

ALASKA STATE LEGISLATURE  
**SENATE JUDICIARY COMMITTEE**

May 3, 2002  
1:44 p.m.

**MEMBERS PRESENT**

Senator Robin Taylor, Chair  
Senator Dave Donley, Vice Chair  
Senator John Cowdery  
Senator Gene Therriault  
Senator Johnny Ellis

**MEMBERS ABSENT**

All Members Present

**COMMITTEE CALENDAR**

CS FOR HOUSE BILL NO. 208(RES)

"An Act relating to aquatic farming of shellfish; and providing for an effective date."

MOVED CSHB 208(RES) OUT OF COMMITTEE

CS FOR HOUSE BILL NO. 286(RES) am

"An Act allowing a person to hold two commercial fishing entry permits for a salmon fishery for the purpose of consolidating the fishing fleet for a salmon fishery; relating to salmon fishery associations and to salmon fishery assessments; and providing for an effective date."

MOVED CSHB 286(RES) am OUT OF COMMITTEE

CS FOR HOUSE BILL NO. 498(FIN) am

"An Act expressing legislative intent regarding privately operated correctional prison space and services; relating to the development and financing of privately operated correctional prison space and services; authorizing the Department of Corrections to enter into an agreement for the confinement and care of prisoners in privately operated correctional prison space in the City of Whittier; giving notice of and approving the entry into and the issuance of certificates of participation for the upgrade, expansion, and replacement of a certain correctional prison in the City of Bethel; giving notice of and approving the entry into lease-financing agreements for that project; and providing for an effective date."

MOVED CSHB 498(FIN) am OUT OF COMMITTEE

CONFIRMATION HEARING: SELECT COMMITTEE ON LEGISLATIVE ETHICS

Arthur S. Robinson

SENATE JOINT RESOLUTION NO. 13

Proposing amendments to the Constitution of the State of Alaska relating to inflation- proofing the permanent fund.

MOVED CSSJR 13(RES) OUT OF COMMITTEE

**PREVIOUS COMMITTEE ACTION**

HB 208 - See Resources minutes dated 4/24/02.

HB 286 - See Resources minutes dated 4/8/02 and 4/24/02.

HB 498 - No previous action to record.

SJR 13 - See State Affairs minutes dated 4/26/01, 2/21/02, 3/21/02 and 4/16/02.

**WITNESS REGISTER**

Representative Drew Scalzi

Alaska State Capitol

Juneau, AK 99801-1182

**POSITION STATEMENT:** Introduced HB 208 and HB 286.

Mr. Roger Painter

Alaska Shellfish Growers Association

PO Box 704

Juneau, AK 99802

**POSITION STATEMENT:** Testified in support of HB 208.

Mr. Ron Long

No address given

**POSITION STATEMENT:** Testified in support of HB 208.

Ms. Sue Aspelund

Cordova District Fishermen United

PO Box 1715

Cordova, AK 99574

**POSITION STATEMENT:** Testified in support of HB 286.

Mr. Victor Smith

No address given

**POSITION STATEMENT:** Testified in opposition to HB 286.

Mr. David Bedford

Southeast Alaska Seiners Association

526 Main Street

Juneau, AK 99801

**POSITION STATEMENT:** Testified in support of HB 286.

Mr. Jerry McCune

United Fishermen Of Alaska

211 4<sup>th</sup> St. Ste. 110  
Juneau, AK 99801-1143

**POSITION STATEMENT:** Testified in support of HB 286.

Mr. John Manly  
Staff to Representative John Harris  
Alaska State Capitol  
Juneau, AK 99801-1182

**POSITION STATEMENT:** Introduced HB 498.

Mr. Frank Smith  
No address given

**POSITION STATEMENT:** Testified in opposition to HB 498.

Mr. Ben Butler  
Mayor of Whittier  
PO Box 741  
Whittier, AK 99693

**POSITION STATEMENT:** Testified in support of HB 498.

Mr. Victor Wellington, Sr.  
Mayor of Metlakatla Indian Community  
P.O. Box 8  
Metlakatla, AK 99926

**POSITION STATEMENT:** Testified on HB 498.

Mr. Frank Prewitt  
8900 Upper Huffman Rd.  
Anchorage, AK

**POSITION STATEMENT:** Testified in support of HB 498.

Mr. Charles Campbell  
3020 Douglas Hwy.  
Juneau, AK 99801

**POSITION STATEMENT:** Testified in opposition to HB 498.

Mr. David Katzeek  
Alaska Native Brotherhood Camp #2  
320 Willoughby Ave.  
Juneau, AK 99801

**POSITION STATEMENT:** Testified in support of HB 498.

Mr. Margot Knuth  
Strategic Planning Coordinator  
Department of Corrections  
431 N. Franklin St. Ste. 400  
Juneau, AK 99801

**POSITION STATEMENT:** Testified in opposition to HB 498.

Mr. James Price  
PO Box 7043

Nikiski, AK 99635

**POSITION STATEMENT:** Testified in opposition to HB 498.

Ms. Elsie Hendryx  
Kenai Native Association  
215 Fidalgo Ave. Ste. 101  
Kenai, AK 99611

**POSITION STATEMENT:** Testified in support of HB 498.

Mr. Ron Wilson  
No address given

**POSITION STATEMENT:** Testified in opposition to HB 498.

Mr. Jim LeCrone  
Public Safety Employees Association  
4300 Boniface Pkwy.  
Anchorage, AK 99504

**POSITION STATEMENT:** Testified in opposition to HB 498.

Mr. Rick VanHatten  
Alaska Correctional Officers  
4300 Boniface Pkwy.  
Anchorage, AK 99504

**POSITION STATEMENT:** Testified in opposition to HB 498.

Mr. Brad Wilson  
Public Safety Employees Association  
4300 Boniface Pkwy.  
Anchorage, AK 99504

**POSITION STATEMENT:** Testified in opposition to HB 498.

Ms. Dee Hubbard  
No address given

**POSITION STATEMENT:** Testified in opposition to HB 498.

Mr. John Duffy  
Manager  
Matanuska-Susitna Borough  
PO Box 459  
Palmer, AK 99645-0459

**POSITION STATEMENT:** Testified in opposition to HB 498.

Mr. Arthur S. Robinson  
35401 Kenai Spur Hwy.  
Soldotna, AK 99669

**POSITION STATEMENT:** Testified for confirmation to the Select Committee on Legislative Ethics.

Mr. Jay Hogan  
PO Box 21073  
Juneau, AK 99802-1073

**POSITION STATEMENT:** Testified in opposition to SJR 13.

Ms. Sheila R. Howe  
N.E.C.

No address given

**POSITION STATEMENT:** Testified in support of SJR 13.

Mr. Robert Storer  
Executive Director  
Alaska Permanent Fund Corporation  
Department of Revenue  
PO Box 25500  
Juneau, AK 99802-5500

**POSITION STATEMENT:** Testified in support of SJR 13.

Mr. Jim Kelly  
Director Of Communications  
Alaska Permanent Fund Corporation  
Department of Revenue  
PO Box 25500  
Juneau, AK 99802-5500

**POSITION STATEMENT:** Testified in support of SJR 13.

**ACTION NARRATIVE**

**TAPE 02-24, SIDE A**

**CHAIRMAN ROBIN TAYLOR** called the Senate Judiciary Committee meeting to order at 1:44 p.m. Senators Cowdery, Therriault and Chair Taylor were present. The first order of business before the committee was HB 208.

