work the ground. It alleviated the abandonment issue in which a miner had invested a significant amount of time and equipment and resources just because of a typo in their Statement of Annual Labor.

Mr. Hutchinson turned to slide 20 which continued to address Section 11 of the legislation. It was a clean-up provision related to rents and royalties and specified that if there had been a partial payment of rents and royalties, the miner would have the ability to cure the situation paying the full payment amount due to the State of Alaska.

Mr. Hutchinson moved to slide 21 dealing with transfers in Section 12 of the bill. The section dealt with transferring a claim from an unqualified person to a qualified person. The section outlined the procedure. One of the provisions that had been eliminated was a nebulous provision related to regulations deemed to be too vague.

Mr. Hutchinson moved to slide 22, Section 13 that dealt with another clean-up provision. It ensured that mining on state selected land located on or after an active unpatented federal mining claim could be located only with recorded permission of the unpatented federal mining claim holder.

Mr. Hutchinson scrolled to slide 23 which related to Section 14 of the bill. The provision stated that DNR was not required to go back and look through their files for compliance issues without any sort of good cause. He reported that DNR naturally went through the process when some of the filings were presented to the department. Some of the small miners' groups were concerned that DNR was unilaterally looking through the files for typos and violations. The bill ensured that it was not the case.

[1:18:11 PM](#)

Mr. Hutchinson reviewed slide 24 regarding sections 15, 16, and 17 of the bill. Section 15 dealt with applicability which mostly applied to Section 8 and Section 9 and Section 13 - the written permission from the federal unpatented holder. Section 16 ensured that there was a smooth transition process. As the state went through regulations there would not be any declarations of abandonment moving forward if the legislation were to become law. Section 17

indicated an immediate effective date. He concluded his presentation and was available for questions.

Representative Wool had a question about labor and the \$100 fee. He suggested paying \$100 was much easier than actually doing work. He asked what would happen presently if a miner did not meet the labor requirement. He also asked how long a miner could not do labor. Mr. Hutchinson answered that \$100 was in statute currently. The bill would limit the time a person could sit on a claim without working to 5 years.

Representative Wool wondered how it appeared in statute presently. He asked if the timeframe was indefinite. Mr. Hutchinson answered that it was the reason for implementing a restriction.

Representative Wool suggested that people holding onto claims and not developing them were more likely mom-and-pop operations. Mr. Hutchinson had mentioned molybdenum, magnesium, and graphite, which he thought would be pursued by corporate entities rather than the smaller miner. He wondered if there was a disconnect mostly for gold. Mr. Hutchinson commented that it was for the future. He noted that the Alaska Miners Association included large and small miners. Generally, there had been a consensus in support. If there was time, the committee would hear testimony from some of the larger mines that had capital interests off to the sideline but were supportive of the bill. It started with the mom-and-pop operations and the smaller miners too.

[1:22:01 PM](#)

Representative Wool asked if there were small mining operations that also looked for other minerals besides gold. Mr. Hutchinson indicated that it started with gold which was an important mineral.

Representative LeBon shared that he had provided banking services for many gold miners during his past career as a banker. He agreed that it was long overdue to clean up some of the statutes and regulations related to mining. He attested that the concerns and issues brought up by Mr. Hutchinson were very real, as he had heard about them often. The relationships that miners had with DNR was not always good. He suggested that the bill would likely help improve those relationships. The bill would lend itself to

increased mining productivity and encourage entry into the industry for individuals who wanted to start a gold mine. He thought it would be easier for potential miners to take the initial step in investing in a gold mining operation. He argued that the legislation was not only advantageous for current miners, it would also benefit future miners encouraged by the changes presented in the bill. He was in full support of the bill.

Vice-Chair Ortiz appreciated the legislation. He asked about the regulatory environment in relationship to the mining industry prior to the bill. He wondered if Alaska was viewed as a friendly and supportive environment to the mining industry prior to the bill. Mr. Hutchinson answered that he had heard Senator Bishop state numerous times that he believed Alaska's law was 50 years behind.

Vice-Chair Ortiz asked if Mr. Hutchinson's response meant that Alaska was less open to the mining industry. Mr. Hutchinson answered there had been a struggle with the perception of how DNR was interpreting some of the provisions in statute. He brought up the example he had previously provided about de facto abandonment where a miner received a document stating that his claim was abandoned. He was not provided with an ability to cure the issue. Generally, constitutionally, a person was entitled to due process and notice. He thought a legitimate case could be made that there had been de facto takings that had occurred over decades where the affected miner did not have the ability to cure in a way that satisfied constitutional requirements of due process and proper notice.

Vice-Chair Ortiz asked what the most significant impact would be of enacting the bill. Mr. Hutchinson answered that the hope was increased production. He believed the legislation would provide more stability with the state's statutes. He suggested that the due process provisions created a higher probability that people could invest the necessary capital knowing that the law was structured in a way that placed miners in a good position to be successful.

Co-Chair Foster shared that he had grown up mining and his family had been in the mining industry. He asked for verification that the bill did not affect the carryforward for the affidavits. For example, if a miner did \$1000 in labor in the current year, he would be able to carry over a portion to the following year. He did not believe the bill

changed the provision. He asked if he was correct. Mr. Hutchinson responded, "That's correct."

Co-Chair Foster suggested that if a miner was deficient in their rent payment made on the affidavit of labor, they would receive a notice indicating that there had to be a cure. However, if a miner were to send in the affidavit of labor past the due date, it would be considered an abandonment of a claim and there would be no further notice provided to the miner. He asked if he was accurate.

Mr. Hutchinson answered there was a balance. He elaborated that the bill provided a miner the ability to cure within a timeframe. Ultimately, the idea was to increase production. If a miner received notice that there was some sort of deficiency, was given the opportunity to cure, and did not act, someone else in line could step in. The bill was encouraging someone to produce the claim. The bill struck a balance.

Co-Chair Foster suggested that it was not only addressing a deficiency in a rent payment, it also provided a miner the opportunity to cure a situation in which the affidavit was not submitted in a timely manner. He asked if he was correct. Mr. Hutchinson answered that once a miner had proper notice, they would have 90 days to cure the defect.

If they were not able to, it could constitute abandonment.

[1:28:59 PM](#)

Representative Josephson stated that currently the process was indefinite. A person could receive a claim and effectively turn it into their cabin site without any other burden than an annual fee. Mr. Hutchinson answered that he had only heard the concern anecdotally. It was a concern that existed and, the bill was attempting to move away from such a practice.

Representative Josephson asked how his constituents benefited from small mines, in terms of rents and royalties. Mr. Hutchinson deferred to DNR to answer the question.

Mr. Goodrum replied mining was an important industry in Alaska. Every year it contributed a significant amount of money to the state's coffers. Within DNR, the state

collected rental payments annually in addition to or in lieu of labor payments made. Miners were also required to make royalty payments to the state when they produced. He continued that miners paid other taxes to the Department of Revenue (DOR) pulling in far more money than DNR from the mining industry. He noted presentations being done in the Senate Resources Committee in which many of the numbers were captured from the mining industry. He reiterated that mining had been an important part of Alaska's history and would be a critical industry going forward in the state.

Representative Josephson commented that although there were mines throughout Alaska, they tended to be regions like the Minto area, the North Star Borough, and the Seward Peninsula. He suggested that small mines were more intensively located in certain parts of the state. He asked if he was correct. Mr. Hutchinson answered in the affirmative.

Representative Wool wanted to better understand the term "carry forward" as mentioned by Co-Chair Foster. He provided an example. He asked, if a miner spent \$5000 in one year for dirt work, whether it would carry the claim 50 years. Mr. Hutchinson deferred the question to the department.

Mr. Goodrum responded that if a person held 10 mining claims and the requirement was for \$100 of labor on each claim which would be a total of \$1000 to be done in the year. It could all be done on one of the claims if the miner was developing them sequentially such as moving upstream. If there was a positive balance of annual labor that was completed, the labor could be carried forward. He indicated there was a specified amount that could be carried forward which he thought was for less than 5 years. He indicated that Ramona Monroe was on the phone and could provide additional detail.

RAMONA MONROE, ALASKA MINERS ASSOCIATION, ANCHORAGE (via teleconference), answered that the law would allow the carry forward to be applied in the year the work was done plus four sequential years if there was sufficient labor to satisfy the labor requirement for each of the four subsequent years for a total of five years. The goal was that at least once every five years a miner was working their land.

[1:34:24 PM](#)

Co-Chair Johnston OPENED public testimony.

