

HOUSE FINANCE COMMITTEE
April 2, 2013
1:41 p.m.

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CALL TO ORDER

Co-Chair Stoltze called the House Finance Committee meeting to order at 1:41 p.m.

MEMBERS PRESENT

Representative Alan Austerman, Co-Chair
Representative Bill Stoltze, Co-Chair
Representative Mark Neuman, Vice-Chair
Representative Mia Costello
Representative Bryce Edgmon
Representative Les Gara
Representative Lindsey Holmes
Representative Scott Kawasaki, Alternate
Representative Cathy Munoz
Representative Steve Thompson
Representative Tammie Wilson

MEMBERS ABSENT

Representative David Guttenberg

ALSO PRESENT

Daniel George, Staff, Co-Chair Stoltze; Angela Rodell, Deputy Commissioner, Treasury Division, DOR; Jeff Stark, CIV-TRANSPORTATION, Anchorage, DOL; Michael Foster, Chairman of the Board, KABATA; David Livingstone, Managing Director, Citygroup Global Markets Inc.

SUMMARY

CSHB 23 (FIN) KNIK ARM BRIDGE AND TOLL AUTHORITY

CSHB 23 (FIN) was REPORTED out of committee with an "amend" recommendation and with a new fiscal impact note from the DOT/PF and one new zero fiscal note from the DOR.

#hb23

HOUSE BILL NO. 23

"An Act relating to bonds of the Knik Arm Bridge and Toll Authority; relating to reserve funds of the authority; relating to taxes and assessments on a person that is a party to an agreement with the authority; and establishing the Knik Arm Crossing fund."

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Co-Chair Stoltze discussed the bill on the agenda.

Representative Costello MOVED to ADOPT the proposed committee substitute for CSHB 23, Work Draft 28-LS0141\O, Martin, 4/2/13 (FIN). Co-Chair Stoltze OBJECTED for discussion.

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DANIEL GEORGE, STAFF, CO-CHAIR STOLTZE, discussed the changes in the CS. He noted that the changes were found on page 4, between lines 9 and 12.

"The duty of the chair of the board to report annually to the governor and the legislature terminates upon the cumulative appropriation to the authority after January 1, 2013 of 1,140,000,000."

He noted that the language addition encompassed the extent of the changes in the CS.

Co-Chair Stoltze stated that the changes were constructed with help from the administration.

Vice-Chair Neuman stated that the bill was modified with help from the administration, the Department of Law (DOL), the Department of Revenue (DOR) and the Department of Transportation and Public Facilities (DOT/PF). He noted an effort to gain the governor's approval, since Knik Arm Bridge and Toll Authority (KABATA) was a state entity.

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Representative Holmes requested an explanation of the legal ramifications of the cap presented in the CS.

Vice-Chair Neuman introduced Ms. Rodell as a member of the KABATA board.

ANGELA RODELL, DEPUTY COMMISSIONER, TREASURY DIVISION, DOR, noted that the cap of \$1.14 billion had the intent of limiting the amount of money requested by KABATA. All of the requests would accumulate until the cap was reached and an additional request would require a visit to the legislature.

Representative Holmes understood that the language would cap the moral obligation of the state at \$1.14 billion.

Ms. Angela Rodell concurred.

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Representative Holmes asked about the moral obligation, which was instated with the creation of reserve fund and enacted the duty to report to the legislature any shortfalls. The language clarified that the state was not liable for more than \$1.14 billion. The clarification was for those who wished to purchase bonds.

Ms. Rodell agreed that the language clarified the duty to report and request further appropriation. Once the \$1.14 billion was reached, the duty to report and the moral obligation were eliminated.

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Representative Holmes thought that the \$1.14 billion was money added by the state to the reserve fund. She understood that the governor's proposed capital budget also included funds for the project. She asked if the funds would be included in the \$1.14 billion spent on the project. She expressed confusion regarding the \$1.14 billion.

Ms. Rodell responded that the \$1.14 billion did not include the money appropriated up to this point, but rather the money appropriated into the reserve fund and then used for the availability payment structure that added up to a cumulative of \$1.14 billion. While the \$10 million in the governor's budget was contributed toward the \$1.14 billion, all the transportation dollars appropriated to KABATA were

not included. She stated that DOL could offer further explanation.

Representative Holmes expressed concern about the moral obligation. She wondered about another liability to the state beyond the reserve fund.

Ms. Rodell responded that the reserve fund would address shortfalls in the availability payment. The availability payment was utilized when the bridge was open and available. Obligations entered into by KABATA as contract rather than bond payments falling under the availability payment would be made up by the reserve fund.

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Representative Holmes asked if the availability payments under the state contracts were the only liability to the state.

Vice-Chair Neuman explained the purpose of the availability payments. He recognized that the traffic toll revenues used to pay toward the availability payment would not be revenue neutral until approximately seven years after the onset of the bridge's operation. He explained that the availability payment was part of the \$1.14 billion.

Representative Holmes asked if the state would then own the bridge and there would be no further lump sum payment.

Co-Chair Stoltze WITHDREW his OBJECTION. Version 0 was ADOPTED.

