

HOUSE FINANCE COMMITTEE  
March 13, 2014  
8:36 a.m.

8:36:07 AM

CALL TO ORDER

Co-Chair Stoltze called the House Finance Committee meeting to order at 8:36 a.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 David Guttenberg  
Representative Lindsey Holmes  
Representative Cathy Munoz  
Representative Steve Thompson  
Representative Tammie Wilson

MEMBERS ABSENT

None

ALSO PRESENT

Daniel George, Staff, Representative Bill Stoltze;  
Representative Lora Reinbold, Sponsor; Don Habeger,  
Director, Division of Corporations, Business and  
Professional Licensing, Department of Commerce, Community  
and Economic Development; Arnold Liebelt, Policy Analyst,  
Office of Management and Budget, Office of the Governor;  
Kris Curtis, Legislative Auditor, Alaska Division of  
Legislative Audit; Steve Weaver, Assistant Attorney  
General, Civil Division, Department of Law; Crystal  
Koeneman, Staff, Representative Lora Reinbold; Daniel T.  
Seamount Jr., Commissioner, Alaska Oil and Gas Conservation  
Commission, Department of Administration; Cathy Foerster,  
Engineering Commissioner, Alaska Oil and Gas Conservation  
Commission, Department of Administration.

SUMMARY

HB 140 NOTICE FOR REGULATION ADOPTION

HB 140 was HEARD and HELD in committee for further consideration.

HB 239 EXTEND BOARD OF EXAMINERS IN OPTOMETRY

HB 239 was REPORTED out of committee with a "do pass" recommendation and with one new fiscal impact note from the House Finance Committee for the Department of Commerce, Community and Economic Development.

HB 240 EXTEND BOARD OF CHIROPRACTIC EXAMINERS

HB 240 was REPORTED out of committee with a "do pass" recommendation and with one new fiscal impact note from the House Finance Committee for the Department of Commerce, Community and Economic Development.

HB 241 EXTEND BOARD OF MARITAL & FAMILY THERAPY

HB 241 was REPORTED out of committee with a "do pass" recommendation and with one new fiscal impact note from the House Finance Committee for the Department of Commerce, Community and Economic Development.

HB 242 EXTEND PT & OCCUPATIONAL THERAPY BOARD

HB 242 was REPORTED out of committee with a "do pass" recommendation and with one new fiscal impact note from the House Finance Committee for the Department of Commerce, Community and Economic Development.

Co-Chair Stoltze communicated that the committee would discuss the four board extensions simultaneously.

#hb239

#hb240

#hb241

#hb242

HOUSE BILL NO. 239

"An Act extending the termination date of the Board of Examiners in Optometry; and providing for an effective date."

HOUSE BILL NO. 240

"An Act extending the termination date of the Board of Chiropractic Examiners; and providing for an effective date."

HOUSE BILL NO. 241

"An Act extending the termination date of the Board of Marital and Family Therapy; and providing for an effective date."

HOUSE BILL NO. 242

"An Act extending the termination date of the State Physical Therapy and Occupational Therapy Board; and providing for an effective date."

[8:37:22 AM](#)

DANIEL GEORGE, STAFF, REPRESENTATIVE BILL STOLTZE, referred to the Department of Commerce, Community and Economic Development Professional Licensing Program's Annual Report dated December 2013 (copy on file). He relayed that numbers in the fiscal notes had been derived from the annual report. He communicated that there were four replacement fiscal notes for HB 239, HB 240, HB 241, and HB 242.

Mr. George addressed the fiscal note for HB 239. The analysis in the first three paragraphs on page 2 remained the same. New language had been added related to the extension of the Board of Examiners in Optometry including a summary of the board's FY 12 through FY 13 biennium data, revenues, expenditures, biennium surplus/deficit, and ending cumulative surplus/deficit. The analysis also included a description of the FY 08 through FY 11 cumulative data and number of licensees. The format was repeated in the fiscal notes for all four bills. He communicated that the board's revenues in FY 12/FY 13 were \$74,540 and expenditures were \$94,478. There was a biennium deficit of \$19,938 and a cumulative surplus deficit of \$44,755.

[8:39:49 AM](#)

Mr. George discussed the fiscal note for HB 240. The second page of the note reflected the FY 12/FY 13 biennium data for the extension of the Board of Chiropractic Examiners. The board's data included revenues of \$179,215, expenditures of \$168,800, a surplus of \$10,415, and a cumulative surplus of \$80,344.

[8:40:29 AM](#)

Mr. George pointed to the fiscal note for HB 241. The second page of the note reflected the FY 12/FY 13 biennium data for the extension Board of Marital and Family Therapy. The board's data included revenues of \$63,165, expenditures of \$85,197, a deficit of \$22,032, and a cumulative surplus of \$112,195.