KARL HANNEMAN, ALASKA MINERS ASSOCIATION, ANCHORAGE (via teleconference), spoke in support of the legislation. He was a member of the Alaska Miners' Association working group that had advocated for the changes presented in the bill. The changes were primarily process and administrative in nature. The goal was to improve the efficiency and the relationship between the miners and DNR. It was an important step forward in terms of simplifying the administration of mining claims. He asked members for their consideration and thanked them for their time.

[1:35:24 PM](#)

Co-Chair Johnston CLOSED public testimony.

Co-Chair Johnston asked the department to review the fiscal note.

Mr. Goodrum reviewed the fiscal impact note [FN1 (DNR), OMB Component Number 3002] which essentially covered what would be required of the department to do additional work. Under current statute certain activities occurred by operation of law. The bill would create a process and a timeframe in which DNR employees would need to make contact with certain miners and to provide the time period and window to make administrative corrections. For example, in FY 21 the fiscal note would be \$176,700 for two Natural Resource Specialist I employees to assume the duties of communicating with miners to ensure mining claims and rental properties were properly maintained.

Representative Knopp asked if the positions would have other job duties as assigned or would they be limited to contacting miners.

Mr. Goodrum responded that positions would be additional positions. Currently there was about 35,000 mining claims throughout the state. The mining section had about 20 personnel actively manning them. The fiscal note would come from program receipts generated from the mining industry. He reported that in FY 19 the mining industry generated \$5.4 million to DNR alone. The Department of Revenue received several other monies related to mining. The

program receipts would be generated by the department and the Division of Mining, Land and Water from mining activities.

Representative Knopp looked at the fourth paragraph of the fiscal note that discussed the Natural Resource Specialist I. He had only seen two qualifications; A miner had to be a minimum of 18 years of age and had to be a U.S. citizen. He wondered if there were other qualifications.

Mr. Goodrum noted that at the beginning of the bill a couple of sections talked about modifications to qualifications. Some of them had to do with limited liability corporations and trusts. However, the preponderance of the work would be done when someone identified a potential error in a Statement of Annual Labor and communication with the potentially affected miner. The specialist would have to provide a time and process for a miner to amend, correct, or cure a deficiency. Qualifications only played a small part. The larger portion of work that would be done by the 2 Natural Resource Specialists would be working with mineral tenure and mineral rights that were acquired and properly maintaining them.

Representative Knopp referred to deficiency notices. He asked about deficiencies other than annual work requirements.

[1:40:02 PM](#)

Mr. Goodrum responded that the positions would be located in the Minerals Property Section of DNR. He mentioned MTRSC claims and working with miners regarding which mineral rights were being acquired at the time of filing the claims. Sometimes there might be other private property or other things withheld. The two positions would be corresponding with miners to ensure that the mining rights acquired were understood by all parties. The positions would ensure that when corrections needed to be made, the department was notifying and corresponding with miners to provide support for them in protecting their rights.

Representative Knopp noted there was nothing included in the travel line on the fiscal note. He asked Mr. Goodrum to comment.

Mr. Goodrum answered that quite likely employees from the mining section would be traveling who were involved in permitting. The division did over-flights throughout the state to ensure work was done in a proper fashion. The two particular positions being discussed would be more involved with written correspondence and phone calls rather than traveling to the field.

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

#sb134

SENATE BILL NO. 134

"An Act relating to medical assistance reimbursement for the services of licensed professional counselors; and providing for an effective date."

[1:42:38 PM](#)

SENATOR DAVID WILSON, SPONSOR, indicated that SB 134 was an act relating to medical assistance reimbursement for the services of licensed professional counselors. The bill also benefited all Alaskans in need of behavioral health by expanding its capacity. The legislation would add licensed professional counselors (LPCs) to the Medicaid optional services. The concept of the bill was to expand behavioral health capacity and utilization for Alaska's most vulnerable population.

Senator Wilson continued that Medicaid clients and all Alaskans had difficulty finding access to behavioral health care often waiting 3 to 6 months for appointments. In a state of crisis, they utilized the most expensive platinum level of care there was - Alaska's emergency rooms. He asserted that in current times, it was not where they need to be. He reported that it cost on average about \$4360 for behavioral health assessment in Alaska's emergency rooms versus about \$200 in a clinical setting. Adding more counselors to provide services in a clinical setting would provide Alaska with improved health care outcomes at a lower cost. The bill would provide the appropriate level of care with an appropriate level of health care providers. Costs were rising at an unsustainable rate and something needed to be done differently to stop the trend. Essentially, Alaska needed to retool its factories and systems to get more productive and better outcomes for

Alaskan citizens. He asserted that SB 134 complimented HB 290, SB 120 and many other pieces of legislation in terms of the 1115 waiver to help provide a cost containment reduction increasing access for Alaskans with better outcomes of behavioral health services. He believed that other healthcare providers in Alaska agreed, as there were letters of support and people waiting to testify in favor of the legislation. His staff, Mr. Zepp, would be reviewing a PowerPoint Presentation for the committee.

1:45:16 PM

GARY ZEPP, STAFF, SENATOR DAVID WILSON, began with slide 2 of the PowerPoint presentation titled "SB 134 "An Act relating to medical assistance reimbursement for the services of licensed professional counselors; and providing for an effective date" dated March 22, 2020 (copy on file). He relayed that SB 134 would add licensed professional counselors to the Medicaid optional services. The concept of the bill was to expand capacity and utilization of behavioral health care in a clinical preventative setting versus a state of crisis in Alaska's emergency rooms.

Mr. Zepp continued that the expansion of behavioral health care was projected to reduce waiting for services and to improve the quality of care by providing the appropriate care by the appropriate healthcare provider. He reported that it would cost less than behavioral healthcare in emergency rooms across the state. In conversations with stakeholders, he heard about wait times for substance abuse disorders, suicide, depression, trauma from violence, and serious mental illness of anywhere from 3-6 months for Medicaid clients. It was due to a workforce shortage of behavioral healthcare professionals who were available to see Medicaid clients.

Mr. Zepp thought everyone had seen examples of behavioral healthcare shortages that had been revealed in people's daily lives and through stories in the media. Licensed professional counselors were a valuable cost-effective part of treatment for behavioral health care. The proposed legislation was a piece of the behavioral health capacity puzzle that already included marital and family therapists, licensed social workers, PhD psychologists, prescribing nurse practitioners, and medical doctors like psychiatrists and primary care physicians. There were approximately 717

active licensed professional counselors available in Alaska.

Mr. Zepp turned to slide 3 regarding behavioral health. Many people were familiar with the term "mental health." Mental health covered many of the same issues as behavioral health, but the term only encompassed the biological component of the aspect of wellness. He read from the slide:

Behavioral health is the scientific study of the emotions, behaviors, and biology relating to a person's mental well-being, their ability to function in everyday life, and their concept of self. "Behavioral health" is the preferred term to "mental health." A person struggling with his or her behavioral health may face stress, depression, anxiety, relationship problems, grief, addiction, attention-deficit/hyperactivity disorder or learning disabilities, mood disorders, or other psychological concerns. Counselors, therapists, life coaches, psychologists, nurse practitioners, or physicians can help manage behavioral health concerns with treatments such as therapy counseling or medication.

Representative LeBon asked what the minimum qualifications were to become a licensed provider of mental health services to be eligible for Medicaid reimbursement. Mr. Zepp deferred to the various people online to address the question. Senator Wilson thought Deputy Commissioner Wall could answer Representative LeBon's question.

[1:49:11 PM](#)

ALBERT WALL, DEPUTY COMMISSIONER, DHSS, JUNEAU (via teleconference), responded that the requirements for licensure rested with occupational licensing. An academic and professional background check and a test were required. After making application and all that was entailed a person would become professionally licensed in the state. In the state plan for Medicaid, the state's agreement with the federal government as to how it handled Medicaid, there were specific definition of health care provider types. He indicated that part of the lengthy process of getting a new provider type into the system could be addressed with the federal government after a bill was passed with the provider type. He was describing a multi-step process.

First, a provider had to become an enrollable provider in statute. Second, the state had to add the professional licensure to Alaska's state plan with Centers for Medicare and Medicaid Services (CMS). Third, regulations had to come after the fact to put together the framework in which the new license type could bill Medicaid. There was a professional licensure board that had oversight of the license. The definition was included in the agreement with the federal government and the state would craft regulations in which to bill through.

Mr. Zepp considered slide 4: "Why Medicaid clients and who are they?" He read from a prepared statement:

"Why Medicaid clients and who are they? Medicaid provides health coverage and long-term care services for Alaska's most vulnerable: children, seniors, people with disabilities, pregnant women, and very low income or working poor.

