

HOUSE JOURNAL
ALASKA STATE LEGISLATURE
TWENTY-THIRD LEGISLATURE
FIRST SPECIAL SESSION

Juneau, Alaska

Thursday

June 24, 2004

Third Day

Pursuant to adjournment the House was called to order by Speaker Kott at 10:00 a.m.

Roll call showed 36 members present. Representatives Kapsner and Samuels were absent and their presence was noted later.

Representative Coghill moved and asked unanimous consent that Representatives Heinze and Wilson be excused from a call of the House today. There being no objection, it was so ordered.

The invocation was offered by the Chaplain, Representative Coghill. Representative Fate moved and asked unanimous consent that the invocation be spread on the journal. There being no objection, it was so ordered.

"The earth is the Lord's, and the fullness thereof; the world, and they that dwell therein." Psalms 24:1

Let us pray. Father, thank You for the beauty of the world that we dwell in; for the privilege of serving our fellow Alaskans; for the responsibility laid on our shoulders, we ask for help. For the privilege, we ask that we remember those who have gone before us and those who will follow us; that we handle our responsibility under Your direction. We thank You for the privilege. In Jesus' name. Amen.

The Pledge of Allegiance was led by Representative Berkowitz.

CERTIFICATION OF THE JOURNAL

Representative Coghill moved and asked unanimous consent that the journal for the second legislative day of the First Special Session be approved as certified by the Chief Clerk. There being no objection, it was so ordered.

Representative Rokeberg moved and asked unanimous consent that the House adjourn sine die.

Representative Berkowitz objected.

Representative Croft placed a call of the House.

**The presence of Representatives Kapsner and Samuels was noted.

The call was satisfied.

Representative Rokeberg moved and asked unanimous consent to withdraw the motion. There being no objection, it was so ordered.

The call was lifted.

The Speaker stated that, without objection, the House would recess to 11:30 a.m.; and so, the House recessed at 10:51 a.m.

AFTER RECESS

The Speaker called the House back to order at 4:10 p.m.

The Speaker stated that, without objection, the House would advance to:

REPORTS OF STANDING COMMITTEES

SB 1001

The Finance Committee has considered:

SENATE BILL NO. 1001

"An Act relating to taxes on cigarettes and tobacco products, to tax stamps on cigarettes, to forfeiture of cigarettes and of property used in the manufacture, transportation, possession, or sale of unstamped cigarettes, to accounting for and use of part of the proceeds of the additional cigarette tax, and to licenses and licensees under the Cigarette Tax Act; relating to unfair cigarette sales; and providing for an effective date."

and recommends it be replaced with:

HOUSE CS FOR SENATE BILL NO. 1001(FIN)

"An Act relating to restrictions on shipping or transporting cigarettes; relating to taxes on cigarettes and tobacco products, to tax stamps on cigarettes, to forfeiture of cigarettes and of property used in the manufacture, transportation, facilitation of transportation, possession, offering for sale, or sale of unstamped cigarettes, to accounting for and use of part of the proceeds of the additional cigarette tax, and to licenses and licensees under the Cigarette Tax Act; relating to unfair cigarette sales; relating to supersedeas bonds in certain tobacco-related litigation; amending Rules 204 and 205, Alaska Rules of Appellate Procedure; and providing for an effective date."

(HCR 101 - title change resolution)

The report was signed by Representatives Harris and Williams, Co-chairs, with the following individual recommendations:

Do pass (2): Meyer, Hawker

Do not pass (2): Chenault, Stoltze

No recommendation (6): Fate, Joule, Foster, Harris, Moses, Williams

Amend (1): Croft

The following fiscal note(s) apply to HCS SB 1001(FIN):

4. Zero, House Finance Committee/Various Depts.

SB 1001 is on today's first supplemental calendar.

