

HOUSE FINANCE COMMITTEE
February 13, 2007
1:41 P.M.

CALL TO ORDER

Co-Chair Chenault called the House Finance Committee meeting to order at [1:41:30 PM](#).

MEMBERS PRESENT

Representative Mike Chenault, Co-Chair
Representative Kevin Meyer, Co-Chair
Representative Bill Stoltze, Vice-Chair
Representative Harry Crawford
Representative Richard Foster
Representative Les Gara
Representative Mike Hawker
Representative Mike Kelly
Representative Mary Nelson
Representative Bill Thomas Jr.

MEMBERS ABSENT

Representative Reggie Joule

ALSO PRESENT

Representative Andrea Doll; Karen Rehfeld, Director, Office of Management and Budget; Pat Galvin, Commissioner, Department of Revenue; Michael Barnhill, Assistant Attorney General, Department of Law; Whitney Brewster, Director, Division of Elections, Office of the Governor

SUMMARY

CONFIRMATION HEARING:

PAT GALVIN, COMMISSIONER, DEPARTMENT OF REVENUE

Commissioner Galvin was confirmed.

HB 107 An Act making appropriations for qualified regional seafood development associations, for investigation and litigation relating to the public employees' retirement system and the teachers' retirement system, and for a special advisory election; and providing for an effective date.

HB 107 was HEARD and HELD for further consideration.

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CONFIRMATION HEARING:

PAT GALVIN, COMMISSIONER, DEPARTMENT OF REVENUE

PAT GALVIN, ACTING COMMISSIONER, DEPARTMENT OF REVENUE, provided an overview of his resume, which includes a law degree and Masters of Business Administration (MBA). He noted that his background was as a business tax planning attorney dealing with land use management for municipal and village corporation clients. The land use planning lead to work in the Alaska Coastal Management Program and oversaw the Division of Governmental Coordination in the Knowles Administration.

Commissioner Galvin added he was versed in the State's oil and gas issues. Governor Palin requested that he serve as the Commissioner of Revenue, providing an opportunity to merge his education and experience in serving Alaska. He recognized that the position presented a tremendous fiduciary responsibility. He acknowledged that the consistent element of his public service was the responsibility to keep the interest of Alaskan's first.

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Representative Crawford asked about using earnings from the Alaska Permanent Fund for development of a natural gas pipeline. Commissioner Galvin commented that the vehicle proposed by the current Administration will not involve the level of investment associated with the previous contract and is not an issue relevant to the Permanent Fund's immediate future. In responsibility to manage the fund, diversification is the tool to protecting assets; placing a large portion into one sector would not be consistent with that intent.

Representative Crawford referenced the Petroleum Production Tax (PPT) and asked if the Department was up to the challenges given the number of auditors on staff. Mr. Galvin explained that the Department will need to hire more auditors and are currently in a process of nationwide recruiting. The Department is hopeful to fill those positions.

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Vice Chair Stoltze thought that the statute previously passed would allow the Alaska Permanent Fund Corporation more latitude to make appropriations directly from the principle. He inquired if that could come back to the Legislature for approval. Mr. Galvin did not anticipate the Permanent Fund Corporation being approached for a similar investment as proposed by the Murkowski Administration.

Vice Chair Stoltze inquired if such a consideration were before Commissioner Galvin, would he turn to the Legislature for approval. Mr. Galvin understood that the Alaska Permanent Fund investment strategy is governed by statutory requirements to operate as a good investor. To make a significant investment in one asset would not be in keeping with that principle.

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Representative Gara asked about times when the Administration is face with large policy decisions. He hoped that during questions, there would be direct answers. Mr. Galvin anticipated that anyone testifying would provide direct answers based on facts; he agreed that any information should be straight. Regarding employee concerns, Governor Palin has made it clear that she expects individuals to be free to disperse information for the public discourse.

Co-Chair Meyer worried about the declining oil prices and gaps in the budget. He pointed out that the savings in the Constitutional Budget Reserve (CBR) could last two to three years. He wondered how the State could bridge that lower gap later. Commissioner Galvin pointed out that the Governor has made it clear, it is her intention to appropriate within the State's means. The CBR exists to cushion the years when revenue dips below that need; it is not intended to be a sustainable source for covering a gap. He believed that the oil prices would need to drop more than the \$40-\$50 bbl range before a threat resulted to the CBR. Commissioner Galvin added that if there were long-term deficits, Governor Palin has indicated prioritizing the concern; the choices would be an income tax, sales tax, & tapping the Alaska Permanent Fund earnings. Her 1st choice would be a sales tax and then it would be a tie between the other two. He said he supports that as it would protect lower income citizens.

