

SENATE FINANCE COMMITTEE  
April 12, 2013  
9:19 a.m.

9:19:38 AM

CALL TO ORDER

Co-Chair Meyer called the Senate Finance Committee meeting to order at 9:19 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

Joe Balash, Deputy Commissioner, Department of Natural Resources; Doniece Gott, Staff, Senate Finance Committee; Josh Walton, Staff, Representative Mia Costello; Stacey Schubert, Director, Governmental Relations and Public Affairs, Alaska Housing Finance Corporation, Department of Revenue;

PRESENT VIA TELECONFERENCE

Becky Cruse, Department of Law, Anchorage;

SUMMARY

HB 50           MULTI-UNIT HOUSING: COMMERCIAL USE

CSHB 50(FIN) was REPORTED out of committee with a "do pass" recommendation and with a previously published zero fiscal note: FN1(REV).

HB 76 UNEMPLOYMENT; ELEC. FILING OF LABOR INFO

HB 76 was SCHEDULED but not HEARD.

HB 129 OIL & GAS EXPLORATION/DEVELOPMENT AREAS

HB 129 was HEARD and HELD in committee for further consideration.

#hb129

CS FOR HOUSE BILL NO. 129(FIN)

"An Act relating to approval for oil and gas or gas only exploration and development in a geographical area; and providing for an effective date."

Co-Chair Meyer noted that the memos from Legislative Legal and the Department of Law (DOL) responding to questions previously raised by Senator Hoffman could be found in member files(copy on file).

[9:21:31 AM](#)

Co-Chair Meyer noted that public testimony was CLOSED.

JOE BALASH, DEPUTY COMMISSIONER, DEPARTMENT OF NATURAL RESOURCES, stated that he had reviewed the legal memo, written by Don Bullock from Legislative Legal; April 12, 2013. He disagreed that the findings in Section 1 were unnecessary in regard to the legislation. He stated that the findings in Section 1, and the substantive portion in Section 2, would be a useful tool for Department of Natural Resources (DNR) as it implemented the department's obligations to review and approve additional steps of exploration and development after the leasing stage. He shared that when the REDOIL decision was handed down, issues were raised that the department believed should be addressed by the legislature, and that the bill was the proper vehicle to do so. He offered that Section 1 provided a way for the legislature to guide the department in how to implement the findings of the REDOIL decision. He understood that the DOL had filed a request for reconsideration with the court, but there was no guarantee that further clarification on some of the questions raised by the conclusions. He shared that in the days after the decision, DNR had received an appeal on a plan of operations that cited the court case. He noted for the

committee that the Supreme Court decision had opened up uncertainties that DNR hoped the legislature could speak to.

[9:25:54 AM](#)

Senator Hoffman inquired if language could be written that would make Section 2 clearer.

Mr. Balash responded that DNR was satisfied with the language in the section. He wondered which part needed clarification.

[9:26:23 AM](#)

Senator Hoffman asked whether Section 2 was written as clear as it could be written.

Mr. Balash reiterated that the department was satisfied with Section 2.

Senator Hoffman directed the committee to Page 2 of the legal memo:

In conclusion, the findings in sec. 1 may be unnecessary. If the language in the substantive law is clear, the findings are unnecessary. The language in the proposed amendment seems to be consistent with the court's finding of a constitutional requirement to consider cumulative impacts in all phases of a project.

Senator Hoffman contended that the memo clearly stated that the findings were unnecessary.

Mr. Balash explained that Section 2 was stand alone and had not been driven by the REDOIL decision; however Section 1 was in response to the decision. He added that the findings and the substantive sections were not linked, as was generally the case. He stressed that the department wanted to use the bill to define the parameters in which the REDOIL decision would be implemented by the department.

[9:28:20 AM](#)

Senator Hoffman understood that the department would follow the legal counsel of DOL and that the legislature would

follow the counsel of Legislative Legal. He pointed to the last sentence of the second paragraph of the memo:

However, I suggest omitting the findings from the bill under the guidance of the Manual of Legislative Drafting.

