

SENATE FINANCE COMMITTEE

April 4, 2013

9:13 a.m.

9:13:49 AM

CALL TO ORDER

Co-Chair Meyer called the Senate Finance Committee meeting to order at 9:13 a.m.

MEMBERS PRESENT

Senator Pete Kelly, Co-Chair
Senator Kevin Meyer, Co-Chair
Senator Anna Fairclough, Vice-Chair
Senator Click Bishop
Senator Mike Dunleavy
Senator Lyman Hoffman
Senator Donny Olson

MEMBERS ABSENT

None

ALSO PRESENT

Daniel Sullivan, Commissioner, Department of Natural Resources (DNR); Cora Campbell, Commissioner, Department of Fish and Game (DFG); Wynn Menefee, Deputy Director, Division of Mining, Land, and Water, Department of Natural Resources; Suzanne Armstrong, Staff, Senator Kevin Meyer

PRESENT VIA TELECONFERENCE

SUMMARY

SB 18 BUDGET: CAPITAL

SB 18 was REPORTED out of committee with a "do pass" recommendation.

SB 74 UNIVERSITY OF ALASKA BUILDING FUND

SB 74 was SCHEDULED but not HEARD.

CS HB 77 (RES)

LAND USE/DISP/EXCHANGES; WATER RIGHTS

CS HB 77 (RES) was HEARD and HELD in committee for further consideration.

#hb77

CS FOR HOUSE BILL NO. 77(RES)

"An Act relating to the Alaska Land Act, including certain authorizations, contracts, leases, permits, or other disposals of state land, resources, property, or interests; relating to authorization for the use of state land by general permit; relating to exchange of state land; relating to procedures for certain administrative appeals and requests for reconsideration to the commissioner of natural resources; relating to the Alaska Water Use Act; and providing for an effective date."

[9:17:28 AM](#)

DANIEL SULLIVAN, COMMISSIONER, DEPARTMENT OF NATURAL RESOURCES (DNR), highlighted the administration's efforts on permitting reform. He commented that permitting reform and modernization efforts entailed establishing systems that were more "efficient, timely, and certain." The reform effort was in its third year and progress was made. Permitting reform enjoyed bi-partisan support in the legislature and benefitted every Alaskan. He emphasized that HB 77 and the permitting reform efforts were not about permitting the Pebble Mine. The department was fully committed to protecting fish habitat. The legislation would not weaken fish habitat protection. He noted the backlog in the department's reservations and stated that DNR adjudicated thirty three reservations in the last three years. Most of the adjudications were between DNR and the Department of Fish and Game (DFG) and resulted in protecting fish habitat. The reduced backlog and adjudications demonstrated the department's commitment to protecting fish habitat.

CORA CAMPBELL, COMMISSIONER, DEPARTMENT OF FISH AND GAME (DFG), communicated that she heard a lot of "serious concern" during public testimony on HB 77[See BASIS HB 77 minutes 04/03/2013 1:42 PM]. She stated that most testifiers believed that the legislation reduced protection

for fish habitat. She maintained that the legislation did not affect DFG's Title 16 authority to protect fish and fish habitat. The bill did not alter statutes that required DNR to consult with DFG when considering fish habitat impacts for a water use authorization. She shared that many testifiers recognized Alaska's world class fisheries and sustainable management. She stressed that with passage of the bill, all of the state's fisheries protection remained intact. She mentioned the concerns from "partners" and individuals who had gathered data for a water reservation application and believed that the data became unacceptable if HB 77 was adopted. She countered that the data would remain usable to move an application forward. She continued that some testifiers believed the legislation created an obstacle for those pursuing a water reservation to access both DNR and DFG. She explained that both departments must review and approve the applications. She encouraged applicants to create a partnership with the departments from the start of the process. She indicated that the water reservation process would work more efficiently under the legislation.

Commissioner Campbell addressed the concerns related to the DFG zero fiscal note. The department determined that existing staff could handle any additional workload from the legislation. She reported that staff was currently in place in the departments "water shop." Staff was tasked with reviewing DNR's water reservations and partnering with the public.

