

HOUSE FINANCE COMMITTEE
March 19, 2015
1:30 p.m.

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CALL TO ORDER

Co-Chair Thompson called the House Finance Committee meeting to order at 1:30 p.m.

MEMBERS PRESENT

Representative Mark Neuman, Co-Chair
Representative Steve Thompson, Co-Chair
Representative Dan Saddler, Vice-Chair
Representative Bryce Edgmon
Representative Les Gara
Representative Lynn Gattis
Representative David Guttenberg
Representative Scott Kawasaki
Representative Cathy Munoz
Representative Lance Pruitt
Representative Tammie Wilson

MEMBERS ABSENT

None

ALSO PRESENT

Laura Stidolph, Staff, Representative Kurt Olson;
Representative Paul Seaton, Sponsor; Taneeka Hansen, Staff,
Representative Paul Seaton.

PRESENT VIA TELECONFERENCE

Cynthia Franklin, Executive Director, Alcoholic Beverage Control Board, Department of Commerce, Community and Economic Development.

SUMMARY

HB 49 BENEFIT CORPORATIONS

HB 49 was HEARD and HELD in committee for further consideration.

HB 116 EXTEND ALCOHOLIC BEVERAGE CONTROL BOARD

HB 116 was HEARD and HELD in committee for further consideration.

#hb116

HOUSE BILL NO. 116

"An Act extending the termination date of the Alcoholic Beverage Control Board; and providing for an effective date."

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LAURA STIDOLPH, STAFF, REPRESENTATIVE KURT OLSON, reviewed the sponsor statement with the committee.

HB 116 extended the sunset date for the Alcoholic Beverage Control (ABC) Board to June 30, 2018. Each year the Division of Legislative Audit reviewed boards and commissions to determine if they should be reestablished in accordance with Title 24 and Title 44 of the Alaska Statutes. The Division of Legislative Audit reviewed the activities of the Alcoholic Beverage Control Board. The purpose of the audit was to determine whether there was a demonstrated public need for the board's continued existence and whether it had been operating in an effective manner.

The board had addressed all issues found in prior audits with two being resolved and one being partially resolved. As the members might have noted from the most recent audit there were five findings and recommendations. First, the board's director should ensure that all board meetings were properly published on the State's Online Public Notice System. Second, the board should notify local governing bodies of applications for new and transfer licenses within 10 days of receipt. Third, the board should issue catering permits in accordance with statutory requirements. Fourth, the board should issue recreational site licenses in accordance with statutory requirements. Finally, the board should

implement a process to monitor and track all complaints to ensure they were resolved in a timely manner.

As the members noted in their review of the audit in their packets it was the opinion of the Division of Legislative Audit that the board be extended three years to June 30, 2018. In the opinion of the auditors the board was serving the public's interest by effectively licensing and regulating the manufacture, barter, possession, and sale of alcoholic beverages in Alaska. To speak to the recommendations mentioned earlier, Kris Curtis, Legislative Auditor, Alaska Division of Legislative Audit and Cynthia Franklin, Director, Alaska Alcoholic Beverage Control Board were available online from Anchorage.

In closing, the ABC Board served an important role in guarding the health and safety of Alaskans by protecting the general public through the issuance, renewal, revocation, and suspension of alcoholic beverage licenses. The continuation of the board was very important.

Ms. Stidolph thanked committee members for supporting HB 116.

Representative Wilson asked about the fiscal note. She noted there was money coming from the general fund. She wondered why the fees collected from serving alcohol did not pay for operating expenditures making the program cost neutral.

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CYNTHIA FRANKLIN, EXECUTIVE DIRECTOR, ALCOHOLIC BEVERAGE CONTROL BOARD, DEPARTMENT OF COMMERCE, COMMUNITY AND ECONOMIC DEVELOPMENT (via teleconference), spoke to Representative Wilson's question. She explained that if the licensed premise was inside a municipality, by statute the entire fee was refunded to the municipality for law enforcement efforts to do with Title 4 provisions. Many of the licensing fees in alcohol were returned to the individual communities where the licensed premise existed. In non-municipality settings the license fees were placed into the general fund. Although the ABC Board collected licensing fees its costs were not technically cancelled out

by the licenses because the bulk of the funds received were returned to the municipalities by statute.

Representative Wilson asked if the municipalities were required to provide enforcement having to do with ABC Board issues in their communities. She wondered about enforcement outside of a municipality.

Ms. Franklin responded that the refunds were based on enforcement of Title 4. Over previous years she reported there had been different definitions of the statute. Currently, the ABC Board required municipalities to report their Title 4 activities annually. The report included the number of Title 4 violations filed and prosecuted in their jurisdiction. Presently, the board had five officers statewide that were employed by the state that conducted special enforcement efforts. The Alcoholic Beverage and Control Board had a couple of programs that were law enforcement related centering on preventing underage access to alcohol. Officers of the ABC Board performed special enforcement whereas municipalities focused on everyday enforcement of Title 4 laws and rules around alcohol. Typically municipalities had their own conditional use permits or zoning requirements for alcohol licenses. However, the responsibility of renewing licenses, preparing for board meetings, and other activities fell on ABC Board employees.

