

HOUSE FINANCE COMMITTEE
April 10, 2006
9:12 a.m.

CALL TO ORDER

Co-Chair Meyer called the House Finance Committee meeting to order at [9:12:52 AM](#).

MEMBERS PRESENT

Representative Mike Chenault, Co-Chair
Representative Kevin Meyer, Co-Chair
Representative Bill Stoltze, Vice-Chair
Representative Richard Foster
Representative Mike Hawker
Representative Jim Holm
Representative Reggie Joule
Representative Mike Kelly
Representative Beth Kerttula
Representative Carl Moses
Representative Bruce Weyhrauch

MEMBERS ABSENT

None

ALSO PRESENT

Heath Hilyard, Staff, Representative Tom Anderson; Michael Pawlowski, Staff, Co-Chair Meyer; Representative Peggy Wilson; Linda Miller, Staff, Representative Peggy Wilson; Jerry McCune, United Fisherman's Association; Peter Froehlich, Commercial Fisheries Entry Commission; Representative Norm Rokeberg; Kristin Ryan, Director, Division of Environmental Health, Department of Environmental Conservation

PRESENT VIA TELECONFERENCE

Thomas Stratton, Alaska Rural Water Systems

SUMMARY

HB 484 "An Act allowing for revenue received from issuance of additional entry permits to be appropriated for reimbursement to salmon fishery associations."

CSHB 484 (FSH) was REPORTED out of Committee with a "no recommendation" and with a new zero fiscal note by the Department of Fish and Game.

HB 360 "An Act relating to the regulation of public accommodation water supply systems."

HB 360 was heard and HELD in Committee for further consideration.

HB 93 "An Act relating to dentists and dental hygienists and the Board of Dental Examiners; establishing certain committees for the discipline and peer review of dentists; excluding the adjudicatory proceedings of the Board of Dental Examiners and its committees from the Administrative Procedure Act and from the jurisdiction of the office of administrative hearings; and providing for an effective date."

HB 93 was heard and HELD in Committee for further consideration.

HB 390 "An Act limiting the amount that a municipality may charge for an appeal of a residential real property tax assessment to the municipality's board of equalization."

HB 390 was scheduled but not heard.

[9:13:04 AM](#)

HOUSE BILL NO. 484

"An Act allowing for revenue received from issuance of additional entry permits to be appropriated for reimbursement to salmon fishery associations."

REPRESENTATIVE PEGGY WILSON, sponsor, introduced her staff.

LINDA MILLER, STAFF, REPRESENTATIVE PEGGY WILSON, related the history of HB 484. In 2002, the Alaska Legislature created salmon fishery associations under AS 16.40.250 to encourage fleet reduction in the Alaska salmon fisheries. Salmon fishery associations may be formed in salmon fisheries throughout the state to facilitate a permit buy back program. This means that a group of fishermen may form an association and vote to assess themselves for purposes of Buying Back Salmon Permits in their fishery.

Ms. Miller explained that the Southeast Seiners have formed an association to develop a buy back program for Southeast seine permits. One of the questions raised by fishermen was "What would happen if we assess ourselves to buy back these permits then at some point in the future the Commercial Fisheries Entry Commission sells permits back into the fishery?" Their dilemma was that they wanted a guarantee

that they would get their money back if that actually happened. HB 484 answers that question.

Ms. Miller reported that the CS for HB 484 that is before the committee is a housekeeping measure to clarify what may happen to the revenue if the Commercial Fisheries Entry Commission should find it necessary to sell or re-issue permits that have been relinquished under the buy back program authorized under AS 16.40.250. This bill makes it clear that in the unlikely event CFEC sells more permits than were previously purchased by an association, the legislature may appropriate money back to that association.

The change from the original version to the current CS is to make it clear that the fishery association that actually did the buy back is the fishery association that may receive the payback. Under this bill the legislature may appropriate revenue from the permit sale to the association that paid money or incurred debt to remove the permit from the market in the first place. The state or CFEC has the responsibility to monitor each limited entry fishery. In the event that CFEC determines more permits are needed in a salmon fishery through an optimum number determination or court action, the provisions of HB 484 would apply.