#HB 208

**HB 208-AQUATIC FARMS FOR SHELLFISH**

REPRESENTATIVE DREW SCALZI, sponsor of HB 208, said the aquatic farming act was passed in 1988 to streamline the process by which people interested in mariculture could acquire sites for aquatic farms. He said acquiring sites had become problematic because people often found sites conducive to procreating species close to transportation routes and applicants were met with contention from individual landowners or fishermen who used the sites. HB 208 would require the Alaska Department of Fish & Game (ADFG) to find 90 specific sites that would be conducive to both the farmer and the people in the surrounding area. He said ADFG would work with the Department of Natural Resources (DNR) and the Department of Environmental Conservation (DEC) to accomplish this task.

CHAIRMAN TAYLOR asked Roger Painter to provide testimony.

MR. ROGER PAINTER, Alaska Shellfish Growers Association, said HB 208 would provide a way for the mariculture industry to partner with local communities to find sites around communities seeking economic development and bring aquatic farms into production to benefit the local economy. He said the public process regarding aquatic farm sites is very intensive, and includes the Alaska Coastal Zone Management process, DNR's best interest findings, involvement of the U.S. Corps of Engineers in issues of anchorage, and ample time for public input. He said HB 208 would not affect that process.

CHAIRMAN TAYLOR asked if there were any questions for Mr. Painter. There were none.

MR. RON LONG said he was employed by a shellfish hatchery. He said HB 208 would not change any priority uses or displace prior, existing or conflicting uses. He wanted to reiterate that the bill would not change the public process.

He said one of the goals of HB 208 was to engage agencies and the public in determining sites suitable for aquatic farming. He said the intent was not to cut corners, bump people off their sites or take over anchorages. He said the intent of the bill was to identify sites that would work for the farmer and the State.

CHAIRMAN TAYLOR asked if there were any questions for Mr. Long. There were none.

SENATOR COWDERY moved CSHB 208(RES) out of committee with attached fiscal notes and individual recommendations.

There being no objection, CSHB 208(RES) moved out of committee with attached fiscal notes and individual recommendations.

#

The next order of business before the committee was HB 286.

#HB 286

#### **HB 286-FISHING PERMITS/ASSOCIATIONS/ASSESSMENTS**

REPRESENTATIVE SCALZI, sponsor of HB 286, said the bill would offer the salmon industry a tool for consolidation. He said it would allow individuals to hold two salmon permits in any given area. He said there was often a lot of inactivity of permits and believed there were more permits issued in some areas than

necessary; more permits were activated when a fishery became healthy through an increase in prices or salmon runs. HB 286 would offer individuals in the salmon fisheries the opportunity to buy and hold some of the permits. The permits would carry no privileges, such as extra fishing gear or time. He said consolidating the effort would keep fishermen from other areas from coming in and exacerbating the problem of overcrowding.

He said HB 286 was the highest priority bill supported by the United Fishermen of Alaska (UFA) because it would offer the most benefit to the commercial fishing industry.

CHAIRMAN TAYLOR asked Ms. Sue Aspelund to provide testimony.

MS. SUE ASPELUND, Executive Director, Cordova District Fishermen United (CDFU), said CDFU represents the fishing families of the Copper River/Prince William Sound area. CDFU believes the industry needs a variety of tools to pursue structural changes necessary to compete in the new global marketplace. HB 286 would provide fishermen with one of the simplest and most immediate tools to get fishing gear out of the water in distressed fisheries.

CHAIRMAN TAYLOR asked if there were any questions for Ms. Aspelund. There were none.

MR. VICTOR SMITH said UFA and processors are saying that HB 286 is part of a plan to revitalize Alaskan salmon fisheries. He said the main authors of HB 286 were Mr. David Bedford, Executive Director of the Southeast Alaska Seiners Association (SASA), and Mr. Bob Thorstenson, president of UFA and stockholder of "Alaska Seafoods." He said fishermen themselves had very little input on the bill. The SASA board did not authorize or direct Mr. Bedford to proceed on its behalf regarding permit stacking. He said the board authorized a committee to explore options for fleet reduction but while that committee was exploring options, Mr. Bedford was also working on a plan of his own. He said Mr. Bedford denied saying there was a deal that processors would support permit stacking in exchange for UFA's support to keep global seafoods out. He said Mr. Bedford now claims he said UFA wouldn't oppose the processors' new management plan if the processors would support permit stacking.

MR. VICTOR SMITH said one of the touted features of HB 286 was that it could be used in different ways in different fisheries. He wondered why that would be necessary because all Alaska salmon fisheries were subject to the same laws. He said UFA and SASA also used the selling point that HB 286 would be in the control

of fishermen. He said they had possibly been guilty of involvement or trade on their global decision. He said nonresidents couldn't use their permits and were forced to sell. He said the salmon industry needs to follow the law. Key people involved in HB 286 had conflicts of interest and had broken rules of accountability. He said these same people would probably have control over permit stacking and how it would work. He believed HB 286 would be as bad for many Alaskans as it had been for the first round of nonresidents ousted from Alaska fisheries.

CHAIRMAN TAYLOR asked if there were any questions for Mr. Victor Smith. There were none. He asked Mr. David Bedford to provide testimony.

MR. DAVID BEDFORD, Executive Director, SASA, said he sat on the board of UFA for SASA and was licensed to practice law in Alaska. He said HB 286 is the highest priority piece of legislation for UFA and has a strong majority of support within that organization.

He said UFA brought HB 286 forward because the salmon fisheries are in dire straits and some things need to be done to address the economic difficulties the fisheries are experiencing. He said HB 286 would give them the opportunity to reduce the number of people competing for a share of a shrinking pie so they could have a viable fishing business to support the coastal regions that depend on the salmon fisheries.

MR. BEDFORD maintained that HB 286 was drafted to be as transparent as possible to make sure that control would be in the hands of the permit holders. It was drafted that way because they were concerned somebody might be able to use the bill to force something on fishermen that they didn't want. He said HB 286 would require a two-thirds vote of all permit holders before any kind of assessment could be levied. He said anybody wanting to initiate the program would be required to go to the permit holders with an outline of the plan so they had a very clear idea of what would be done and what their money would be paying for. The program would be regional so nobody from another area would have anything to say about a distant fishery.

MR. BEDFORD said UFA and SASA are asking the Legislature to give them the tools to address their problems.

1:55 p.m.

SENATOR THERRIAULT asked who would buy and hold the permits.

MR. BEDFORD said the limited entry law specifies that only individuals can hold permits. He said the association would decide it was going to set up a program and figure out how to do it. They could contract with a permit holder to send their permit back to the Commercial Fisheries Entry Commission to be extinguished, or the association could contract with a permit holder to hold a second permit until sometime in the future when the fishery was so lucrative that there should be more people fishing. Individuals would hold the permits at all times.

SENATOR THERRIAULT asked if HB 286 might create a situation where people would buy low and hope to sell high.

MR. BEDFORD said that is possible with any kind of effort reduction program. He said the Magnuson-Stevens Act provided effort reduction programs for federal fisheries. A person could buy a permit and try to speculate on it but he didn't think that would be a very good investment. He said people currently in the fishery would probably buy a second permit to hold because they would receive an annual payment from the association and they would have to compete with one less boat. He said the association should be able to contract for less money with a person who would be gaining the additional benefits of less competition.

CHAIRMAN TAYLOR asked if there were any further questions for Mr. Bedford. There were none.

MR. JERRY MCCUNE, UFA, said HB 286 wouldn't work for every fishery; it would be an option that some fisheries could use. He said people probably wouldn't buy another permit in a fishery where permits cost \$60,000 to \$70,000. However, they would probably buy another permit if the permit cost \$10,000 to \$18,000. He said that might be a good investment for a fisherman planning to stay in the fishery.