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JEFF STARK, CIV-TRANSPORTATION, ANCHORAGE, DOL, stated that he had worked with KABATA for five years and served as their chief counsel for the last two years. He explained that a Private Public Agreement (PPA) existed between KABATA and a chosen private developer. He mentioned that potential obligations would exist as part of the agreement. He stated that the primary obligation of the state would include responsibility for availability payments. If the project proceeded according to plan, the availability payment would be the only payment made to the developer. He pointed out the possibility of a termination payment, should the agreement be terminated for convenience. He

stated that the agreement could be terminated if either side defaulted. The non-defaulting party could terminate because of a change in circumstances or a court order or anything that compromised the viability of the project.

Mr. Stark noted that if the project was terminated because of the default of the developer, the state would pay at a discounted rate according to a complex formula. The state would assume the toll-risk and the developer would assume the design, construction, operation and maintenance risks. He added that some cost risks were shifted back to the state in the form of relief events. All of the obligations arose under the PPA and the moral obligation created by the statute covered every obligation. Availability payments were covered by the moral obligation. The cap ended the moral obligation for the legislature to step in and fund any shortfall at \$1.14 billion, including all appropriations from this year on.

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Representative Holmes asked if the \$1.14 billion was the final liability for the state.

Mr. Stark responded that the figure \$1.14 billion was arrived at by Citygroup Corporation, the financial advisor for KABATA. Citygroup Corporation created the worst-case scenario by taking the lowest possible toll assumption and applying probabilities to estimate the revenue potential of the project. Citygroup Corporation utilized the toll scenario that assumed that the state terminated the agreement for convenience at the worst possible moment and they arrived at \$1.14 billion. The intent was to provide assurances to the developer and the financial markets that the money would be available in the worst case scenario. The risk to the developer and the state was lessened as a result.

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Representative Holmes asked if the state might be liable for additional funding, with the bill as written.

Mr. Stark replied that the cap applied to the moral obligation, but not to KABATA's obligation. He stated that the theoretical possibility existed that the state would have additional obligations, due to unlikely events such as

earthquakes. He stressed that KABATA would remain responsible to the developer in that event. The state would have no moral obligation to backstop KABATA, but the option would exist, if deemed appropriate.

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Representative Gara asked about the term availability payment. He asked if the term indicated the amount the state would owe if tolls did not cover the cost of construction and operation of the bridge.

Mr. Stark replied that availability payment was made by the state to the developer for making the bridge and highway lanes available to the traveling public. If the lanes were not available, the state would not pay. Construction delays would not encumber availability payments. The term availability payment indicated that payment was made when the area was indeed available. The payment would be made monthly by the state to the developer for the services that the developer would provide. The developer would design and build the bridge and provide 100 percent of the financing for the bridge. The developer would operate and maintain the bridge for 35 years, which would include resurfacing when required.

Representative Gara asked if the availability payment was made if the tolls did not cover those costs.

Mr. Stark replied that the availability payment was the contractual obligation of KABATA to the developer. The developer would contribute \$800 million and provide multiple services. The developer expected to receive availability payments in return. He voiced that KABATA would expect toll revenues in the early years, which would not provide enough funding to cover the availability payment. As time progresses and traffic builds, the expectation was that the toll revenues would cover the availability payment and result in a surplus to the state. A shortfall was expected in the early years, which was the purpose of the reserve account, to provide money that KABATA could draw on in the early years to make the full amount of the availability payments including everything from the tolls and the shortfalls. If tolls did not increase as quickly as expected, the money would remain in the reserve account for that purpose.

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Representative Gara asked about financing in the form of a federal Transportation Infrastructure Finance and Innovation Act (TIFIA) loan. The original request was for \$500 million. He asked if the \$500 million and \$1.14 billion were collectively utilized.

Mr. Stark replied that the structure of the deal was that KABATA would not provide financing, but instead enter into one contract with one developer. The developer would then provide 100 percent of the financing for the project. Therefore, KABATA would not pay any money to the developer, absent a relief event, until the lanes were open to traffic. He explained that KABATA utilized TIFIA to lay the ground work to qualify the project for financing, making it available for the developer. Because the interest rate program was low, the assumption was that any developer that wished to win the competition would use TIFIA. The borrower would be responsible, solely to repay the TIFIA loan and any other financing arranged for the project.

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Representative Gara understood that the availability payment would be KABATA's duty up to \$1.14 billion to the extent that the operator did not generate the revenue necessary to break-even. He asked how the TIFIA loan related to the \$1.14 billion. He wondered if the developer could approach KABATA for assistance in paying the \$500 million TIFIA loan.

Mr. Stark replied that TIFIA did not apply to the \$1.14 billion, which was simply a cap on the moral obligation. Appropriations made to KABATA were the only contribution against the cap. The expectation was that \$150 million would be appropriated to the reserve account by the time the project opened up. The project was sized to prevent further draws on the reserve account until capacity was expanded. The expectation was for total revenues to come in and the state would not reach the \$1.14 billion. He stated that reaching the cap would occur if the state chose to terminate at an extremely inopportune time. The loan obligation for the developer was a separate issue. The moral obligation was related because it provided the developer the confidence needed to borrow \$800 billion to

build the bridge. The financing was the province of the developer.

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Representative Gara understood that the \$500 million TIFIA loan was in addition to the \$1.14 billion. He queried if the state's credit or moral obligation was in jeopardy if the developer was unable to repay the TIFIA loan. He asked if the state would compensate the issuer for the remaining balance.