[8:41:11 AM](#)

Mr. George addressed the fiscal note for HB 242. The second page of the note reflected the FY 12/FY 13 biennium data for the State Physical Therapy and Occupational Therapy Board. The board's data included revenues of \$250,000, expenditures of \$325,365, a deficit of \$75,365, and a cumulative deficit of \$55,238.

Representative Guttenberg noted that the OMB component number [at the top right of the first page] on each of the fiscal notes was the same. He wondered how the numbers were determined. Mr. George deferred the question to the department.

Co-Chair Stoltze noted that the question would be addressed later in the meeting. He relayed his intent to address the bills one at a time, beginning with HB 239. He added that the bills had been previously heard and public testimony had been taken.

#hb239

HOUSE BILL NO. 239

"An Act extending the termination date of the Board of Examiners in Optometry; and providing for an effective date."

8:42:49 AM

REPRESENTATIVE LORA REINBOLD, SPONSOR, briefly discussed the bill.

Co-Chair Stoltze asked about the sponsor's vision for the legislation. Representative Reinbold wanted to keep the examiners in optometry in business.

Representative Costello noted that the board was carrying forward a deficit. She wondered what the legislature would be communicating by extending a board with a deficit.

8:45:36 AM

Representative Costello reiterated her question. Additionally, she wondered how the deficit would impact the department's actions moving forward related to setting board fees.

DON HABEGER, DIRECTOR, DIVISION OF CORPORATIONS, BUSINESS AND PROFESSIONAL LICENSING, DEPARTMENT OF COMMERCE, COMMUNITY AND ECONOMIC DEVELOPMENT, replied that the division recognized that some boards were in a deficit position; the information had been communicated in a report provided to the legislature. The department was cognizant of the business environment and was working to make licensing fees less onerous. Some of the programs had seen 100 percent fee increases; the increases represented a hardship for members. The department was taking some of the programs into compliance over a couple of cycles.

Representative Costello asked for verification that the department planned to adjust fees if the legislation passed. Mr. Habeger believed that the fees for the Board of Examiners in Optometry had been adjusted 100 percent in the last cycle to help the board catch up.

Representative Costello asked about efforts to increase board transparency. She wondered if there was an effort to share information pertaining to a board's fiscal status online.

Mr. Habeger replied that the department was working to increase transparency. He spoke to various actions the department had taken towards the goal. He required an executive member of the division staff to present information to a board at every meeting; many boards met quarterly. Additionally, the information was discussed 6 months before a board's fee adjustment time. Lastly, the division posted the information online on a quarterly and year-end fiscal basis; the data was available to the public on the division's website.

8:49:02 AM

Representative Guttenberg noted that the OMB component number on each of the fiscal notes was the same. He asked what the number indicated. Mr. Habeger deferred the question.

ARNOLD LIEBELT, POLICY ANALYST, OFFICE OF MANAGEMENT AND BUDGET, OFFICE OF THE GOVERNOR, answered that the OMB component number referred to how the funding would flow through the budget. The boards under discussion were all within the same OMB component number and would be broken out into detail within the department's budget.

Representative Guttenberg asked how the debts were handled at the end of the fiscal year. Mr. Habeger answered that the operating budget included specific language that carried forward a negative and positive balance; per statute, the division tracked and carried the balance as well.

Representative Gara wondered how shifting to board meetings by teleconference would impact the state. He noted that members wanting to travel on their own could choose to do so. He spoke to the idea as a cost savings measure. Mr. Habeger answered that boards currently utilized teleconferences in conjunction with in-person meetings. For example, the medical board felt that it was necessary to meet in urban and rural communities to ensure that it was in touch with its constituency. The division honored the desire of the board.

Representative Gara wondered if the division would have power to keep fees down by asking boards to hold meetings via teleconference. Mr. Habeger replied that he could make the determination, but did not believe it was always wise.

8:53:21 AM

Representative Gara asked the division to maximize the use of teleconference meetings when possible. He referred to boards in deficit and asked if the division had the discretion to let them catch up over a two to three year cycle. Mr. Habeger replied in the affirmative. There were currently several programs catching up over multiple years.

Co-Chair Stoltze remarked that members were volunteers donating their time. He surmised that they did not enjoy taking time away from their profession. He believed the larger cost problem was related to investigations that may not be as well-rounded. He believed the members were judicious related to cost.

Representative Thompson noted that most of the boards had the best intentions to avoid deficits; members raised their own dues for meeting travel. He stated that most of the deficits were caused by investigations and law suits. He did not believe members could be told how to spend their money.