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Representative Wilson asked if there was anything preventing the legislature from changing the fee structure. She was not opposed to municipalities getting monies back if they were doing enforcement. However, if the state was also doing some of the enforcement activity she believed the cost needed better distribution. She wondered if there was a way to track the fees.

Ms. Franklin stated that there was a desire and an effort to see that more of the licensing receipts remained within the agency for the purpose of funding the ABC Board's efforts. She mentioned that there was a 2.5 year Title 4 stakeholder process that began in May 2012 which resulted in a Title 4 revision package that was currently in the hands of the legislature but not introduced in the session in progress. In the course of the stakeholder's (stakeholders included Department of Public Safety,

Department of Health and Social Services, and members of the public sector) review the board's licensing fees were found to be too low and had not been raised for several decades. She reported that most of the fees were returned to the municipalities. She elaborated that the idea behind the rewrite was to raise fees and to include in legislation an outline of where the fees were distributed including dispersal to the ABC Board for licensing and enforcement. The draft bill had not yet been introduced but hoped that it would be in the current session.

Co-Chair Thompson asked if the bill would have additional fiscal impacts. Ms. Franklin responded affirmatively. She indicated that the rewrite was extensive and increased licensing fees. She opined that the question as to whether it added money was difficult to answer because there was nothing in the language that was submitted that would direct the money anywhere. The legislation did increase licensing fees. The fiscal note before the committee reflected the fees currently in statute under Title 4. There was no specific funding mechanism that related the licensing fees to the cost of the agency.

Co-Chair Thompson recognized Representative Pruitt at the table.

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Representative Wilson wanted to better understand the fees that were currently in place. She was unclear why certain board funds were placed in the general fund versus other accounts. She wanted to be able to better assess fee increase amounts. She suggested the legislature would be asking for increases high enough to cover expenses in order for each board to become self-sufficient. She requested a copy of a stakeholder report if there was one.

Co-Chair Thompson noted that his staff would try to find a copy of the report and provide it to committee members.

Representative Gattis asked about the three-year extension and the fiscal note. She noticed that the out-year estimates were predicted at a flat rate. She wondered about raises and inflation rates. Ms. Franklin asked if Representative Gattis was referring to the out-year estimates.

Representative Gattis responded that she was referring to the three years including the out-years. Ms. Franklin stressed that the out-years were very difficult to predict due to the new substance assigned to the agency by AS 17.38. She did not have any idea how regulating a new substance was going to affect the agency financially and whether tax revenues would be directed to the agency to offset costs. She added that in other states where marijuana was legal costs of regulating the substance had been offset by taxes received. She was not aware of any place in statute that offset costs with licensing fees having to do with the regulation of alcohol. It was her understanding that offsets did not occur because of refunds to municipalities. She pointed out that the first refund check to the municipalities for a six month period totaled \$660 thousand. The entire budget of the agency prior to adding marijuana was \$1.75 million. She continued that when discussing \$1.2 million per year in refunds to municipalities it came close to equaling the ABC Board's entire budget. There was a large sum of money going back to the municipalities. She suggested that in the future years until certain questions were answered concerning tax revenue and how many positions would be needed at the ABC Board to safely regulate the new substance the out-years would be difficult to predict.

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Representative Gattis clarified that she was only looking at FY 16, FY 17, and FY 18. All three years appeared relatively flat according to the fiscal note in terms of raises or increases. She wanted to know if an awareness of the state's fiscal crunch was reflected in the fiscal note. Ms. Franklin responded affirmatively. She elaborated that the agency's decision was a reflection of not knowing what the requirements might be to safely regulate the new substance. She did not have a financial estimate anticipating future staff needs. However, the board, with all other things being equal, anticipated trimming costs along with all state agencies.

Co-Chair Neuman referred to the fiscal note. He opined that the fiscal note should be more detailed. He commented that the fiscal notes for the marijuana policy board were much more detailed. He asked Co-Chair Thompson for a revised fiscal note.

Co-Chair Thompson responded that there would be some major questions regarding present legislation.

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Representative Gara noted that the legislative audit summarized the duties of the ABC Board which included protecting the public's health and safety. He was concerned about two neighborhoods within his district. He wanted to know more about what was being done. He discussed a particular assault in Anchorage. He asked if the board had the power to take proactive steps to work with bars on public safety matters or did the ABC Board wait until after an incident or at the time of relicensing. Ms. Franklin asked if Representative Gara's question was directed towards her.

Representative Gara responded affirmatively. He restated the question. He wondered if the board had the power and took proactive steps to protect public safety. He wondered if the board waited until after a violation to respond. Ms. Franklin answered that the board did both. She explained that the board had some proactive education-type activities that it engaged in including attending the Anchorage Downtown Partnership meetings. The board did not have the power to proactively take a license without some other occurrence. She furthered that a municipality in which a licensed premise was located had the option to protest the issuance, transference, or renewal of a license and could, mid-renewal period, protest the continued operation of a license. The board worked in cooperation with the municipalities and local governing bodies to identify problem operators and licensees. There could be some reliance on municipal governments to identify the operators by their protest tool. She reported the board was aware of the current problems in downtown Anchorage and was in communications with individual liquor licensees and with the Anchorage Downtown Partnership. However, the statutes did not permit the board to revoke a license in response to a violation of Title 4.

