

SENATE FINANCE COMMITTEE

April 27, 2015

1:39 p.m.

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CALL TO ORDER

Co-Chair MacKinnon called the Senate Finance Committee meeting to order at 1:39 p.m.

MEMBERS PRESENT

Senator Anna MacKinnon, Co-Chair  
Senator Pete Kelly, Co-Chair  
Senator Peter Micciche, Vice-Chair  
Senator Click Bishop  
Senator Mike Dunleavy  
Senator Lyman Hoffman  
Senator Donny Olson

MEMBERS ABSENT

None

ALSO PRESENT

Cori Mills, Assistant Attorney General, Department of Law;  
Bill Milks, Assistant Attorney General, Department of Law;  
Jerry Burnett, Deputy Commissioner, Treasury Division,  
Department of Revenue; Senator Cathy Giessel.

SUMMARY

^ALASKA'S FISCAL CRISIS

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Co-Chair MacKinnon remarked that there were recent conversations about Alaska's revenue, and budget deficit. She announced that there was an FY 15 budget shortfall of \$3.9 billion. She stated that there was an anticipated budget shortfall of \$3.2 billion or \$4 billion depending on revenue in FY 16. She emphasized that 90 percent of Alaska's revenue came from the monetization of oil and gas resources through property tax, corporate income tax,

production tax. She wondered if she had overlooked any other sources of revenue from oil and gas.

Vice-Chair Micciche announced that the state also received revenue from leasing acreage.

Co-Chair MacKinnon announced that there were recent meetings that addressed Alaska's state debt. She stated that there was a recent meeting about a cash deficiency plan. The conversations surrounded the state constitution, and developed questions. She referred to page 30, Article 9 of Alaska's constitution. She stated that the day's conversation would be centered on those questions in that section.

CORI MILLS, ASSISTANT ATTORNEY GENERAL, DEPARTMENT OF LAW, introduced herself.

BILL MILKS, ASSISTANT ATTORNEY GENERAL, DEPARTMENT OF LAW, introduced himself.

Co-Chair MacKinnon looked at Article 9, Section 10, as related to "interim borrowing." She read from the constitution, "the state, in its political subdivisions may borrow money to meet appropriations for any fiscal year in anticipation of the collections of revenues for that year, but all debt so contracted shall be paid before the end of that fiscal year." She specifically wondered who would be considered "The State." She urged the committee members to elaborate on that question.

Senator Dunleavy queried the definition of "The State", and wondered if the governor and administration could borrow under that definition. He further wondered if there was a law that defined "The State. Ms. Mills replied that the Department of Law opined that "The State" referred to the Executive Branch of government, specifically the commissioner of the Department of Revenue (DOR).

Senator Dunleavy surmised that the legislature had seeded some aspect of its authority to the administration. Ms. Mills replied did not know of the original provision of the constitution rested with the legislature, but she announced that the provision rested in the state. She stated that the provision specifically anticipated covering gaps throughout the year, as revenue did not necessary flow as anticipated. She stated that the provision was intended for the

executive branch to ensure that the legislative appropriations could be implemented.

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Senator Dunleavy asked for a restatement of Ms. Mills' last sentence. Ms. Mills restated that the provision was drafted with understanding that revenue did not always arrive in time to be spent under the legislative appropriations.

Senator Dunleavy wondered if the time gap was taken into consideration. Ms. Mills replied that the time period mattered, only related to anticipation of the revenue for that year.

Senator Dunleavy stated that the state may not know when the revenue would arrive, because of the volatility of the price of oil. Mr. Milks replied that there must be focus of specific circumstances. He stated that the language in the constitution was specifically related to the anticipation of revenues for the year. The appropriation bills were often passed in anticipation of the revenues. He stressed that there was no case interpreting Article 9, Section 10, so one could only refer to the conversations during the Constitutional Convention. He stated that they anticipated times when tax revenues may not meet expectations in a particular year.