Representative Gara agreed with statements made by Co-Chair Stoltze and Representative Thompson related to travel. He asked if the Department of Law (DOL) conducted the investigations. Mr. Habeger replied that the division had its own investigators charged with investigating business and professional licensing. There were enforcement staff for Title 8.

8:57:00 AM

Representative Gara pointed to costs charged to boards resulting from investigations. He noted that DOL sometimes billed an hourly rate that was much higher than the rate its employees were paid. He wondered if the boards were charged the actual cost of the investigator. Mr. Habeger replied that the board was charged an hourly rate. The division's investigators positively kept their time; if they were working for several programs they kept the information on their time sheets by the half hour as well. He added that the investigators were only charged for the time they worked.

Representative Gara asked if the hourly rate was an accurate reflection of the cost of the investigator. Mr. Habeger answered that there was no markup charged.

[8:58:37 AM](#)

Vice-Chair Neuman MOVED to REPORT HB 239 out of committee with individual recommendations and the accompanying fiscal note. There being NO OBJECTION, it was so ordered.

HB 239 was REPORTED out of committee with a "do pass" recommendation and with one new fiscal impact note from the House Finance Committee for the Department of Commerce, Community and Economic Development.

#hb240

HOUSE BILL NO. 240

"An Act extending the termination date of the Board of Chiropractic Examiners; and providing for an effective date."

[8:59:15 AM](#)

REPRESENTATIVE LORA REINBOLD, SPONSOR, relayed that HB 240 would extend the termination date of the Board of Chiropractic Examiners. She spoke to the importance of keeping high-quality chiropractors in business. She urged the committee to support the extension of the bill that would enable the board to continue to license; regulate; and protect and promote the public health, welfare, and safety of Alaskans.

Co-Chair Stoltze asked if there were amendments. He relayed that the committee had discussed the fiscal note earlier in the meeting.

Vice-Chair Neuman MOVED to REPORT HB 240 out of committee with individual recommendations and the accompanying fiscal note.

Co-Chair Stoltze OBJECTED for discussion.

Representative Holmes pointed to the legislative audit report and believed the board was doing its job.

Co-Chair Stoltze WITHDREW his OBJECTION.

There being NO further OBJECTION, HB 240 was REPORTED out of committee with a "do pass" recommendation and with one new fiscal impact note from the House Finance Committee for the Department of Commerce, Community and Economic Development.

#hb241

HOUSE BILL NO. 241

"An Act extending the termination date of the Board of Marital and Family Therapy; and providing for an effective date."

[9:01:42 AM](#)

REPRESENTATIVE LORA REINBOLD, SPONSOR, thanked the committee for its questions pertaining to the fiscal notes. She explained that the bill would extend the termination date for the Board of Marital and Family Therapy and providing for an effective date. She communicated that the professionals provided an important service in communities. She urged the committee to support the legislation that would enable the board to continue to effectively license and regulate marital and family therapists and to protect and promote the health, welfare, and safety of Alaskans.

Co-Chair Stoltze referred to the audit recommendation to extend the board. He asked if there were any amendments. He remarked that the fiscal note had been discussed earlier in the meeting.

Vice-Chair Neuman MOVED to REPORT HB 241 out of committee with individual recommendations and the accompanying fiscal note. There being NO OBJECTION, it was so ordered.

HB 241 was REPORTED out of committee with a "do pass" recommendation and with one new fiscal impact note from the House Finance Committee for the Department of Commerce, Community and Economic Development.

#hb242

HOUSE BILL NO. 242

"An Act extending the termination date of the State Physical Therapy and Occupational Therapy Board; and providing for an effective date."

9:03:22 AM

REPRESENTATIVE LORA REINBOLD, SPONSOR, discussed that HB 242 would extend the termination date of the State Physical Therapy and Occupational Therapy Board and provide for an effective date. She relayed that the therapists provided a tremendous opportunity for Alaskans to be healthy and to return to work after injury. She spoke to the importance of the board. The legislation would allow the board to carry out its duties to effectively license and regulate physical and occupational therapists and to protect and promote the health and welfare of Alaskans.

Co-Chair Stoltze noted that the auditor had recommended the extension.

Representative Guttenberg asked about the recommendation from audit. He wondered if there was a uniform case management system across all boards and commissions.

KRIS CURTIS, LEGISLATIVE AUDITOR, ALASKA DIVISION OF LEGISLATIVE AUDIT, replied that the division's investigative unit had upgraded its case management system in 2010. The auditor's findings and recommendations related to all occupational boards that utilize the investigative unit to investigate cases. The Division of Legislative Audit had made the same finding in the past two years that problems existed with the management system; it recommended improvements.