MR. MCCUNE said the associations would be difficult to set up because the permit holders need to support the idea to start an association. He said many safeguards are contained in HB 286: a timeline on assessments is required; a two-thirds vote of all permit holders would be required to extend an assessment; and 25% of the permit holders could petition to have a vote to change or remove an assessment.

CHAIRMAN TAYLOR asked if there were any questions for Mr. McCune. There were none.

SENATOR COWDERY moved CSHB 286(RES) am out of committee with attached zero fiscal note and individual recommendations.

There being no objection, CSHB 286(RES) am moved out of committee with attached zero fiscal note and individual recommendations.  
#

The next order of business to come before the committee was HB 498.

#HB 498

### HB 498-CORRECTIONAL FACILITIES

MR. JOHN MANLY, representing the House Finance Committee, which sponsored HB 498, said the bill would authorize the Department of Corrections (DOC) to enter into a contract for a privately operated 1,000-bed prison in Whittier. He said the State would contract for those beds over a 25-year period. HB 498 would also authorize the expansion of the Yukon-Kuskokwim Correctional Center (YKCC) in Bethel by 96 beds for a cost of \$19 million to be financed through certificates of participation.

SENATOR COWDERY asked about housing for staff.

MR. MANLY said there is a housing problem in Whittier. He anticipated that housing would be built for staff or staff would commute from Anchorage. He said the Department of Transportation & Public Facilities has agreed to keep the Whittier Tunnel open 17 hours each day if the prison is built in Whittier, which would cover the three shift changes.

SENATOR COWDERY asked if the prison would be built on private land or city-owned land.

MR. MANLY said it would be built on land leased to Whittier by the Alaska Railroad Corporation (ARRC).

SENATOR THERRIAULT asked about water, sewer, electrical and other infrastructure needs.

MR. MANLY said Whittier believes it has utilities covered because it has adequate power from Chugach Electric Association, Inc. (Chugach) and wells to provide water. He said the prison would have an onsite sewage treatment plant.

CHAIRMAN TAYLOR asked Mr. Frank Smith to provide testimony.

MR. FRANK SMITH said he has a 30-year background in the field of criminal justice. He said the proposed prison makes less sense

than the prison that was proposed in Kenai. He said the prison in Whittier is similar to the prison that was proposed in Wrangell but far less feasible. Representative Andrew Halcro wrote an opinion piece in the Anchorage Daily News that said the proposal made no sense unless you looked at the money trail. He said it doesn't make fiscal sense to spend an extra \$18 million per year to move prisoners to Whittier.

MR. SMITH said it would be impossible to staff a prison in Whittier because nobody would be able to get there. Downtown Anchorage is 65 miles from Whittier and there is often a half-hour wait at the tunnel because it is only one-way. Staffing was a significant challenge at the Spring Creek Correctional Center (SCCC) in Seward, which has much easier access than Whittier.

He said HB 498 doesn't make sense because the State would be required to pay whether or not the prison ever housed a prisoner. He said five years would be committed to building costs and building costs have never been specified because there has never been an economic analysis of the project. He noted that the building costs killed a private prison proposal in Delta Junction.

MR. SMITH expressed concern that the people pushing for HB 498 might have taken money from contractors through contractual work and that HB 498 makes less sense than any proposal he has heard in his 14 years of knowledge of Alaskan legislation.

SENATOR COWDERY asked how much money the State spent housing prisoners in Arizona.

MR. FRANK SMITH said the state spent \$51 to \$57 per day per bed. He said there were extra charges for transportation and medical care but those charges would be the same in Whittier. He said the Whittier prison would cost more than the economic feasibility study projected for the Delta Junction private prison proposal.

SENATOR COWDERY asked how much money the State has spent in Arizona.

MR. FRANK SMITH thought it was approximately \$16 million per year.

SENATOR COWDERY asked if he thought that money was better spent in Arizona rather than Alaska.

MR. SMITH said it would make more sense to spend \$16 million in Whittier than Arizona. He pointed out that twice that amount

would be spent in Whittier at a prison they wouldn't be able to staff because of poor pay and training.

SENATOR COWDERY asked how he knew that.

MR. SMITH said he had read virtually every article written on private prisons in the past five years and has just finished a chapter on Native Americans in private prisons for a publisher. He assured Senator Cowdery that he knows the subject and has demonstrated it time after time in debates and testimony.

SENATOR COWDERY asked why he thought access to Seward was easier than Whittier.

MR. SMITH said Seward doesn't have the problems related to the wait to use the tunnel and Seward has far more housing. He said SCCC was a larger prison. He said a Wyoming study concluded that a community of 9,000 couldn't support a prison of the size proposed in Whittier. He said Whittier has an annual population of about 130 people, many of whom are retired. He said, at the most, 10 people in Whittier could be potential employees for the prison. He said HB 498 would be nothing but welfare for Whittier, which he thought received enough welfare.

SENATOR COWDERY asked why employees wouldn't be able to commute from larger cities.

MR. SMITH said the pay range that was suggested was between \$8.50 and \$13 per hour. People in South Anchorage and Girdwood would probably not want to work at the prison and people from downtown Anchorage would have to drive 65 miles twice per day to make barely over minimum wage.

SENATOR COWDERY was sure they would raise the wages if they couldn't get employees.

MR. SMITH wasn't sure that would happen. He said the State would be in a peculiar position because the proposed contract was a pay-for-pay contract. He said the request for qualifications (RFQ) was the same RFQ that was used in the Wrangell private prison proposal. The company would be protected under the RFQ. Whittier would be charged for start-up costs if the Legislature passed HB 498 and the Governor vetoed it. He said Mr. Frank Prewitt cited \$3.5 million for startup costs.

SENATOR COWDERY said he had two boats in Whittier and could be on either one of them from South Anchorage in an hour and a half from his house and out enjoying Prince William Sound. He didn't

think access was a problem.

CHAIRMAN TAYLOR asked Mayor Ben Butler to provide testimony.

MAYOR BEN BUTLER, City of Whittier, said unlike the rest of the communities that proposed private prisons, the community of Whittier supports a prison; the City made sure of that before going to the State or a contractor. He said they held public hearings and had petitions circulated. Approximately 80% to 85% of the people in Whittier supported the proposal. He pointed out that nobody from Whittier had testified against HB 498.

He said the infrastructure needs of a large prison were already in Whittier. Chugach put in a large power line that supplies 25 megawatts of power. The community uses 15% of the available power and would use 50% with the prison. Natural gas comes into Whittier and there is plenty of water. An onsite sewage treatment plant would be built with the prison.

MAYOR BUTLER said Whittier was able to learn from the experiences of the last two communities that had proposed a private prison. The procurement method was done through the Perkins Coie law firm in Anchorage. He said they sent out an RFQ, to which five companies responded. He said an independent team, consisting of a building construction consultant from Anchorage, a certified public accountant firm and a resident of Whittier, reviewed the proposals. The City Council picked Cornell Corrections (Cornell). He said there was no appeal to that decision so they felt the process was done fairly.

SENATOR COWDERY said Whittier's population increased in the summer. He asked whether the vendors commuted from Anchorage or lived in Whittier during the summer.

MAYOR BUTLER said there is a little bit of both. Access was reasonable because the tunnel was open 17 hours per day in the summer. He said quite a few vendors lived in Girdwood and commuted every day. Half of the schoolteachers also lived in Girdwood and commuted, even with the tunnel only open 68 hours per week in the winter. He said the tunnel issues were not as serious as stated.

CHAIRMAN TAYLOR asked how many companies competed for the project.

MAYOR BUTLER said the City of Whittier sent out five RFQs. One company didn't respond at all and two other companies decided not to respond. He said the two companies that did respond were

Cornell and Corrections Corporation of America (CCA), the company that housed the prisoners in Arizona.