**CONSIDERATION OF THE FIRST SUPPLEMENTAL
CALENDAR**

Representative Coghill moved and asked unanimous consent that the House adopt the First Supplemental Calendar. There being no objection, the following was adopted:

SB 1001 TOBACCO TAX; LICENSING; PENALTIES

SECOND READING OF SENATE BILLS

SB 1001

The following was read the second time:

SENATE BILL NO. 1001

"An Act relating to taxes on cigarettes and tobacco products, to tax stamps on cigarettes, to forfeiture of cigarettes and of property used in the manufacture, transportation, possession, or sale of unstamped cigarettes, to accounting for and use of part of the proceeds of the additional cigarette tax, and to licenses and licensees under the Cigarette Tax Act; relating to unfair cigarette sales; and providing for an effective date."

with the:

Journal Page

FIN RPT HCS(FIN) NT 2DP 2DNP 6NR 1AM	4478
FN4: ZERO(H.FIN/VARIOUS DEPTS)	4479

Representative Coghill moved and asked unanimous consent that the following committee substitute be adopted in lieu of the original bill:

HOUSE CS FOR SENATE BILL NO. 1001(FIN)

"An Act relating to restrictions on shipping or transporting cigarettes; relating to taxes on cigarettes and tobacco products, to tax stamps on cigarettes, to forfeiture of cigarettes and of property used in the manufacture, transportation, facilitation of transportation, possession, offering for sale, or sale of unstamped cigarettes, to accounting for and use of part of the proceeds of the additional cigarette tax, and to licenses and licensees under the

Cigarette Tax Act; relating to unfair cigarette sales; relating to supersedeas bonds in certain tobacco-related litigation; amending Rules 204 and 205, Alaska Rules of Appellate Procedure; and providing for an effective date."

There being no objection, it was so ordered.

Amendment No. 1 was offered by Representatives Williams and Meyer:

Page 5, line 18:

Delete "June 30, 2004"

Insert "December 31, 2004"

Page 15, line 7:

Delete "June 30, 2004"

Insert "December 31, 2004"

Representative Williams moved and asked unanimous consent that Amendment No. 1 be adopted. There being no objection, it was so ordered.

Amendment No. 2 was offered by Representative Harris:

Page 1, line 7, following "**litigation;**" (title amendment):

Insert "**relating to the tobacco Master Settlement Agreement;**"

Page 14, line 20:

Insert a new bill sections to read:

* **Section 38.** AS 45.53.020(b) is amended to read:

(b) A tobacco product manufacturer that places money into escrow under (a)(2) of this section is entitled to receive the interest or other appreciation on such money as earned. Such money itself shall be released from escrow only under the following circumstances:

(1) to pay a judgment or settlement on a released claim brought against such tobacco product manufacturer by this state or a releasing party located or residing in this state; the funds shall be released from escrow under this paragraph in the order in which they were placed into escrow and only to the extent and at the time

necessary to make payments required under the judgment or settlement;

(2) to the extent that the tobacco product manufacturer establishes that the amount that it was required to place into escrow **on account of units sold in the state** in a particular year was greater than the **Master Settlement Agreement payments, as determined under sec. IX(i) of the Master Settlement Agreement, including, after final determination of all adjustments, payments that the manufacturer would have been required to make on account of those units had it been a participating manufacturer** [STATE'S ALLOCABLE SHARE OF THE TOTAL PAYMENTS THAT THE MANUFACTURER WOULD HAVE BEEN REQUIRED TO MAKE IN THAT YEAR UNDER THE MASTER SETTLEMENT AGREEMENT HAD IT BEEN A PARTICIPATING MANUFACTURER, AS SUCH PAYMENTS ARE DETERMINED UNDER SEC. IX(i)(2) OF THE MASTER SETTLEMENT AGREEMENT AND BEFORE ANY OF THE ADJUSTMENTS OR OFFSETS DESCRIBED IN SEC. IX(i)(3) OF THAT AGREEMENT OTHER THAN THE INFLATION ADJUSTMENT], the excess shall be released from escrow and revert back to that tobacco product manufacturer; or

(3) to the extent not released from escrow under (1) or (2) of this **subsection** [SUBSECTIONS], funds placed into escrow shall be released from escrow and revert back to the tobacco product manufacturer 25 years after the date on which they were placed into escrow.