Commissioner Campbell continued that some testifiers felt that obtaining a water reservation was the only way to ensure an adequate water supply in order to protect fish habitat. She stressed that DFG had the ability to review any DNR water authorizations. In addition, DFG had a separate fish habitat permitting process that mandated fish habitat protection when necessary. A water reservation was not the only avenue to protect fish stream habitat.

[9:25:42 AM](#)

Commissioner Sullivan asserted that counter to public perception; the legislation would not diminish public participation. The department encouraged more participation early on in the application process in order to address concerns. He informed the committee that a provision in HB 77 authorized DNR to issue preliminary best interest

findings. The provision provided for two opportunities for public comment and statutorily ensured more public notice in the process. He mentioned that DNR made efforts to increase public notice especially in rural areas. He exemplified a recent DNR draft Yukon area plan. The Tanana Chiefs requested an extension for the public notice period and asked for a briefing from the department. The department agreed. The public notice period remained open and DNR provided the briefing. He noted a similar situation in Bristol Bay with the Bristol Bay area plan. The department was eager to extend the 30 day deadline for public comment to ensure full public participation.

Senator Hoffman observed that the vast majority of dissenting public testimony centered on Section 40 of the legislation, which abrogated the ability for a "person" to reserve water rights. He asserted that individual water rights were at the heart of the issue. He stressed that Section 40 commanded focused scrutiny by the committee. He referred to a letter from the NANA Regional Corporation (copy on file) to the governor dated March 30. He read the following:

"Section 40 would eliminate the ability of "a person" to reserve water rights. Under the existing statute (AS 46.15.145(A)), Alaska Native Corporations ("ANCs") created pursuant to the Alaska Native Claims Settlement Act, as well as other entities and individuals, are eligible to apply for reserved water rights as 'a person'."

Senator Hoffman stated that the courts would be the only avenue for an individual to pursue water rights, if the right was removed from statute. He pronounced that, "the people of Alaska deserve better." He felt that individual water rights were inviolable and its elimination was contrary to constitutional rights. He was bewildered why the administration was attempting to eliminate individual water rights. He felt that it was his job to protect such a fundamental right for the citizens of the state. He estimated that 90 percent of the testimony on HB 77 strongly protested the removal of individual water rights. He reiterated that water rights were guaranteed by the state constitution. He called for the elimination of Section 40 of the bill.

[9:34:10 AM](#)

Commissioner Sullivan acknowledged the discussion centered on "water authorizations" during public testimony. He identified three types of authorizations that were issued by the state: (1) Temporary water use permits (TWUPS), (2) Water rights, (3) Water reservations. He delineated that TWUPS and water rights involved the removal of water from a water body. Anyone can apply for either one and were the most requested permits. The department issued thousands of TWUPS each year and strove to do so in a timely manner. He continued that water rights required a more intensive application process. Once granted the right was permanent. He communicated that HB 77 did not affect TWUPS and water rights permitting. He stressed that anyone could come to DNR for a temporary water permit or water right. He explained that an application for a water reservation was a much more involved process that included three to five years of data collection. He noted that DNR received much fewer applications for water reservations. The most frequent applications came from DFG for fish habitat protection. He explained that the bill changed the water reservations application process and proposed that the application for water reservations "come formerly from public agencies to manage the public resource." He emphasized that "individuals, companies, NGO's, and tribes could initiate the application process ... through an agency."

Commissioner Sullivan addressed a question from the previous day regarding the necessity to change the statute. He explained that Alaska had an abundance of water. The department was concerned with a recent legal trend of rulings from court cases that prohibited DNR from issuing any TWUPS or water rights from the body of water in question until the water reservation was adjudicated. The process could take many years. The department believed that the situation would interfere with the timely issuance of TWUPS and water rights applications. He reiterated that the legislation would not affect the vast majority of water right applications.