Medicaid clients have difficulties finding access to behavioral healthcare and often have to wait three to six months for appointments. So, you can imagine a person in crisis or someone who is ready to accept behavioral healthcare services and there isn't any access or are told it's available in three or four months. So, what are their options? Alaska's emergency rooms.

SB 134 would directly impact the lives of our most vulnerable population of citizens, our poor, our young, and our seniors. Alaska's emergency rooms have been overwhelmed with volumes of Medicaid client's emergency situations in need of behavioral health. The leading cause of emergency room visit are related to alcohol disorders and the associated ailments of alcohol abuse.

Often Medicaid clients have nowhere else to go due to the lack of access and the lack of capacity which causes patients to stay much longer in the emergency room than they should. Typically, if a Medicaid client is in a stage of crisis and there is not access to the appropriate care, they leave the facility and the cycle repeats itself. They will be back at the

emergency room because they are open 24 hours a day, seven days a week."

Mr. Zepp moved to slide 5: "Adult Untreated Behavioral Health Statistics." He indicated that the following few slides reflected some of the statistics concerning the lack of behavioral health care, both nationally and within Alaska. He read from a prepared statement:

Approximately, 70 percent of American's who need behavioral health services do not receive treatment. For substance use disorders it's about 92 percent that typically do not receive treatment; and adults with serious mental health issues, approximately 66 percent, do not receive behavioral health treatment.

Without treatment in a timely manner, this often can lead to interactions with the police, the court systems, and the correctional facilities within our state.

According to the "Bureau of Justice Statistics", approximately 51.4 percent of prisoner have a serious psychological distress and/or a history of a mental health problem - 20 percent of those are considered "severely and persistently" mentally ill.

Mr. Zepp discussed children untreated for behavioral Health on slide 6. He relayed that the chart showed levels of depression, anxiety, and behavioral health disorders by age for children. He read from a prepared statement:

"As you can see, children are very much susceptible to behavioral health issues. Common behavioral health issues that our children experience include depression, anxiety, behavioral disorders, and the most common which is attention-deficit/hyperactivity disorder (ADHD). A child diagnosed with depression has approximately a 74 percent chance of having a co-disorder, like anxiety. If a child is diagnosed with depression and anxiety disorders, if not treated, they usually increase over time, and the child's behavioral health condition worsens.

Boys are more likely than girls to have a mental, behavioral, or developmental disorder and children living below the poverty line have a 22 percent more

likelihood of a mental, behavioral, or developmental disorder.

SB 134 can expand the capacity of behavioral healthcare in our schools, our communities, and our healthcare facilities."

1:54:35 PM

Mr. Zepp continued to slide 7 which discussed the Alaska assessment of behavioral health care needs. He read from a prepared statement:

Mental disorders among children can cause serious changes in the way children typically learn, behave, or handle their emotions, which causing distress and problems throughout the day.

This is absolutely tragic, and you have probably heard this previously, but according to the American Foundation for Suicide Prevention, the Alaska Bureau of Vital Statistics, and the State of Alaska, Office of Epidemiology:

Alaska has the highest rate of suicide per capita in the country;

In Alaska, suicide is the number one leading cause of death for ages 10-64;

Alaska rate is 21.8 suicides per 100,000 people and in rural Alaska it is 35.1 per 100,000;

There was a 13 percent increase in suicides between 2013-2017, as compared to 2007-2011;

Toxicology results following suicides since 2015 show 70 percent involved one or more substances, most frequently alcohol;

More than 90 percent of people who die by suicide have depression or diagnosable, treatable mental or substance abuse disorder."

Mr. Zepp turned to slide 8: "Alaska assessment of behavioral health care needs." He continued to read from a prepared statement:

"Later in our presentation, the expert testimony will be able to shed a light on the workforce shortage of behavioral healthcare professional available to treat Medicaid clients and Alaskans in general.

The 2016 Alaska Behavioral Health Systems Assessment Report estimated that 145,790 adult Alaskans - roughly 20% of the state's population - need behavioral health services. Despite the estimated need for mental health care in Alaska, the ratio of mental health providers to population is low compared to national levels.

Also, most behavioral health professionals work in urban areas and in remote areas of the state, they have even lower provider/population ratios."

Mr. Zepp moved to the chart on slide 9: "Alaska Emergency Room Department Super-Utilizer Facts Total Medicaid Billed Charges." He read from his prepared statement:

"The chart above reflects the total cost that the State of Alaska has paid to emergency rooms for Medicaid clients throughout our state over the previous four years.

As you can see, in 2016 the total costs were \$233 million + and that amount has risen over the last four years by \$47.1 million dollars or 21.1 percent.

As an example, in 2019, the top 2.9 percent of "super-utilizers" consumed 16.3 percent of the charges at \$46 million dollars (1,301 clients at an average cost of \$35,357 annually). They had 10 visits or more per year, some as much as 50 visits per year.

If we count the top 10.03 percent of "super-utilizers" (6,250 Medicaid clients) costs \$114.0 million or 40.67 percent of the total charges annually (6,250 clients at an average cost of \$18,240 annually). They had 5 visits or more per year.

Costs are rising at an unsustainable rate and we have to do something different to stop this trend. We need to improve Medicaid programs and provide increased quality and become more cost efficient. We believe, and other healthcare providers in Alaska agree, by

adding more LPC counseling services, we have a chance to improve these outcomes.

[1:58:31 PM](#)

Representative Josephson asked what was typically the reason for an appointment. Mr. Zepp responded that the majority of Medicaid clients were seen in Alaska's emergency rooms for substance abuse disorders. Representative Josephson assumed people were going through withdrawals.

Co-Chair Johnston indicated there were some folks online that would likely be answering Representative Josephson's question.

Representative Wool asked if the increase in Medicaid billed charges for emergency room services in 2018 and 2019 was due to Medicaid expansion. He had heard from hospitals prior to Medicaid expansion that they had several people going to the emergency room, as it was their only option. The hospitals were not billing because Medicaid was not available at the time. He suspected that the increase in charges was a result of an increase in Medicaid patients through the expansion. Mr. Zepp deferred to Deputy Commissioner Wall.

Representative LeBon asked how emergency room repeat customers were intercepted and directed to providers. If people were to continue the pattern of showing up to the emergency room, the hospital would not refuse to treat the patients.

Senator Wilson responded that the Mat-Su Health Foundation had the High Utilizer Mat-Su (HUMS) Project. He indicated members likely had an information sheet in their packets. It reflected an intensive case management program. He believed Providence had a similar program in place and had seen a significant drop in expenses. In talks with the Mat-Su Foundation and Providence, he found that they diverted patients for which they could not bill for services. He also noted another information sheet that talked about Medicaid super utilizers and why they entered emergency rooms, many of which were experiencing substance abuse or behavioral health issues.

Mr. Zepp continued with his prepared statement regarding slide 9:

"With the federal approval of state's 1115 waiver for behavioral healthcare services and by adding LPCs to the mix of behavioral healthcare professionals it offers an opportunity to expand capacity, increase the quality of care, lower the costs versus the crisis mode at the platinum level costs that the state has already paid.

I'll repeat, the amounts shown above is what the state has already paid on behalf of Medicaid clients in Alaska for emergency room visits over the last four years."

[2:02:29 PM](#)

Mr. Zepp continued to slide 10: "Alaska Emergency Room Department Super-Utilizer Facts Number of Medicaid Clients." He read from a prepared statement:

"The chart above shows that the number of Medicaid clients in our emergency rooms have not increased but the costs have.

The most common diagnoses for the top 2.7 percent super-utilizers are alcohol-related disorders and the associated ailments;

The top 2.7 percent of "super-utilizers" are likely to be between 20-59 years old & 61 percent are females and 39 percent are males."

Representative Tilton posed a question about how to change a person's behavior who was consistently going to the emergency room because it was what they knew to do. Mr. Zepp suggested that in a few minutes the committee would hear from the Mat-Su Health Foundation and from Jared Kosin, the CEO of the Alaska State Hospital and Nursing Home Association (ASHNA). Currently, they had two programs that had been in practice for about 2 years that were experiencing success in rerouting patients away from the emergency room to a clinical setting. Both programs had achieved health improvements and cost savings.

Representative Tilton asked if the bill would increase availability of substance abuse providers. Mr. Zepp responded affirmatively. He noted that in 2018 the Senator

had sponsored SB 105 which added licensed, marital family therapists to the Medicaid optional services. He thought there was a stereo type in place regarding licensed marital therapists and licensed professional counselors - that their scope was limited in terms of what they could provide. However, the counselors could provide a wide variety of services up to, but excluding, the prescription of drugs. Licensed therapists could handle many modalities including: substance abuse, anxiety, schizophrenia, mood disorders, and depression.