* **Sec. 39.** AS 45.53.020(b) is repealed and reenacted to read:

(b) A tobacco product manufacturer that places money into escrow under (a)(2) of this section is entitled to receive the interest or other appreciation on such money as earned. Such money itself shall be released from escrow only under the following circumstances:

(1) to pay a judgment or settlement on a released claim brought against such tobacco product manufacturer by this state or a releasing party located or residing in this state; the funds shall be released from escrow under this paragraph in the order in which they were placed into escrow and only to the extent and at the time necessary to make payments required under the judgment or settlement;

(2) to the extent not released from escrow under (1) of this subsection, funds placed into escrow shall be released from escrow and revert back to the tobacco product manufacturer 25 years after the date on which they were placed into escrow.

* **Sec. 40.** AS 45.53.020(b) is repealed and reenacted to read:

(b) A tobacco product manufacturer that places money into escrow under (a)(2) of this section is entitled to receive the interest or other appreciation on such money as earned. Such money itself shall be released from escrow only under the following circumstances:

(1) to pay a judgment or settlement on a released claim brought against such tobacco product manufacturer by this state or a releasing party located or residing in this state; the funds shall be released from escrow under this paragraph in the order in which they were placed into escrow and only to the extent and at the time necessary to make payments required under the judgment or settlement;

(2) to the extent that the tobacco product manufacturer establishes that the amount that it was required to place into escrow in a particular year was greater than the state's allocable share of the total payments that the manufacturer would have been required to make in that year under the master settlement agreement had it been a participating manufacturer, as such payments are determined under sec. IX(i)(2) of the master settlement agreement and before any of the adjustments or offsets described in sec. IX(i)(3) of that agreement other than the inflation adjustment, the excess shall be released from escrow and revert back to that tobacco product manufacturer; or

(3) to the extent not released from escrow under (1) or (2) of this subsection, funds placed into escrow shall be released from escrow and revert back to the tobacco product manufacturer 25 years after the date on which they were placed into escrow.

Page 15, line 30:

Insert a new bill section to read:

* **Sec. 48.** The uncodified law of the State of Alaska is amended by adding a new section to read:

CONDITIONAL EFFECT. (a) Section 2 of this Act takes effect only if AS 45.53.020(b)(2), as amended in sec. 1 of this Act, is held by a court of competent jurisdiction to be unconstitutional.

(b) Section 3 of this Act takes effect only if AS 45.53.020(b)(2), as amended in sec. 1 and in sec. 2 of this Act, are held by a court of competent jurisdiction to be unconstitutional.

Page 16, line 4:

Insert new bill sections to read:

* **Sec. 50.** Section 1 of this Act takes effect July 1, 2004.

* **Sec. 51.** If sec. 2 of this Act takes effect under sec. 4(a) of this Act, it takes effect on the day after the date of a final order or decision by a court of competent jurisdiction holding AS 45.53.020(b)(2), as amended in sec. 1 of this Act, to be unconstitutional.

* **Sec. 52.** If sec. 3 of this Act takes effect under sec. 4(b) of this Act, it takes effect on the day after the date of a final order or decision by a court of competent jurisdiction holding AS 45.53.020(b)(2), as amended in sec. 2 of this Act, to be unconstitutional.

Renumber the following sections accordingly.