Representative Gara wanted to make sure that the ABC Board was taking proactive safety steps in working with bars before incidents occurred. He wanted to reconfirm that she was responding affirmatively to his question. Ms. Franklin responded in the affirmative. She furthered that the board identified a bouncer safety course and had started

recommending that licensees engage in the educational course. She relayed that all of the board's Anchorage enforcement officers attended the course, which was originally offered by CHARR [Alaska Cabaret, Hotel, Restaurant and Retailers Association]. She added that the course information was also listed on the ABC Board's website.

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Representative Gara asked about another neighborhood at 13th and Gamble in Anchorage. He explained that there were two liquor stores across the street from each other and had one of the highest concentrations of publicly intoxicated people in Anchorage. He wondered if the board had the power to grant two liquor stores in such a close distance from one another. He wondered if it was beyond the board's power to avoid issuing two licenses in the same area.

Ms. Franklin explained Title 4 was structured such that local governing bodies were responsible for informing the board about community issues concerning the location or zoning of a licensee. She reported that the board was aware of the stores Representative Gara was referring to. As the Anchorage municipal prosecutor she had visited the area several times. The board was aware that there had been controversy regarding the licenses. She informed the committee that Title 4 allowed protests of renewals, transfers, initial applications for licensees or potential licensees. At any time a governing body could protest a licensee's continued operation even at a mid-renewal period. Once a protest was issued the ABC Board would uphold the protest according to AS 4.11.480 unless the board found that the protest was arbitrary, capricious, and unreasonable. She relayed that it was up to the Anchorage Assembly to file a protest against the particular stores.

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Co-Chair Thompson suggested that Representative Gara approach his municipality. He reported a problem in Fairbanks where three liquor stores had similar issues with public intoxication. The municipality told each of the stores that it was going to protest their license renewals unless they did something. He reported that they were all working on reducing their hours of operations at the times in which problems were occurring.

Representative Gara indicated that the local municipality was currently working on the issue. He had just wanted to hear from the ABC Board.

Vice-Chair Saddler asked about licenses for clubs, particularly patriotic clubs. He mentioned a previous bill that passed allowing spouses of service members and certain under aged service members to attend functions at patriotic clubs without drinking. He wanted to know about any problems to do with alcohol control enforcement resulting from the legislation. Ms. Franklin responded in the negative. She relayed that clubs had been very orderly, quiet, and respectful of the rules.

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Vice-Chair Saddler indicated that some ABC enforcement agents wanted to obtain access cards to certain patriotic clubs. He wondered if the effort was still underway. Ms. Franklin believed the issue had been resolved. She had not had the issue come up in the prior six months.

Vice-Chair Saddler said that the administrative home of the board had changed from Department of Public Safety to Department of Commerce, Community and Economic Development. He wanted to know if the change had diminished the ABC Board's ability to achieve either its commerce supporting role or its public safety enforcement role.

Ms. Franklin relayed that she had only been a part of the agency since it had been under the umbrella of commerce. She opined that the board was functioning well following the change. She believed that licensees were satisfied with the board's performance in meeting its public safety mission and making sure licensees understood specific rules. The tone of the agency and its relationship with DPS, DHSS, and with licensees was excellent. She suggested the success of the board was due to the move between departments as well as the legislative audit. She discussed the stakeholders' workgroup in which members were forced to talk through some very difficult issues. She reported that the three board meetings she attended had focused significantly on public safety. The ABC Board took its job seriously and had a fresh perspective with the change to DCCED.

Vice-Chair Saddler commented that the results of the ABC Board's survey on page 23 of the audit indicated participants thought there would be a need for new laws or regulations. He wondered what type of new laws would be needed.

Ms. Franklin shared that some of the details were decided in the stakeholders group. She did not know what laws were indicated in the survey. Department of Public Safety was at the table in the stakeholders group when discussing large issues regarding Title 4. She relayed that one of the public safety issues that came up had to do with dry villages and bootlegging penalties. The perception from law enforcement was that the penalties were not effective. The way in which the group addressed the problem was to rewrite the penalties so that the amount of alcohol that was brought into a dry village resulted in increased penalties. In other words, a fine structure was tied to the amount of alcohol imported into a dry village. This was an example of the issues addressed with the stakeholders' workgroup.

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Representative Wilson asked that the revised fiscal note include a list of categories, a breakdown of license fees collected within each category, and the amount of fees given to municipalities. She felt the information would help in determining a revised fee structure aiming for self-sufficiency.

Co-Chair Thompson directed Ms. Franklin to provide the information to his staff to distribute to members. Ms. Franklin would provide the information.

Representative Edgmon asked about new areas of regulation. He wondered about powdered alcohol and whether it would be included in the rewrite of the bill that was coming forward. He wanted to know if powdered alcohol was under the current jurisdiction of the ABC Board. Ms. Franklin reported powdered alcohol was already illegal in Alaska. She referred to AS 04.16.110 and conveyed that a person may not sell alcoholic beverages in powdered form if intended for human consumption. The law was enacted in 1995 and was a Class "A" misdemeanor. The board was very satisfied with the powdered alcohol prohibition and had no intention of revisiting its corresponding law. She was aware of its

recent publicity but felt that the issue was already addressed in statute.