Representative Guttenberg asked for verification that the finding in the audit report was not unique to the State Physical Therapy and Occupational Therapy Board. Ms. Curtis agreed. She detailed that the finding had been included in every occupational board since 2013.

Co-Chair Stoltze commented on his appreciation for the profession. He asked if there were amendments. He remarked that the fiscal note had been discussed earlier in the meeting.

Vice-Chair Neuman MOVED to REPORT HB 242 out of committee with individual recommendations and the accompanying fiscal note. There being NO OBJECTION, it was so ordered.

HB 242 was REPORTED out of committee with a "do pass" recommendation and with one new fiscal impact note from the House Finance Committee for the Department of Commerce, Community and Economic Development.

[9:06:52 AM](#)

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[9:08:19 AM](#)

RECONVENED

#hb140

HOUSE BILL NO. 140

"An Act relating to the information that must be included with certain notices provided for the proposed adoption, amendment, or repeal of a regulation."

[9:08:28 AM](#)

REPRESENTATIVE LORA REINBOLD, SPONSOR, discussed the bill. She communicated that she had met with small businesses in her district prior to running for office. She discussed a restaurateur in her district who had asked for decreased regulations on business. She remarked that she currently chaired the House Regulatory Review Committee. The intent of the bill was to provide increased transparency in the regulatory process. Additionally, the bill would incorporate more into the regulatory process to increase its impact.

Representative Reinbold pointed to Section 1 of the bill, which amended the law by adding a new section titled the Regulation Impact Transparency Act. The bill would require additional information in state agency notices of proposed regulations specifically to increase transparency of the proposed fiscal impacts including the private sector. She detailed that the section would allow materials to become more transparent.

Representative Reinbold addressed Section 2. Currently under AS 44.62.190(d) an agency was required to provide a "reason under the proposed action." She read from the sectional analysis:

If the reason given is "federal," HB 140 will require identification of the federal action that is the reason for the proposed regulation. It also adds a requirement to estimate compliance costs to private persons (including private businesses), other state agencies and municipalities.

Representative Reinbold added that compliance costs would be estimated in aggregate form for stakeholders. Section 3 added a subsection outlining that a person may not bring a court action in challenge of regulation if a state agency inaccurately or insufficiently provides a cost estimate. Section 4 added a new section requiring an effective date. She relayed that the bill was not retroactive.

[9:12:54 AM](#)

Representative Reinbold expected pushback on the bill from some agencies.

Co-Chair Stoltze noted that various agencies were available for questions.

Representative Reinbold pointed to letters of support from various entities including the Alaska Municipal League, State Chamber of Commerce, National Federation of Independent Business, Council of Alaska Producers, and the Wasilla Area Seniors. She had discussed the bill with House Finance Committee members prior to the hearing had had received additional input; subsequently there was work underway on a CS.

[9:14:04 AM](#)

Representative Costello thanked the sponsor for the legislation. She had also heard from constituents and businesses about the overregulated society. She encouraged any effort to increase transparency in the regulatory process. She asked whether the Department of Law (DOL) provided instructions to state agencies related to proposed regulations.

STEVE WEAVER, ASSISTANT ATTORNEY GENERAL, CIVIL DIVISION, DEPARTMENT OF LAW, replied that the department focused on the legal review of regulations; it advised agencies and discussed information about the Administrative Procedure Act. Specific to public outreach, the act required

newspaper notice and online posting. The agency was additionally required to provide advanced notice to requestors or people interested in speaking on the regulation.

Representative Costello asked if a member of the public would receive answers if they called an agency with a question on a proposed regulation. Mr. Weaver replied in the affirmative. He detailed that the department encouraged agencies to share its answers with the broader public online. He elaborated that if the question pertained to legal interpretation of an existing regulation the agency would have the ability to consult with their advising DOL attorney and the assistant attorney general for specific questions.

[9:17:37 AM](#)

Representative Costello wondered if the same courtesy and transparency was extended to stakeholders who called with questions about proposed regulations.

Mr. Weaver responded in the affirmative. The department encouraged agencies to share information when they received questions on proposed regulations; it also advised agencies that when answering individual questions about the interpretation of a regulation that the broader public may be interested in the information as well. The department wanted all public to know about regulations and their meaning. Subsequently, DOL asked agencies to watch out for making personal commitments to one particular stakeholder. The objective was a level playing field.

Representative Costello replied that the response was not in line with previous information she had been given. She stated that statute referenced in the bill included a section called "style and form"; the section allowed DOL to revise (when necessary) a drafting manual for administrative regulations that prescribed the style and forms for submitting regulations. She detailed that the drafting manual pertaining to administrative regulations was 250 pages. She believed the manual had certain prohibitions related to answering questions via telephone, which was considered ex parte communication depending on the caller. As a lawmaker, she had heard from people about their inability to get information from departments about proposed regulations. She took the issue seriously. She

discussed the remoteness of many areas in Alaska and believed that the state should encourage members of the public to call with questions on proposed regulations.