Mr. Zepp continued to slide 11: "Preventative behavioral health care can reduce costs." He continued reading his prepared statement:

"There is good news however. Since the passage of SB 105, which added licensed martial and family therapists to the Medicaid Optional Services. Several programs aimed at diverting Medicaid clients from emergency rooms into more comprehensive coordinated care models are in practice right now.

As you'll hear from Mr. Jared Kosin, the President and CEO of the Alaska State Hospital and Nursing Home Association and hopefully from the Mat-Su Health Foundation ladies, Ms. Elizabeth Ripley and Robin Minard. Programs are diverting "Super-Utilizers" from our emergency rooms in Alaska to a clinical or coordinated care setting and it does save money. These two are examples that are working in Alaska right now and achieving significant results. Most importantly, the Medicaid clients are receiving improved quality by the appropriate healthcare professions but at substantially reduced costs. This saves the Medicaid program money! By adding capacity with Licensed Professional Counselors to assist with behavioral healthcare issues, this enhances those programs as well as other private practice clinical settings too.

We did want to touch on the fiscal note from our friends at the Department of Health and Social Services. It's understood they have to provide estimates of what programmatic changes may costs but we believe there is more to the story."

Mr. Zepp thanked the stakeholders that supported the bill. He revealed a list of the stakeholders on the final slide.

Co-Chair Johnston thanked the presenters and encouraged invited testimony to begin.

[2:08:52 PM](#)

JARED KOSIN, PRESIDENT AND CHIEF EXECUTIVE OFFICER, ALASKA STATE HOSPITAL AND NURSING HOME ASSOCIATION, ANCHORAGE (via teleconference), indicated the association fully supported SB 134 and thought it was smart policy and a smart use of resources. He suggested the legislation would reduce visits to emergency rooms. Utilization would be reduced in 2 ways. First, it would create direct access to care in the community. In response to Representative Tilton's question regarding how to change behavior, he suggested that people would have an option other than going to a high level-of-care emergency department. He thought it was reasonable to think people would go to another provider for care. For those people that were hard-wired to go to an emergency room, they could be redirected via a successful discharge from an emergency department. He relayed that currently in the system of care, with the capacity issues at Alaska Psychiatric Institute (API), patients were going to the emergency room in crisis, being converted to Title 47 ex-parte patients, and were boarding at emergency departments for days at a time while they waited for an inpatient bed. Patients would then be discharged from their inpatient bed and would show back up at emergency rooms perpetuating a vicious cycle. The legislation would provide emergency departments with the option of making a warm handoff to a counselor in the community. The counselor could then take the patient working with them on a long-term basis. Such capacity was currently non-existent or, if it did exist, it was on a very low level. The bill would allow for more continuity of care. He sincerely believed SB 134 would decrease health care costs rather than increase them. Ultimately, the bill would save the state money. He urged members to support the bill.

[2:13:00 PM](#)

Representative Tilton referenced Mr. Kosin's statement about the bill allowing hospitals to make successful discharges because they would have the ability (currently not in existence) to handoff patients to providers. She asked if capacity of providers or the lack of the ability

to bill Medicaid influenced why behavioral health providers were not presently used.

Mr. Kosin responded that both applied. He used the Mat-Su Regional Medical Center as an example. It had a private family practice as part of its network of services called Solstice Family Care. Solstice Family Care had a licensed clinician who could provide services for Medicaid recipients. However, currently there was no way to bill Medicaid for its services. He asserted that without the ability to bill for services, the entity could not stay in business for very long. The bill would allow for a new avenue for discharging patients from the emergency department to the clinician at Solstice Family Care, work with the patient on a plan of care to help them through episodes that would otherwise land them back in the emergency room, and bill Medicaid. The cost for 15 visits to the clinician would equal approximately the same as a single visit to the emergency room. The economics were justifiable.

Representative Carpenter asked about the likelihood the federal government would approve professional counseling services. He wondered if there were already other states that include it in their services.

Mr. Zepp reported having reached out to the National Council of State Legislatures to do some research. They found that about 6 states including Montana, Washington, and Oregon, had already added licensed professional counselor services to their Medicaid optional services.

[2:15:55 PM](#)

ROBIN MINARD, MAT-SU HEALTH FOUNDATION, WASILLA (via teleconference), relayed that the Foundation shared ownership in the Mat-Su Regional Medical Center and invested its profits back into the community in order to improve the health and wellness of Alaskans living in Mat-Su. She was testifying in strong support of SB 134. The bill was crucial because it would help address an important health issue facing Mat-Su residents every day - mental health and substance use problems. Licensed professional counselors were key behavioral health providers who could help with the mental health and substance use issues.

Ms. Minard continued that the Foundation was aware the issues were difficult for Mat-Su residents because they had stated as much in the previous 3 community health needs assessments. She reported that in 2013 residents and professionals stated that the top 5 challenges they faced were alcohol and substance abuse, children experiencing trauma and violence, depression and suicide, domestic violence and sexual assault, and lack of access to behavioral health care. Residents with the list of issues could be helped with access to counseling. School nurses in the same survey were seeing waiting lists as long as 4-8 months for children and families that had Medicaid to get into see a counselor - much too long to have to wait. It was crucial that Alaska residents had access to behavioral health providers for care before their problems escalated to the state of crisis.

Ms. Minard continued that Mat-Su Regional Medical Center and the community was inundated by residents who were in crisis related to behavioral health issues. In 2016, 3443 residents were seen in the emergency department with a primary behavioral health diagnosis, and those people had 8400 visits costing \$43.8 million in facility charges. The cost did not include the costs associated with law enforcement or emergency transportation. The average cost per visit was over \$5000 and, the average cost per patient was almost \$13,000.

Ms. Minard noted the senator mentioning the HUMS Program earlier in the meeting. She explained that HUMS was a program supported by the Mat-Su Health Foundation, the program was started as a way to provide care coordination and access to community support for high utilizers. High utilizers were defined as residents who have had 5 or more visits to the emergency department in a year and who were unable to independently access consistent, appropriate care in the community. The HUMS program had already resulted in dramatic cost savings. It had also alleviated significant trauma for patients as well as health care providers and families who often suffered trauma along with the patient. She urged members, as they delved into the data, to keep in mind that if people had access to care before their needs became a crisis, there would be far less need for a program such as HUMS.

Ms. Minard relayed some of the results of the HUMS Program to-date. She reported a cost savings of \$2.168 million over

2 years. In 2018, the top 3 utilizers saved \$340,288 by not making emergency department visits. In the same year, 7 patients did not visit the emergency department at all after they enrolled in the HUMS Program. She relayed that enrollment was voluntary for the patient. The age of the patients ranged from 16-82, and 72 percent had Medicaid as their health insurance. She reiterated the importance of Medicaid clients having access to the whole continuum of care. The program had an external evaluator and the Foundation was still learning and tweaking the program to make it more effective and less expensive as time passed.

Ms. Minard shared a couple of success stories from the program thus far. The first was a young adult client that had had 17 visits to the emergency department in the prior year. They had poorly managed diabetes and a substance abuse disorder. Most of their emergency department visits lead to inpatient admission into the intensive care unit (ICU). They had a long history of IV drug use and was non-compliant with primary care appointments. She continued that when the person was referred to the HUMS Program, the outlook was poor, and HUMS staff were told the client had little or no interest in improving their situation. With time and a listening ear, the HUMS staff built a rapport with the person and it quickly became obvious that the desire for a healthier life existed. She was happy to share that the client was currently sober; their diabetes was well managed; they had a driver's license; they were working a full-time job; and they had a great relationship with the primary provider's office.

Ms. Minard presented a second example. Another client had been extremely proactive with their care and improving their own quality of life. They had been able to maintain sobriety for over 6 months and enrolled in parenting classes to become a better parent in the hopes of regaining custody of their child. The program assisted with housing, getting them into substance use disorder treatment, and with purchasing needed hygiene and clothing items. The person had gained and maintained steady employment at a restaurant in walking distance of where they lived so they could get to work. The client was currently saving money to get their own apartment. She concluded that the HUMS Program showed great promise. However, even more promising was the idea that if there was more behavioral health care available earlier on, the HUMS program might not be needed in the future. The hope was for people to get care in a

lower cost setting. She understood there was concern about adding costs to the Medicaid System. She asserted that SB 134 would do the opposite; it would allow behavioral health care to be provided in the least costly setting, thus, avoiding all of the more expensive care later. She thanked members for their time.

[2:22:15 PM](#)

Co-Chair Johnston OPENED Public Testimony.