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Representative Guttenberg asked about the authorities being extended. He relayed that her position had moved over from public safety. He suggested that the board would have more to do with the agricultural community with the growing, sale, and distribution of marijuana. He wanted her perception of how the board was handling the marijuana initiative.

Ms. Franklin reported that the ABC Board was working very diligently in regards to the marijuana initiative. The board's management team met with state regulators of Colorado. State regulators from Oregon and Colorado meet with the Alaska team to discuss in detail the challenges they faced. She reported that marijuana was a very different substance from alcohol and that cultivation and growing were new areas to the ABC Board. She detailed that she and her enforcement officer spent time with the owner of Bells Nursery in Anchorage to better understanding about growing plants indoors in Alaska and what type of issues and challenges that might arise. She also reported spending time with Department of Environmental Conservation discussing testing facilities, labs, and standards for a plant and how to write them into regulations. She maintained that the agency's experienced licensing and enforcement staff could be counted on to deal with the new challenge.

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Representative Guttenberg noted the federal banking restrictions that made it illegal for marijuana businesses to do their banking in the United States. He wondered how the ABC Board was addressing a change in banking regulations the marijuana community.

Ms. Franklin mentioned that the ABC Board was working with Ms. Kevin Anselm, Director, Division of Banking and Securities, Department of Commerce, Community and Economic Development, regarding associated issues. She pointed out that Ms. Anselm attended a conference in the fall of 2014 with other banking regulators from legalized marijuana states and would have an answer for Representative

Guttenberg's questions. She assured the committee that the banking experts at state agencies were involved, interested, and engaged in figuring how to bank the marijuana industry.

Representative Wilson made some calculations from the information on the fiscal note and pointed out that the operation cost of the ABC Board totaled \$279,208 per month. She wondered if it would be more cost effective to subcontract the board's duties more affordably. She thought the figure was high. Ms. Franklin asked if Representative Wilson was referring to the fiscal note that included marijuana.

Representative Wilson responded affirmatively. She added that she was unable to tell how much of the amount applied to marijuana and how much applied to the ABC Board. Ms. Franklin informed the committee that the previous year's budget for the board was \$1.75 million. She believed the work of the board's relatively small staff could not be contracted out more economically. There were 10 statewide employees and herself, the director. She clarified in the fiscal note the board had to include marijuana with the passing of legislation. The budget in the fiscal note reflected six additional employees to handle marijuana issues for the period of FY 15 and FY 16. She reviewed there were 16 employees statewide to enforce marijuana and alcohol regulations in statute. In comparing Alaska's 16 employees to the number of regulators in other states such as Colorado and Washington and adjusting for population, she concluded that the state was getting the best bang for its buck with the current employees in the division. She did not think a private company could carry out duties more efficiently. She pointed out that ABC Board shared many resources with the rest of DCCED and across agencies. She did not believe it was possible to scrape any closer to the bone in the agency's budget.

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Representative Wilson clarified that her question was not intended to imply that agency employees were not working diligently. She believed that \$279 thousand was a significant amount of money per month. She surmised that perhaps the costs reflected what the legislature had asked the agency to do based on statute. She asked Co-Chair Thompson about whether it was appropriate to have the

fiscal note detail the costs for both marijuana and alcohol. She was wondering if the information would be provided in lieu of or additionally in another piece of legislation. She highlighted that the cost to the state was \$136 thousand per month to regulate and monitor alcohol. She was unclear about potential duplication.

Co-Chair Thompson relayed that the bill would not be passed out of committee because of so many unanswered questions. He relayed that his office would try to get a breakdown of costs associated with alcohol and with marijuana. He reiterated that the new bills could influence the policies around marijuana.

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Co-Chair Thompson asked about the five recommendations from the legislative audit report. He wondered about the status of addressing each of the issues. Ms. Franklin indicated that all five issues had been addressed. A couple of them had been address prior to her recent tenure in September. The first addressed notifications to municipalities. There was a staff change and with the changeover corrected the notification procedure so that the 10-day deadline was currently being met. All of the recommendations were accepted by the agency and had been corrected. She addressed the issue of multiple fiscal notes and multiple marijuana bills, it was her understanding that it was required that the agency had a fiscal note attached to each bill because it was unknown whether any individual bill would pass. She explained that it might be that in other bills regarding marijuana a fiscal note for the staffing and board to effectively regulate the substance. A fiscal note was in each bill.

Representative Gara commented that the board was roughly \$1.5 million short of the fees the agency took in and expenditures. He asked Ms. Franklin if he was accurate. Ms. Franklin responded positively.

Representative Gara asked if all of the fees that the agency took in were from liquor license sales or from other fees. Ms. Franklin answered the fees that were taking in were from liquor license fees. The reason the amount fell short was because the agency did have a fee structure for marijuana at present. She indicated that the agency would not be able to determine the quantity of licenses that

would be issued or for what dollar amount prior to the industry start-up. The fiscal note that was before the committee reflected financial outlays for the regulation of marijuana without any revenue currently. She spoke of the City of Denver with 650 thousand people, 100 less people than in Alaska, had issued approximately 900 marijuana licenses. In 2014 Denver took in \$15.9 million in taxes and added 37.5 fulltime employees solely for the regulation of marijuana. The employees' costs were fully covered by the tax revenues collected.