The Manual of Legislative Drafting addresses legislative findings at pages 14 - 15:

Although legislative findings relevant to the need for a bill are presumably contained in the record of committee hearings and debate on the bill, there are some instances in which the findings are deemed necessary and should be set out in the bill and enacted as a part of the bill. This may be particularly true if the bill proposes to enact law that is likely to be challenged on constitutional grounds. The findings enacted as a part of that law may provide justification for upholding the validity of the law. The drafter should work closely with the requester to ensure that the legislative history of the bill, particularly the record of the committee hearings, provides a basis for the findings. In cases where the findings are not necessary for placement in the bill text, the drafter should work closely with the requestor to prepare intent text that can be specifically entered into the legislative history of the bill, particularly the record of the committee hearings.

Senator Hoffman offered that his first choice would be to eliminate the findings and his second would be to consider the amendment offered during public testimony from attorney Lisa Weissler (copy on file).

9:29:57 AM

AT EASE

9:33:35 AM

RECONVENED

9:34:15 AM

BECKY CRUSE, DEPARTMENT OF LAW, ANCHORAGE (via teleconference), solicited questions from the committee.

[9:34:46 AM](#)

Vice-Chair Fairclough explained that the committee was considering two competing legal opinions on the topic of including legislative intent in HB 129. She asked whether the administration recommended that the findings remain in the bill.

[9:36:34 AM](#)

Senator Hoffman restated his question whether the substantive law in Section 2 was written clearly enough for the findings to be removed from Section 1.

Ms. Cruse expressed confusion with the committee's questioning.

[9:37:56 AM](#)

Mr. Balash interjected that, typically, the findings were directly connected to the substantive law in the later sections of the legislation. He reiterated that in the case of HB 129, they were not. He furthered that the substantive section of the bill stood independently and had been requested prior to the REDOIL decision. He stated that the bill provided a convenient mechanism for the legislature to address how DNR should implement the courts findings. He restated that the uncodified law in Section 1 was distinct from the substantive action being taken in Section 2. He furthered that ordinarily findings would accompany substantive law, but not in the case of HB 129.

[9:39:39 AM](#)

Vice-Chair Fairclough believed that the administration was trying to lay out, for future court action that the legislature agreed with the legislative findings that supported the implementation of Section 2 when talking about Alaska's maximum use, consistent with the public interest. She offered that the legislative findings sent a message from the legislature to the courts.

Mr. Balash replied that the voice of the legislature was embodied in Section 1. He acknowledged that the department

would be undergoing a regulation process associated with Section 2, and that the decisions would be consistent with the legislative findings in Section 1.

[9:41:59 AM](#)

Senator Hoffman reiterated that the department could clarify the language in Section 2. He stressed that the argument could be made that the language in Section 2 was not clear.

[9:43:18 AM](#)

Vice-Chair Fairclough agreed that if Section 2 could stand alone, then it should. She countered that the court continued to argue with the legislature's authority to determine what the maximum benefit for the people of Alaska was. She thought that the question remained whether to go with the court or follow the findings of Legislative Legal.

[9:45:41 AM](#)

Senator Hoffman understood that Legislative Legal and DOL were at odds concerning the question. He said that if the committee wanted to ignore the recommendation of Legislative Legal then the responsibility for any consequences rested with the legislature.

[9:46:49 AM](#)

AT EASE

[9:48:53 AM](#)

RECONVENED

HB 129 was HEARD and HELD in committee for further consideration.

[9:49:27 AM](#)

Vice-Chair Fairclough queried whether the April 12, 2013 legal memo from Donald Bullock, Legislative Counsel, Division of Legal and Research Services, Legislative Affairs Agency was in member files and available to the public.

DONIECE GOTT, STAFF, SENATE FINANCE COMMITTEE, replied in the affirmative.

#hb50

CS FOR HOUSE BILL NO. 50(FIN)

"An Act authorizing the Alaska Housing Finance Corporation to allow certain commercial uses in a multi-unit residential housing development owned or financed by the corporation and limiting the Alcoholic Beverage Control Board's issuance of certain licenses to premises in the residential housing development."