Ms. Miller stated that the Commercial Fisheries Entry Commission, who worked with the Southeast Seiners in developing their association, supports this bill. Peter Froehlich, Commissioner of CFEC, and Jerry McCune from the United Fishermen of Alaska were available to answer any questions. Ms. Miller requested support for the CS for HB 484 - Fishery Association Reimbursement.

[9:17:07 AM](#)

Representative Stoltz asked about self-funded buy backs. He saw no clear separation for that.

PETER FROEHLICH, COMMERCIAL FISHERIES ENTRY COMMISSION, related that there is no limit in the bill as to the source of the funds. Association funds used for the buy back could be reimbursed under this bill.

Representative Stoltze noted that most buy back mechanisms use federal funds. He said it appears that there is nothing that would limit those federal funds from being paid back to individual fishers. Mr. Froehlich replied that the association could use federal funding, or self-assessment, or a combination of the two. The legislature could later reimburse the association, not the individual fishers.

Representative Wilson added that in this instance, they are assessing themselves and borrowing the money to do it. She stated no problem with clarifying the idea. Representative

Stoltze reported on a likely mechanism for funding. He wanted to ensure that it is the intent of the bill to refund the amount that the association has assessed.

Mr. Froehlich said that is the intent of the bill. It was crafted with UFA and the Southeast Seiners, who are working with Congress and Senator Stevens' office. Representative Wilson added that when the association borrows money they want to be sure they are reimbursed. Representative Stoltze summarized that there are two parts in need of reimbursement, self-assessment and federal funds.

[9:24:18 AM](#)

Representative Kerttula suggested that the money could be used for other things to enhance the fishery if it is going into the buy back. She did not see a concern because the bill solves the problem and the money would go back to the fishery. Representative Wilson agreed.

Mr. Froehlich added that the version of the language in Congress considers it a federal loan where financing is required. Representative Kerttula said that is even more of a reason for the bill.

[9:26:40 AM](#)

Co-Chair Chenault asked what gives the impression that if the association goes through a buy back provision, the state would go back in and resell more permits. Representative Wilson responded that has never been the case. The association is nervous about taking this big step because of the large amount of money. It is a "what if" statement. Co-Chair Chenault voiced concern about it being a long time into the future before any state department would want to increase permits.

[9:28:47 AM](#)

Representative Weyhrauch asked what percent of the funds go to permits.

JERRY MCCUNE, UNITED FISHERMAN'S ASSOCIATION, related that the bill allows the association to create a committee, voted on by the permit holders, to accept money or assess themselves. He explained that if there was a buy back, they could set a price for the permit. The only reason that they would have to put permits back, would be like the case in Sitka where they went to court and asked for more permits. The judge ruled that a fishery could be made too exclusive. If the association used their own money they would have the opportunity to ask the legislature at a later date if they could get any money back.

Mr. Froehlich related two possibilities for having to issue more permits: setting an optimum number that is higher than the number of permits reduced by the buy back, and a court order. He addressed Representative Weyhrauch's concern. All of the funding would go to permittees in the buy back.

[9:32:18 AM](#)

Representative Weyhrauch said it seems like it is a risk for the state. If there is a challenge, then the fishers might be in a position of having sold their permits and obtained money. If permits have to be put back, there may be a legal risk to the state. Mr. McCune thought a lawsuit would be unlikely because the state can defend an optimum number. There is also a provision to own two permits. He said he could not guarantee there would be no lawsuit. Representative Weyhrauch summarized it would have to be equal to, or greater than, the optimum number set by the commission. Mr. McCune agreed.

[9:34:32 AM](#)

Representative Stoltze asked if the salmon fisheries association is made up of those that have limited entry permits. Mr. Froehlich replied yes, commercial harvesters. Representative Stoltze asked about concerns related to conservation and sport fishing. Mr. Froehlich said he is not aware of any mechanism that would allow others to participate in a buy back. Representative Stoltze thought there might be others interested in participating in a buy back. He wondered if that would be a policy concern. Mr. Froehlich said it is a policy question beyond the scope of the bill.