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Co-Chair Meyer advised that a few years ago, the Legislature had looked at a statewide sales tax. He mentioned tapping into the Alaska Permanent Fund earnings or excess reserve funds. He understood that the Governor proposed moving some of the excess funds into the principle. Co-Chair Meyer hoped to keep a larger part of that to help bridge any gap. Commissioner Galvin agreed with the need for a long-term fiscal policy which integrates various options.

Co-Chair Meyer inquired about revenue sharing support or community dividends. Commissioner Galvin replied that the Administration believes that municipal revenue sharing is an important responsibility for the State.

Co-Chair Meyer asked if Commissioner Galvin had been involved with the previous Administration's gas line negotiation. Commissioner Galvin said he was not. He added that his role as the Commissioner of Revenue, had originated under the Stranded Gas Act. Under the new approach, there would be a similar sharing of that role for negotiations.

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Representative Gara understood the Governor mentioned that if the State were being shortchanged through the oil tax, that was the first place to look for revenue. Commissioner Galvin claimed they were two different issues. The sales tax scenario & looking from the long-term revenue structure. Everyone is interested in looking at the reality of the PPT model used. Governor Palin recognizes that if what the State receives something different from the PPT than anticipated, the issue would be revisited.

Vice Chair Stoltze asked about charitable gaming issues. Commissioner Galvin noted he had not significantly addressed that issue yet and that it would be regulated through the Tax Division. To date, there has been no issue. Vice Chair Stoltze pointed out bills in Committee to expand gambling.

Representative Crawford understood that the oil companies could amend their returns for at least two years after the true-up. He hoped that the oil companies would put forth honest information on the true-up rather than submitting amended returns at the end of the time. Commissioner Galvin stated that the true-up is coming before the actual regulations have been finalized. That would be an unrealistic expectation to put on those companies to provide a comprehensive and complete picture of their tax returns. From a normal motivation point of view, it is more likely that the companies would provide an underpayment at true-up time. He anticipated a significant risk that oil companies would be misleading the State by providing a larger check at the beginning and that it would take time to understand the whole picture.

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Representative Crawford worried that the oil companies would come up with new deductions and credits during the true-up window. Commissioner Galvin responded the challenge in implementing the change would be anticipating the type of deductions faced. It is complex to determine what can be included. At this time, the State does not have a clear picture of what is going to be included. There must be some level of give and take in the decision making process and it will take some time before a clean picture of what is involved comes forward.

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Representative Gara understood that companies could take up to two years to amend their returns. He worried that they would withhold the more controversial items in order to buy another two years. He asked if British Petroleum (BP) had not deducted the repair costs from last summer by March 31st, would they then have those two years to come up with the deduction. Commissioner Galvin offered to get that information to the Committee.

Representative Kelly inserted if the oil companies "played games" on that, it would aggravate the Department. Commissioner Galvin anticipated that the oil companies will play straight in order to develop an adequate relationship with the Administration.

Representative Kelly asked the biggest differences between Commissioner Galvin and Commissioner Corbus. Commissioner Galvin commented that was not a fair comparison; he had not been involved with the previous commissioner. The current Administration plans to approach issues facing the State with more openness and honesty. Both the citizens and the Legislature will be called upon to come up with ideas. He added that the previous commissioner had been so embroiled in gas line issues that other policy issues suffered.

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Representative Hawker requested further background on Commissioner Galvin's experience. Commissioner Galvin responded that he had been in private practice as an attorney in Anchorage; he took the position as the director of the Division of Governmental Coordination in 1999 and worked at that position for nearly three years. The work included the oversight responsibility of the Coastal Management program as well as coordinating natural resources policy and permitting issues within the Department of Department of Environmental Conservation, Department of Natural Resources and Department of Fish and Game. He worked closely with the commissioners of those departments to put together State response to a number of different issues.

Commissioner Galvin continued, when he moved to the Department of Natural Resources, he took a position putting together mitigation measures as a part of the leasing and license issues, dictating environmental concerns. The Division quickly evolved and took the lead on providing a system geared toward protecting wildlife and birds. He had become involved with the oversight of the Oil and Gas Division, including issues of leasing and licensing.

Representative Hawker appreciated his extensive experience; however, noted that the position of commissioner for the Department of Revenue differed greatly from his position in the Department of Natural Resources.