CHAIRMAN TAYLOR asked Mayor Victor Wellington, Sr. to provide testimony.

MAYOR VICTOR WELLINGTON, SR., Mayor of the Metlakatla Indian Community, asked that request for proposal (RFP) permission be put into HB 498. He said Metlakatla was interested in building a prison yet he heard in committee meetings that Whittier was the only community interested in building a prison. That is not the case; Metlakatla officials discussed the possibility with DOC, legislators and experts in Washington, D.C. He said Metlakatla has the infrastructure to support a prison. A new road is being built between Metlakatla and Ketchikan, which would increase the workforce and a new medical facility is being built. He said it would be good public policy to include RFP permission to make the option available to every community.

CHAIRMAN TAYLOR asked Mr. Frank Prewitt to provide testimony.

MR. FRANK PREWITT said he was a consultant for Cornell and the City of Whittier on the proposed prison project. He addressed a handout that showed a snapshot of DOC's inmate population in February 2002. He said each red block in the graph represented a day in the month in which the prison was operating over emergency capacity. He said every prison in the state was operating at or near maximum capacity. He said the graph did not show the 600 prisoners in Arizona. He then addressed a handout that had been taken from the DOC website showing growth in prison populations. DOC experienced a steady upward growth in prison populations since the early 1980s. He said DOC was adding 150 to 200 prisoners per year at an average growth rate of 4%. He wasn't aware of any changes in law or demographics that would change that upward trend.

SENATOR COWDERY asked what the difference was between soft and hard beds.

2:25 p.m.

MR. PREWITT said a hard bed was a jail or prison bed. A soft bed was in a privately owned correctional residential center, also known as a halfway house. He noted that 80% of the prisoners are felons. He said 4,280 hard beds would be needed in Alaska prisons by the year 2005, leaving the system roughly 1,380 beds short. He said there was no question that there was a serious need for in-state beds. He said the State could deal with the

problem by sending its prisoners to Arizona; that would be less costly. He said Senator Cowdery made a good point about whether that money could be better spent in the state circulating in the local economy.

MR. PREWITT addressed another handout that compared HB 498 to Senator Green's SB 231 and the Governor's SB 336. He said SB 231 and SB 336 were basically variations on the same theme seeking to expand existing State correctional facilities throughout the state by roughly 1,100 beds in SB 231 and 1,200 beds in SB 336. He said HB 498 would add 1,000 beds in one site.

He addressed a handout that showed the prison population on March 25, 2002, which showed sentenced and un-sentenced prisoners in DOC facilities. He said sentenced and un-sentenced prisoners were being combined under one roof throughout the state.

He said there were regional jails at statehood and sentenced felons were housed outside the state in federal bureau prisons. He said a jail was a prison to hold offenders after their arrest through their trial and sentencing. At that point, they needed to be transferred to a prison that addressed their security and program needs. He said regional jails worked well until the *Cleary v. State of Alaska* lawsuit in the early 1980s. Part of the *Cleary* lawsuit ended up as a settlement agreement between the State and the prisoner plaintiffs to bring sentenced prisoners in the federal bureau prisons back to Alaska.

MR. PREWITT said the regional jails lacked the economy of scale to be cost-effective and lacked the resources to be program-effective. He said a prisoner serving a 10 to 15-year sentence should come out of prison with some semblance of a behavioral change and should be in a prison close to mental health, substance abuse, vocational training and educational resources. He said there were barely enough of those resources in the communities available for the public, let alone prisoners.

He said 1,400 of the prisoners in Alaska were Native Alaskans. While 6% of the general population was Native Alaskan, 37% of the prison population was Native Alaskan. He said these individuals needed the opportunity to try to break the recidivism cycle and spreading the services throughout the state couldn't provide that opportunity. He said that wasn't cost-effective or program-effective.

He said the Whittier prison would make room in regional jails. He said the prison would have enough economy of scale to offer services in a cost-effective fashion and be close enough to

resources to be able to deliver effective programming and involve the various regional corporate entities such as Southcentral Foundation in the delivery of programs.

He addressed a handout that compared the economic impact of HB 498 to SB 231 and SB 336. SB 336 would increase the operating budget by \$35 million and the capital budget by \$16.8 million for a total of \$51.8 million per year. SB 231 would increase the operating budget by \$29.5 million and the capital budget by \$14.5 million for a total of \$44 million per year. HB 498 would increase the operating budget alone by \$14.2 million, including capital.

He said the bottom of the handout showed a cost per day per bed comparison of the three bills. SB 231 and SB 336 would carry the average cost of \$114 per day per bed. There would also be an amortized daily capital rate of \$36 per day per bed for a total of \$152 per day per bed. He said HB 498 would cost between \$89 and \$91 per day per bed. He said HB 498 would set a ceiling on the Whittier prison whereby both capital and operation would have to be provided for 18% to 20% less than the statewide average. He said HB 498 would mean a \$59 per day per bed savings to the State.

**TAPE 02-24, SIDE B**

2:30 p.m.

MR. PREWITT said the Whittier plan would cost more than leaving the prisoners in Arizona. The total operating costs of the Whittier prison would be \$32 million dollars, which is \$14 million more than was being spent in Arizona. There would be many benefits to the state if the prisoners were in Whittier; there would be approximately 325 union jobs and over 200 permanent jobs, as well as indirect jobs.

He said HB 498 was the best of the three bills because Whittier is situated on a deep-water port where materials could be shipped in inexpensively. Also, Whittier is situated near Anchorage with a population of 250,000 to 300,000 and available contractors and programs. Thousands of people commute from Wasilla and Palmer to Anchorage every day. Whittier is approximately the same distance from Anchorage and people could commute there as well.

CHAIRMAN TAYLOR asked if there were any questions for Mr. Prewitt. There were none. He asked Mr. Charles Campbell to provide testimony.

MR. CHARLES CAMPBELL said he was a former Director of

Corrections. He believed that legislators knew that HB 498 is a bad idea and that SB 231 is a superior approach to addressing Alaska's prison bed space problems. He said the committee should table HB 498 and allow the Legislature to move forward with a responsible solution to the problem for the sake of efficiency.

He thought that HB 498 probably appealed to some members of the committee because the initial costs would be less than SB 231. He said it would be a matter of unwise expediency to pass HB 498 because it would be putting an important law enforcement and social service function at risk at the urging of a group of people with heavy financial stakes in the proposition rather than being guided by knowledgeable experts. He said the future costs could be enormous.

Having worked in various roles in the field of corrections for over 50 years, he believes a 1,000-bed prison in Whittier is a very bad idea. He doubted the committee could find another corrections professional, current or retired, who didn't agree with him unless they had some financial stake in the proposition.

MR. CAMPBELL said Whittier is very inaccessible. Staff would be marginally qualified and inexperienced with no law enforcement backup. Cornell would have a difficult time recruiting a staff of qualified and competent line officers and an even harder time keeping them. He said a new report in *The Corrections Yearbook* indicated that the annual staff turnover rate in private prisons across the country was 53% and the staff turnover rate in public prisons was 16%.

He said the Whittier prison would be a \$100 million embarrassment and it could also be a legal problem. He said the legal principles behind the *Cleary* case were alive and well. The Constitution of the State of Alaska requires correctional administration based on principles of reformation. He didn't think Cornell had given serious thought to the principles of reformation.

He disagreed with Mr. Prewitt's comment that Whittier would be the best place for the State to center its correctional efforts such as education, therapy, Native culture programs and vocational programs. The lack of community resources in Whittier would make it impossible to have an effective correctional program and the large size of the prison would make it even worse because large facilities do not work half as well as smaller facilities. He said the main concern was bringing prisoners back from Arizona.