Mr. Stark replied no. He stated that Alaska would not be responsible in any way for any of the financing obtained by the developer. The developer would borrow and repay the funds required to build the bridge. As long as the state continued to make the availability payments to the developer and otherwise comply with the terms of the PPA, the state would remain without liability. The only contractual liability for the state was to the developer.

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Ms. Rodell interjected that the developer would receive an availability payment from KABATA to make the bridge available. The availability payment would then be pledged to secure the debt obligations required to raise the capital needed to build the bridge. The state would not enter into financing agreements, but was obligated to honor availability requests. If the state failed to honor an availability request, the state's credit rating could be compromised.

Representative Gara understood that the state would guarantee payment of up to \$1.14 billion in case the developer was not generating revenues needed to pay the bonds taken out. He asked to know more about the TIFIA loan.

Ms. Rodell replied that the TIFIA loan was part of the \$800 million required by the developer to construct the bridge. She stated that KABATA would enter into contracts with investors and communicate to them the plan to repay the loans from the availability payment from the contract with the state of Alaska. She further explained that KABATA would collect the tolls and use them to make the availability payment. The bill allowed for a limit of \$1.14

billion, which if exceeded would require KABATA to return to the state with communication that toll revenues were not sufficient. The state agreed to grant KABATA the authority to return and request up to \$1.14 billion if toll revenue was deemed insufficient. The \$500 million TIFIA loan was not connected to the \$1.14 billion, which was tied in totality to KABATA's contract obligations.

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Representative Gara recalled testimony about a projected \$2.2 billion shortfall. He wondered how a larger shortfall would be addressed.

Ms. Rodell responded that if the shortfall was greater than \$1.14 billion, the state would have no further obligation and KABATA would request the cap be lifted if they continued to seek state support for the availability payment. The availability included profit to the developer for their equity contribution. An availability payment would include a profit margin for the developer.

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Co-Chair Austerman understood the financing package that the developer must construct. He asked if the \$10 million attached to the bill became part of the reserve fund.

Ms. Rodell concurred.

Co-Chair Austerman asked if the \$10 million was the initial investment into the reserve fund.

Ms. Rodell stated that the \$10 million would initially create the reserve fund and capitalize it at \$10 million.

Co-Chair Austerman stated that the replenishment of the \$10 million as needed was a request for funds above the \$10 million. He referred to a previous presentation listing the financial pictures and the \$150 million projected reserve through HB 23. He asked for further explanation of the \$150 million.

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Ms. Rodell replied that the intent was to build the reserve account to \$150 million, understanding the potential

shortfalls resulting from the bridge's onset. The anticipation was that \$150 million would provide appropriate reserve levels to prevent additional requests from KABATA.

Mr. Stark responded that the legislation stated that the chairman would request additional appropriations required to restore the reserve fund to the reserve fund requirement. The agreement would provide that the reserve fund requirement was \$150 million. The intent was to size the reserve fund to an amount that would postpone the need to ask for additional funds. Eventually expansion to increase capacity was planned as a second phase of the project. The reserve fund could be drawn down to a certain level and then request additional funds from the state providing confidence for the developer that KABATA would make the payments the developer required to repay the money borrowed to build the bridge. The financial markets would also be given the confidence that they would be repaid, which would be reflected in lower cost to the state.

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Co-Chair Austerman understood that the \$150 million would be built up over time and allow the developer to borrow the funds required to build the bridge. He asked about the anticipation of drawing off the reserve. He assumed that the drawing of the reserve would occur sometime after the project started and the road was open.

Vice-Chair Neuman stated that the project was anticipated to be revenue-neutral in approximately seven years.

Co-Chair Austerman asked the expectation for drawing off of the reserve. Vice-Chair Neuman replied that the draw from the reserve fund would begin the day that the bridge opened.

Co-Chair Austerman asked about the anticipated time frame for building the bridge. Mr. Stark replied four to five years.

Co-Chair Austerman clarified that the reserve fund must have \$150 million in 4 to 5 years in order to meet the obligation created. He asked about page 4 of the bill, lines 8 and 11, "upon the cumulative appropriation." He

asked if funds other than state general fund dollars would be contributed to the reserve fund.

Mr. Stark replied yes, all toll revenues would contribute to the reserve account.

Vice-Chair Neuman informed the committee about lease payments for the power utilities and gas lines connecting to the bridge.

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Representative Costello asked for a current budget for the project. She understood that the state's moral obligation was enacted instantaneously with the creation of the reserve account meaning that the two were linked. She asked if the state had history of setting a moral obligation as suggested in the CS.

Ms. Rodell relayed history of setting caps based on a finance plan.

MICHAEL FOSTER, CHAIRMAN OF THE BOARD, KABATA, responded that the estimation for Phase 1A of the private sector capital costs was \$715 million. The widening from 2-4 lanes was estimated at \$115 million. The estimation was less than \$800 million, which was calculated into the financial plan.

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Co-Chair Austerman clarified that \$715 million plus \$115 million was not less than \$800 million. Mr. Foster replied that the previous testimony suggested that the cost of the capital project was \$800 million. The estimation was \$830 million based on PPA.