JON ZASADA, POLICY INTEGRATION DIRECTOR, ALASKA PRIMARY CARE ASSOCIATION, ANCHORAGE (via teleconference), spoke in support of SB 134. He read from a prepared statement:

"Alaska's 2 federally qualified health centers actively support SB 134 adding Medicaid reimbursement for LPCs has been a top priority in our efforts to expand access to behavioral health services for many years.

Community health centers are already using LPCs in their practices to provide school-based services, individual counseling services, substance abuse disorder treatment, and in supporting care coordination activities. And this does include individual coaching on basic health and hygiene issues such as we're addressing now with the COVID epidemic. However, these services provided by LPCs are not currently reimbursable. They are currently paid for through earned income, federal and private grant funds. This is not sustainable.

Health centers have received considerable federal funding to expand behavioral health services in the primary care setting. They are required to provide behavioral healthcare that is integrated with medical, dental, pharmacy, and other services. Adding LPCs to the roster of billable providers enables health centers to make their services more sustainable. This is the national best practice.

LPCs are a valuable, cost-effective component of team-based whole-person care. This is particularly important right now as we are doing everything that we can to keep patients out of emergency rooms and hospitals. Mild and moderate anxiety and depression

are co-occurring conditions with chronic conditions including diabetes and hypertension. LPS are a vital provider type that can typically provide short-term counseling support that enhances the work of other medical, dental, and pharmacy team members in stabilizing and improving the health of emergent patients and assisting them in managing chronic conditions over time.

Finally, in 2017, Alaska health centers reported a deficit of 12-18 behavioral health providers that could expand access to 6000 to 9000 additional patients. We support SB 134. It addresses a key need in Alaska's response to behavioral health, lends stability to efforts already underway, and offers another tool in our response to improving care and lowering the overall cost of care."

Mr. Zasada thanked the committee for its time.

[2:25:24 PM](#)

DON BLACK, EXECUTIVE DIRECTOR, BETHEL FAMILY CLINIC, BETHEL (via teleconference), introduced himself and read a prepared statement:

"Our clinic employs one licensed clinical worker and one licensed professional counselor in our behavioral health department. When I last spoke, we were providing services to teens at the Bethel Youth Facility in efforts to reverse destructive habits while these students are still young. Our substance abuse programs were embedded in the community as well as at the Yukon-Kuskokwim Correctional Center where our staff provided group and individualized guidance.

All that is gone while we hunker down. Although our delivery has changed, our services continue. We continue in more individualized services and, where possible, by electronic medium. More individualized services stretch our staff thin, but limited Medicaid billable staff stretches us even thinner. We're venturing into the unknown. We have no numbers to support where we are going. We just know, we just all know, we are going there.

Look around the room, or if you are meeting electronically as I am, imagine you're looking around the room. See not just the faces of your colleagues. See not just the names of your colleagues. See the person. We are all gathering on a Sunday, not as an ordinary day but as a day to accomplish important business in the time remaining this session. Meanwhile, there is a wave coming. We don't know how hard it will hit. We don't know when it will hit. We just know that it will hit, and there is nothing we can do to stop it. And we can't even swim, just float. This stressor just entered all of our lives.

Some of those people around the room or virtual room will cope with this stressor better than others. It doesn't matter how we cope or appear to cope it was a stressor for everyone. Many of you have coping mechanisms to help you relax - a morning cup of coffee and a newspaper at the local coffee shop. Closed. Church closed. A relaxing dinner with loved ones or friends after a long day - closed. A trip to the gym or local pool to work off some anxiety, relax, and re-center - all closed. We are helping our clients build mental and emotional tools to help them address the stressors in their own lives. Now we have a new stressor to add to the list. We anticipate more individualized time will be needed. We also anticipate a potential flood in demand of these services. For those in the Medicaid world, we may have to triage and choose between which services are billable and which services are not.

I just closed my dental office on Friday and am repurposing as many staff as possible to assist in the increased needs in other areas of our clinic. With the reduction in some services, the revenue to run the clinic becomes more of a concern. When I triage a behavioral health patient, part of that formula may have to include the sustainability of the overall clinic when it should be the greater need of the patient. Passing SB 134 allows me to focus more on the patients' needs and less on the financial needs. Passing SB 134 allows me to have access to a broader range of billable behavioral health specialist labor pool. It amazes me how an entire globe is pivoting all in the same direction all at this very same point in time. SB 134 has become something different to me in

the past few weeks. It has become our essential part of that pivot."

2:29:15 PM

ERIC BOYER, PROGRAM OFFICER, ALASKA MENTAL HEALTH TRUST AUTHORITY, ANCHORAGE (via teleconference), indicated he also served as the chair for the Alaska Healthcare Workforce Coalition. The Coalition's primary focus was to increase the workforce in the healthcare industry across Alaska. The Trust and the Coalition supported SB 134 to be able to expand the number of behavioral health practitioners who could bill for Medicaid services which would increase the responsiveness of the healthcare community. People experiencing behavioral health disorders could be treated when they needed the help versus being put on a waitlist.

Mr. Boyer continued that the Alaska Mental Health Trust Authority (AMHTA) was concerned about Trust beneficiaries' lives being improved. Beneficiaries included Alaskans with mental health issues, substance use disorders, developmental disabilities, Alzheimer's Disease and related dementia, and traumatic brain injury. In partnership with the Department of Health and Social Services, the Trust ensured Alaska had a comprehensive and integrated system of care to provide the necessary services and supports for beneficiaries in their community of choice and in the least restrictive setting possible. The legislation would create a more equitable distribution of health professionals in Alaska. It would expand options for behavioral health treatment and care, decrease the wait times experienced by many who were seeking behavioral health services, and prioritize helping out the most vulnerable beneficiaries across the state. He reiterated that the Trust fully supported SB 134.

2:31:22 PM

SEVILLA LOVE, INTEGRATION COORDINATOR, ALASKA PRIMARY CARE ASSOCIATION, ANCHORAGE (via teleconference), had direct insight from her service in the healthcare field. She alluded to the failing attempt that Alaska health centers were currently facing because they could not meet the behavioral health needs of their communities due to the limitations barring them from hiring qualified behavioral health providers known as licensed professional counselors.

She noted the bio, psycho, social, and economic impact of COVID-19 which would only exponentiate the dire need to prioritize the passage of SB 134.

Ms. Love continued that the behavioral health issues on the system came at an exorbitant cost to state and federal funding. All of the conditions were preparing to swamp an already over-burdened emergency and acute response and social service system in the wake of COVID-19.

Ms. Love reported there were LPCs available to go to work presently, but health centers were not able to hire them due to not being able to bill Medicaid. She indicated that when patients were sick, they went to their primary care provider. She referred to an article that reported up to 45 percent of people who died by suicide had visited their primary care provider within a month of their death. Additional research suggested that up to 67 percent of individuals who attempted suicide received medical care as a result of their attempt. She concluded that given the statistics she provided, primary care had an enormous potential to prevent suicide and connect people with the needed healthcare they required.

Ms. Love continued that by capturing patients when they presented to primary care, providers could help them. She advocated removing all barriers between driving down costs while meeting the increasing behavioral health issues of individuals and families on their way into the system. She argued that prevention was needed immediately before state social youth and family services and psychiatric admissions were necessary. All of the issues were most appropriately prevented, met, and treated in primary healthcare centers. The licensed professional counselor workforce was needed to reduce future financial burdens and to save lives.

[2:34:25 PM](#)

PRENTICE PEMBERTON, COUNSELING SOLUTIONS OF ALASKA, ANCHORAGE (via teleconference), spoke in support of SB 134. He provided a brief work history. He was currently in private practice and owned Counseling Solutions of Alaska. He had 23 therapists who worked for him in Anchorage and Eagle River. He was calling on behalf of all of them in support of the bill. Changing the rule that a psychiatrist had to supervise LPCs and licensed clinical social workers (LCSWs) was long overdue. He responded to an earlier

question about qualifications. Licensed professional counselors need the same qualifications to provide therapy as those required for LCSWs and licensed marriage and family therapists (LMFTs). The qualifications included a graduate degree, 2 years of supervised work experience, passing a licensing exam, and taking continuing education credits. They were as qualified to provide therapy as any other LPSCs, LPSWs, or LMFTs.

Mr. Pemberton conveyed that the preferred approach to treating kids and teens was psychotherapy first, then referral for evaluation by a psychiatrist. He thought things were currently done in reverse order. He argued that supporting families and kids in their community and allowing problem solving was the way to avoid further hospitalizations and the use of valuable emergency room resources. He suggested that Medicaid kids were some of the most vulnerable citizens Alaska had, yet they were denied reasonable access to much needed mental health services for them and their families.