CHAIRMAN TAYLOR asked if Mr. Campbell really believed anybody cared about that. He didn't think people cared. He thought the prisoners were going to stay in Arizona as long as it was cheaper for them to be there. He said anybody who tried to build a prison or tried to do anything in Alaska would encounter advisory votes or organized labor and contractors would fight about it. He said the prisoners would still be in Arizona but there would be more of them. He said if he listened to Representative Andrew Halcro, Alaska should put out a bid for Mexico and Afghanistan. He said if we sent the prisoners far enough and treated them bad enough they could be housed for practically nothing. He asked if Mr. Campbell really believed something would be put together in the state.

MR. CAMPBELL said 95% of the people in Alaska prisons and the Arizona prison were going to be released back into the community so it makes sense to work with them and try to make them less likely to commit further crimes. He said nothing would be worse, in terms of good correctional principles, than to have a 1,000-bed for-profit private prison in Whittier. He said Whittier was hardly better than Arizona in terms of accessibility for many of the prisoners' families.

SENATOR COWDERY didn't agree that Whittier is inaccessible. He said he lived in Anchorage and had been to Whittier as many as three times in one day.

CHAIRMAN TAYLOR hoped there was some way to find a solution to bring all the points made to some sort of balance. He hoped they really were concerned about bringing prisoners home from Arizona.

MR. CAMPBELL said he had worked in seven different federal prisons and had been in charge of all of the prisons in Alaska. He couldn't recall one prison where there wasn't staff that lived close enough to be able to assemble an emergency crew in five minutes. He said the hour and a half Senator Cowdery spoke of was too long a time in an emergency situation.

SENATOR COWDERY said he was only speaking in terms of access.

CHAIRMAN TAYLOR asked Mr. David Katzeek to provide testimony.

2:41 p.m.

MR. DAVID KATZEEK, Alaska Native Brotherhood (ANB) Camp #2, spoke in Tlingit throughout his testimony and translated it into English. He thanked the committee for allowing him to share a serious, important and emotional issue for the Native peoples.

He said his grandparents and ancestors said the most powerful thing human beings can do is work together for the good of one another. He said HB 498 was an opportunity to be able to bring private industry, government, Native communities and other interested parties together to restore families, rehabilitate individuals, make the public safe, reduce recidivism and reduce the costs of prison care.

He said ANB Camp #2 was concerned about the issue because 70 to 80 of their people would be incarcerated in the next year. He said somebody was making money off of their people, whether it was a private prison or the State of Alaska. He said the whole picture needed to be looked at.

He said they went to Cornell because they had an opportunity. They worked with the City of Hoonah, DOC, the Tlingit-Haida Central Council, the Alaska Federation of Natives, the Department of Health and Human Services, the Department of Justice and many others to work toward resolving problems on their own. He said the committee had the opportunity to practice good leadership by making decisions that were very difficult and sometimes not very popular in public opinion.

MR. KATZEEK finished by saying, "Have you heard the cry of a little boy who misses his daddy? Do you hear the crying of a little girl?" He said that was really what it was all about. He said it wasn't easy for him to sit in front of the committee and talk about something as difficult and emotional as this issue. He said part of the healing of the Native community was to be able to say they wanted to help.

CHAIRMAN TAYLOR asked if there were any questions for Mr. Katzeek. There were none. He asked Ms. Margot Knuth to provide testimony.

MS. MARGOT KNUTH, Strategic Planning Coordinator, DOC, said DOC had concerns about HB 498. DOC uses four factors by which it measures legislative proposals that address correctional facilities:

- Is it safe;
- Does it meet the State's need for prison and jail beds;
- Is it within the structure of the government or government relationship; and
- Is it cost-effective?

She said HB 498 failed on all four standards. She said HB 498

was not the best of the three private prison proposals to come before the legislature; it was the worst.

She said Whittier is a difficult location for that size of a prison. It has a population of 182 people. Adequate fire and police protection are necessary for a large prison and Whittier has neither. Whittier does have power and water, which is a good start and land could be rented from ARRC. Whittier does not have an adequate sewage treatment plant for such a large prison. It would cost \$4 million to build a new sewage treatment plant for the prison alone or \$9 million to expand Whittier's existing sewage treatment plant. She said there were some significant infrastructure costs to be considered. In addition, housing would have to be provided for staff, educators, substance abuse counselors, clergy and medical staff for the prison. She said they would probably have to commute from Anchorage since there wasn't any housing.

MS. KNUTH didn't believe that Whittier has the capability of government to be responsible for the operation of a prison. She said Whittier had never bonded a project, let alone one of this magnitude. She said the bonding would require a level of sophistication Whittier does not have and the prison would cost at least \$110 million.

She said a private company usually built private prisons and then opened its doors for business and negotiated a daily cost with interested clients. She said the cost for 700 Alaska prisoners in Arizona was \$57 per day per bed. She said Alaska was able to change the rate and the number of prisoners depending upon needs and market pressures. She said there is an excess of private prison bed space in the United States and the daily rates were falling. She said the opening of the Anchorage jail created an additional 200 in-state beds, which reduced the number of Arizona prisoners to 600. DOC was in the process of negotiating daily rates for those prisoners and expected to agree to about \$53 per day per bed or \$11.6 million per year. She said every dollar per day per bed represents \$250,000 in Alaska's operating budget.

2:47 p.m.

CHAIRMAN TAYLOR asked if she thought the State could get a better deal if the prisoners went to New Mexico, Mexico or Afghanistan.

MS. KNUTH said there were significantly cheaper options than Arizona. She said housing the prisoners in Arizona was a compromise between appropriate care for inmates and cost. She said DOC had monitors at the Arizona prison. The contract with

Arizona is fairly strict in the needs for inmates. She said Alaska requires greater programming and higher staffing ratios than any other CCA clients in the United States because they expected better treatment.

CHAIRMAN TAYLOR asked why.

MS. KNUTH said that is the personal commitment of DOC. Other prisoners housed in Arizona were U.S. Marshall's inmates and inmates from Hawaii, Montana and Washington, D.C. The Alaskan representatives worked with the representatives of the other inmate populations and were aware of how many hours other jurisdictions spent working with CCA and what their programming requirements were. She said Alaska had the greatest presence. She said the only client that was charged more was the federal government for some of its inmates.

MS. KNUTH said the proposal for a private prison in Whittier would cost \$32.8 million per year for 25 years. She said DOC only paid for occupied beds in Arizona and could withdraw its prisoners at any time and stop paying. She said HB 498 calls for a 25-year commitment to \$90 per day for 1,000 beds, regardless of whether all the beds are occupied or not and that doesn't make economic sense.

She disputed Mr. Prewitt's representation that DOC facilities were over capacity. She said that was probably true on the day that the snapshot was taken but since that time, the Anchorage jail opened and increased total capacity by over 250 beds. She said DOC was at approximately 95% capacity statewide. Two facilities were over capacity that week because of logistics problems in transportation. DOC could house the Arizona prisoners in the Whittier prison, but that would only occupy 600 of the 1,000 beds. She understood building for the future but cautioned against speculating too high. She said DOC experienced a growth rate of 200 prisoners per year during some years but there had been no growth in the previous two years.

She said SB 336 proposed regional expansion, which is needed because of the pretrial population and short-term misdemeanants that only spend a short period of time in the system. Approximately 33,000 people were booked into the system each year but only 5,000 of them were retained at any given time. She said most of these people couldn't go through the prison in Arizona, Whittier, SCCC or the Palmer Correctional Center (PCC) because they needed to be housed close to their courts. There were also long-term felons who needed to be in a prison with programs, such as SCCC, PCC and Wildwood Correctional Center. She said there is

a need for 1,200 beds but not in one location.