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Representative Wilson asked how much the project would cost if the state were to build the bridge without a private partner. Vice-Chair Neuman opined that the project would cost the state more than private industry would pay.

Representative Wilson understood that the tolls would take care of the bridge maintenance and snow removal. Vice-Chair Neuman replied that the private partner would remain responsible for all maintenance costs.

Representative Wilson asked for an estimate of maintenance costs, if paid by the state. Vice-Chair Neuman did not know.

Representative Wilson opined that the project was a great opportunity for the state. She requested estimates from DOT/PF for the bridge's maintenance costs.

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Mr. Foster stated that an estimate for maintenance of the bridge was \$260 million, over the course of 35 years. The private developer would incur those costs.

Representative Munoz understood that \$800 million was a rough estimate for construction costs. Approximately \$600 million would result from bonding. The revenues over the \$600 million plus the profit for the developer would be paid from the reserve fund and the revenues from the tolls.

Mr. Foster replied that the private activity bonds, TIFIA or equity commitment were all part of the developer's capital outlay. The state was not responsible for paying any of the financial debt. The state's responsibility lay in the availability payment. The \$800 million was simply a construction cost estimate for the initial capital for the project.

Representative Munoz asked why the moral obligation authority exceeded the cost of the project.

Mr. Foster replied that \$1.14 billion estimate was used to model the worst case scenario. An example of a worst-case scenario was compared to defaulting on a home loan after remodeling. For this project, the worst-case scenario would be KABATA defaulting on their obligation to pay the availability payment. The \$1.14 billion default included the request for the reserve fund of \$150 million along with the amount that the developer owed to TIFIA or other organizations that financed the project. He added that after \$150 million was contributed to the reserve, an additional request would be made for \$111 million. The developer and partner would request information regarding a default on behalf of the state; the partner could continue to make their payment. The payment was a combination of the reserve funds appropriated by the state and the termination

of the contract. The moral obligation included the termination for default in the worst-case scenario, which forced the developer to exit his financial obligations to his financiers.

Co-Chair Austerman asked for more information about the \$111 million calculation.

Mr. Foster replied that the base case was \$150 million to cover the initial toll deficit for the first 7 years. He mentioned a sensitivity analysis of \$1.14 billion default and another \$111 million was added to the reserve fund to cover the shortfalls.

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Co-Chair Austerman asked if the \$111 million was anticipated general funds.

Mr. Foster responded that the funds could be general funds, Title 23 or transportation funds.

Co-Chair Austerman mentioned the ferry system. He was glad to see the state catching up.

Representative Gara acknowledged that the bridge would cost \$800 million. He asked who in Anchorage would pay for the tunnel through Government Hill, road infrastructure, and upgrades. He wondered if the expense of the additional road construction in Anchorage and Wasilla was included in the \$800 million. He wondered if the state was responsible for the infrastructure and maintenance. He mentioned Phase 2, which included construction of another bridge and tunnel.

Mr. Foster answered that the additional infrastructure was covered under the project as well as the \$1.14 billion moral obligation. He added that 18 miles of road including the tunnel through Government Hill in Anchorage and improvements to the AC coupler were components of Phase 2. The roads heading north were part of the DOT/PF Statewide Transportation Improvement Program (STIP) process.

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Representative Gara asked if the developer paid for the infrastructure and if it was included in the \$800 million.

Mr. Foster replied that the responsibility for the additional development lay with the developer as part of the PPA.

Vice-Chair Neuman added that the additional development was part of the \$800 million construction costs.

Representative Holmes referred to page 2, section 2 and a reference to changing a \$500 million bonding authority to \$600 million. She asked if the amount was related to TIFIA or another financing component.

Mr. Foster replied that KABATA had a capacity of \$600 million available, but the statute was written for \$500 million. The increase would allow the private developer to access the additional capacity.

Representative Holmes asked about the requirement for reviewer-sign-off of the PPA.

Mr. Foster responded that KABATA's five-member voting board included deputy commissioner Angela Rodell, the commissioner of revenue, Pat Kemp along with a member from Anchorage and one from MatSu. The PPA was subject to substantial review and input from DOR and DOT/PF along with KABATA and outside consultants. He stated that KABATA would receive final approval from DOL that the Request for Proposal (RFP) could be implemented. When KABATA approved the final contract, the approval would come through the administration.

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Vice-Chair Neuman furthered that the RFP would be written by the DOL, DOR and DOT/PF and finally approved by the governor.

Representative Munoz asked why the moral obligation was not set at \$150 million. Vice-Chair Neuman responded that the \$150 million was only part of the reserve fund. The \$150 million would be accessed in the first seven years as a part of the availability payment. The \$150 million was expected to be refunded to the GF and was considered a loan.

Co-Chair Stoltze referred to the reserve fund as a "bridge bridge fund." Vice-Chair Neuman agreed with the assessment.

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Representative Costello offered Amendment 4. She stated that she had followed the KABATA project with interest. She expressed concern regarding the financial modeling and potential plans. She requested that KABATA revisit the legislature for approval before KABATA issued bonds or form a partnership to construct the bridge as required by Amendment 4.