[9:20:48 AM](#)

Mr. Weaver answered that once the formal notice of proposed regulations was published one of the frequently asked questions was about what leeway an agency had for one-on-one communications with a particular person. If a position was taken by the department on a regulation over the phone it was not shared with other stakeholders. He detailed that DOL and agencies were not trying to limit information to stakeholders; however, there was an established process that allowed all stakeholders to submit comments. The process guaranteed that everyone would have the same access to the agency decision maker. The problem with public comments in a one-on-one phone call was that there was no easy way to make a record of the comment. He noted that the agency may end up at odds with a commenter if the commenter believed the agency got the comment wrong. Additionally, there was no way for the general public to see the comments. Finally, there may be a sense that regulations were developed in a backroom. Individuals who did not have the opportunity to speak one-on-one to an agency decision maker may feel left out. He explained that a member of the public may feel that the public notice and comment process was meaningless.

Mr. Weaver provided the Regulatory Commission of Alaska (RCA) as an example. The RCA worked frequently with the public comment process. He spoke to the success of the even playing field the commission's public comment process provided. The process included a time period that allowed members of the public to reply to each other's comments. He understood the concern detailed by Representative Costello. He continued that there was a right of the public to communicate with agency decision makers. He stressed that in the formal regulations process it was important that all commenters were on the same level playing field. He reiterated that one party should not have access that other members of the public did not have. Additionally, a solid comment record was important in the event of any future litigation.

[9:24:51 AM](#)

Representative Costello remarked that when a person called with a question the answer was posted online for everyone to view. She discussed that when a stakeholder called with a question to understand the regulation and was pushed to the public comment period, they were put in a situation where they were commenting on something they did not understand. She asked whether it was possible for the departments to post any stakeholder questions and answers online. She believed a party was disadvantaged when they called and could not ask a question. She was sure that legitimate questions arose in response to the volumes of regulations that were produced.

Mr. Weaver replied that DOL had advice in place to agencies that anticipated many questions on complicated regulations. The department encouraged agencies to provide frequent opportunities to answer questions and to make answers as public as possible to avoid the impression of backroom dealing. Workshops were also an acceptable way to provide information. The department also advised agencies to be prepared to stand by any statements made to the public related to regulations.

Representative Costello opined that the process sounded complicated.

Co-Chair Stoltze appreciated the sponsor's commitment to the project. He discussed the regulatory process. He remarked on the ability of the attorney general to back up regulators with the "stroke of a pen and a pronouncement." He stated that the issue was larger than it appeared.

[9:28:41 AM](#)

Representative Munoz was curious about the review process related to consistency with statute and statutory authority for a regulation. She wondered what would happen if DOL found that something went beyond statutory authority.

Mr. Weaver replied that DOL tried to work with the agency to reach a point where regulations did not pose a legal concern. The regulations attorney had the power to disapprove a regulation that was not consistent with statutory authority. The department rarely used the power in the interest of ensuring that agencies performed their activities in conformance with statutory authority. The department tried to work with agencies on different

regulations or moving forward on part of a regulation without disapproval or violation of statutory authority.

Representative Munoz asked if it was common for DOL to send regulations back to agencies for further work and clarification. Mr. Weaver replied in the affirmative.

Representative Wilson referred to regulations that had been proposed by the Department of Environmental Conservation (DEC) related to air quality in Fairbanks. She asked if DEC would have been required to inform the public how much it would cost residents to abide by air quality regulations the if law had been in place when the regulations had been proposed.

Representative Reinbold replied in the affirmative. The intention was to inform on the potential impact of a regulation on businesses or municipalities in aggregate form.

Mr. Weaver expounded that as a legal matter he could not provide an opinion on the hypothetical scenario provided by Representative Wilson. The legal answer would depend in part on what the bill meant by "to provide a good faith estimate," what it meant for the estimate to be in the aggregate, and what it meant for information to be available to state agency.

Representative Wilson expressed frustration that when significant regulation had been proposed in Fairbanks the community had asked questions that had not been answered. Subsequently, the community had been expected to comment on the regulations that were to be included in a state implementation plan. She did not know what the plan looked like. She was concerned about impacts to individual residents, not necessarily municipalities as a government entity. She wondered how legislators could ensure that constituents understood what proposed regulations would do. She reiterated that questions had gone unanswered in workshops provided by the state. She relayed that public comment pertaining to the air quality regulations in Fairbanks had been closed on January 21, 2014. She wondered what the community was supposed to do.

