

HOUSE FINANCE COMMITTEE
April 29, 2011
1:27 p.m.

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CALL TO ORDER

Co-Chair Stoltze called the House Finance Committee meeting to order at 1:27 p.m.

MEMBERS PRESENT

Representative Bill Stoltze, Co-Chair
Representative Bill Thomas Jr., Co-Chair
Representative Anna Fairclough, Vice-Chair
Representative Mia Costello
Representative Mike Doogan
Representative Bryce Edgmon
Representative Les Gara
Representative David Guttenberg
Representative Reggie Joule
Representative Mark Neuman
Representative Tammie Wilson

MEMBERS ABSENT

None

ALSO PRESENT

John J. Burns, Attorney General, Department of Law; Brian Bjorkquist, Assistant Attorney General, Department of Law; Chris Poag, Assistant Attorney General, Department of Law; Senator Giessel; Senator Olson; Senator McGuire.

SUMMARY

SB 46 BUDGET: CAPITAL

SB 46 was not in possession of the House Finance Committee, so no action was taken.

#sb46

SENATE BILL NO. 46

"An Act making and amending appropriations, including capital appropriations and other appropriations; making appropriations to capitalize funds; and providing for an effective date."

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JOHN J. BURNS, ATTORNEY GENERAL, DEPARTMENT OF LAW, stated that the contingency language in SB 46 was unconstitutional. He stated that it was possible that the Senate Finance Committee could remove that specific language. He stated that it was his responsibility to uphold the constitution. He stressed that the principles of government were grounded in the constitution.

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Attorney General Burns stated that the constitution outlined the specific criteria for legislation. He pointed out that the legislature had the power to override the governor's veto. He pointed out sections in the capital budget that upset the balance of powers in the Alaska government. He stressed that the contingency language was unconstitutional. He pointed out that there was \$104 million in spending related to grouped projects. He stressed that the contingency language restricts the governor's constitutional rights. He stressed that the governor is a state-wide elected official, and the legislators are only elected based on districts, he is allowed to veto. He also pointed out that the legislature has the power to over ride the governor's veto.

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Attorney General Burns stated that the power and authority to appropriate funds are assigned to the legislature. He pointed out that a disruption of these rights is unconstitutional. He explained that linking projects together with contingency language would usurp the governor's line-item veto power, and would upset the checks and balances that constrain the two branches of government.

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Attorney General Burns stressed that the risk of litigation would jeopardize the funding of energy projects. He pointed

out that no project could rely on money, if the state funding was uncertain.

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Attorney General Burns stated that the confinement clause declared that the contingency language was unconstitutional. He referred to a ruling in the Knowles vs. Legislative Council case.

Attorney General Burns stated that linking appropriations was unconstitutional and felt that the capital budget's unconstitutional language should be removed.

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Representative Gara pointed out that the legislature's lawyers had expressed a different opinion. He stated that he had shared a conversation that he had with Attorney General Burns. He stated that the senate had their reasons for including the language in the bills. He stressed that the Senate wanted specific projects, and wondered if the Attorney General would be available to mediate the conflict, and try a list of projects that everyone could agree on. Attorney General Burns explained that he would always be of assistance. He pointed out that there was an important process. He felt that decisions should not be made behind closed doors, and encouraged the legislature to make clear open conversations.

Co-Chair Stoltze stated that the term "veto-power" was considered "inside baseball talk."

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Representative Gara pointed out that the governor does not openly discuss what projects he will veto. He explained that the constitution allows for the governor to encourage the House and Senate to solve their issues. He asked that the Attorney General work with the governor to determine the most valuable energy projects. He pointed out that the governor was not open about his choices, and hoped that the governor would be in more communication with all parties. He also pointed out that the legislature did have the power to override the governor's veto.

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Representative Costello felt that the struggle was with the linkage of the projects SB 46. She stressed that that was the main issue that the House was dealing with. She pointed out that there could be a concern in later budgets with linkage language. She wondered if the capital budget was creating a new law by linking energy projects together. Attorney General Burns stated that the point of the confinement provision was to keep the capital budget focused on appropriations, not on legislation and creation of new law. He stressed that that was the current concern.

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BRIAN BJORKQUIST, ASSISTANT ATTORNEY GENERAL, DEPARTMENT OF LAW stated that there was not one state energy plan. He pointed out that many state agencies were working on an energy plan, but there was not one state energy plan. He stated that the intent language in section 4 of SB 46 referenced the statutory energy plan, and spoke to helping communities develop an energy plan.

Representative Costello pointed out that there was a history of language assigned to a line item. Mr. Bjorkquist stated that the legislature can set forth intent language, as long as the language does not restrict the governor's constitutional right to veto a line item. He pointed out that the governor could not veto language. He could only veto a line item.

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Vice-chair Fairclough pointed out that she was uncomfortable with the contingency language. She supported energy solutions that help benefit Alaska. She explained that the meeting was held in Anchorage because there were too many "sound-bites thrown around of the good and bad of the capital budget." She pointed out that there was some contingency language that had been supported in the courts, and requested a conversation about why this specific language was unconstitutional. Attorney General Burns agreed with Vice-chair Fairclough, and stressed that the real problem was regarding the contingency language that was tied with a particular line-item. Mr. Bjorkquist pointed out that the Alaska Supreme Court defined an item of appropriation to be a sum of money dedicated to a particular purpose. The intent language was meant to be the

minimum number of words necessary to explain the legislature's intent for a specific appropriation.