Page 1, line 2, following "Authority;":
Insert "requiring legislative approval of a financial plan before the authority may issue bonds or enter into a public-private agreement for construction of the Knik Arm bridge or appurtenant facilities;"

Page 1, following line 5:
Insert new bill sections to read:

"* Section 1. AS 19.75.111(a) is amended to read:

(a) Except as otherwise explicitly made applicable to the authority, the performance of the authority's duties and the exercise of its powers, including its powers to issue bonds and otherwise incur debt, shall be governed exclusively by this chapter. In furtherance of its purposes, the authority may

- (1) own, acquire, construct, develop, create, reconstruct, equip, operate, maintain, extend, and improve the Knik Arm bridge and its appurtenant facilities;
- (2) sue and be sued;
- (3) adopt a seal;
- (4) adopt, amend, and repeal regulations under AS 44.62 and establish bylaws;
- (5) make and execute agreements, contracts, and all other instruments with any public or private person, governmental unit or agency, corporation, or other business entity lawfully conducting business in the United States for the exercise of its powers and functions under this chapter and for the financing, design, construction, maintenance, improvement, or operation of facilities, properties, or projects of the authority, including making and executing contracts with any person, firm, corporation, governmental agency, or other entity for the purpose of

(A) incurring indebtedness, obtaining investments in the authority's projects, acquiring or granting lump sum payments for services in advance or in arrears, grants, and other financing; and

(B) entering into public-private partnerships or service contracts in any form; the authority may not enter into a partnership or contract for construction of the Knik Arm bridge unless the authority has obtained the approval of the legislature of a financial plan as provided in (c) of this section;

(6) in its own name acquire, lease, rent, sell, or convey real and personal property;

(7) issue and refund bonds in accordance with this chapter, in order to pay the cost of the Knik Arm bridge and its appurtenant facilities; the authority may also secure payment of the bonds as provided in this chapter;

(8) incur other indebtedness, including lines of credit and indebtedness to the Federal Highway Administration, United States Department of Transportation, under 23 U.S.C. 601 - 610 (Transportation Infrastructure Finance and Innovation Act of 1998), as amended, and secure that indebtedness as provided in this chapter;

(9) apply for and accept gifts, grants, or loans from a federal agency or an agency or instrumentality of the state, or from a municipality, private organization, or other source, including obtaining title to state, local government, or privately owned land, directly or through a department of the state having jurisdiction of the land;

(10) fix and collect fees, rents, tolls, rates, or other charges for the use of the Knik Arm bridge and appurtenant facilities, or for a service developed, operated, or provided by the authority; notwithstanding AS 37.10.050(a), fees, rents, tolls, rates, and other charges fixed and collected under this paragraph may exceed the actual operating cost of the use of the bridge, facility, or service;

(11) bring civil actions, refer criminal actions to the appropriate authority, and take other actions or enter into agreements with law enforcement and collection agencies to enforce the collection of its fees, rents, tolls, rates, other charges, penalties, and other obligations;

(12) pledge, encumber, transfer, or otherwise obligate revenue derived by the authority from the

ownership, use, or operation of toll facilities, including fees, rents, tolls, rates, charges, or other revenue of the authority or money that the legislature may appropriate, except a state tax or license, as security for bonds or other indebtedness or agreements of the authority;

(13) deposit or invest its funds, subject to agreements with bondholders;

(14) procure insurance against any loss in connection with its operation;

(15) contract for and engage the services of consultants, experts, and financial and technical advisors that the authority considers necessary for the exercise of its powers and functions under this chapter;

(16) apply for, obtain, hold, and use permits, licenses, or approvals from appropriate agencies of the state, the United States, a foreign country, and any other proper agency in the same manner as any other person;

(17) perform reconnaissance studies and engineering, survey, and design studies with respect to the Knik Arm bridge and its appurtenant facilities;

(18) exercise powers of eminent domain or file a declaration of taking as necessary for the Knik Arm bridge and appurtenant facilities under AS 09.55.240 - 09.55.460 to acquire land or an interest in land; the authority's exercise of powers under this paragraph may not exceed the permissible exercise of those powers by the state;

(19) confer with municipal and other governments, metropolitan planning organizations, and the department, concerning the Knik Arm bridge;

(20) do all acts and things necessary to carry out the powers expressly granted or necessarily implied in this chapter; nothing in this chapter limits the powers of the authority that are expressly granted or necessarily implied.

* Sec. 2. AS 19.75.111 is amended by adding a new subsection to read:

(c) The authority may not enter into a public-private partnership or service contract for construction of the Knik Arm bridge or appurtenant facilities unless the authority submits to the legislature a financial plan including all projected construction, maintenance, and operation costs for the first 40

years of the project and the financial plan has been approved by the legislature by law."

Page 1, line 6:
Delete "Section 1"
Insert "Sec. 3"

Renumber the following bill sections accordingly.

Page 2, line 6:
Delete "a new subsection"
Insert "new subsections"

Page 2, lines 6 - 23:
Delete all material and insert:

"* Sec. 5. AS 19.75.211 is amended by adding new subsections to read:

(e) Before issuing bonds for the Knik Arm bridge under this section, the authority shall submit to the state bond committee a description of the bond issue, a copy of the resolution of the board of directors of the authority supporting the bond issue, a report setting out the sources and amounts of revenue that will be used for payment of the principal of and interest on the bonds and the effect the issuance of the bonds by the authority would have on the ability of the state or political subdivision of the state to market bonds, and a preliminary prospectus, offering circular, or official statement relating to the bond issue.