Representative Hawker asked about Alaska Housing Finance Corporation (AHFC). Commissioner Galvin stated he was a member of that board. There are a number of different boards that the Commissioner serves on by statute, some of which can be delegated and others that can not. He clarified that the Alaska Permanent Fund Corporation and the Alaska Retirement & Management Board (ARM) can not be delegated. He hoped to participate in all the boards, however, recognized that his duties would make it difficult to participate at the level that he would like to have represented.

Representative Hawker asked which boards would be delegated to the management team. Commissioner Galvin responded that he has delegated a "second" to the following:

- Alaska Industrial Development and Export Authority, (AIDEA)
- Alaska Housing Finance Corporation (AHFC)
- Bond Bank
- Bond Committee
- Knick Arm & Bridge Authority

Representative Hawker noticed that the Alaska Housing Finance Corporation would be delegated. Commissioner Galvin responded that he would remain the primary & intended to participate.

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Representative Hawker knew that the Alaska Permanent Fund Corporation could not be delegated and asked Commissioner Galvin's professional experience and qualifications to be on that Board. Commissioner Galvin responded that he had a Master of Business Administration (MBA) in financial planning & taxation dealing with investment issues and portfolio management. From his professional experience as an attorney, a large portion of the practice dealt with trusts in the State. He stated that he had no experience as an investment manager but does have a background in education.

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Representative Hawker asked if he had personal or professional experience managing a large treasury or investment banking experience. Commissioner Galvin said he

did not. Representative Hawker voiced concern as those are daily operations of the Department of Revenue functions of the State and questioned how those areas of responsibility would be approached. Commissioner Galvin responded that his primary responsibility would be to recognize that there are investment professionals that are available to the State to make decisions. In the end, it is the responsibility to the beneficiaries of the trust to insure that the investment principles are appropriate and managed in a way to preserve interests. Commissioner Galvin concluded, there is an appropriate investment strategy happening and that there are professionals available to question. He was confident that he would be able to accomplish the responsibilities.

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Representative Hawker inquired about taxation policy concerns in the broadest sense. He pointed out that the person hired to administer taxation policy was previously a litigator. The person in that position during the Murkowski Administration had a background as a Certified Public Accountant (CPA). He worried about a tax policy of litigation versus accounting. Commissioner Galvin responded that John Iverson, who was hired as the tax accountant, is an attorney and worked on tax cases within the Department of Law, the Department of Revenue and natural gas royalty cases. Commissioner Galvin emphasized Mr. Iverson should not be characterized as a litigator. He is someone who can bring "a fresh approach" to the Department. The deputy commissioner and the tax director also need to address technical issues, ranging from the PPT, cruise ship initiative, gaming, and regaining the corporate income tax system or any tax, which the State collects. He was satisfied with the choices, reiterating that litigation was not the driving force. Representative Hawker worried about a lack of supervisory experience.

Representative Hawker reiterated the career track and experience of Commissioner Galvin regarding resource issues facing the State. He mentioned past "healthy tension" between departmental activities and wondered if there would be a merger between the departments. Representative Hawker asked if Commissioner Galvin would be able to make the decisions expected from that agency within the State. Commissioner Galvin asserted that he will be the Commissioner of the Department of Revenue and that the Administration will guide him in decisions to be made. He emphasized that Alaska is a natural resource State and the revenue is derived from resource development. It is not necessary to consider tax implications of that to be completely separate. The premise of the question seems to be about the "healthy tension" between the Department of Revenue and the Department of Natural Resources. He summarized that in the end, there must be people that can

work through such issues and create a singular policy. He recognized that there is a tension between the departments but realized the need is to provide a common answer for the State of Alaska in resolving those issues. He hoped to bring that voice to the cabinet of the Governor, when resolving issues facing the State.

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Commissioner Galvin admitted that he is his own person and that his staff, in the end, will have their own identity.

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In response to a query by Representative Crawford, Commissioner Galvin explained that the perceived tension is not a tension between the roles of revenue and natural resources but rather natural resource management. The new administration has the opportunity to evaluate which type of tension they will foster. He hoped to see more integration throughout the various departments. He believed that the Governor recognizes that it is not inherent in the Department that there be a tension & ultimately, the Governor wants to bring in people that shared her view.

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Representative Kelly asked if he would be the acting director of the Alaska Industrial Development and Export Authority (AIDEA). Commissioner Galvin replied that he was delegated as a second on that board; if he is able to attend, he will participate especially in any policy decision.