SENATOR COWDERY asked about the town where the prison in Arizona was located.

MS. KNUTH said Florence is about an hour and a half outside of Phoenix and has a population of approximately 60,000.

SENATOR COWDERY asked if Florence has public water and sewer facilities.

MS. KNUTH said it does, as well as adequate law enforcement and fire departments.

SENATOR COWDERY asked if the prison is inside city limits.

MS. KNUTH said it is. She noted that Florence is the largest prison town in the United States.

She said the contract proposed in HB 498 represented about \$820 million. She said Mr. Prewitt compared the Whittier estimate of \$90 per day to the DOC average of \$150 per day. She said the \$150 also includes \$32 for major medical coverage, transportation costs and administrative costs. She said the proper comparison would be \$150 per day per bed spent in DOC facilities to \$122 per day per bed in Whittier. She noted that the State wouldn't own the prison after the 25-year contract and ownership would be worth something. She said the State could build and operate a single prison for the same amount of money or less but it doesn't need one. She said HB 498 proposes a prison in the wrong place with the wrong type of beds. She said DOC is also concerned about the lack of a competitive procurement process.

CHAIRMAN TAYLOR asked Mr. James Price to provide testimony.

3:00 p.m.

MR. JAMES PRICE believed HB 498 was a bad piece of legislation and that the statements made in support of HB 498 were incorrect. He didn't believe it would be cost-efficient or that the State would see any savings. He believed the location of the prison would drive costs up.

He said a previous witness said there was a lot of support for HB 498 in Whittier. He said the Kenai Peninsula Borough made the same claim about its private prison proposal. However, 73% voted against the proposal with the largest voter turnout of any borough election. He said there was opposition throughout the

large borough so he didn't think it was a "not-in-my-backyard" issue.

He argued that the Whittier proposal was worse than the Kenai proposal and believes that the lack of local opposition was due to the fact that there was no provision in the city code to allow for a vote of the people. He said people were reluctant to oppose the Kenai proposal because of the political ramifications of speaking out against a project supported by local politicians. He said that was probably also the case in Whittier.

He also expressed concern about the sole-source contract because Cornell got the contract without really having to go through a competitive bidding process. He said the City of Whittier was going to own the prison and he didn't understand why they wouldn't want to put the project out for bid to bring costs down.

MR. PRICE had 18 pages of summary detailing the failures of private prisons in general and Cornell in particular. He said it was interesting that auditors were already looking at Cornell for possible conflicts in violation of the Security and Exchange Commission rules. He said Cornell's financial problems could cause difficulties in their management of a private prison in Whittier.

He urged the committee to kill HB 498.

CHAIRMAN TAYLOR asked Ms. Elsie Hendryx to provide testimony.

MS. ELSIE HENDRYX, Kenai Native Association (KNA), supported HB 498 and urged the committee to support the bill. She said KNA wanted to get their people back into Alaska and Whittier was not that far away from Anchorage. She believed inmates would be closer to their families, which would help the recidivism rate with the Native people.

CHAIRMAN TAYLOR asked Mr. Ron Wilson to provide testimony.

MR. RON WILSON said he had been a correctional officer with DOC for almost 19 years but the opinions he was expressing were his own. He first had contact with private prisons when he worked in Nome and Cornell wanted to place a halfway house next to the high school. The people of Nome decided that wasn't a good idea. He said communities in Alaska, such as Delta Junction, Kenai and Wrangell, decided private prisons were not a good idea. He wondered what kind of rules Cornell had to play by. He said if they were playing baseball they would have struck out already; if they were playing basketball they would have been penalized for a

flagrant foul when they sued Delta Junction for \$1 million. He said despite all this Cornell was still in the game.

He knew how Cornell operated. He used the following analogy to demonstrate:

They'll come into your town; come in with their corporate aircraft, their big cars, their big wallets and promise you a trip to the moon. And while they're wining and dining you and doing everything else, once they have the contract with all the i's dotted and the t's crossed and it's so iron clad that the turrets are actually bleeding, they'll set you out front and you'll be looking down the road and Jethro Bodean from the Beverly Hillbillies will be coming down the road with his truck and pick you up and he will be taking you to the moon. Now the only place you'll be ending up is the Valley of the Moon Park [ph.] in Anchorage and then he'll tell you you have to get your own ride home.

MR. WILSON said private prisons were not a good idea and most of the communities that had been presented with the proposal of a private prison agreed. He said SB 231 would help prisoners by increasing the size of prisons in local communities and increasing revenues in local communities. He had the opportunity to observe Native prison populations reacting with people from their community when he worked in Nome. He said even the most obstinate Native prisoner would lose their tough demeanor in the presence of an elder. He said putting prisoners close to their own communities could only help in their rehabilitation.

CHAIRMAN TAYLOR asked Mr. Jim LeCrone to provide testimony.

MR. JIM LECRONE, Public Safety Employees Association (PSEA), wanted to coin a new term, "situational accessibility." He said Mayor Butler mentioned that half of the teachers in Whittier commuted. He suspected that it wasn't a major emergency if a teacher missed a day of school because of bad weather. He worked with DOC several years previously and there was a landslide that closed the highway between Anchorage and Seward for five days. He said most people who worked at the Seward prison commuted on a weekly basis. He said the relief crew was prevented from getting to Seward because of the landslide. He said that was not a bad situation because enough people lived in Seward to maintain the security at SCCC. He said that was "situational accessibility." He said a crew couldn't be expected to be on duty more than 24 hours maintaining security control over 1,000 inmates.

He had never heard Cornell address the Alaska Police Standards

Council (APSC) requirements for certifying correctional officers. He said Alaska statute mandates that all correctional officers must meet APSC standards, which is a lengthy process of training, psychological evaluations and background evaluations. He expected the legislature to hold Cornell to the same standard but suspected it would raise their labor costs significantly. He urged the committee to let HB 498 die. He said SB 231 and SB 336 were much better bills.

CHAIRMAN TAYLOR asked Mr. Rick VanHatten to provide testimony.

MR. RICK VANHATTEN, Alaska Correctional Officers, said he was a 16-year correctional officer and president of the Alaska Correctional Officers chapter of PSEA. He was speaking personally and on behalf of the 735 correctional officers in the state. He didn't want to repeat the points that had already been made. He said SB 231 was the best bill for DOC and the communities.

CHAIRMAN TAYLOR asked Mr. Brad Wilson to provide testimony.

MR. BRAD WILSON, PSEA, said PSEA represented the Alaska State Troopers, police departments and correctional officers. He said PSEA was opposed to HB 498. He said the committee should support SB 231 if they were concerned about the recidivism rate. He said spreading prisoners throughout the state would allow them to be in their own communities with their own community support. He said that reduced recidivism.

He said Cornell said their officers would meet APSC standards. He asked why anyone who could meet APSC standards would work in Whittier with the long commute and less money if they could work for DOC with a 20-year retirement program, benefits and better pay. He said DOC was hiring and had positions that had not been filled.

He was involved in the private prison proposals in Anchorage, Delta Junction, Kenai and Wrangell. He said in every case the local government said they didn't need a vote because their people were 85% in support of it. He said that always turned out to be wrong when it did go to a vote. He said the same argument was being used for Whittier. He said PSEA did everything they could to get a vote in Whittier. He said if Mayor Butler was so sure that 85% of the community was in support of the prison, he would have a vote. He said polling and petitions could be subjective because they were given by supporters of the prison who presented a one-sided story. He agreed with Representative Eric Croft's statement that HB 498 was not about a private

prison; it was about powerful people putting money into the pockets of one corporation. He said we were better than that and we needed to say no.