Representative Gara asked if the ABC Board would be breaking even without the marijuana component. Ms. Franklin responded approximately.

Representative Gara asked if there was any way for the state to benefit from the sales of liquor licenses rather than any windfall going to a bar owner. He purported that what happened was that there was a limited number of licenses that people sold them for a significant amount of money. Was there any way to restructure the transferring of a license and if so, would it have to be changed in statute.

Ms. Franklin agreed that the secondary market value of liquor licenses came from a combination of the population limits on licenses creating a limited availability. She was unaware of any other way to correct the issue of transferability for alcohol licenses except to rewrite the statute. She was advocating for non-transferable licenses without population limits for marijuana.

Co-Chair Thompson invited Ms. Franklin to make any closing comments. Ms. Franklin thanked committee members for their time.

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Co-Chair Thompson reiterated that the bill would be set aside.

HB 116 was HEARD and HELD in committee for further consideration.

#hb49

HOUSE BILL NO. 49

"An Act relating to corporations, including benefit corporations, and other entities; and providing for an effective date."

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REPRESENTATIVE PAUL SEATON, SPONSOR, read the sponsor statement for the bill:

HB 49 expands the options for Alaskan entrepreneurs and investors by placing a new type of corporate entity, the Benefit Corporation, in Alaskan statute. A benefit corporation is a for-profit corporation which incorporates public benefits and community improvement into its business practices, no matter the principal service or product provided. Allowing the creation of benefit corporations will give business owners more choice in how to run their business and will bring to Alaska a slice of the \$6.6 trillion that is invested nationally in similar corporations.

Corporate law generally requires a corporation to consider the financial impact to their shareholders as the top priority when making decisions. Under the benefit corporate structure, owners and boards have the freedom to take actions which positively impact their communities without fear of violating a fiduciary duty. Benefit corporations are formed voluntarily and have the same tax status of any other for-profit corporation. By electing in their articles of incorporation to become a benefit corporation, a business simply gains the flexibility to include mission and social impact in their business practices. Twenty-seven other states have passed benefit corporation legislation and many more have benefit bills in process. Over 1400 benefit corporations have incorporated in those states, including Ben & Jerry's, Patagonia, Rasmussen College, Epic Coffee, and King Arthur Flour Company (America's oldest flour company). Each of these companies works to benefit the public and their communities in the way that matters most to them.

HB 49 also includes measures to ensure accountability and transparency. Just as a traditional corporation provides their shareholders with financial reports, a

benefit corporation will additionally create and publish a biennial benefit report describing how the company has pursued the general public benefit. This report, which is held against a third party standard, allows shareholders, investors, and the public to confidently invest in benefit corporations that share their values.

The goal of HB 49 is to give businesses more flexibility and control over their decisions and to provide investors with a clear social investment option.

Representative Seaton relayed that the bill idea was brought to him by some of his constituents who were looking for ways for corporations to be accountable and to allow mission-based or social impact-based investments to advance. He had received feedback from Dianne Hughes, an owner from the Earth Friendly Coffee Company in Homer, and Gordon Blue, the director of Alaska Sustainable Fisheries Trust in Sitka. He pointed out letters in member packets from people around the state. He was available for questions.

Co-Chair Thompson mentioned that there were agency folks available for questions.

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Representative Gattis wanted to know what corporations were unable to do currently without passing new legislation.

Representative Seaton mentioned that someone with a stock portfolio has probably noticed a plethora of stockholder lawsuits that have come about. He claimed they were typically a result of shareholders being disgruntled with the maximization of their returns. House Bill 49 allowed corporations to pursue a community or statewide goal as a general or specific benefit. All of the people investing in a B Corporation would be aware that the purpose of their investment was not only to make a profit but also to pursue a benefit goal. He furthered that often corporations were held back from doing what was socially responsible because of the potential of being sued by their stockholders.

Representative Seaton continued that corporate law defines the primary purpose of a C Corporation; to earn money for

its shareholders. In the case of a B Corporation, the corporation, the board of directors, and the investors could pursue mission or social impact investments without the fear of being sued. He spoke of the success of the B Corporation all around the country in terms of the pursuit of sustainability. A large corporate farm, as a C Corporation, might not be able to use sustainable farming practices if it meant lower profits for its shareholders. Shareholders might sue a corporation if they thought the farming method took away from their bottom line. Whereas, a B Corporation could select a general and specific public benefit.

Representative Gattis had a difficult time thinking about a corporation that did not have profit as a primary goal. She understood the concept but was struggling with the idea.

Representative Seaton responded that B Corporation's main mission could be to make a profit but could also have a goal of providing a general or public benefit. The B Corporation status benefited a corporation in certain other ways such as: maintaining a certain persona, being able to get action in the legislature, or providing an economic advantage to the corporation over others. Many of the stockholder lawsuits were based on certain kinds of things.