Senator Hoffman understood the issue. He knew that water right reservations were few in number. He opined that the problem was that citizens had to apply through an agency to obtain a water reservation. He emphasized that it was a constitutional right for citizens to directly apply to the government for a water right. He believed the citizens of Alaska were being treated as "second class citizens in

their own state." Considering the small number of water reservation applications why bother changing the statute. Requiring that an individual apply through an agency for water reservations made the application process more onerous as opposed to streamlined, which was counter to what the administration was striving to achieve. Commissioner Sullivan stated that a court order could prohibit issuance of TWUPS or water reservations until a water reservation was resolved. He judged that situation was not an example of streamlining. Senator Hoffman suggested that another solution was possible that did not infringe on individual rights. Commissioner Sullivan responded that the court issue "slapped the door on individual's rights to access water."

[9:42:23 AM](#)

Senator Olson stated that he wrote a letter to Co-Chair Meyer that requested the bill be placed in a subcommittee to address the constitutional issues the bill raises.

Co-Chair Meyer stated that he was taking the suggestion under advisement.

Senator Dunleavy wondered whether taking water reservation applications to court was employed as a strategy to prevent projects from moving forward. Commissioner Sullivan replied that he did not want to hypothesize about the intentions of applicants. He restated that the departments concern was over the possibility that the legal trend had the potential to delay TWUP and water reservation applications. He added that water reservations were reissued in perpetuity after an initial ten year review period. Water reservations demanded responsible management. He thought that having the water reservation managed by a state agency was preferable.

Co-Chair Kelly asked how long it took the agency to issue a water reservation. Commissioner Sullivan answered that it took three to five years of data collection.

Co-Chair Kelly wondered whether a water body with multiple reservations could be made concurrently.

WYNN MENELEE, DEPUTY DIRECTOR, DIVISION OF MINING, LAND, AND WATER, DEPARTMENT OF NATURAL RESOURCES, responded that an entire water body was not considered. A water

reservation adjudication must specify a specific segment of a water body.

Co-Chair Kelly wondered whether DNR could process multiple water reservations for the same water body. Mr. Menefee explained that only if the reservations were on the same segment of the water body.

Co-Chair Kelly surmised that environmental groups could use water reservations as a strategy to shut down projects. Mr. Menefee replied that the strategy might exist but could not predict how successful the outcome would be.

Commissioner Sullivan restated the departments concern that taking water reservation adjudication to court delayed TWUP and water right applications.

Co-Chair Kelly felt that "a flaw" existed in current law that allowed "outside groups to control the length of time it took to develop projects" through manipulation of the process. He did not believe it was a constitutional issue.

[9:50:32 AM](#)

Senator Olson asked whether the state could seek a summary judgment against such tactics. Commissioner Sullivan related that the department did not have to grant a water reservation application but the department had to process every water reservation application. He restated that court procedures might prohibit other water permits from being issued until the water reservation was adjudicated. He believed it was a "troubling trend."

Co-Chair Kelly believed that outside groups were "shutting the state down." Taking water reservation adjudications to court was the groups "clever" tactics to stop development in the state. He thought that the constitution gave the legislature the authority to determine how to administer water rights. He believed that state administration of water rights was not a constitutional issue. He viewed Section 40 as a response to stop the outside environmental groups from shutting down development in the state.

Vice-Chair Fairclough asked whether individuals were able to directly petition for water reservations in other states. Commissioner Sullivan answered in the negative.

Vice-Chair Fairclough felt that Alaskans valued direct local control. She initiated a series of questions in an effort to understand the permitting process. She asked whether the water reservation statute was adopted in 1986. Mr. Menefee answered in the affirmative.

Vice-Chair Fairclough wondered whether an individual had ever qualified for a water reservation in the state. Mr. Menefee answered that the state never fully adjudicated an application from an individual.

Vice-Chair Fairclough recapped that an individual person never fully qualified for a water reservation in the state. She asked how the data collection process worked. Mr. Menefee elaborated that the data collection process varied depending on the type of resource you wanted to protect. In the case of fish habitat a person would have to study the volumes of water in a water body segment over a period of time. Statistically 5 years was necessary to balance out weather trends. The evaluation also included the species living in the habitat.