CHAIRMAN TAYLOR said the committee moved SB 231 out of committee about two and a half weeks previously. He asked Ms. Dee Hubbard to provide testimony.

MS. DEE HUBBARD said she was a mother from Sterling. She asked the committee not to vote HB 498 out of committee. She said Mr. Prewitt emailed an RFQ to the city manager of Whittier on October 23<sup>rd</sup>. She said it was the same RFQ that was to be used in Wrangell. She said Mr. Prewitt also emailed a list of companies to send the RFQ to because the city manager didn't know who to send it to. She said a number of communities were "being asked to jump through the Cornell hoops with Mr. Prewitt giving them as much information as he possibly could to help them." She said it was odd that Mr. Prewitt, who represented Cornell, gave Whittier an RFQ for Cornell to respond to.

She had found nine permits that Cornell would have to apply for and satisfy; some of which could be very costly. She said the incinerator could cost \$5 to \$10 million. She said no one knew what the project would cost because no feasibility study was required. She said there was a big difference between building a prison in Anchorage and building a prison in Whittier. For example, a prison in Whittier would need to be built to withstand a 200-pound per square foot roof load. She said that was a lot more concrete and steel than was used in Anchorage.

She spoke to an analysis she had given committee members and said Cornell and Whittier expected to have some costs reimbursed through bonds. She said the mayor had been living in Juneau for three weeks with Cornell covering those costs.

**TAPE 02-25, SIDE A**

3:18 p.m.

MS. HUBBARD said Sec. 7 of HB 498 appeared to bundle the YKCC and Whittier projects together.

CHAIRMAN TAYLOR asked Mr. John Duffy to provide testimony.

MR. JOHN DUFFY, Manager, Matanuska-Susitna (Mat-Su) Borough, said SB 231 was the borough's preference. He agreed with Senator Cowdery's statement that Alaskan dollars needed to remain in Alaska to provide economic opportunities for Alaska residents and contractors.

He said the Whittier prison would cost \$89 to \$91 per day per bed. He said other facilities have comparable costs, if not less, i.e. PCC costs \$58 per day per bed. He passed out a handout that showed the costs of correctional facilities in the state and noted that other facilities also cost less than the Whittier proposal.

MR. DUFFY said the capital costs associated with the Whittier prison would need to be scrutinized closely. The sewage treatment prison could cost between \$4 million and \$9 million according to DEC estimates. Electrical power was available but a substation would be needed to connect it to the prison, which would cost \$500,000 to \$750,000.

He said there are also other reasons to support the regional approach. Unemployment rates throughout the state are very high: 7.7% in the Mat-Su and Ketchikan Gateway Boroughs; 9.6% in the Kenai Peninsula Borough; and 10.6% in Bethel. He said most of the workers for the Whittier prison would commute from Anchorage, where there was a 4.3% unemployment rate. The Mat-Su Borough felt the economic benefits of prison expansion should be shared throughout the state. He passed out a memo from Northern Economics that estimated the effects of prison expansion as detailed in SB 231. He said the regional approach would result in approximately 300 jobs in Ketchikan, 200 jobs in Fairbanks and over 1,000 jobs each in the Mat-Su and Kenai. He said SB 231 would share the economic impacts of prison expansion throughout the state.

He believed providing a regional approach would help rehabilitation rates because prisoners would be located closer to their families and networks.

SENATOR THERRIAULT informed the committee that he was not going to propose an amendment to include language for PCC in HB 498 because it would trigger a title change.

SENATOR ELLIS proposed Amendment 1 to delete Sec. 7. He said there was progress earlier in the process to disengage the Whittier and YKCC projects and the deletion of Sec. 7 would ensure that the two weren't entangled.

SENATOR THERRIAULT asked who brought the amendment to Senator Ellis and why legislative drafters didn't draft it.

SENATOR ELLIS said he believed Senator Hoffman's staff drafted it in consultation with legislative drafters.

SENATOR THERRIAULT said Sec. 7 made it appear that nothing would happen at YKCC unless the Whittier proposal went forward.

CHAIRMAN TAYLOR objected to the motion for the purpose of a roll call vote.

Upon a roll call vote, Senator Ellis voted in favor of Amendment 1 and Senators Cowdery and Therriault and Chairman Taylor voted against Amendment 1. Therefore, Amendment 1 failed to be adopted by a vote of one to three.

SENATOR COWDERY moved CSHB 498(FIN) am out of committee with attached fiscal notes and individual recommendations.

SENATOR ELLIS objected. He strongly supported the regional approach proposed in SB 231. He would rather see money invested in vocational and technical education, other education programs, other alternatives in diversion programs and rehabilitation at other levels than new prisons. He said more prison space is needed but there was no contest between HB 498 and SB 231.

CHAIRMAN TAYLOR asked if there was any further discussion. There was none.

Upon a roll call vote, Senators Cowdery and Therriault and Chairman Taylor voted in favor of moving CSHB 498(FIN) am out of committee and Senator Ellis voted against moving CSHB 498(FIN) am out of committee. Therefore, CSHB 498(FIN) am moved out of committee by a vote of three to one with attached fiscal notes and individual recommendations.

#

The next order of business before the committee was the confirmation hearing for Arthur S. Robinson to the Select Committee on Legislative Ethics.

**CONFIRMATION HEARING: SELECT COMMITTEE ON LEGISLATIVE ETHICS**

CHAIRMAN TAYLOR asked Mr. Arthur S. Robinson to explain why he would like to serve on the Select Committee on Legislative Ethics.

MR. ARTHUR S. ROBINSON said he was asked to fill the position by Chief Justice Dana Fabe. He said it had been a while since he'd done public service. He was a district attorney almost thirty years ago and worked in State government for a while. He wanted to give something back to the communities. He thought serving on

the Select Committee on Legislative Ethics would be an opportunity to do that without doing full-time public service.

CHAIRMAN TAYLOR asked if there were any questions for Mr. Robinson. There were none. He appreciated Mr. Robinson's willingness to serve. He said it isn't an easy task and many people get the issues of morality and ethics confused.

MR. ROBINSON agreed the issues are different.

CHAIRMAN TAYLOR appreciated the fact that he understood the distinction. He wished him the best in his efforts.

SENATOR COWDERY moved that the Senate Judiciary Committee report a letter to the full Senate recommending Arthur S. Robinson for confirmation of the full body.

There being no objection, it was so ordered.

The final order of business before the committee was SJR 13.

#SJR 13

**SJR 13-CONST. AM: PERMANENT FUND**

CHAIRMAN TAYLOR said SJR 13 proposed amendments to the Constitution of the State of Alaska relating to the Alaska permanent fund. He asked Mr. Jay Hogan to provide testimony.

MR. JAY HOGAN referred the committee to his letter dated May 3, 2002. He wanted to make one correction to that letter and said HB 304 had passed out of the House of Representatives and was now in the Senate. He said the letter explained his position.

He said a great deal of change had been made to the permanent fund by statute over the past 26 years. He said the investment policy and inflation proofing was provided for by statute, as well as a host of other improvements. He said that was the way it was supposed to be.

He said he sat through many committee hearings in 1975 when the statutory permanent fund was passed by the legislature and vetoed by the governor. He said the discussions in 1976 focused on making it a flexible provision so that future legislatures would be able to change the administrative structure, purposes of use and other things. He said the only provisions that were put in the Constitution were the concept of a trust fund, the source of income (25% of certain mineral royalties) and that funds could

not be withdrawn once they were in the corporate status.