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Co-Chair Thompson referred to an email he received from a supporter of the bill. The supporter suggested that, first, the bill provided legal protection to directors and officers to consider the interest of all stakeholders. Secondly, it created additional rights for stake shareholders to hold directors and officers accountable. Co-Chair Thompson believe that the two ideas conflicted with each other.

Representative Seaton responded that the way in which people were held accountable was to select a public benefit and to measure themselves against third party standards. Directors and officers that did not pursue the corporation's general goal could be sued. However, a suit was not limited to the measure of financial benefit but also to the measure of meeting a public purpose. People in B Corporations to make a profit and to fulfil a public purpose. A benefit report had to be filed every two years. Otherwise, stockholders could claim that the director and

board members were not fulfilling the goals of the corporation.

Vice-Chair Saddler commented that it appeared that someone was trying to graft the efficiency and energy of the corporate capital model with the social idealism of public interest efforts. He had a difficult time completely understanding the idea because he believed corporations were in the business to make money. He asked about the tax implications for the State of Alaska. He wondered if benefit corporations would be exempt from or subject to paying taxes.

Representative Seaton responded that there would be no tax implications. As a for-profit corporation a benefit corporation would be subject to the same taxes as a C Corporation without credits or benefits.

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Vice-Chair Saddler asked Representative Seaton if he had any idea how many existing C Corporations would switch to a benefit corporation structure if the legislation passed.

Representative Seaton responded that Nevada passed similar legislation in January 2014. Since that time 499 companies had either formed or converted to a benefit corporation. He relayed that it took a two-thirds vote of stock holders to convert. Conversion standards were outlined in the bill.

Vice-Chair Saddler anticipated that more corporations would start out as a benefit corporation and make a change to a C Corporation later. He asked about the practical impact on the state economy with the passage of HB 49.

Representative Seaton responded there was a significant amount of money invested in social responsible and sustainable companies that would not invest in corporations in Alaska if they were not sustainable. There was 6.6 billion in capital available, according to Pew Charitable Trusts, for the investment in social responsible corporations. Some of the money could be brought to Alaska, but he did not know an amount.

Vice-Chair Saddler spoke of seeing some non-profits had taken advantage of public laws such as water rights reservations with an avowed purpose not to use the water

but to prevent other development projects from using it. He was concerned whether a benefit corporation might use the tools available to a for-profit corporation to deprive other for-profit corporations from developing Alaska's resources. He would address additional questions in the future.

Representative Seaton suggested that becoming a benefit corporation did not establish additional rights to state resources. However, it did allow a benefit corporation to define its investment parameters to include a social impact element as part of its general purpose.

Vice-Chair Saddler emphasized wanting be sure of the answer to his question prior to creating a new type of corporation.

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Representative Gara told a story of a law case regarding Buster Brown Shoe Company. They wanted to attract employees by providing daycare at their business. The corporation was challenged by a shareholder that claimed that it was not maximizing profits under standard corporate law. Buster Brown lost in court. He asked if owners and shareholders of the benefit corporations were given notice of a change.

Representative Seaton responded positively. As a benefit corporation, a corporate structure, was established in law with reporting requirements. There was a much higher threshold to convert to a B Corporation because of having to have an agreement among stockholders.

Representative Gara wondered if one of the motivations in establishing a benefit corporation was to avoid litigation.

Representative Seaton believed it was one motivation. He elaborated that the purpose was to allow corporations to have a specific public benefit as well as making money for shareholders without fear of a lawsuit.

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Representative Gara asked if the proposed legislation would allow a group to donate profits to, for example, a veterans group or a faith-based cause as a for-profit corporation and still adhere to its values.

Representative Seaton confirmed that Representative Gara was correct. He relayed it was not a non-profit and therefore could make money but could have a specific or general public benefit. The examples given were well within the aspects of the legislation.

Representative Munoz believed her question had been answered regarding the proposed requirements to gain the approval of the existing shareholders of a C Corporation. She recalled a two-third majority vote of a corporation's shareholders was necessary to institute a change to the status of a benefit corporation. She was wondering if percentages were defined in statute.

Representative Seaton deferred to his staff.

TANEEKA HANSEN, STAFF, REPRESENTATIVE PAUL SEATON, asked if Representative Munoz was referring to a specific statute.

Representative Munoz referred to page 2, Section 2 of the bill where it outlined the minimum voting requirement to establish a benefit corporation. She felt the voting prerequisites were not laid out clearly in the bill. She mentioned Representative Seaton alluding to the necessity of a two-thirds vote. Ms. Hansen confirmed that there was a two-thirds vote requirement. She would provide the information to the committee.

Representative Munoz wanted to make sure that the requirement was referenced in the bill.

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Representative Wilson wanted to better understand why a new type of corporation would be necessary in order for a corporation to change its vision. She suggested conferring with shareholders but making changes within the already-established laws.

Representative Seaton responded that without establishing a benefit corporation a C Corporation would be without protection from shareholder litigation having to do with pursuing anything other than profit. In forming a B Corporation a company would be able to pursue not only a profit but also an identified public benefit. All shareholders would be aware of what they were buying and

what benefits were being invested in. The filing of a benefit report by all B Corporations would be required.

Representative Wilson was referring to the process of communicating with shareholders to inform them as to the goals of the company outside of making a profit. She wondered if a C Corporation could operate in such a way as long as shareholders were aware of the terms.