Representative Kelly asked the maximum number of employees supervised in the past by the Commissioner. Commissioner Galvin replied 35 at the Division of Governmental Coordination and about 20 at the Division of Oil and Gas. There are approximately 500 employees in the Department of Revenue. He added he had no direct experience in dealing with Unions. He stated that he worked for a legal firm, addressing tribal law and worked with the North West Arctic Borough and various village and tribal councils.

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Representative Thomas asked the time frame of his move from the Governor's office to the Division of Natural Resources. Commissioner Galvin replied that was in June, 2002. Representative Thomas asked if there was a vacancy at that time. Commissioner Galvin explained someone had retired. Representative Thomas worried about the logging that happened in the Tongass during the Knowles Administration and asked if Commissioner Galvin had been involved.

Commissioner Galvin replied that he was not involved in overall timber policy. He acknowledged that he did partake in some of the evaluation and negotiations with the U.S. Forest Service.

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Co-Chair Meyer MOVED that the House Finance Committee refer the Governor's appointee for Commissioner of Revenue, Pat Galvin, to the House and recommended that his appointment be considered in joint session of the 25th Legislature.

Representative Hawker OBJECTED for a comment. He observed that the Governor should be able appoint anyone to any position, but he worried about the qualifications of Mr. Galvin to run the Department of Revenue. He reiterated that he would be supporting the nominations presented by Governor Palin.

Representative Hawker WITHDREW his OBJECTION. There being NO further OBJECTION, it was so ordered, the confirmation of Pat Galvin, Commissioner, Department of Revenue.

AT EASE: [2:55:12 PM](#)
RECONVENE: [3:02:48 PM](#)

#HB107
HOUSE BILL 107

An Act making appropriations for qualified regional seafood development associations, for investigation and litigation relating to the public employees' retirement system and the teachers' retirement system, and for a special advisory election; and providing for an effective date.

Co Chair Chenault noted that the Committee would hear testimony, but would not entertain any amendments at this meeting.

KAREN REHFELD, DIRECTOR, OFFICE OF MANAGEMENT AND BUDGET, provided testimony on the legislation.

DEPARTMENT OF COMMUNITY & ECONOMIC DEVELOPMENT

Office of Economic Development

Regional Seafood Development Tax pass-through to the Copper River/Prince William Sound Marketing Association. The appropriation was inadvertently omitted from the FY07 budget bills. The 1% tax assessment generated \$152,464 during calendar year

2005, which was to be appropriated to the association
as of July 1, 2006. \$152.4 Pass Through

Ms. Rehfeld noted that the request is for pass-through funds for the Copper River/Prince William Sound Marketing Association, who was the first group to organize as a regional seafood development association. The Department of Revenue collected the tax but there was not an appropriation to flow those collected taxes back to the development association.

Representative Hawker pointed out that the request had been an oversight. Ms. Rehfeld agreed and clarified that the appropriation language is now included in the FY 08 budget. Representative Thomas advised that the funds were monies used for marketing last year and is now desperately needed by that community.

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DEPARTMENT OF LAW

Civil Division, Labor & State Affairs

Funding for the investigation and proposed litigation related to actuarial services received by the State of Alaska. The investigation would be completed during FY07, and the proposed litigation is contemplated to begin before the end of the FY07. The amount of the appropriation is the estimated costs to complete the investigation and take the case from inception through trial. \$12.0 million Department of Law/PERS/TRS

Ms. Rehfeld noted that the request was in the amount of \$12 million dollars to be used for the Department of Law's proposed litigation against actuarial services provided to the State. She observed the estimated amount of unfunded liabilities for the retirement system. It is complicated litigation; the anticipated time of the case is approximately two years.

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Representative Gara asked for an overview of the litigation.

MICHAEL BARNHILL, ASSISTANT ATTORNEY GENERAL, LABOR & STATE AFFAIRS SECTION, DEPARTMENT OF LAW, explained that there was not the expertise within the State of Alaska, Department of Law for actuarial malpractice suits. In 2006, the Department received a request from Senator Hollis French asking for a review of the matter. Money was received for outside counsel. He noted that \$400 thousand was appropriated & the Paul Weis Law Firm out of New York was hired, a firm that has taken such cases to a jury verdict.

The Firm advised the State Department of Law that there are actually valid claims against Mercer. The Department of Law is now seeking funds to pursue with that legal case. The Department believes that these are extraordinary times and it is not an ordinary case.