Mr. Weaver answered that DOL was tasked with enforcement of the Administrative Procedure Act. The size of a project, its impact, the length of public comment period, decision

to hold workshops, and to post frequently asked questions were all determined by agencies. He explained that the Administrative Procedure Act set a floor, but not a ceiling; an agency could always do additional outreach. The agency could provide supplemental public comment periods if the public requested the opportunity. The principle concern about answering one-on-one questions was that there was no record and that one member of the public may get an advantage that other members of the public did not have. He stressed that the department did not discourage outreach.

[9:35:43 AM](#)

Representative Wilson believed the message was that it was okay to give everyone a disadvantage versus giving one person an advantage. Mr. Weaver replied that it was not a matter of disadvantaging people. The purpose of public hearings and workshops was to provide the public with an opportunity to participate in the process on an even playing field.

Co-Chair Stoltze noted that the public felt that its chances to be involved were "slim and none."

Representative Wilson stated that during the public comment period some of the community's questions had been answered and others had not. She stressed that commenting on regulations that were not understood did not make sense. She wondered about the average person in Fairbanks that may not be able to continue to afford living in the community due to the new regulations. She emphasized that the prevention of one-on-one conversations between the public and agencies disadvantaged everyone if the department chose to limit the opportunity for comment. She wondered whether suing a department was the only recourse.

[9:38:11 AM](#)

Mr. Weaver replied that there was always judicial review of regulations if a problem arose related to noncompliance with the Administrative Procedure Act. He surmised that there may be confusion about one-on-one conversation. He explained that DOL wanted transparency and a level playing field, which was the point of a public hearing process. He relayed that an agency may be able to provide an answer if it had not conducted sufficient outreach and the

regulations were not understood by the public. He noted that environmental law would be before the resources committee. He furthered that DOL's concern was that comments were on the record in the event that a regulation was challenged in the future. He stressed that a phone call did not provide a record that could be reviewed; it could be a source of confusion particularly if the commenter believed the agency misunderstood the comment. He discussed a hypothetical scenario involving oil companies as stakeholders. He elaborated that if one oil company had a one-on-one conversation with a department, the other oil companies could be at a disadvantage. The other oil companies or environmental groups could contend that regulations had been developed in a backroom.

[9:41:12 AM](#)

Mr. Weaver relayed that he did not have intimate knowledge about DEC regulations Representative Wilson was referring to. He noted that the regulations were not formally in front of DOL for review. He deferred further questions on the topic to DEC.

Representative Wilson discussed that the process kept members of the public at a disadvantage. She surmised that DEC could not be sued given that it had provided public comment and numerous meetings. She believed community members in Fairbanks were equally disadvantaged because no one understood the regulatory plan. She emphasized the importance of involving the public in the process. She mentioned that the borough or city was a government entity, but the impact of converting from wood to gas or oil would be significant on the public.

Representative Reinbold pointed to page 2, line 6 of the bill. She stressed that private persons were listed first to indicate their priority. The impacts of a proposed action were to be provided in aggregate form to the private sector and individuals to prevent situations where people could not afford to live in the state.

She commented that people calling agencies with questions on regulations were not given answers. She stated that it was time consuming for businesspersons to attend workshops to understand regulations. She remarked that it was much easier for people to ask questions over the phone. She

believed it was unfair to the public to ask them to make a formal comment on a regulation they did not understand.

[9:44:42 AM](#)

Representative Guttenberg referred to a fiscal note related to the Department of Fish and Game and up to 400 proposals annually. He asked if changes in the state medical AlaskaCare insurance were considered a regulation change.

Mr. Weaver answered that there were numerous personnel board regulations that addressed items such as insurance for state employees. He was unable to answer questions specifically related to AlaskaCare. He relayed that the vast majority of personnel regulations were matters of internal management (part of the employer/employee relationship) and did not affect the public. He detailed that most personnel regulations and regulations relating to insurance were outside of the Administrative Procedure Act. The legislature had established different procedures for the personnel board. He used the Alaska Industrial Development and Export Authority as an example and relayed that the vast majority of its regulations were not subject to the Administrative Procedure Act because it behaved as a market participant; the entity also had its own administrative procedures set in statute.

[9:46:56 AM](#)

Co-Chair Stoltze assumed that the Alaska Railroad Corporation was exempt from almost everything.

Representative Guttenberg asked if retirees fell under the same category. Mr. Weaver deferred the question to a DOL retirement law attorney. He added that the legislature had established that most personnel and insurance regulations fell outside the Administrative Procedure Act.

Representative Guttenberg wondered whether he could have a conversation with a state agency related to pending regulation without it being considered ex parte.