Representative Seaton explained that the reason benefit corporations were springing up was because of lawsuits resulting from shareholders not agreeing to new terms. He furthered that unless there was a corporate structure that specifically defined terms and a corporation was required to produce benefit reports then the people in a corporation were at risk. He believed that within a closely held operation, such as a business with only five people, a group might be able to reach an agreement. However, a corporation pursuing the \$6.6 billion in available investment monies designated for sustainable corporations, would purchase stock rather than negotiating around a table.

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Representative Wilson commented that they would not all be around a table, the majority would rule, 50 percent plus 1. She asked if a benefit corporation and B Corporation were the same thing. She asked if there was a difference.

Representative Seaton indicated that a benefit corporation was statutorily designated. He volunteered that B Lab, similar to Pew Charitable Trust, provided a B Corporation certification which had no force in law. He provided other examples such as sustainable salmon labels, and certified LEED buildings that have no official recognition in state statute. He clarified that B Corporation was generally a shorthand for a benefit corporation.

Representative Edgmon referred to page 2, lines 22 to 24, which allowed a corporation to amend its articles of incorporation to add an extra layer of indemnification. He clarified that when the board of directors purchased directors and officers insurance they would be protected from an errant lawsuit. Otherwise, as a corporation, it could spin off of subsidiaries, or form a limited liability corporation, or incorporate as a non-for profit. However,

as a for-profit corporation it would allow for a provision such as day care like in Representative Gara's earlier example. He saw the bill being complicated in terms of many pages in length, but he felt the substance was one theme.

Representative Seaton agreed that Representative Edgmon was correct in his interpretation.

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Representative Pruitt relayed a scenario in which instead of being sued by a shareholder who felt that the corporation was not effectively running the business to make them money they sued the corporation because they felt the corporation was not investing enough capital into the public benefit. He suggested that at any point an investor of a benefit corporation could take issue with the amount being invested in the benefit. He asked if a B Corporation could be sued for a reason opposite of making a profit.

Representative Seaton directed his attention to page 9, Article 5. He confirmed that claims against a corporation for failing to pursue or create a general public benefit could be filed but not for monetary damages. He used the example of a retail sports complex that was supposed to benefit little league but had not spent money on it as reflected on a benefit report. A shareholder could litigate against the corporation influencing the entity to invest money to benefit little league.

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Representative Pruitt was uncertain that litigation would be avoided by establishing a new type of B Corporation in Alaska. He opined that litigation would still occur but on another footing.

Representative Seaton responded that the difference was that someone could sue but not for a financial gain.

Representative Pruitt argued that a shareholder could sue for financial gain even if they were not receiving money directly. They could claim that not enough money was being directed to an entity or organization of which they were a beneficiary.

Representative Seaton indicated that Representative Pruitt was correct. He pointed out that it was totally voluntary for a B Corporation to have a general or specific benefit. The bill provided protection for a corporation that wanted to have a general or public benefit as part of its mission. There was nothing requiring a change to or the establishment of a B Corporation. He furthered it was totally up to the vote of the shareholders.

Representative Pruitt understood that a two-thirds vote was required to establish a B Corporation. He wondered if the voting requirement was the same for a corporation wanting to convert from a B Corporation to a for-profit corporation.

Representative Seaton responded positively. He conveyed that he had to leave the committee meeting to chair another but his staff would remain to answer any further questions.

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Co-Chair Neuman pointed out the simplicity of the bill. He highlighted that the bill allowed a company to structure itself as a B Corporation and outlined that a specified percentage would be given to a public purpose or non-profit. A benefit corporation paid taxes on its total profits but was required to inform its stockholders what portion of the profits would go to a certain non-profit company upon the approval of the board. He wondered if he was accurate.

Representative Seaton confirmed that Co-Chair Neuman was correct in his interpretation.

Co-Chair Thompson stated that the committee would be hearing more complicated bills than HB 49 indicating the potential need to hold morning meetings.

Ms. Hansen provided additional information. She reported that the bill allowed a corporation to define its purpose in the articles of incorporation so that the shareholders were informed. It was not only for the purpose of contributing to non-profits. There were many corporations that did things such as paying for volunteer hours to promote employee and community wellness. There were other options but corporations needed to articulate them in their

benefit report and to their shareholders through their articles of incorporation.

Co-Chair Neuman opined that further involving private industry was essential based on the state's fiscal situation. The legislation before the committee helped towards that end. He reiterated that shareholders expected to have a maximum profit and the bill established that part of the profit would go towards a non-profit. He used Ben and Jerry's as an example. He did not believe the ice cream company had ever been sued.

Ms. Hansen indicated that Ben and Jerry's was the model for the legislation. She reported that they would have been a benefit corporation but they were currently a subsidiary of Unilever. Ben and Jerry's pursued their status through a certification process. They did not have legal protection. Upon being taken over there was a requirement to seek the best financial offer but somehow the board was able to remain part of the decision making process to protect its social benefit. HB 49 would protect a corporation's mission and upon a change in ownership social benefit could be part of the consideration.