Mr. McCune responded that only permit holders could participate in the buy back. Representative Stoltze commented that the association does not want anyone else to participate. Mr. McCune responded that the permit holders are the ones that are going to be assessed. Representative Stoltze noted a reluctance to provide a mechanism. He asked about buy backs and conservation.

Representative Kerttula noted that there needs to be an optimum number of permits. She said a theoretical risk is always there. She noted that sport fishing does not fit into the commercial fisheries entry. Representative Stoltze maintained that it is hard to separate them.

[9:40:11 AM](#)

Representative Weyhrauch suggested a three-part process for sport fishers to participate. Mr. Froehlich said that is

accurate since the bill refers to associations qualified under AS 216.42.50.

Representative Stoltze shared some discomfort but said it is not his intent to bog down the bill.

Representative Weyhrauch spoke about conflicts between user groups with a limited resource. He suggested involving all regions by having a broad policy such as this one.

[9:43:20 AM](#)

Representative Kelly voiced a concern about a person with the intent to shut down the fisheries in order to limit the market. Mr. McClune reported that only permit holders can form an association, so that is not a danger. No one has to sell a permit. The association is trying to reduce permits for those who want to get out of the fishery.

[9:45:32 AM](#)

Representative Kelly asked if there is a danger of a cartel. Mr. McCune explained market limitations. Representative Weyhrauch noted that last year the commercial fisheries entry commission tried to amend provisions of those statutes that dealt with a moratorium. This bill is a vehicle for fixing an unworkable statute.

Co-Chair Chenault stated that it is a voluntary buy back program.

[9:48:51 AM](#)

Co-Chair Meyer noted a new zero fiscal note from the Department of Fish and Game.

SUZANNE CUNNINGHAM, STAFF, REPRESENTATIVE MEYER, explained that the House Special Committee on Fisheries drafted fiscal note #1. She has requested a new zero note by Department of Fish and Game.

[9:50:49 AM](#)

Representative Foster MOVED to report CSHB 484 (FSH) out of Committee with individual recommendations and with the accompanying fiscal note. There being NO OBJECTION, it was so ordered.

CSHB 484 (FSH) was REPORTED out of Committee with a "no recommendation" and with a new zero fiscal note by the Department of Fish and Game.

[9:51:29 AM](#)

#hb360

HOUSE BILL NO. 360

"An Act relating to the regulation of public accommodation water supply systems."

MICHAEL PAWLOWSKI, STAFF, CO-CHAIR MEYER, testified that HB 360 grew out of the Department of Environmental Conservation's (DEC) subcommittee budget process. The State of Alaska regulates drinking water systems that are above a Class C well, one that serves less than 25 people. He explained that Class C wells were removed from regulation because of funding issues and because the program was too broad. He stated that these types of wells pertain to private homes. He noted that the committee became concerned in the differentiation between private homes and more public access areas. He stressed that drinking water was the foundation of public health. The bill is intended to set standards for wells that serve the general public. He pointed out the revised fiscal note from the Department of Environmental Conservation.

Co-Chair Meyer asked what kinds of small wells would serve the public. Mr. Pawlowski commented that small restaurants would be such an example. Co-Chair Meyer noted that there was no regulation for wells serving fewer than 25 people, and that this was a problem when a small well served a public day care or other small public facility.

[9:55:14 AM](#)

Mr. Pawlowski noted that requesting an annual test of a drinking water source was a reasonable practice. He stressed that the state ought be part of the oversight for public drinking water.

[9:56:00 AM](#)

Representative Kelly expressed concern over adding regulations when a responsible operator might meet the requirements in any case. He asked if there was a way to avoid such a costly program. He expressed concern that adding an entirely new program might be overly expensive for the state.