Mr. Weaver replied that legislators were allowed to have discussions with entities about pending regulations in the process of public comment. He emphasized that concerns about ex parte communications came into play once the formal public comment period commenced. He stated that

there was significantly more latitude for discussions over the phone about the meaning of an implemented regulation or prior to the formal public notice period. The department advised agencies to be prepared to live by information provided to the public; DOL also encouraged agencies to provide as much outreach as possible related to pending regulations. He stressed that agencies could receive calls related to regulations; citizens had the right to ask questions. The department got concerned when a person believed a regulation was a done deal prior to the public notice or if someone tried to have a one-on-one conversation with an agency about what a regulation should look like during the formal public comment period. The purpose of the formal public comment period was to obtain information and comments on regulations. The department advised agencies to conduct scoping in advance of the public comment period for complicated regulations. He stressed that scoping and outreach were always good. The department urged agencies to avoid the appearance that regulations were drafted in a backroom and to ensure that public comment was not meaningless.

[9:50:52 AM](#)

Co-Chair Stoltze commented on the legislature losing a public relations battle when voters trusted other branches of government more. He remarked that the annulment of regulations had a poor track record at the ballot box. He noted the paradox of government.

Representative Munoz pointed to the bill's inclusion of a standard of good faith to be used by agencies to determine economic impact costs to individuals. She asked if DOL was comfortable that the language provided enough clarity for agencies.

Mr. Weaver answered that bill structure spoke to inaccuracy of a good faith estimate. The department believed in the importance of transparency in the regulation process. The department appreciated the sponsor's and committee's interest in the subject. When DOL looked at language it did not take a policy position. He noted that the Office of the Governor and individual agencies could take policy positions. The department looked at the possibility for litigation; it was interested in whether the current shield of curtailing litigation based on inaccuracy, foreclosed a lawsuit. He provided an example of a mixing zone proposed

by DEC; mixing zones were bodies of water where mines or other received permits to dump pollutants. The idea was that pollutants would disperse due to the water current. He detailed that DEC had implemented mixing zone regulations in the interest of promoting development. He provided a scenario about a disgruntled environmental group, representative of the tourist industry, or commercial fishermen related to a mixing zone. He questioned whether it was good faith to put out a number that represented only the cost to the mine. If a litigant was unhappy with a decision they would look for places in statute to find a way to sue related to whether an agency acted in good faith. He stated that DOL would defend against a suit to the best of its ability.

[9:55:39 AM](#)

Co-Chair Stoltze appreciated Mr. Weaver's candor and testimony.

Representative Reinbold remarked that the legislature had given much of its power away to boards in its ability to write regulation. She shared that a regulation on a controversial issue had come before the House Regulatory Review Committee during the interim. She had found a regulation was in clear violation of statute. She had asked the Board of Personnel to wait on the regulation until she had a chance to meet with colleagues during session to discuss the intent of the law. She relayed that the Department of Administration had provided her letter of concern to the media. She stated that the board had chosen to disregard her concerns. She expounded that a court case existed, but the statute had not been entered into the court case. She explained that subsequently regulations had been written based on a court case. She was very concerned about the issue. She believed a regulation had to be a statute.

Co-Chair Stoltze noted that the sponsor had introduced the bill prior to the issue she was describing. Representative Reinbold replied in the affirmative. She detailed that the occurrence had reinforced the importance of public comment on regulations. She noted that the CS required entities such as the personnel board to increase accountability.

[10:00:08 AM](#)

Representative Wilson asked if part of the issue was about the need to change or clarify the minimum requirements for departments related to public outreach regarding regulations.

Representative Reinbold deferred the question to her staff.

CRYSTAL KOENEMAN, STAFF, REPRESENTATIVE LORA REINBOLD, replied that some of the language in the CS did not necessarily raise the minimum requirements; it did not call for increased public hearings or other.

Representative Wilson was working to address the two issues that had been discussed.

10:02:05 AM

DANIEL T. SEAMOUNT JR., COMMISSIONER, ALASKA OIL AND GAS CONSERVATION COMMISSION, DEPARTMENT OF ADMINISTRATION, introduced himself.

CATHY FOERSTER, ENGINEERING COMMISSIONER, ALASKA OIL AND GAS CONSERVATION COMMISSION, DEPARTMENT OF ADMINISTRATION, relayed that the commission currently considered cost to stakeholders and affected parties as part of its hearing process. Additionally, the commission had a process for any interested party to ask questions and receive answers. She relayed that the commission was very careful not to enter into ex parte communications. She furthered that their executive assistant could take questions from the public to the commissioners for clarity; other staff members could also answer questions. She added that the commission was an independent agency that did not work through the governor; it was asked to adjudicate on oil and gas issues that may pit the Department of Natural Resources against an operator or land owner. The commission often had multiple hearings.