MR. HOGAN said Wyoming had created a payout provision for their public school fund and permanent mineral trust fund by statute. He said other states did the same thing by statute and through their constitution. He said it was historically correct to make this change by statute. He didn't understand why there should be a constitutional provision when a statutory provision would do the job.

3:35 p.m.

CHAIRMAN TAYLOR said it seemed that SJR 13 would set up a disconnect between the earnings and dividends by going to a fixed average percentile instead of the 5-year income averaging. He asked if SJR 13 would cause dividends to eat into the principal of the fund.

MR. HOGAN said from his own research on the issue he discovered that there were a number of endowments and trust funds that used the 5% payout method. The theory is that over time it would allow for inflation proofing of the fund and allow a reasonable return of money to be used for other purposes. He said the State had more than 20 years of experience inflation proofing the permanent fund by statute by putting earnings reserve money into it and inflation proofing on an annual basis. He said that was the choice of those individual legislatures. He felt the permanent fund had been doubly inflation proofed. He said the legislature should retain the ability to choose what to do with the income of the permanent fund.

SENATOR THERRIAULT commented that Mr. Hogan's letter provided a good synopsis of the history of the permanent fund and what other states were doing. He would probably use the first part of the letter that talked about the creation of the permanent fund. He received an email from a constituent that said the permanent fund was created to dish out dividends. He was amazed that there was so much misinformation out there.

He said the Senate State Affairs committee substitute (CS) addressed the issue of the possibility of eroding the principal of the permanent fund. He referred to page 1, line 16, which stated, "Money may be appropriated from the earnings reserve account." He said Section 1 specified that all income from the permanent fund would be retained in a separate earnings reserve account. He said the 5% draw was limited to that earnings reserve account and would not be taken from the principal.

CHAIRMAN TAYLOR asked if there were any further questions for Mr. Hogan. There were none. He asked Ms. Sheila Howe to provide testimony.

MS. SHEILA HOWE, N.E.C., said she was a mother. She said she spent most of the summer reading over the information on SJR 13. She supports SJR 13 because the bill would give some stability and permanency to the inflation proofing qualities of the permanent fund. She understood that the permanent fund was initially intended to meet the needs of the state in the future. She wasn't concerned about the dividends paid out on a yearly basis. She saw the need to protect the permanent fund against inflation and perpetuities and thought SJR 13 was the best way to accomplish that.

SENATOR THERRIAULT asked if she was in Alaska during the advisory vote on the permanent fund dealing with the long-range fiscal plan.

MS. HOWE said she had been in Alaska since 1969 and had not missed an election.

SENATOR THERRIAULT asked if she felt comfortable telling the committee how she voted.

MS. HOWE was against that proposal because of the way it was laid out. She wasn't against using the APF.

SENATOR THERRIAULT said Mr. Eddie Burke [ph.] said he spoke for Ms. Howe. He said Mr. Burke's editorials lumped Ms. Howe's no-vote with the 83% that voted against the proposal. He said Ms. Howe's position was very different than Mr. Burke's.

CHAIRMAN TAYLOR asked Mr. Robert Storer to provide testimony.

MR. ROBERT STORER, Executive Director, Alaska Permanent Fund Corporation (APFC), Department of Revenue (DOR), said the board of APFC believed that inflation proofing should be memorialized in the Constitution. He said that could be done by creating a spending limit of no more than 5% of the moving average of the APF over a five-year period. He said only the earnings reserve of the APF would be available and the principal of the APF would be protected. He said SJR 13 was heard extensively in the Senate State Affairs Committee.

MR. JIM KELLY, Director of Communications, APFC, DOR, referred the committee to the memorandum from Mr. Storer requesting amendments to SJR 13 dated April 23, 2002. He addressed the

fourth paragraph on page 2 of the memorandum, which requested a technical amendment:

**Sec. 30. Transition.** On the effective date of the 2002 amendments relating to the Alaska permanent fund (art. IX, sec. 15), the balance [PORTION] of the statutory earnings reserve account (AS 37.13.145) [THAT CONSISTS OF INCOME] of the permanent fund is transferred to the earnings reserve account established in Section 15(a) [15(b)] of Article IX.

MR. KELLY said he discussed this amendment with Senator Therriault and believed he was supportive of it. He said APFC had not had time to show the Senate State Affairs CS to the board and legal counsel when it was moved out of committee. After legal counsel reviewed the CS, it was discovered that 15(b) would need to be changed to 15(a). He said that was just a technical error. The addition of the word "balance" and the subtraction of "that consists of income" would be necessary to make the intent clear. He said the APF's market value was the combined total of the principal, the realized and the unrealized income. He said 5% of that would be the payout limit in any given year, all of which would come from the earnings reserve account.

He asked for a further amendment to add the words "inflation proofing" after the words "relating to" in the first line of the title. He said SJR 13 was really about inflation proofing the APF. He said the 5% limit would ensure that the APF was made permanent in the Constitution. He said as long as those provisions were in the Constitution, APFC would be able to provide a growing income stream in addition to what would be needed to be retained to offset inflation. He believed the change in the title would make it easier for the people to support SJR 13 at the polls after it passed the legislature.

CHAIRMAN TAYLOR moved Amendment 1 to add the words "inflation proofing" after the words "relating to" on page 1, line 1 in the title; replace the word "portion" with the word "balance" on page 2, line 9; strike the words "that consists of income" on page 2, line 10; and replace "15(b)" with "15(a)" on page 2, line 11.

3:50 p.m.

SENATOR THERRIAULT said the wording of the title had gone back and forth between the legislative drafters and the APFC. He said bill titles were supposed to express the contents of the bill. He understood that the APFC wanted the title reworded for salesmanship but inflation proofing didn't really cover the full

contents of the bill. He said SJR 13 was more than just an act dealing with inflation proofing because it would set up the 5% draw. He said inflation proofing would be accomplished but he didn't think that would be a correct title for the bill.

SENATOR DONLEY said it wouldn't be a legal title.

CHAIRMAN TAYLOR removed the title change from Amendment 1.

MR. KELLY said the rest of the amendment was for clarification purposes. He said the point of that section was to transfer all of the money that was in the earnings reserve account and everything that everybody thought was in the earnings reserve account. He said that was currently in a statutory earnings reserve account and SJR 13 would set up a constitutional earnings reserve account. They just wanted to be sure that the two accounts matched up.

SENATOR THERRIAULT said that was added in the Senate State Affairs Committee so that the legislature wouldn't have access to the earnings reserve account by a simple majority vote. He said the new account would be protected and only 5% per year would come out.

MR. KELLY said the words "that consists of income" should be stricken because they suggested that the unrealized earnings would not be transferred when they should be.

SENATOR THERRIAULT said they wanted to make sure that everything from the statutory earnings reserve account got moved into the constitutional earnings reserve account.

CHAIRMAN TAYLOR asked if there was objection to Amendment 1.

There being no objection, Amendment 1 was adopted.

CHAIRMAN TAYLOR asked if there was further discussion on SJR 13. There was none. He asked if anyone else wished to testify on SJR 13. There was nobody.

SENATOR THERRIAULT moved CSSJR 13(JUD) out of committee with attached fiscal note and individual recommendations.

CHAIRMAN TAYLOR noted that there was an objection.

Upon a roll call vote, Senators Cowdery, Ellis and Therriault and Chairman Taylor voted in favor of moving CSSJR 13(JUD) out of committee and Senator Donley voted against moving CSSJR 13(JUD)

out of committee. Therefore, CSSJR 13(JUD) moved out of committee by a vote of four to one with attached fiscal note and individual recommendations.

#

ADJOURNMENT

There being no further business before the committee, the Senate Judiciary Committee meeting was adjourned at 3:54 p.m.