Mr. Pawlowski responded that in creating the fiscal note, cost had been a concern. He also noted that this issue pertains to nearly 3 thousand wells in the state of Alaska. He urged that this was also a policy statement, and that the costs in the fiscal note were as conservative as possible.

Representative Kelly cited experience in dealing with the standards of drinking water and various water sources. He again expressed concern over having regulations at this

smaller level. He noted that risks existed and citizens had the right to pursue a civil law suit. He also noted that it might place another burden on small businesses.

Co-Chair Meyer observed that one should assume that water for a nursing home or day care is kept clean and safe.

Representative Stoltze asked if the RCA office has dealt with this issue. He cited experiences with the RCA and the costs involved, and wondered if this would be detrimental to smaller businesses. He explained that there were many such small businesses in his district, already burdened with costs and regulations. He asked how this would help those businesses.

Mr. Pawlowski stated that this regulation affects only those small wells serving less than 25 people, which is smaller than most small business, and not an actual water system.

Representative Stoltze noted that it might affect a small subdivision in the more rural pockets of even larger cities. He expressed reluctance to have DEC visiting these small areas.

[10:03:26 AM](#)

Representative Holm asked if there had been a case of illness that caused the change, or rather just an examination of the regulations. Mr. Pawlowski noted discussions in the Resources Committee of cases when illness had developed, potentially from these types of water sources. He pointed out the Public Health funding contained in the fiscal note.

Co-Chair Chenault sought clarification for the types of businesses affected by this legislation. He observed that any business that was not a private home would fall under this regulation.

[10:05:12 AM](#)

Mr. Pawlowski deferred to the director of the Department to answer this question.

KRISTIN RYAN, DIRECTOR, DIVISION OF ENVIRONMENTAL HEALTH, DEPARTMENT OF ENVIRONMENTAL CONSERVATION, testified regarding the legislation. She stated that it required regulation of small public facilities, and not water systems that serve private homes, such as a subdivision, unless one of those homes was providing a public service, such as day care. There are a variety of public services captured under this legislation. She estimated there were 3,000 wells of this size that serve the public in some way.

[10:07:42 AM](#)

Ms. Ryan noted that two years ago, the regulations stated that if water was from a surface water system, it should be approved by an engineer, and tested for substances annually, as well as being designed by a certified engineer. She acknowledged that the fiscal note had been controversial. However, she emphasized that the public should feel protected with safe water. She noted this would require four personnel for adequate testing for the current number of small public wells.

[10:09:34 AM](#)

In regard to whether there were cases of illness, she stated that it was difficult to actually prove the reason for some sickness. She stated it was indeed a risk.

Co-Chair Meyer asked how many of the 3,000 wells were in Anchorage. She noted that a large percentage, about half, of public wells are in Anchorage.

[10:10:57 AM](#)

Representative Holm observed that the definition of a public accommodation in statute reads: "and all other public amusement and business establishments".

Ms. Ryan interpreted that to mean gas stations and office buildings, and any facilities that provide business to the public and have drinking water. She noted that the Resource Committee discussed circumstances when an individual might provide services out of their home.

[10:12:33 AM](#)

Representative Holm stated that he did not believe it was important for the Department to interpret the statute, but rather how the law might be misinterpreted.

Ms. Ryan acknowledged that interpretation would be subject to individual regulators.

Representative Holm expressed that this bill might be going too far into controlling water systems. He observed that the definition contained lack of clarity, and he expressed reservation about making changes through regulations.

[10:14:43 AM](#)

Ms. Ryan cited an example of how to write regulations that meet the intent of the legislation.

Mr. Pawlowski acknowledged that a similar broad definition of public accommodation was examined in a bill regarding pesticides last year. He read from the definition, and pointed out that it only pertains to a place that serves the general public.

Representative Holm observed that the Second Amendment was written to protect citizens from the government.

Co-Chair Meyer stressed that the regulations should match the intent of the bill. He suggested that AS 188.300 be examined to ensure that "public accommodation" was the proper reference.