Co-Chair Stoltze noted that the legislation cast a wide net. He surmised that the topic impacted the commission, but was more applicable to other agencies.

Ms. Foerster agreed. She reiterated that the commission had a process in place. She stated that other agencies could do the same. The commission would hold another hearing if it was obvious that there were additional questions or that uncertainty existed. She relayed that the commission had

just completed three or four hearings on hydraulic fracturing regulations.

Co-Chair Stoltze asked if the commission had significant public participation.

Ms. Foerster replied that the commission did have a wide variety of public participation. The agency reached out through the media in public forums. The agency did include cost as part of its considerations. She relayed that the agency had a small and specialized staff; it did not have cost estimators or people who were current on industry, environmental, or public costs. However, as part of the hearing process the agency encouraged people to bring cost impacts to its attention; the information was considered in the regulations. The commission heard many valid concerns about why the legislation was under consideration; however, there were impacts resulting from the legislation that would be highly negative on the agency. She stated that if the agency was required to estimate the cost impacts to anyone impacted by its proposed regulations it would not be qualified to do a good job at the estimate. Additionally, whatever the agency put into its public notice may become a subject of debate in its hearing. The purpose of the regulation hearings was to understand whether the regulation was right. She noted that the agency's regulations tended to pertain to physics.

Co-Chair Stoltze wondered if the commission had to engage in a study when it answered a question from the public.

Ms. Foerster replied that it depended on the question. For example, a member of the public may call to ask why the commission would allow hydraulic fracturing in Alaska. The answer had been that hydraulic fracturing had been occurring for approximately 50 years in Alaska and 25 percent of its wells had been hydraulically fractured; the state had rules in place that made the process safe. The agency welcomed the public to come in to discuss its rules. She stated that questions were sincere, but sometimes came from a low level of understanding. One of the entity's goals was to have an informed public, which allowed the process to run more smoothly. She did not want the agency's hearings to turn into a debate about how much regulations would cost affected parties. She stated that the requirement would derail the agency's efforts to do its intended work. She relayed that the agency would do a poor

job at providing estimates. Additionally, it could depend on the regulated industry to determine the costs; however, she had examples of the industry's cost estimates that were far above actual costs. She did not want the agency to devolve to a conversation about costs when its ultimate purpose related to a conversation about physics. She had heard many valid concerns and thought they may be addressed more effectively if other agencies had an improved process.

[10:09:31 AM](#)

Co-Chair Stoltze asked hypothetically if the agency could easily answer a question from the public about whether it would approve an adequate gas supply for a proposed pipeline deal. Ms. Foerster answered that the agency did not currently have many hearings about the issue. She replied that her answer to the question would be as frustrating to the public as it was to the legislature. She would answer that when the operators came to the agency with a plan for how to market North Slope gas the plan would need several technical details including what had been done to accelerate oil production in the meantime, what would be done to mitigate oil losses when the gas was sold, when and how much gas would be sold, and how the sale of Prudhoe Bay gas would affect the synergies with the use of gas to get oil out of the ground in other places across the North Slope. She continued that the agency would approve a plan if the plan demonstrated that alternatives had been considered and that the alternative proposed would promote greater ultimate hydrocarbon recovery for the state.

Co-Chair Stoltze referred to the desire for increased transparency and improvement in the regulatory process. He assumed the agency was testifying because it may have a difficult time with the bill requirements. He asked the commission to communicate with his office related to providing a solution without an unrealistic expectation. He noted that most of the concerns were related to issues like food safety regulations. He pointed to the complexity of the work done by the commission. He pointed to support around the table for the broader goal of increased transparency.

Ms. Foerster relayed that the commission held the legislature in high regard and intended to respect and

abide by any legislation that was passed. She was not aiming to criticize the legislation, but to share concerns.

Co-Chair Stoltze took the commission's presence in the spirit of working to ensure that legislation would not have unintended consequences. He assumed the sponsor had been talking with small businesses and not oil producers when she decided to introduce the legislation.

Representative Costello referred to bill language "a good faith effort." She believed the language had been included to allow for flexibility in terms of costs of providing estimates. She would be interested to know whether the term appeared elsewhere in statute and about its definition.

Representative Reinbold thanked the committee for its time. She stressed that the bill pertained to something that weighed heavily on many people and municipalities. She believed that one exemption would have a domino effect. She hoped to work with the committee on the CS.

Co-Chair Stoltze expressed dislike for exemptions; however, the committee would entertain the idea if a valid public policy reason existed. He mentioned unintended consequences.

HB 140 was HEARD and HELD in committee for further consideration.

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ADJOURNMENT

[10:15:48 AM](#)

The meeting was adjourned at 10:15 a.m.