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Vice-chair Fairclough referred to a conversation about creating a "mouse-trap" with contingency and non-severability language. She stressed that if the legislature came together to fund the projects. She wondered if there was a legal challenge needed, or if the linkage would be allowed and would withstand a constitutional challenge. Co-Chair Stoltze agreed with Vice-chair Fairclough. Attorney General Burns pointed out that the purpose of the "mouse trap" was to pull away power from the governor stated that the language had been fully reviewed, and the intent of the tying of projects was for the purpose of depriving the governor of his line-item veto power. He stressed that if the Senate Finance Committee decided to keep the contended language in the bill, the Judiciary branch would get involved.

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Representative Edgmon referred to intent language which was non-binding, and wondered if the legal challenge might not be as strong, because the contingency language might be considered intent language. He wondered if it would undermine the clause. Mr. Bjorkquist stated that if the intent language was attempting to create substantive law, it would be considered unconstitutional. He continued that there was not an energy plan in existence, so the contingency language created an energy plan. He stressed that it was a violation of the confinement clause.

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Representative Edgmon he pointed out that the budgets passed during session are very critical to the state, but specifically to rural Alaska. He stressed that the capital budget did not need to be passed before the end of the legislative session according to the constitution, and asked for confirmation. Attorney General Burns affirmed that the capital budget did not need to be passed before the end of the session.

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Representative Doogan pointed out that Attorney General Burns had stated that there could be a third party coming in to invalidate the budget, if the bill was written with the contingency language. He wondered if that had ever occurred in the past. Attorney General Burns replied that this would be the first time that this specific approach was used.

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Representative Doogan wondered if assigning Village Public Safety Officers to a specific location would violate the governor's authority. CHRIS POAG, ASSISTANT ATTORNEY GENERAL, COMMERCIAL/FAIR BUSINESS SECTION, CIVIL DIVISION-JUNEAU, DEPARTMENT OF LAW was not aware of an instance where there was a challenge to a contingency that linked together numerous appropriation items. He explained that there were some legal challenges where public interest litigants challenged appropriations as a violation of the dedication clause.

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Co-Chair Stoltze commented that his presence in the process allowed for lengthy litigation limiting projects. He would be surprised if there was not litigation against the Susitna project. He felt that there were many possibilities for people to attempt to litigate the potential for oil exploration. Attorney General Burns agreed.

Co-Chair Stoltze and Attorney General Burns had a conversation about how litigation against capital budget decisions could be brought forward by anyone.

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Representative Guttenberg recalled comments about state energy policy. He felt that there was a broad state energy policy, and felt there was much effort regarding organizing an energy policy. He wondered why it would not be constitutional for the legislature to appropriate money to a single organized energy policy within the budget. Mr. Bjorkquist responded that the program of the state energy plan, and stated the legislation regarding energy policy was merely a statement of goals that the state agencies had been striving for. He stressed that the energy policy was not a program.

Representative Guttenberg pointed out that the policy had been created by the legislature, and if the legislature passed the list of projects, then the energy policy would be state-implemented.

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Mr. Bjorkquist stated that an appropriation bill cannot include substantive law. Representative Guttenberg asked if SB 46 violated the law. Mr. Bjorkquist responded that the senate's attempt is to link the projects and call them a state energy policy.

Representative Guttenberg wondered if the opinion of Attorney General Burns is the law.

Co-Chair Stoltze interjected that Attorney General Burns represented the law.

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Attorney General Burns agreed that he is not a member of the judiciary branch in the context of the present law. He stressed that the point of view that he was presenting was the opinion of the Department of Law.

Representative Gara stated that many different actions might be considered unconstitutional. He mentioned that he was the former assistant to the attorney general. He expressed concern regarding leaving Juneau without a capital budget, because many projects in the bill were good projects that may save consumers money. No energy package and no weatherization funding might leave people without the capital budget.

Co-Chair Stoltze stated that the bicameral process means that both legislative bodies must approve the budget.

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Attorney General Burns shared concern about the capital budget. He understood the importance. He wanted to make sure that the process occurred appropriately. His comments were just an opinion of the Department of Law. Ultimately the decisions would be made by the Judiciary Branch. The consensus of the Department of Law is that the language is unconstitutional.

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Representative Gara stated that the opinion of the Attorney General is only an opinion just as that of Legislative Legal department was only an opinion. The judiciary branch holds the force of law.

Mr. Poag recommended the removal of section 37. Co-Chair Stoltze is not in the condition to remove section 37, because the House Finance Committee was not in possession SB 46.

Vice-chair Fairclough appreciated the recommendation of Attorney General Burns, but her position is not to say what good policy was for the Senate. Should the bill come over from the senate, the governor has the ability to reduce or remove a project. She stressed that compromise was required, and stated that she would be happy to compromise if she had a bill in her hand.

Co-Chair Stoltze stated that the "mouse is maybe a rabid rat."

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Representative Joule discussed the necessity of a capital budget for the state. If it is a project in rural Alaska, the importance is for work for Alaskans and materials purchased locally. Those capital projects become a way to get people through a training process. The best form of welfare is a job, and many projects weretied to that. So much was presented in the rural areas, and he hoped that the issue was resolved before the loss of another season to shift materials. He expressed the information obtained by the legal community.

Co-Chair Stoltze stated that they will all head back early morning. He appreciated the members coming.

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Attorney General Burns stated that he remained hopeful that the contingency language woult be removed before moving to the House. He understood that the Governor would evaluate each project on the merits of the projects.

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Co-Chair Stoltze credited three senators present as SENATOR MCGUIRE, SENATOR OLSEN, and SENATOR GEISSEL.

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ADJOURNMENT

The meeting was adjourned at 2:58 PM