Mr. Pemberton continued that as a community mental health provider and medical social worker, one of his largest frustrations was not being able to find quality outpatient services. As a provider in private practice, he was contacted frequently by doctors, pediatricians, and family doctors looking for providers who would take their Medicaid clients, as they could not get them in anywhere. The emergency room was their last hope. Families were desperate to help their kids in crisis. He surmised that the state would pay for the care of today's children. The question was would the investment occur in the near term by paying for their health and wellness, or would it be in several years by paying for their institutionalization or incarceration. He thought much of the backlog could be alleviated.

[2:38:29 PM](#)

Co-Chair Johnston CLOSED Public Testimony.

Co-Chair Johnston asked someone to walk through the fiscal note.

[2:39:09 PM](#)

GENNIFER MOREAU-JOHNSON, DIRECTOR, DIVISION OF BEHAVIORAL HEALTH, DEPARTMENT OF HEALTH AND SOCIAL SERVICES (via teleconference), spoke in support of the bill. The bill could expand access to care for eligible Alaskans statewide. She also noted the potential for expanded access for care in rural communities for individuals experiencing mild to moderate disturbances. There was also the potential decrease overtime of psychiatric emergency services and acute care services. Licensed professional counselors would also be able to provide screening, grief intervention, and referral to treatment which was a key element of the continuum of care.

Co-Chair Johnston interrupted Ms. Moreau-Johnson. She asked if she could walk through the fiscal note. Ms. Moreau-Johnson deferred to Melissa Hill.

MELISSA HILL, ADMINISTRATIVE OPERATIONS MANAGER, DIVISION OF HEALTH CARE SERVICES, DEPARTMENT OF HEALTH AND SOCIAL SERVICES (via teleconference), reviewed the fiscal note [OMB Component 3234]. The fiscal note showed a \$55,900 services request to complete modifications to the Medicaid Management Information System (MMIS) that would add a new provider type and adjust associated business rules.

Co-Chair Johnston set the bill aside. She confirmed that the amendments for another bill had been sent out via email.

SB 134 was HEARD and HELD in committee for further consideration.

[2:42:55 PM](#)

AT EASE

[2:56:38 PM](#)

RECONVENED

#sb172

CS FOR SENATE BILL NO. 172 (L&C)

"An Act extending the termination date of the State Medical Board; requiring a report on the State Medical Board's audit compliance; and providing for an effective date."

[2:56:47 PM](#)

ELIZABETH REXFORD, STAFF, SENATOR DONNY OLSON, introduced herself and read the sponsor statement:

SB 172 will extend the termination date of the State Medical Board (board).

The State Medical Board has served the public's interest by effectively licensing physicians, osteopaths, podiatrists, physician assistants, and paramedics. The board monitored licensees and worked to ensure that only qualified individuals practiced in Alaska. Furthermore, the board has developed and adopted certain regulatory changes to protect the public, improve the licensing process, and improve the delivery of services.

The most recent audit completed by the Division of Legislative Audit has proposed a termination date that is three years less than the eight-year maximum allowed per statute. The Senate Labor and Commerce committee recently amended the bill to reduce the termination date by an additional two years for a sunset date of June 30, 2023. Additionally, the committee also required that the legislative audit division submit a report concerning compliance of the recommendations from the audit to the medical board within one year after the effective date. The reduced extensions and one-year report requirement are due to the audit's finding that board had failed to follow through on a few set priorities. First, the board failed to consistently report license actions to the Federation of State Medical Boards. Secondly, the board has failed to adopt regulations governing registration in the controlled substance prescription database. These regulations require licensees to register in a controlled substances prescription database. Thirdly, the board did not monitor compliance with the database registration requirement. The board is tasked with adequately monitoring licensees to ensure that those with a DEA number register with the controlled substance prescription database.

We respectfully request that the termination date of the board be extended to align with the Senate Labor & Commerce committee's recommendation of June 30, 2023,

as well as requiring the one-year report from legislative audit. These changes are incorporated into the current version.

Co-Chair Johnston thanked the sponsor and his staff for the bill and invited Kris Curtis to the table.

[2:59:52 PM](#)

KRIS CURTIS, LEGISLATIVE AUDITOR, ALASKA DIVISION OF LEGISLATIVE AUDIT, conducted an audit of the State Medical Board. She indicated a copy of the report was in member's packets. She reviewed the state audit:

The audit concluded the board served the public's interest by effectively licensing physicians, osteopaths, podiatrists, physician assistants, and paramedics. The board monitored licensees and worked to ensure only qualified individuals practiced in Alaska. Furthermore, the board developed and adopted certain regulatory changes to protect the public, improve the licensing process, and improve the delivery of services.

The audit also concluded the board did not serve the public interest by inconsistently reporting board license actions to the Federation of State Medical Boards (FSMB). In addition, the board did not adopt regulations to require licensees register in the controlled substance prescription database and did not adequately monitor licensees to ensure those with a DEA number registered with the controlled substance prescription database.

Ms. Curtis indicated the audit recommended the Legislature extend the board for 5 years.

Ms. Curtis referred to the background section of the audit on page 5. She read from the report:

Senate Bill 74, effective July 2017, required occupational board licensees that prescribe controlled substances to register with the controlled substance prescription database maintained by the Board of Pharmacy. The database is intended to reduce misuse, abuse, and diversion of controlled substances. Practitioners are required to check the database prior

to dispensing, prescribing, or administering medications, with certain exclusions.

Ms. Curtis turned to page 11 which showed a schedule of licensing activity. The board issued just over 1600 new licenses from FY 16 through January 2019. As of the end of January 2019 there were 5073 active licensees which represented a 9 percent increase compared to the 2012 sunset audit.

Ms. Curtis pointed to page 14 which displayed a schedule of revenues and expenditures. She indicated there was a deficit in 2018 of over \$800,000. In response to the deficit they increased fees. The schedule of fees was shown on page 15.

Ms. Curtis reported that the auditors made 3 recommendations for improvement beginning on page 18 of the audit. She read from the report:

Recommendation No. 1: The board should adopt regulations to guide the process for registering with the controlled substance prescription database.

The board did not adopt regulations to require licensees with a Drug Enforcement Administration (DEA) number register with the controlled substance prescription database. Senate Bill 74, Section 60 included uncodified law that directed all boards that licensed occupations with prescription authority to adopt regulations to implement the law.

Rather than adopt regulatory guidance for registering, the board expanded the regulatory definition of unprofessional conduct to include licensees that do not register. The board also implemented regulations that require review of the controlled substance prescription database prior to prescribing or dispensing and added an opioid maximum daily dosage. Board members did not consider the importance of establishing regulations to guide in the process and believed the regulatory changes that were made were sufficient to satisfy the requirements of Senate Bill 74.

The database was intended to reduce misuse, abuse, and diversion of controlled substances. The lack of

regulations regarding registration requirements increases the risk that licensees will not register which, in turn, limits the database's effectiveness. As described in Recommendation No. 2, the audit found a high degree of noncompliance with the registration requirements.

We recommend the board adopt regulations to guide the process for registering with the controlled substance prescription database.

Recommendation 2: The board should develop procedures to ensure licensees with a DEA number register in the controlled substance prescription database.

Per AS 08.64.101(a)(7), effective July 2017, the board must require a licensee who has a DEA registration number to register with the controlled substance prescription database. The audit reviewed 25 new licenses (of which 19 had a DEA number) and 15 renewal licenses (of which 13 had a DEA number).

Auditors noted that the application form for new licenses did not require an applicant provide evidence of registration with the controlled substance prescription database. Division staff processed the applications and the board approved the applications without regard for whether or not the applicant registered with the database. Auditors checked the database and found that five of the 19 new license applicants with a DEA number (26 percent) had not registered - four applicants were not listed in the database and one was listed in the database with a status of "pending." Auditors noted that the renewal application was revised in November 2018 to request applicants for renewal licenses list their controlled substance prescription database registration number. However, applicants were permitted to list a status of "pending," and division staff did not verify that a licensee obtained a registration number at a later date. Four of the 13 renewal applicants with a DEA number (31 percent) had a status of "pending."

The board and DCBPL failed to comply with AS 08.64.101(a)(7) due to a lack of procedures and the

board's decision to allow licensees a grace period before enforcing the new requirements. The law did not provide for a grace period and had an effective date of July 2017. The controlled substance prescription database was intended to reduce misuse, abuse, and diversion of controlled substances.

Incomplete information within the database limits its effectiveness, which increases the risk that controlled substances may be abused or diverted.

We recommend the board develop procedures to ensure licensees with a DEA number register with the controlled substance prescription database.

Recommendation 3: The board chair should work with DCBPL's director to establish and implement procedures to ensure board disciplinary actions are reported in accordance with state law.