Representative Harris moved and asked unanimous consent that Amendment No. 2 be adopted. There being no objection, it was so ordered and the new title follows:

HOUSE CS FOR SENATE BILL NO. 1001(FIN) am H

"An Act relating to restrictions on shipping or transporting cigarettes; relating to taxes on cigarettes and tobacco products, to tax stamps on cigarettes, to forfeiture of cigarettes and of property used in the manufacture, transportation, facilitation of transportation, possession, offering for sale, or sale of unstamped cigarettes, to accounting for and use of part of the proceeds of the additional cigarette tax, and to licenses and licensees under the Cigarette Tax Act; relating to unfair cigarette sales; relating to supersedeas bonds in certain tobacco-related litigation; relating to the tobacco product Master Settlement Agreement; amending Rules 204 and 205, Alaska Rules of Appellate Procedure; and providing for an effective date."

Representative Coghill moved and asked unanimous consent that HCS SB 1001(FIN) am H be considered engrossed, advanced to third reading, and placed on final passage. There being no objection, it was so ordered.

HCS SB 1001(FIN) am H was read the third time.

The question being: "Shall HCS SB 1001(FIN) am H pass the House?" The roll was taken with the following result:

HCS SB 1001(FIN) am H

Third Reading

Final Passage

YEAS: 23 NAYS: 15 EXCUSED: 2 ABSENT: 0

Yeas: Anderson, Berkowitz, Cissna, Crawford, Croft, Dahlstrom, Gara, Gatto, Gruenberg, Guttenberg, Harris, Hawker, Joule, Kapsner, Kerttula, Kookesh, McGuire, Meyer, Morgan, Rokeberg, Samuels, Seaton, Weyhrauch

Nays: Chenault, Coghill, Fate, Foster, Holm, Kohring, Kott, Lynn, Masek, Moses, Ogg, Stepovich, Stoltze, Williams, Wolf

Excused: Heinze, Wilson

And so, HCS SB 1001(FIN) am H passed the House.

Representative Coghill moved the effective date clauses.

The question being: "Shall the effective date clauses be adopted?" The roll was taken with the following result:

HCS SB 1001(FIN) am H

Third Reading

Effective Dates

YEAS: 38 NAYS: 0 EXCUSED: 2 ABSENT: 0

Yeas: Anderson, Berkowitz, Chenault, Cissna, Coghill, Crawford, Croft, Dahlstrom, Fate, Foster, Gara, Gatto, Gruenberg, Guttenberg, Harris, Hawker, Holm, Joule, Kapsner, Kerttula, Kohring, Kookesh, Kott, Lynn, Masek, McGuire, Meyer, Morgan, Moses, Ogg, Rokeberg, Samuels, Seaton, Stepovich, Stoltze, Weyhrauch, Williams, Wolf

Excused: Heinze, Wilson

Gara changed from "Nay" to "Yea".

And so, the effective date clauses were adopted.

Representative Coghill moved the court rule changes.

The question being: "Shall the court rule changes be adopted?" The roll was taken with the following result:

HCS SB 1001(FIN) am H
Third Reading
Court Rules

YEAS: 31 NAYS: 7 EXCUSED: 2 ABSENT: 0

Yeas: Anderson, Chenault, Cissna, Coghill, Crawford, Dahlstrom, Fate, Foster, Gatto, Gruenberg, Guttenberg, Harris, Hawker, Holm, Joule, Kapsner, Kerttula, Kookesh, Kott, Lynn, McGuire, Meyer, Morgan, Moses, Rokeberg, Samuels, Seaton, Stepovich, Weyhrauch, Williams, Wolf

Nays: Berkowitz, Croft, Gara, Kohring, Masek, Ogg, Stoltze

Excused: Heinze, Wilson

Croft changed from "Yea" to "Nay".

Ogg changed from "Yea" to "Nay".

And so, the court rule changes were adopted.

In accordance with Rule 43(b) of the Uniform Rules, the Speaker waived engrossment of HCS SB 1001(FIN) am H, and it was referred to the Chief Clerk and transmitted to the Senate with copies of certified amendments attached.