(f) Bonds may not be issued unless

(1) the state bond committee finds, based on the information submitted by the authority under this section and other information that is reasonably available to or requested by the committee, that either the Knik Arm bridge revenue and other revenue available to the authority or the revenue of the private person or enterprise under a public-private partnership agreement entered into by the authority under AS 19.75.111(a) can be reasonably expected to be adequate for payment of the principal of and interest on the bonds to be issued and that issuance of the bonds by the authority would not be expected adversely to affect the ability of the state or its political subdivisions to market bonds; and

(2) the authority submits to the legislature a financial plan including all projected construction,

maintenance, and operation costs for the first 40 years of the project and the financial plan has been approved by the legislature by law."

Vice-Chair Neuman responded that a similar amendment was initially discussed in the transportation committee where it received a thorough vetting. He countered that the state did not follow the procedure suggested in Amendment 4 for other road projects due to the implications of such delays. He added that the RFP was reviewed by the DOL. He opined that the project review should be accomplished by experts on the issue. He preferred to allow the professionals to accomplish the complicated task of reviewing the final RFP rather than the legislature, where a committee chair might kill the bill. He asked deputy commissioner Rodell to explain the extensive process that would be reviewed by the administration.

Ms. Rodell stated that the plan, RFP and PPA would be reviewed by the KABATA staff, the DOR and the DOL. She believed that the checks and balances required by the legislature were included in the CS with the inclusion of the cap on the moral obligation. The DOR wanted the mega project to continue moving forward without the potential of legislative delays. She noted that developers expressed concern about bidding on a project that required further legislative approval for an award on a contract. She opined that the amendment would be difficult to enact and fulfill.

Co-Chair Austerman asked about the \$600 million bonding authority granted by the legislature.

Ms. Rodell responded that the state received a federal allocation through Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU) and KABATA would make the allocation available to the private developer if they chose to use the bonding authority. The allocation that came from the federal Department of Transportation was for \$600 million. The original statute for KABATA had \$500 million, so the inclusion of \$600 million was a technical correction.

Co-Chair Austerman asked if the bond was a KABATA bond.

Ms. Rodell responded that KABATA was an issuing entity as a conduit issuer, but the obligation for repayment was on the developer.

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Representative Wilson asked if the passage of the amendment could delay the project.

Mr. Foster opined that the amendment would delay the project.

Representative Wilson understood that KABATA would revisit the legislature for more funding regardless of the amendment.

Mr. Foster replied that he hoped not to revisit the legislature following the use of reserve fund.

Representative Wilson compared the amendment's purpose to suggestions presented for the instate gas pipeline. She wished that the legislature was quicker than private industry, but was not hopeful. She did not support the amendment because she desired state development in the form of projects such as the one presented in HB 23.

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AT EASE

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RECONVENED

Co-Chair Austerman MOVED a friendly amendment to Amendment 4. He suggested a requirement that Legislative Budget and Audit (LB&A) provide approval, as opposed to the legislature. He noted that LB&A held monthly meetings, enabling a fluid process.

Vice-Chair Neuman objected to the amendment to the amendment.

Representative Costello noted no objection to the friendly amendment to the amendment.

Vice-Chair Neuman commented that the private partnership would view the amendment as a lack of trust on the state's part. He opined that the private partnership would hesitate to invest in a project that required further legislative process and approval. He thought that the amendment was a "poison pill" for the bill. He believed that the bill was

crafted carefully to ensure an appropriate partnership between the state and a private entity. He stressed that the amended amendment was a "poison pill."

[2:53:20 PM](#)

Representative Thompson spoke against the amendment. He stated that companies interested in bidding on the project might opine that the state was not ready to build the bridge by implementing the restrictions suggested in the amendment.

[2:54:01 PM](#)

RECESSED

[4:13:21 PM](#)

RECONVENED

Co-Chair Stoltze reported to the committee that a testifier was available to speak to the amendment.

Vice-Chair Neuman noted that David Livingston could interpret the potential problems with Amendment 4.

[4:15:08 PM](#)

DAVID LIVINGSTONE, MANAGING DIRECTOR, CITYGROUP GLOBAL MARKETS INC., testified that his expertise was facilitating public/private partnerships throughout the country. He asserted that the amendment would kill the project. He noted that KABATA shortlisted three firms to provide proposals for predetermined levels estimating project costs over the following 35 years. The firms were required to spend several million dollars before the bid was awarded to acquire construction cost estimates. In the proposal the firms would bid on, Citygroup would provide an affordability curve. The firms would request assurance that if they spend several million dollars to arrive at an affordable bid, the project will move forward. He mentioned a project in Pittsburg where a contract was rejected and the bidder lost an opportunity due to a government entity's decision.

[4:17:58 PM](#)

Co-Chair Stoltze asked about Mr. Livingstone's familiarity with the structure of the Alaska legislative body. He

mentioned a pending amendment to the amendment to substitute LB&A approval for legislative approval. He wondered if the alternative might initiate a different reaction.

Mr. Livingstone requested further clarification about the amendment to Amendment 4.