Of the 140 board disciplinary actions issued by the State Medical Board between FY 16 and January 2019, 44 (31 percent) were not reported to the FSMB as required by AS 08.64.335.

Alaska Statute 08.64.335 states:

The board shall promptly report to the Federation of State Medical Boards for inclusion in the nationwide disciplinary data bank license and permit refusals under AS 08.64.240, actions taken by the board under AS 08.64.331, and license and permit suspensions or surrenders under AS 08.64.332 or 08.64.334.

The 44 disciplinary actions not reported to FSMB were actions taken by the board under AS 08.64.331. According to DCBPL management, staff misunderstood the types of actions to be reported.

Additionally, the board and DCBPL lacked written procedures to ensure the actions were correctly reported in a timely manner. The national data bank maintained by FSMB is designed to restrict the ability of incompetent physicians to move from state to state without disclosure or discovery of a physician's

damaging or incompetent performance. DCBPL's failure to report disciplinary actions increases the risk to public safety.

We recommend the board chair work with DCBPL's director to establish and implement procedures to ensure board disciplinary actions are reported in accordance with state law.

Ms. Curtis directed attention to the responses to the audit beginning on page 31. The commissioner of DCCED stated that corrective action had already been taken to make sure that disciplinary actions were reported in compliance with state law.

Ms. Curtis continued to page 33 of the audit containing the response from the board chair. In response to recommendation 1 to adopt regulations the board chair reiterated her belief that the statutes clearly required licensees to register with the controlled substance prescription database. In her opinion, regulation did not seem necessary. She also stated that the regulations that were created were reviewed by the Department of Law and were found to be sufficient. However, the chair stated that the board would consult the Department of Law and take any corrective actions that they deemed necessary.

Ms. Curtis continued that in response to recommendation 2 to develop procedures, the chair stated that a procedure had been created to ensure that their licensees would be registering with the database.

Ms. Curtis reported that in response to recommendation 3 the chair agreed to implement procedures to ensure disciplinary actions were reported in accordance with state law.

[3:05:45 PM](#)

Representative LeBon asked Ms. Curtis if she had a sense that the State Medical Board was investigating as appropriate. He queried about issues that might be falling through the cracks and not actually reaching the decision level. Ms. Curtis commented. "There's always things that we don't know." The audit always focused on efficiency to which investigations were happening. The auditors did not look at actual investigations and evaluate whether they

made a right decision. She could not properly address Representative LeBon's question.

Representative Knopp asked if the board was fully staffed. Ms. Curtis relayed that the entire board had changed over within the previous few months.

Representative Knopp asked Ms. Curtis to tell the committee about the make-up of the board. He asked if the board consisted of members of the public or whether they were medical professionals. He asked the question because Ms. Curtis had mentioned regulations. Ms. Curtis referenced page 1 of the audit which went into detail about the organization and function of the board. The board was comprised of 8 members - 5 physicians, 1 physician's assistant, and 2 public members with no direct financial interest. The Division of Corporations, Business, and professional Licensing provided support for the board in terms of drafting regulations. The Department of Law reviewed the regulations.

Representative Knopp asked where the board fell short. He wondered if it was turnover in membership. Ms. Curtis thought they had a valid argument in that they felt like the statutes were clear. The statute stated that licensees had to register. In the board's opinion, additional regulations were not needed. The auditors felt that the non-compliance was so high, that it warranted putting regulations into place.

[3:08:39 PM](#)

SENATOR DONNY OLSON, SPONSOR, wanted to respond to Representative Knopp's question. He indicated that the board had changed out completely over the previous couple of months. The issue he had with the new board members was that they were either from Anchorage or Fairbanks with only one person from Sitka. He thought there was a maldistribution of board members. He agreed with the auditor's recommendation of having tighter constraints.

Co-Chair Johnston relayed that Dr. Richard Wein was online and available for questions.

Senator Olson indicated he had been on the board previously. He expressed concerns that a chairman had not

been named. He thought the circumstance was similar to a ship without a captain at the helm.

Representative Knopp noted Senator Olson's comments about proper geographic representation. He wondered if the board would be better served with members that were more evenly distributed throughout the state. He asked if there was something the legislature could do to help. Senator Olson responded that there was a statute which stated that members should be from as many geographical areas of the state as possible. However, the statute could be interpreted loosely, giving the governor the ability to choose whomever he wanted. He mentioned equipment and lab tests. He deferred to Ms. Curtis to answer the remainder of Representative Knopp's question. Ms. Curtis asked Representative Knopp to restate his question.

Representative Knopp thought an executive director was needed for the board, as it did not appear that certain things were being done. Ms. Curtis responded that the board had an executive director. She reported that the position had been occupied by someone for a long time but had left. A new person had recently taken the position. She also noted that the auditors were conducting an audit on the Direct Entry Midwives whose board had turned over 100 percent. In the prior year, the Board of Nursing had turned over 100 percent as well. She commented that there appeared to be a pattern.

[3:12:55 PM](#)

Representative Josephson indicated his office had a bill to improve the PDMP [Prescription Drug Monitoring Program]. He thought Ms. Curtis had testified that the board did not think regulations were needed, as the statutes were clear enough in terms DEA prescribers having to register. He asked if he had heard her correctly. Ms. Curtis responded affirmatively.

Representative Josephson asked about the 26 percent that did not register. He noted there were several providers that did not prescribe opiates and would not need to register. There were other providers that did prescribe opiates but had not registered. He asked if he was correct. Ms. Curtis responded that the percentage applied to the number of providers that should have registered. He was correct that not all providers had to register. However, 26

percent of providers who had a DEA number and were required to register, did not do so.

Representative Josephson suggested it meant that providers who had not registered could not get into the system to look someone up, even if they wanted to. He asked if he was correct. Ms. Curtis responded, "Yes."

[3:14:27 PM](#)

Representative Wool asked that if someone registered with the PDMP, they would not necessarily check the database before writing a prescription. Essentially, they could write 10 prescriptions to 10 different people, never look them up, and no one would know. Ms. Curtis was unsure whether there was an audit trail function within the database to monitor inquiries. There certainly could be. There was no one responsible for monitoring the system.

Representative Wool thought there was a requirement that physicians also enter prescription information that would be accessible to pharmacies. However, it was not part of the law. Only pharmacists had to check the database. Ms. Curtis indicated it applied to all individuals who had prescribing authority. They were supposed to check the database before they administered or prescribed medications. It was both.

Representative Wool explained that as he understood it, providers only had to check the database to see the patient's history at the pharmacy. The provider did not have to enter the prescription they were prescribing. Ms. Curtis reported that there was a requirement that prescriptions were uploaded into the database at some time in the process. The audit took a deeper look at the issue when it conducted a pharmacy audit. The Board of Pharmacy extension date was limited to 3 years. In the next Board of Pharmacy audit, the auditors would be looking at compliance across all occupations.

Representative Josephson mentioned HB 242. He was astonished that the board did not notify prescribers that they were not in compliance with the law. It could put pressure on the board to revoke a provider's license.

Co-Chair Johnston noted Ms. Chambers was online and available for questions.

Ms. Curtis mentioned that the auditors found it slightly egregious that the board granted a grace period, as the law did not provide for a grace period. The Board Chair's response was that it was not the board's intention to grant a grace period for complying with the law. The board only intended to grant a grace period for enforcing the law. From the auditors' perspective there was not a difference.

Representative Carpenter wondered if the board members were the same members through the previous 2 audits. Ms. Curtis did not know what percentage of the board was in place previously. The prior audit was in 2012. The auditors had consistently found problems with reporting. In the chair's response she did not think the auditors characterized the finding correctly. She stated that the prior finding was not exactly the same as the current funding. Ms. Curtis agreed that the findings were slightly different, however, the recommendation was the same. The auditors recommended that they start reporting correctly in compliance with the law which they had not been doing consistently. She highlighted that they were not reporting the portion related to civil fines.

[3:19:18 PM](#)

Co-Chair Johnston OPENED Public Testimony.

[3:19:47 PM](#)

CHARLES MCKEE, SELF, ANCHORAGE (via teleconference), was a beneficiary of the McKee Trust and had had access to medical facilities as recently as October. He spoke in support of the extension of the medical board. He recalled the governor's veto of Medicaid funds. He referred to a lawsuit in which a medical establishment of doctors and nurses sued the current administration. The case was settled out of court due to an artificial emergency that was created by the current administration related to the veto of Medicaid - which he needed to access. He reminded members the state was currently in emergency status but, the artificial emergency was manifested by the current administration which mandated that everyone sign a loyalty pledge.

Co-Chair Johnston interjected that the testifier needed to stay on the topic of the bill.