Vice-Chair Fairclough asked how an individual Alaskan would find out what criteria had to be met and the data to meet the applications requirements. Mr. Menefee stated that the person would work with the agencies. In the case of fish habitat, DNR would direct the individual to DFG.

Vice-Chair Fairclough asked who in DFG would help the individual obtain the data. Commissioner Campbell replied that the department had a "water shop" with staff tasked with assisting the applicant to "navigate the process." She noted that the department delineated all data required to complete the application.

Vice-Chair Fairclough wondered how long the process took. Commissioner Campbell explained that two approaches existed. An individual could proceed unaided. The preferable approach was when the person gathered the data and DFG reviewed the data and assisted the person with the application. She reiterated that the timeliest requirement was gauging water volume and not due to a backlog in the department.

Vice-Chair Fairclough wondered whether there was a general checklist or whether each applicant's requirements

differed. Commissioner Campbell did not know and agreed to provide the information.

Vice-Chair Fairclough queried how the agencies can trust whether the data collected was accurate. Commissioner Campbell informed the Senator that standard equipment existed for stream gauging to determine water flows.

Mr. Menefee continued that DNR worked through USGS [United States Geological Survey] on stream gauging. He noted that USGS was the stream gauge experts and provided the standards for accurate results. He added that the statute defined the requirements for the application. The applicants worked with DNR to determine the best techniques to meet the requirements and correctly collect the data.

Vice-Chair Fairclough deduced that a person could work with the departments to complete the application. She queried the cost of the equipment necessary and wondered whether and individual could successfully complete the application on their own. Mr. Menefee explained that most individuals contracted with a company that performed water gauging. Every individual worked through government agencies to develop an application plan and begin the process.

Vice-Chair Fairclough wanted to demonstrate that a state agency did not detract an individual from the process. She concluded that the government agencies were readily available to assist applicants.

[10:08:22 AM](#)

Commissioner Sullivan concluded that the administrations highest priority was to work with the native community on water issues and intended to do so.

CS HB 77 (RES) was HEARD and HELD in committee for further consideration.

[10:09:58 AM](#)

AT EASE

[10:17:42 AM](#)

RECONVENED

[10:18:48 AM](#)

AT EASE

10:20:15 AM

RECONVENED

#sb18

SENATE BILL NO. 18

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

Co-Chair Kelly MOVED to REPORT SB 18 out of committee with individual recommendations.

10:21:31 AM

AT EASE

10:22:09 AM

RECONVENED

Co-Chair Kelly withdrew his previous motion.

Co-Chair Kelly MOVED to ADOPT the proposed committee substitute for SB 18, Work Draft 28-GS1798\P (Martin, 4/3/13). Co-Chair Meyer OBJECTED for discussion.

SUZANNE ARMSTRONG, STAFF, SENATOR KEVIN MEYER, discussed the major changes in the committee substitute. She reported that a thorough review of the numbers section of the bill was performed that resulted in an initial excess of \$65 thousand. She pointed out that two projects were added to Section 1. Ms. Armstrong cited Page 12, lines 8-10:

Department of Commerce, Community and Economic Development

Juneau Airport Snow Removal Equipment Facility
\$3,000,000 General Funds

Ms. Armstrong explained that, without the funding, Juneau was in danger of losing federal receipts and reimbursement for future equipment, purchases and replacement. Ms. Armstrong cited Page 30, lines 16-18:

Department of Education and Early Development

Kwethluk K-12 Replacement, School Design, Planning,
Foundation (HD 36)

\$25,008,100 General Funds (REA Fund)

Ms. Armstrong noted that the appropriation reflected the commitment of the legislature to fulfill the Kasayulie School Settlement agreement. The funding was sufficient to begin school construction. The intent was to secure the remainder of the funds in FY 2015.

Ms. Armstrong remarked that there were no changes to Sections 4 and Sections 7 that contained the FY 2013 Supplemental Capital and Operating budgets.