[10:16:37 AM](#)

Representative Stoltze asked if this legislation is intended to supplant or to enhance the existing regulations.

Ms. Ryan responded that smaller water systems were usually regulated in other jurisdictions and by local governments, but she pointed out that Anchorage currently does not regulate Class C wells. They do regulate private wells if someone is selling a private residence.

Representative Stoltze pointed out that he does not see a safety valve that would allow a local government to substitute its regulations. He cited that the Department of Environmental Conservation could be fairly stringent and place undue burden on private individuals and small businesses. He noted that running a gas station in a more remote area was already difficult, and wondered what protections existed for them. He stated that this kind of regulation was onerous for such business. He opined that the definition of public accommodations was too broad in this case.

Co-Chair Meyer acknowledged that the definition caused concern, and wondered if there was a way to add a greater comfort with this issue.

[10:20:38 AM](#)

Ms. Ryan proposed that there were some exemptions in regulations, and that smaller facilities other than day care centers and other high-risk facilities would have less onerous regulations.

Ms. Ryan added that the regulations were testing for very serious elements in the water.

[10:22:10 AM](#)

Representative Kelly observed that the bill was sponsored by request, but reiterated his concern over the fiscal note, and adding a level of oversight to an area that is already regulated. He cited an example in his area where a water system of another size was put in, and people were unable to drink the water due to a federal regulation. Then a new level of arsenic was decided and the people were told they could not bathe in the water. He pointed out the current budgetary problems faced by the state, and questioned the value of adding more regulatory activity with a large added cost. He suggested they ought to seek ways to cut the costs of regulations and reduce the burden to smaller businesses.

[10:25:17 AM](#)

Co-Chair Meyer stressed that those in a day care center or senior center ought to be able to rely upon water quality. He noted that a cost was required for this surety. He stated the desire to hold the bill in order to re-examine the fiscal note and cut costs.

Ms. Ryan pointed out that there were currently no standards for the water systems in question.

Representative Kelly pointed out that the reason the state did not regulate water systems for private homes was because citizens would complain bitterly. He suggested that the Committee ought to examine the cost of compliance with this regulation.

[10:28:15 AM](#)

THOMAS STRATTON, EXECUTIVE DIRECTOR, ALASKA RURAL WATER ASSOCIATION, testified that his association is a non-profit that provides training and technical assistance to small water systems. He expressed thanks for the desire to provide safe drinking water in more rural areas. He cited his own experience in building a home and creating a safe water system, and his desire to trust the safety of water at a local day care center.

[10:29:43 AM](#)

He referred to the definition of public accommodation, and stated his belief that the Department had done an excellent job with language. He applauded the legislature for addressing this issue and the Department of Environmental Conservation for working with concerns.

Co-Chair Meyer asked if one did become ill from drinking water at a public accommodation, whether the state was liable for not providing adequate regulation. Mr. Stratton stated he was not able to address liability. Co-Chair Meyer

presumed that one would first approach the private business and then the state.

Mr. Stratton noted an example of individuals dying from drinking from a water supply, and supposed there could be lawsuits in the future.

Representative Hawker MOVED Amendment 1, labeled 24-LS1468\A.5, Bullock, 4/7/06.

Co-Chair Meyer OBJECTED for purposes of discussion.

Representative Hawker MOVED to amend Amendment 1, to change line 20 from "is used as" to "may be". There was NO OBJECTION to the motion to amend Amendment 1, therefore it was adopted.

REPRESENTATIVE NORM ROKEBERG spoke to Amendment 1. He related that there are over 3,000 homes that are served by various types of wells in his district. He stressed the importance of water regulation in the state. He explained that Amendment 1 asks the Department to adopt regulations to protect exposed water aquifers. It requires a fee to be paid by a property developer who is developing around an exposed aquifer that resulted from previous mining activity. The bill is not intended to be special legislation, but applicable to all areas of the state.

Representative Rokeberg gave an example from his district. He stressed that there is a complete breakdown of regulatory authority because the local municipality is looking to DEC to take responsibility and vice versa. Over 200 people with separate wells would be subjected to the activity revolving around the development.