Co-Chair Stoltze explained that Amendment 4 required legislative approval and the friendly amendment substituted approval by a permanent joint committee, which met at intervals throughout the year.

Mr. Livingstone replied that approvals prior to an RFP issuance were acceptable. He explained that once the bid process began, the difficulty finding firms willing to spend several million dollars increased when another approval process was required.

Co-Chair Stoltze asked the difference between issuance of bonds and the submission of bids. He requested more information about the sequence of events.

[4:19:54 PM](#)

Mr. Livingstone replied that the bid process included the issuance of bid documents first, which would happen over a two month period. Then, a several-month process would occur, where firms compiled their bids. Following a month long evaluation, a preferred bidder would be selected and the bidder would have 60-90 days to get to financial close, where the bonds would be sold. The selling of the bonds was the final step of the process.

Representative Holmes understood prior to the RFP issuance, approval by the legislative body or LB&A was acceptable.

Mr. Livingstone agreed that the suggestion would be less objectionable, because the review would occur prior to great expense on behalf of the private partners.

[4:22:10 PM](#)

Representative Kawasaki asked about the example including the city of Pittsburg. He asked how far the project had come prior to its termination by the government entity. Mr.

Livingstone replied that the Pittsburg project was in the final stages where bonds were nearly issued.

Representative Kawasaki repeated that the project was nearly sanctioned when it was terminated. Mr. Livingstone replied in the affirmative.

Representative Munoz discussed Amendment 4. She proposed the inclusion of "legislative approval of a financial plan before the authority enters into a public private agreement and avoided the issuing of bonds."

Mr. Livingstone replied that legislative approval requested prior to the release of the RFP was acceptable.

Representative Munoz clarified that the language would be deemed preferable if "may issue bonds" was removed from the Amendment 4. She suggested that the amendment read "requiring Legislative Budget and Audit approval of a financial plan before the authority may enter into a public/private agreement."

[4:25:59 PM](#)

Vice-Chair Neuman suggested a potential legal issue with the legislature's involvement in the RFP process.

Mr. Livingstone preferred that approval occur prior to a RFP issuance from prospective bidders for a PPA.

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Vice-Chair Neuman requested the opinion from the Attorney General's office regarding the legislature's role in the RFP process.

Mr. Stark replied to the question and the separation of power issue. He thought if it was provided for in the legislation for review, it was probably acceptable. He requested more time to research the issue. He commented that the RFP documents were extremely complex and KABATA received outside counsel to draft them. He stated that he spent weeks reading through the documents and he anticipated that a review might delay the project by up to one year. Delays would create financing risks.

Co-Chair Stoltze requested Mr. Foster's opinion along with additional information about his position at KABATA.

4:29:33 PM

Mr. Foster responded that he was the appointed chair at KABATA for the last four years and had completed the former chair's term. He stated that he was the president of Boy Scouts of Alaska along with president of the Eagle River Community Council. He owned four different companies and was a private sector engineer. He stated that the position with KABATA was appointed, he did not request it. He opined that the toll bridge was a good project for the state.

Co-Chair Stoltze commented that Mr. Foster was "conflicted out" from a large number of work projects due to his status on KABATA.

Mr. Foster stated that the conflict of interest did affect his private sector business. He supported the project despite that fact because he wished for future generations to take advantage of the bridge. He added that his position with KABATA was on a volunteer basis.

Co-Chair Stoltze stated that the KABATA process received multiple attacks and he wished to defend Mr. Foster.

4:31:51 PM

Mr. Foster responded that the state committed \$200 thousand for the DOL's review of the document. He thought that a body without the legal knowledge might be challenged by the complex nature of the document. He stated that the process was complicated and he relied on experts to review the document. He believed that a legislative committee might not have the experience necessary to understand the document. He added that the DOL was best suited to ensure that the legal interests of the state were protected.

Mr. Foster suggested that the addition of another review process might lead developers to seek alternative investment opportunities. He noted that the review suggested in Amendment 4 was not a common practice and was not utilized in other DOT/PF projects. He compared the project to a person purchasing a home and remaining within their spending limits. The RFP had an affordability curve. He opined that the safeguards were already taken care of by

DOL and the DOR. He stated that he met with the governor and presented the worst-case scenario for the project.

4:37:00 PM

Co-Chair Austerman had spoken with his fellow committee members during the break. He WITHDREW his amendment to the amendment.

Representative Gara noted Mr. Livingstone's concern that billions of dollars must be spent on cost estimates for the project along with estimates for the project revenues. He assumed that the estimates had been gathered already.

Mr. Livingstone replied that KABATA had cost estimates, but three different consortiums would propose on the project. He clarified that each consortium must perform their own due diligence, which would cost each of them several million dollars.

4:39:03 PM

Representative Gara asked why the state's moral obligation was necessary if a private contractor builds and operates in anticipation of revenue exceeding costs in seven years.

Mr. Livingstone replied that the moral obligation accomplished several things. The moral obligation would address the risk that the project may neglect to earn sufficient revenue in the anticipated seven years. Additionally, if the state or KABATA entered default, the private partner would require assurance of payment. Only when the project is up and running would KABATA be obligated to make availability payments. The moral obligation was to the private partner by the state and KABATA to uphold their agreement to make payments over the next 35 years.