Ms. Armstrong turned to the language section of the bill. She cited Section 17, Page 88, lines 10-16:

Sec. 17. UNIVERSITY OF ALASKA. (a) The proceeds from the sale of the Diplomacy Building by the University of Alaska are appropriated to the University of Alaska for the purchase and improvement of the Bragaw Office Complex in Anchorage. (b) The proceeds of the revenue bonds issued by the University of Alaska for the purchase and improvement of the Bragaw Office Complex in Anchorage are appropriated to the University of Alaska for the purchase and improvement of the Bragaw Office Complex in Anchorage.

Ms. Armstrong stated that Section 17 was a new section and was added at the request of the University of Alaska and Senator Kelly's office.

Ms. Armstrong referenced page 90, lines 17-18:

(d) The sum of \$618,300, is appropriated from the general fund to the regional educational attendance area and small municipal school district school fund (AS 14.11.030).

Ms. Armstrong noted that the item was removed from the fund capitalization Section 21 to Section 22, the Fund Transfer section. The item was a fund transfer.

10:28:01 AM

Ms. Armstrong mentioned that there were several legislative reappropriations requests related to various Senate districts. The reappropriations were added to the bill and did not result in an additional expenditure.

Co-Chair Meyer interjected that he accommodated reappropriation requests because they did not add to expenditures.

10:28:34 AM

AT EASE

10:29:24 AM

RECONVENED

Vice-Chair Fairclough shared that the community of Hoonah had urged support of a medical facility in the amount of \$1.9 million in matching funds, and she wondered whether the funding was included in the proposed budget. Ms. Armstrong replied that the request was granted and included on Page 104, line 20 of the legislation.

Ms. Armstrong turned to the spreadsheet, "Multi-year Agency Summary, 2013-04-03" prepared by the Legislative Finance Division (copy on file). She reported that the total capital budget amounted to \$1.9 billion. She broke down the total amount as follows: \$836 million in unrestricted general funds, \$152 million in designated general funds, \$78 million in other funds, and \$928 million in federal funds.

Senator Meyer interjected that the total budget amounted to \$2 billion. Ms. Armstrong indicated that \$2 billion included total agency operations. Fund Capitalizations, Debt Service, and Special Appropriations were not included in the total of \$1.9 billion.

Co-Chair Meyer MOVED to ADOPT Amendment 1 (28-GS1798\p) (Martin, 4/4/13). Vice-Chair Fairclough OBJECTED for discussion.

OFFERED IN THE SENATE BY SENATOR MEYER
TO: CSSB 18(FIN), Draft Version "P"

Page 22, following line 15:
Insert new material to read:

	APPROPRIATION	GENERAL
	ITEMS	FUND
Fairbanks Community Food Bank -	65,000	65,000
Vehicle Replacement (HD 1-5)"		

Adjust fund sources and totals accordingly.

Page 101, following line 1:

Insert a new subsection to read:

"(r) The unexpended and unobligated balance, estimated to be \$3,504,825, of the appropriation made in sec. 7, ch. 29, SLA 2008, page 21, lines 30 - 32 (Anchorage, Mountain Air Drive/Hillside Drive extension-\$4,500,000) is reappropriated to the Department of Commerce, Community, and Economic Development for payment as a grant under AS 37.05.315 to the Municipality of Anchorage for improvements and safety upgrades at the intersection on Goldenview Drive from Rabbit Creek to Romania Drive."

Ms. Armstrong explained Amendment 1. She offered that a statewide appropriation of \$65 thousand added to a statewide food bank organization appropriation was incorrect. The amount of \$65 thousand was included in the amendment as a separate item and reappropriated for the Fairbanks Community Food Bank. The original appropriation was reduced by \$65 thousand. The \$65 thousand addressed the \$65 thousand excess in the numbers section of the bill.

Vice-Chair Fairclough removed her objection. There being NO further OBJECTION, it was so ordered.

Co-Chair Meyer shared that the Fairbanks Food Bank was a separate entity from the main food bank in Anchorage. Ms. Armstrong added that the amendment also included a reappropriation from one road project to another road project.