Representative Rokeberg referred to the amendment to Amendment 1 on line 20 as being necessary because that has been the point of contention between the DEC and the city of Anchorage. He highlighted frustrations around access issues and noted three years of dealing with DEC on the matter. He pointed out that the fees will be paid by the developer and should offset costs.

[10:39:46 AM](#)

Representative Rokeberg warned the committee to look at private fiscal notes that result in costs to the private sector. He emphasized that there is an expectation by the public that public accommodations should have safe drinking water. The RCA only handles economic regulation, not water quality issues. He stressed that there are times to accept some of the costs that go with the constitutional responsibility toward public safety. This is such an exception.

[10:42:27 AM](#)

Representative Hawker followed through with the intent of Amendment 1. He questioned if "containing an exposed aquifer" were the appropriate words to use. He suggested "development on property affected by an exposed aquifer". Representative Rokeberg related that the exposed aquifer has to be a pre-existing condition. Representative Hawker asked if the intent is that it must be a development that surrounds and contains an aquifer, not downstream of the aquifer. Representative Rokeberg said it could be within 100 feet of it. He spoke about contaminated water during the development of the subdivisions. Representative Hawker responded that the language reads that the "development must contain the aquifer and must not be within 100 feet". Representative Hawker referred to line 11 and line 14, "property containing". Representative Rokeberg suggested "adjacent to". Representative Hawker suggested "affected by". Representative Rokeberg agreed.

[10:46:53 AM](#)

Representative Kerttula spoke of a concern with the words regarding no improvements within 100 feet. She asked when the construction should have started. Representative Rokeberg said it would be a pre-existing condition. Representative Kerttula attempted clarification.

[10:48:20 AM](#)

Representative Hawker proposed to change lines 11 and 14 to read "property within 100 feet of an exposed aquifer" in place of "containing and".

Representative Kerttula suggested changing lines 21-23.

Co-Chair Meyer suggested that the bill be set aside to have the amendments re-written.

[10:50:48 AM](#)

Representative Kelly asked about if the area is regulated by Anchorage. Representative Rokeberg replied that the only regulation involves testing the water. Representative Kelly asked if they could choose to regulate it. Representative Rokeberg said he believes so. Representative Kelly suggested that sometimes locals don't want regulation responsibility. He suggested a separate bill.

HB 360 was heard and HELD in Committee for further consideration.

[10:52:13 AM](#)

HOUSE BILL NO. 93

"An Act relating to dentists and dental hygienists and the Board of Dental Examiners; establishing certain committees for the discipline and peer review of dentists; excluding the adjudicatory proceedings of the Board of Dental Examiners and its committees from the Administrative Procedure Act and from the jurisdiction of the office of administrative hearings; and providing for an effective date."

Representative Foster MOVED to ADOPT the work draft to HB 93, labeled 24-LS0384\3, Mischel, 3/1/06. There being NO OBJECTION, it was so ordered.

HEATH HILYARD, STAFF, REPRESENTATIVE TOM ANDERSON, explained changes in the new CS. The bill establishes a peer review committee and process for disciplinary sanctions against dentists and dental hygienists. Over the last year a number of amendments were developed. Members of the Alaska Dental Society brought the bill to the sponsor's attention, regarding the disciplinary review process. He referred to a "Summary of Changes" packet in the members' files (copy on file). The changes found in the new CS are on page 4, lines 19-27, page 5, line 30, page 7, lines 2-7, page 7, line 12, page 9, line 14, page 9, line 26, page 9, line 30, page 10, line 14, and page 10, line 23.

HB 93 was heard and HELD in Committee for further consideration.

HOUSE BILL NO. 390

"An Act limiting the amount that a municipality may charge for an appeal of a residential real property tax assessment to the municipality's board of equalization."

HB 390 was scheduled but not heard.

ADJOURNMENT

The meeting was adjourned at 10:58 AM.