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Representative Gara wanted reassurance that the State is not spending "bad money". He thought that the defense will be that "even if they failed to tell the State to place the money into the pension fund, there was no harm, because the State kept those funds".

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Mr. Barnhill acknowledged the question, noting that he could not comment in detail. He acknowledged that such arguments previously had been raised. He acknowledged there are not a lot of cases, however, there is some case law to support the claim.

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Representative Gara advised that there are differences between the two cases referenced by Mr. Barnhill, observing that the previous case did not go retroactively after the funds. In the State of Alaska's case, the funds remained or were spent in other categories.

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Mr. Barnhill did not agree with the characterization of the State's situation. There are 160 participating employers & many school districts in the Teacher's Retirement System (TRS). Representative Gara acknowledged that a portion could not be accessed and wondered if there was sufficient grounds to proceed. Mr. Barnhill advised that he was "uncomfortable" discussing the defense for the State of Alaska.

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Mr. Barnhill reiterated that good arguments could be made to support the State's claims.

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Representative Hawker pointed out that the funding source was the pension trust assets for the Public Employees Retirement System (PERS) and Teacher's Retirement System (TRS). Mr. Barnhill stated that the \$400 thousand dollars came from the PERS & TRS Trust as will the requested appropriation. He was confident that the fund source was

appropriate and that the Alaska Retirement and Management (ARM) Board concurs.

Representative Hawker questioned if there is an argument that the Trust itself did not cause its own injury, but was caused by administrative decisions made outside the Trust. Mr. Barnhill acknowledged that the Trust did not create the injury.

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Representative Hawker questioned if the funding source could be questioned. Mr. Barnhill reiterated that the fund source was appropriate. Representative Hawker asked if \$12 million dollars would be sufficient to try the case. Mr. Barnhill estimated the costs to litigate the case to run between \$10 - \$15 million dollars.

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Representative Gara asked if the ARM board approves the expenditure from the Trust. Mr. Barnhill stated that they have approved the request.

Representative Gara inquired if it was possible for the funds to come out of the General Fund and if the State wins, then place the proceeds into the pension fund. Mr. Barnhill emphasized that this case was "not a lark". He said since the Trust is the recipient, it is an appropriate funding source. He added that he would be remiss to not pursue recovery of the damages.

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Representative Gara stressed that the Administration is pursuing the suit with someone else's money [State employees]; it would be a stronger statement to back it with its own General Fund money. He noted that a contingency fee could be negotiated at a high rate.

He inquired if the case had been put out for a competitive bidding process. Mr. Barnhill advised he has had experience with similar cases. Contingency fees have been negotiated around 8 to 8.5 percent in other cases. He added that some law firms operate on a contingency fee. He stated it would be preferable to pay on an hourly fee basis. Contingency fee agreements have been negotiated, but they were not found to be as beneficial as the hourly fees. Fees could double or triple over the hourly rate. The issue remains whether to pay up front or in the end.

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Representative Thomas requested that further discussion be held in executive session or individual meetings with the attorney, Mr. Barnhill.

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Representative Gara pointed out that "contingency" representation is one of the measures regarding whether a law firm believes there is a good case; he asked if any firms agreed to take the case on a contingency base. Mr. Barnhill responded that at least one firm had offered.

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Ms. Rehfeld asked that the Legislature consider changing the effective date for an appropriation made in Section 2, from February 16, 2007 to November 1, 2006. That change would allow the Administration to pay a couple bills that occurred on the investigation portion of the supplemental. Co-Chair Chenault said okay.

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OFFICE OF THE GOVERNOR

Elections

Funding for the costs associated with the April 3, 2007, special advisory election required by ch.1, FSSLA 2006, on the subject of employment benefits for same-sex partners of public employees and retirees.
\$1.2 million General Funds

Ms. Rehfeld reviewed Section 3, pertaining to a special advisory election on April 3, 2007. She pointed out that there was no fiscal note or appropriation accompanying the legislation. At this point, the Division has incurred costs for printing of ballots in preparation for the election.

Representative Gara asked about the high cost of the election.

WHITNEY BREWSTER, DIRECTOR, DIVISION OF ELECTIONS, noted that the Municipality of Anchorage (MOA) does conduct a special election also on April 3rd. No final agreement has been made regarding workers that might be jointly shared. She acknowledged that no other municipality holds an election in April outside of Anchorage.

HB 107 was HELD in Committee for further consideration.
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ADJOURNMENT

The meeting was adjourned at 3:35 P.M.