Senator Dunleavy MOVED to ADOPT Amendment 2. Vice-Chair Fairclough OBJECTED for discussion.

Offered in the Senate by Senator Dunleavy
TO: CSSB 18 (FIN), Draft Version "P"

Page 14, on lines 20 through line 23:

Delete the entire sentence "It is the intent of the legislature that this appropriation be used only for the specific purpose, and that any funds remaining may not be appropriated for any other borough project."

Page 14, on lines 29 through line 32:

Delete the entire sentence "It is the intent of the legislature that this appropriation be used only for

the specific purpose, and that any funds remaining may be reappropriated only to the Warm Storage Fire Station on Four Mile Road and may not be appropriated for any other borough project."

Ms. Armstrong detailed that the Mat-Su Borough sent a memo requesting removal of the language from the legislation. The projects were part of other legislation that stipulated any reappropriation was subject to legislative approval. The borough thought the language was unnecessary and redundant.

Vice-Chair Fairclough removed her objection. There being NO further OBJECTION, it was so ordered.

Senator Hoffman distributed a letter from the executive director of the Yukon-Kuskokwim Health Corporation, Gene Petola (copy on file) regarding the elimination of \$5 million for the Village Safe Water Protection Projects for inclusion in the record.

Ms. Armstrong stated that the program originally received funding in FY 2013 for research and development opportunities and new technologies.

[10:37:27 AM](#)

Senator Hoffman concurred and explained that the project was attempting to discover ways to make the Village Safe Water systems more effective and less costly. The authorization to continue to expend the funds could potentially save the state millions of dollars.

[10:38:14 AM](#)

AT EASE

[10:41:34 AM](#)

RECONVENED

Co-Chair Kelly moved Conceptual Amendment 1. He cited Section 49, Page 110. He communicated that Section 49 required referencing the effective date of the Supplemental appropriations listed in Section 4 and Section 7.

Co-Chair Meyer objected for discussion.

Ms. Armstrong explained that Karen Rehfeld, Director, Office of Management and Budget, Office of the Governor, pointed out that the legislation failed to provide the earlier effective date of April 14, 2013 for the supplemental budget items.

Co-Chair Meyer removed his objection. There being NO further OBJECTION, it was so ordered.

Co-Chair Meyer shared that the capital budget process was very difficult with less money available. He thanked everyone involved.

Senator Hoffman thanked Co-Chair Meyer for the funding for the Kwethluk School, one of the Kasayulie School Settlement projects.

Vice-Chair Fairclough spoke to the budget process. She appreciated the "good public policy and process" that moved the budget forward. She remarked that the budget addressed the needs of Alaska in a "responsible and responsive way" in a climate of budget short falls.

[10:48:52 AM](#)

Co-Chair Meyer commented that the goals of the capital budget were to maintain the states existing assets, finish projects that were already started, and fund critical projects throughout the state.

Co-Chair Meyer removed his objection. There being NO OBJECTION, CSSB 18 (FIN) 28-GS1798\P was adopted.

Vice-Chair Fairclough stated her commitment to find funding for the University of Alaska's engineering buildings in FY 2014. Co-Chair Meyer agreed, and stated his support but felt that the \$109 million costs were too high to include in the budget. He hoped to find a way to keep the engineering colleges moving forward.

Co-Chair Kelly MOVED to REPORT CSSB 18 (FIN) as amended out of committee with individual recommendations. There being NO OBJECTION, it was so ordered.

SB 18 was REPORTED out of committee with a "do pass" recommendation.

#sb74

SENATE BILL NO. 74

"An Act creating the University of Alaska building fund for the payment by the University of Alaska of the costs of use, management, operation, maintenance, and depreciation of space in buildings; and authorizing the Board of Regents of the University of Alaska to designate buildings for which the fund is to be used."

SB 74 was SCHEDULED but not HEARD.

#

ADJOURNMENT

[10:55:49 AM](#)

The meeting was adjourned at 10:54 a.m.