Mr. McKee indicated the State Medical Board should have refused compliance like the staff at the Alaska Psychiatric Institute (API) who resigned in protest. He reiterated his approval of the extension.

[3:21:46 PM](#)

Co-Chair Johnston CLOSED public testimony.

CSSB 172(L&C) was HEARD and HELD in committee for further consideration.

[3:21:59 PM](#)

AT EASE

[3:22:53 PM](#)

RECONVENED

#sb55

CS FOR SENATE BILL NO. 55(2d JUD)

"An Act relating to judges of the court of appeals; and providing for an effective date."

[3:23:03 PM](#)

Co-Chair Johnston invited Senator Wilson's staff to provide a brief introduction of the bill.

JASMIN MARTIN, STAFF, SENATOR WILSON, indicated that the senator was on other state business but would likely be at the hearing shortly. She explained that SB 55 added a fourth permanent judge to the Court of Appeals. Any criminal trial that ended in a conviction could be appealed. Since 2014, there had been a significant increase in the instances of criminal trials. The court needed a fourth judge to catch up on the large backlog and to keep pace with the current and expected cases in the future. The bill was fully supported by the Alaska Court System. Nancy Mead was in the room to answer specific questions about the courts.

Ms. Martin continued that the focus of the legislation was to strengthen the continuum of public safety. It was essential to equip the courts to handle the growing workload. The issue was highlighted by the Chief Justice in

his recent address to the legislature. The current average time between a criminal appeal being filed and being decided was about 3 years. She asserted that the timeline was unacceptable to victims, the public, attorneys, and defendants.

Ms. Martin asserted that the court would be much faster at resolving the cases that were pending and ready for decision if there was an additional appellate judge. In 2013, the total number of cases ready for review and assigned to a judge was approximately 50. In other words, judges could keep pace if they were issued about 50 decisions per year. However, in 2018, the number of case assignments rose to about 90 decisions per year. The judges could not keep pace with the increase in cases. The legislation would improve the function of Alaska's criminal justice system.

Ms. Martin indicated that the legislature's recent focus on crime legislation had increased the expected case load of the Court of Appeals. In 2018 and 2019 there was a record high number of felony cases filed at the trial courts. All of the facts she had laid out had proven the need for an additional judge. She asked members to support SB 55. She offered to review the sectional analysis at the request of the committee.

Co-Chair Johnston thanked Senator Wilson for coming back to the hearing. She invited Nancy Mead to the table to present invited testimony and provide a review of the fiscal note.

[3:26:06 PM](#)

NANCY MEADE, GENERAL COUNSEL, ALASKA COURT SYSTEM, explained that the Court of Appeals was an appellate court that only handled criminal cases. After a person's Superior Court Trial, an appeal went to the Supreme Court in the instance of a civil case and to the Court of Appeals in the instance of a criminal case. Since the inception of the Court of Appeals in 1980 it had always had 3 judges and had been unable to keep pace with the number of filings and the amount of work since 2011. She expected the trend to continue. Currently, the Court of Appeals was not publishing, disposing, or finishing as many cases as there were cases coming in the door.

Ms. Mead reported that the Alaska Court System had been dealing with the problem with several approaches over the last few years. It had been trying to find funding to have temporary judges handle a portion of the cases. Some of the cases were being handled in a quicker manner with shorter decisions. Presently, it was the Alaska Court System's priority to find a lasting fix to the problem which it expected to continue due to changes in criminal laws and with all of the other increased number of felony trials and felony filings over the previous few years. The Alaska Court System fully supported the bill. It was usually neutral on bills but, the Supreme Court needed the issue to be addressed. She could provide more detail if the committee desired or could answer any questions.

Representative Sullivan-Leonard asked Ms. Mead to explain the 4 full-time positions listed in the fiscal note. Ms. Mead responded that a judge in any appellate court in the country needed some support staff in order to do an effective job. A judge on the Court of Appeals had 2 law clerks. Law clerks were typically, but not always, recent graduates of law school. They served for 1 year. It was standardized around the country with all different judges and all different courts that most law clerk positions lasted 1 to 2 years. A judge came with 2 law clerks and a judicial assistant. A judicial assistant kept track of all the files, answered phones, and handled the front desk. They also typically kept things on schedule and handled the computer system as well as other miscellaneous items. In order to be an effective judge, they needed an effective staff.

Representative Wool asked about the uptick in 2018. Ms. Mead relayed that felony filings typically fluctuated up and down through the years. She reported a severe downtick in the number of filings and the number of trials between 2016 and 2018. The court system's data did not tell the story of why things happened. She had heard that with some of the monumental changes in the criminal law made during the time period there were fewer arrests and fewer felony filings. She suggested that perhaps it was related to the resources of the Department of Law being able to file certain things. Also, there were changes to the drug laws that meant that certain drug felonies were no longer felonies - they significantly dropped. In FY 18 the laws reverted back, and there were an additional 1000 felony filings than the previous year. She reported that there

were about 7200 filings in 2018, versus about 6200 in 2017. In FY 19 the number increased again from 7200 to 7350. The Alaska Court System expected the number of cases to continue to rise as more prosecutors were hired and more law enforcement was on the street.

[3:30:58 PM](#)

Representative Wool wondered if HB 49 had been taken into account or whether the effects of HB 49 would start to appear. He wondered if Ms. Mead expected another quantum leap. Ms. Mead replied that the Alaska Court System expected at least a steady increase from HB 49, if not a more substantial one. In HB 49 the Department of Law's fiscal note included the funding for 6 additional prosecutors. She reported that with more prosecutors in place, there would be more enforcement or consequences for criminal offenses leading to more work for the court system.

Vice-Chair Ortiz asked Ms. Mead if adding an Appellate Court judge would really solve the backlog problem. Ms. Mead responded that the bill would solve the court's part of the problem. She clarified that there were delays at the trial court level which SB 55 did not address. The bill applied to the Court of Appeals. She reiterated that the average time for an appeal to be filed and resolved was 3 years. No one thought the timeframe was acceptable. The part of the problem the court was responsible for would be solved by having a fourth judge on the Court of Appeals. Other reasons for delay were largely because the agencies also had difficulty getting all the resources garnered to get cases briefed in time. They were building up their resources as well. She reiterated that the part of the problem that was attributable to the court taking too long to put its decisions together would be solved by having a fourth judge on the Court of Appeals.

Representative Knopp wondered about the nature of the appeals the court was hearing. He asked whether certain rules should be tightened. Ms. Mead responded that all the cases were criminal in nature. The cases were basically equally split between merit appeals (where a defendant felt something was handled improperly at the trial court level) and sentence appeals (where a defendant felt they should have received less time). The reversal rate was low, and defendants did almost all of the appealing. There were

limited circumstances in which the prosecutor could appeal such as double jeopardy. She continued that when defendants appealed, they won only about 10 percent to 12 percent of the time. When a defendant received a reversal it usually meant that the case was remanded and sent back to the court to correct an error. The person was not typically set free or declared innocent by the Court of Appeals. She provided an example.

Representative Knopp asked if there was anyone that reviewed the merits of the appeal before it went to the trial court for appeal. He wondered if it automatically went to the Court of Appeals.

Ms. Mead responded that a defendant had a right to file an appeal. Most defendants in Alaska's system were represented by a public defender who helped them put together their appeal. The public defender acted somewhat as a filter to put together the best arguments. It would be unusual for a public defender to refuse to file an appeal for a client. The public defender filtered the appeal to make it as strong as possible streamlining things and ensuring that the arguments had merit rather than being frivolous.

Representative Josephson asked if there was a system for a motion for bail pending an appeal. Along with 3 years being broadly unacceptable, there were victims that wanted finality and defendants who might or might not be in custody pending appeal. He asked how time would be made up for someone who was wrongfully held in custody. Ms. Mead answered that people could be out on bail pending appeal. If it happened, it was often because the person was out on bail on their own recognizance or in the community pending their trial. If they did not violate their bail conditions, went through their trial, and were convicted, they could request to remain out on their own recognizance during the pendency of their appeal. It was not common for a person who was incarcerated to have their case completely reversed 100 percent such that they were found innocent. An appeal was sent back about 10 percent of the time for a trial court judge to correct an error.

[3:38:05 PM](#)

Co-Chair Johnston OPENED Public Testimony.

Co-Chair Johnston CLOSED Public Testimony.

Co-Chair Johnston would be setting the bill aside.

SB 55 was HEARD and HELD in committee for further consideration.

Co-Chair Johnston would be recessing Monday morning's meeting scheduled for 9:00 a.m. to a call of the chair.

#

ADJOURNMENT

3:39:14 PM

The meeting was adjourned at 3:39 p.m.