[9:50:49 AM](#)

JOSH WALTON, STAFF, REPRESENTATIVE MIA COSTELLO, introduced HB 50. He stated that the bill spoke to the national trend towards multi-use, multi-unit residential housing. He related that the bill would give the Alaska Housing Finance Corporation (AHFC) the ability to participate in financing and owning properties that had an authorized commercial use space connected to the multi-use property. This would give AHFC the ability to participate in the residential real estate market and expanded opportunity for commercial real estate. He relayed that because the mandate for AHFC was residential housing, several sideboards had been incorporated into the legislation in an attempt to keep the focus on the residential market. He explained that particular types of businesses would be excluded per the sideboards: adult entertainment establishments, liquor stores, bars, substance abuse treatment centers, and businesses selling primarily cigarette and tobacco products. He specified that not all establishments with licenses to serve alcohol would be prohibited; restaurants, for example, would be allowed.

[9:54:44 AM](#)

Co-Chair Meyer wondered if the legislation stemmed from AHFC wanting to incorporate businesses into and already planned housing development.

Mr. Walton referred questions about specific projects to AHFC.

[9:55:25 AM](#)

Vice-Chair Fairclough asked if AHFC was attempting to purchase Inlet Towers, which had a restaurant on the first floor of the building, for affordable housing.

Mr. Walton understood that that was correct.

[9:56:21 AM](#)

STACEY SCHUBERT, DIRECTOR, GOVERNMENTAL RELATIONS AND PUBLIC AFFAIRS, ALASKA HOUSING FINANCE CORPORATION, DEPARTMENT OF REVENUE, commented that the bill was the most important piece of legislation to the corporation this session. She stated that as an independent state agency. AHFC had worked with the private sector to lead the way in quality construction, including energy efficiency and providing home mortgage loans to qualified Alaskan's. She relayed that the bill would allow AHFC to proceed with commercial space and that there were existing in-state interest in AHFC financing commercial/residential projects.

She responded to the question about Inlet Towers. She said that AHFC had already financed the project. She explained that there was a restaurant on the ground floor with market rate apartments above. She shared that questions about whether the property was operating within the terms of the loan agreement had arisen and were being investigated. She urged committee support for the legislation.

[9:58:34 AM](#)

Senator Dunleavy understood that under the legislation AHFC could establish different project models in the future that would be specific to the needs of building residents.

Ms. Schubert replied in the affirmative.

[9:59:18 AM](#)

Co-Chair Meyer queried whether the legislation was in compliance with Title 21.

Ms. Schubert replied no, she added that AHFC worked very closely with community on land use issues.

[9:59:42 AM](#)

Vice-Chair Fairclough inquired if the federal loan guarantee had any stipulations concerning the proximity of the sale of alcohol.

Ms. Schubert responded that the intent of the corporation was to have developers request money directly from AHFC, any concerns about the restriction of federal funds based on the projects merits would be discussed.

[10:01:33 AM](#)

Senator Hoffman noted that the sponsor statement spoke to addressing affordable housing and the statewide housing shortage. He wondered what the interest rates under the legislation were when compared to existing rates that could be refinanced.

Ms. Schubert responded that the interest rates on multi-family projects were established weekly by the corporation. She stated that the taxable loan amount for over \$1 million the current week was 6.375 percent. She said that the advantage to a developer who may want to refinance with AHFC was that the projects no longer had to pencil out independently.

[10:03:38 AM](#)

Co-Chair Meyer OPENED public testimony.

Co-Chair Meyer CLOSED public testimony.

[10:04:14 AM](#)

Senator Dunleavy noted that there were certain parts of the state where land was expensive and that the legislation could be useful in using a single building for multiple uses, therefore reducing cost for all parties involved.

[10:04:47 AM](#)

Vice-Chair Fairclough MOVED to REPORT HB 50 out of committee with individual recommendations and the accompanying fiscal note. There being NO OBJECTION, it was so ordered.

CSHB 50(FIN) was REPORTED out of committee with a "do pass" recommendation and with a previously published zero fiscal note: FN1(REV).

[10:05:18 AM](#)

#

ADJOURNMENT

The meeting was adjourned at 10:05 a.m.