SPECIAL ORDER OF BUSINESS

HCR 101

Representative Coghill moved and asked unanimous consent that the following be taken up as a Special Order of Business at this time:

HOUSE CONCURRENT RESOLUTION NO. 101
Suspending Rules 24(c), 35, 41(b), and 42(e), Uniform Rules of the Alaska State Legislature, concerning Senate Bill No. 1001, relating to taxes on cigarettes and tobacco products.

There being no objection, it was so ordered.

The question being: "Shall HCR 101 pass the House?" The roll was taken with the following result:

HCR 101
Special Order of Business

YEAS: 38 NAYS: 0 EXCUSED: 2 ABSENT: 0

Yeas: Anderson, Berkowitz, Chenault, Cissna, Coghill, Crawford, Croft, Dahlstrom, Fate, Foster, Gara, Gatto, Gruenberg, Guttenberg, Harris, Hawker, Holm, Joule, Kapsner, Kerttula, Kohring, Kookesh, Kott, Lynn, Masek, McGuire, Meyer, Morgan, Moses, Ogg, Rokeberg, Samuels, Seaton, Stepovich, Stoltze, Weyhrauch, Williams, Wolf

Excused: Heinze, Wilson

And so, HCR 101 passed the House and was referred to the Chief Clerk for engrossment.

ENGROSSMENT

HCR 101

HCR 101 was engrossed, signed by the Speaker and Chief Clerk and transmitted to the Senate for consideration.

ENROLLMENT

HB 447

The following was enrolled, signed by the Speaker and Chief Clerk, President and Secretary of the Senate, and the engrossed and enrolled copies were transmitted to the Office of the Governor at 3:56 p.m., June 24, 2004:

CS FOR HOUSE BILL NO. 447(JUD)

"An Act making corrective amendments to the Alaska Statutes as recommended by the revisor of statutes; and providing for an effective date."

HB 484

The following was enrolled, signed by the Speaker and Chief Clerk, President and Secretary of the Senate, and the engrossed and enrolled copies were transmitted to the Office of the Governor at 3:56 p.m., June 24, 2004:

CS FOR HOUSE BILL NO. 484(JUD) am

"An Act imposing a correctional facility surcharge on persons convicted of a crime under state law and on persons whose probation is revoked; relating to fees and expenses for interstate transfer of probation or parole; and providing for an effective date."

HB 489

The following was enrolled, signed by the Speaker and Chief Clerk, President and Secretary of the Senate, and the engrossed and enrolled copies were transmitted to the Office of the Governor at 3:56 p.m., June 24, 2004:

HOUSE BILL NO. 489

"An Act relating to the administration of the Alaska Vocational Technical Center; and providing for an effective date."

HB 545

The following was enrolled, signed by the Speaker and Chief Clerk, President and Secretary of the Senate, and the engrossed and enrolled copies were transmitted to the Office of the Governor at 3:56 p.m., June 24, 2004:

CS FOR HOUSE BILL NO. 545(L&C)

"An Act relating to time extensions under the State Procurement Code for real property leases; and providing for an effective date."

HB 559

The following was enrolled, signed by the Speaker and Chief Clerk, President and Secretary of the Senate, and the engrossed and enrolled copies were transmitted to the Office of the Governor at 3:56 p.m., June 24, 2004:

HOUSE BILL NO. 559 am

"An Act extending the termination of the state training and employment program; and providing for an effective date."

* * * * *

The Speaker appointed Representatives Weyhrauch and Gara to advise the Senate that the House had adjourned sine die.

The Speaker appointed Representatives Gatto and Gruenberg to advise the Governor that the House had adjourned sine die.

ADJOURNMENT

Representative Rokeberg moved and asked unanimous consent that the First Special Session of the House of Representatives of the Twenty-third Legislature of the State of Alaska adjourn sine die. There being no objection, the House adjourned sine die at 4:35 p.m.

Suzi Lowell
Chief Clerk