Co-Chair Neuman talked about public radio seeking other funding sources other than through the state. The legislation would allow a corporation to help non-profit corporations. He reiterated that there were budgetary costs that the state could no longer support like public radio. He commended Representative Seaton for bringing HB 49 forward.

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Vice-Chair Saddler asked if there was an exclusion for making money under a benefit corporation. He asked if a benefit corporation was a solution to a problem in Alaska. Ms. Hansen indicated that it was more prominent in states that had a greater number of publically owned corporations. She referred to Gordon Blue of Sitka. She explained that his company was currently a Limited Liability Corporation (LLC) which functioned somewhat to protect its mission of being community centered. The company needed to generate profit in order to do what it did but had a very specific community goal. The LLC functioned for Mr. Blue but in previous testimony he indicated it limited the company's profits quite a bit which in turn limited its ability to

have funds to carry out its mission. She furthered that Mr. Blue was closely tied to a non-profit which was complicated with the LLC. He had expressed that the benefit corporation structure could potentially be much simpler way to achieve the same goal of protecting a community benefit.

Vice-Chair Saddler asked about page 12, lines 8 to 11. He thought there would be public interest in seeing to what extent a benefit corporation was achieving its benefit mission. However, this section would limit the results of a benefit audit to someone with a connection to the benefit corporation. He wondered if a person with a benefit corporation was a shareholder. In other words, he asked if someone would have access to a benefit audit if they bought only one share of a stock.

Ms. Hansen explained that the section clarified that a benefit corporation was not required to have its benefit report audited. However, there were third-party standards that the report was required to meet. The report had to include the third-party standards the company chose, explain why the company selected them, and clarify any financial connection between the third-party standards and the benefit corporation. There was no requirement that corporation select a particular third-party standard. It was dependent upon the focus of the corporation. She reported that Global Reporting Initiative was one of the third-party standards. She mentioned a sustainable farm standards, more appropriate for a business in agriculture. The core of the third-party standard was currently accepted best practice policy for employment and worker wellbeing and community support.

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Vice-Chair Saddler commented that in the following section of the bill it indicated that a benefit corporation shall send a report to each shareholder. Therefore, a person purchasing only one share received a report. Ms. Hansen relayed that it was required that the benefit report be available to the public. If the company had a website the report had to be on the site.

Co-Chair Thompson asked if there were any further questions.

Representative Pruitt wondered what kind of entity would be interested in forming a benefit corporation. He specifically asked if non-profits had expressed an interest in moving from a non-profit structure to a B Corporation. Ms. Hansen responded that although it was possible that a non-profit would want to make the shift it would also require a shift in philosophy. An entity would no longer be a non-profit changing one of its main goals to making a profit. Mostly she had seen new corporations or current C Corporations that had nurtured certain social values. Creating a benefit corporation was an opportunity to protect what were already goals held by corporations.

Representative Pruitt did not see the simplicity of the bill. He believed the legislation created a loophole for a non-profit corporation to make a profit, potentially competing against for-profit entities. If a corporation's goal was to have a benefit and was shielded from lawsuits for placing company profits into a benefit, the non-profit essentially and legally made money. Whereas, previously the corporation had to be a non-profit. He reiterated that there was more to the bill than the committee was aware of as well as potential ramifications.

Co-Chair Thompson commented that a corporation would be responsible for paying taxes if it moved away from being a non-profit to becoming a for-profit corporation.

Representative Pruitt responded that a benefit corporation could take all of its profits and place them into a public purpose benefit to avoid paying taxes. He believed that the taxes would offset profits. Ms. Hansen relayed that the bill did not allow for any special tax exemptions of any sort. The only way that the money going towards a benefit would be tax exempt was whatever was currently allowed under corporate law for a charitable donation.

Representative Pruitt used the example of running a day care, which he claimed was the cost of doing business. He suggested that income monies [from a B Corporation] could be placed into a benefit [purpose] claiming it as a business expense, leaving the B Corporation without a tax liability. Therefore, he surmised the B Corporation would be competing with other for-profit businesses but would have the ability to write-off tax liability. He referred to a B Corporation as a for-profit non-profit. He stressed

that he bill was not simply to donate money towards a certain benefit.

Co-Chair Thompson commented that there were more complications in moving from a non-profit to a profit corporation. He mentioned assets and loans and speculated that it would not be advantageous for a non-profit to become a B Corporation. The entity would end up paying taxes one way or another.

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Representative Gara said there were a million ways to avoid paying taxes. He provided examples such as increasing the compensation for executives or managers who would then pay taxes on their income. He saw the bill as an extension of freedom to decide about what type of corporations they want to form and for what purpose. The bill added a new option to choose their investment. Like any part of the marketplace a person had the freedom to go somewhere else if they wanted. The legislation did not take away taxes nor would it shrink businesses.

Co-Chair Thompson commented that executives would be paying more money in taxes. He pointed out that the bill had a new fiscal note dated 3/13/15. He commented that the original note had a misprint and the new fiscal note reflected the amounts.

HB 49 was HEARD and HELD in committee for further consideration.

Co-Chair Thompson announced that the meeting scheduled on Friday, March 20, 2015 was canceled.

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ADJOURNMENT

[3:11:55 PM](#)

The meeting was adjourned at 3:11 p.m.