4:41:12 PM

Representative Wilson clarified that Amendment 4 stressed the approval of a financial plan. She asked how large and detailed a financial plan of this nature was expected to be.

Mr. Livingstone replied that a detailed financial plan could span dozens of pages with multiple attachments.

Representative Wilson asked if the information included in the RFP might be confidential.

Mr. Livingstone responded that Citygroup presented a proposal to the three bidders informing about the anticipated project cost. The most competitive bid would be awarded the contract.

Representative Wilson wondered if the financial plan was required, would the bank require the detailed financial plan prior to the bid.

Mr. Livingstone replied no.

[4:43:17 PM](#)

Representative Holmes expressed her condolences to Mr. Stark for evaluating the dense legal documents. She spoke to the complicated nature of the documents and the benefit of legal expertise when evaluating them.

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Vice-Chair Neuman hoped to provide the necessary and credible information with the help of the entities involved. He advocated for the legislature's due diligence along with a trust in the experts. He wondered if additional information might be provided to gain the confidence of committee members. He asked Representative Holmes if she required additional information to further vet the project.

Representative Holmes replied that the break in the meeting allowed her to research the subject more thoroughly, which enabled a better understanding. She appreciated Vice-Chair Neuman's efforts to provide ample information to the committee.

Co-Chair Stoltze respected the House Finance Committee's process of participating in a manner that was not scripted. He credited the committee members for their independent thinking.

[4:46:29 PM](#)

Representative Thompson stated his involvement in design based projects. He provided an example when he served as mayor. He preferred design based projects because they lacked the risk of cost overrun or design changes. He expressed concern with Amendment 4 because developers might choose not to bid on the project knowing that the legislative approval was mandated.

Mr. Foster concurred.

Representative Thompson understood the concern addressed in the amendment, but he had confidence that the experts would not proceed without a viable project. He appreciated the testifiers' assurances that the project was viable.

[4:48:48 PM](#)

Representative Costello appreciated the sponsor's help. She believed that the legislature's responsibility to approve budgets and back moral obligations warranted the mandate that KABATA return to the legislature for approval of their financial plan. She felt a great sense of responsibility to the state in her elected position to constituents expressing concern about the project. She added that the financial review presented to the legislature could include a shortened version for the understanding of those members without law degrees. She expressed hesitancy regarding the size of the project and the lack of information.

Co-Chair Stoltze noted that Co-Chair Austerman was required to leave the hearing to attend a budget meeting.

Representative Munoz clarified that the request for review for LB&A review was removed by Co-Chair Austerman.

Co-Chair Stoltze concurred.

Representative Munoz asked if the amendment sponsor would entertain the notion of inserting the mandate that the review by LB&A replace that of the legislature.

Representative Costello replied that she would consider the replacement a friendly amendment and she supported the change. Co-Chair Stoltze OBJECTED.

Vice-Chair Neuman clarified that the language would read: "the authority may not enter into a partnership or contract

for construction of the Knik Arm bridge unless the authority has obtained the approval of the Legislative Budget and Audit of a financial plan as provided in (c) of this section." He disagreed with the policy that might have substantial effects on the project. He added that the legislation was carefully crafted by the DOL and the DOR. He trusted the department participants, but did not object to the amendment to the amendment.

Co-Chair Stoltze WITHDREW his OBJECTION. The amendment to the amendment was adopted.

Co-Chair Stoltze maintained his objection to Amendment 4 as amended.

A roll call vote was taken on the motion.

IN FAVOR: Costello, Edgmon, Gara, Kawasaki and Munoz
OPPOSED: Thompson, Wilson, Holmes, Neuman and Stoltze

The MOTION FAILED (5-5).

Amendment 4 as amended failed.

Representative Gara MOVED amendment 5. Co-Chair Stoltze OBJECTED for discussion.

Page 5, following line 27:

Insert a new bill section to read:

"* Sec. 8. AS 19.75 is amended by adding a new section to read:

Sec. 19.75.925. No state obligation. A monetary indebtedness or obligation incurred by the authority, through contract, public-private partnership, issuance of bonds, or otherwise, is not a moral or other obligation of the state."

Representative Gara explained that the purpose of Amendment 5 was to prevent the state's moral obligation for the financing of the project. He was informed that the language in his amendment was not constructed properly and he planned to withdraw it. He appreciated the opportunity to state his opinion regarding the state pledging its moral obligation. He planned to craft the amendment properly and introduce it on the House Floor. He expressed concern about the future finances for Alaska along with additional

concern that the moral obligation will be increased if the project projections were inaccurate.

Amendment 5 was WITHDRAWN.

Representative Costello discussed the two fiscal notes. The first new fiscal note showed an estimated capital cost of \$10 million from DOT/PF. The second new fiscal note from DOR had zero fiscal impact.

[4:55:58 PM](#)

Vice-Chair Neuman MOVED to REPORT HB 23 out of committee with individual recommendations and the accompanying fiscal notes.

CSHB 23 (FIN) was REPORTED out of committee with an "amend" recommendation and with a new fiscal impact note from DOT/PF and one new zero fiscal note from DOR.

Co-Chair Stoltze noted that CSHB 23 (FIN) was considered landmark legislation.

[4:58:22 PM](#)

ADJOURNMENT

The meeting was adjourned at 4:58 p.m.