Senator Dunleavy hypothesized that \$5 was needed to cover anticipated expenses, but oil production and prices were low. The cost of government was higher than the current revenue. He further hypothesized that there was only \$2.50, so he wondered if the article allowed the governor to draw from various pools of money that were legislatively allocated to meet the anticipated shortfalls. Ms. Mills asked for a question restatement.

Senator Dunleavy restated his question. Ms. Mills responded that most of the accounts were in the general fund, so they were available for appropriation.

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Senator Bishop felt that the drafting of Article 10 was smartly drafted. It specifically states that the debt must be paid out the following year. Mr. Milks agreed.

Co-Chair MacKinnon felt that the borrowing constraints were linked to the fiscal year. She looked at Article 9, Section 10, and queried the statute number that provided the borrowing. Ms. Mills replied that the statute was AS 43.08.010.

Co-Chair MacKinnon wondered if the debt could be refinanced, if the commissioner of DOR exercised power and issued short term financing, and the price of oil fell to \$35 per barrel during the year post-budget approval. She asked if the debt could be continued year to year. Mr. Milks replied that the statute was tracking the constitutional provision and provided the commissioner the authority to borrow money on behalf of the state, when the judgment of the commissioner becomes necessary to meet the appropriations for any fiscal year in anticipation of collection of revenues for that year. He stressed that there must be the judgment, so there was an anticipation of repayment of the notes.

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Co-Chair MacKinnon stressed that the debt must be paid in its entirety in one fiscal year, and announced that the commissioner of DOR could not refinance in anticipation of the following year's projections. She remarked that there was concern regarding debt management, because there was currently no agreement on a three-quarter vote to access the CBR. She noted that this provision gave the administration the opportunity to provide short-term financing to meet the obligations. Ms. Mills agreed.

Senator Hoffman explained that the administration must implement the budget following adjournment. He wondered if the administration could borrow money with the knowledge that there would be continued revenue shortfalls. Ms. Mills responded that the language was intended to outline the maximum amount of time to repay the debt.

Senator Hoffman stressed that he was looking at the literal interpretation of the constitution. Ms. Mills looked at AS 43.08.035, which addressed an annual appropriation.

Mr. Milk furthered that the borrowing would be linked to meet appropriations for any fiscal year in anticipation of collecting revenues for that particular year.

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Senator Hoffman remarked that he was specifically looking at the constitutional interpretation, rather than the history of the actions of the state. Mr. Milks replied that there was a difference between borrowing and what was linked to meet appropriations for the current year.

Vice-Chair Micciche felt that the constitution was clear that debt, so contracted, shall be paid before the end of the following fiscal year.

Senator Dunleavy remarked that there were financial tools that have been added since the constitution's ratifications. He wondered if the state subaccounts could be accessed by the administration to help pay for government. He specifically queried the financial tools available to the governor and administration to help close the budget gap. Ms. Mills replied that she did not want to address the possible financial tools, as that is not her expertise. She stated that everything was circumstantial. The constitution contemplated the collection of revenues, and borrowing or transferring based on the collection of revenue. If there was no anticipation of revenue, there is a harder question to address.

Co-Chair MacKinnon remarked that there was some suggestion to borrow money and risk the money on the market to make up the difference, otherwise known as "arbitrage." She did not believe that states could engage in arbitrage, because states were not directly taxed. Mr. Milks could not conclusively comment on that assertion.

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JERRY BURNETT, DEPUTY COMMISSIONER, TREASURY DIVISION, DEPARTMENT OF REVENUE, commented in response to the question of arbitrage. The state's investment earnings were limited when the state issued tax free debt, and would be obligated to pay the IRS if they state invested at a higher rate than was borrowed. He shared that the state could earn arbitrage if the state borrowed in the taxable market. Revenue anticipation notes could be taxable or tax free, depending on the circumstances.

Co-Chair MacKinnon wondered if the commissioner of DOR would speak to the legislature before implementing arbitrage. Mr. Burnett responded that he could not speak directly for the commissioner of DOR. He assumed that arbitrage would be vetted by the legislature.

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Co-Chair MacKinnon wondered if the administration would be limited in borrowing to the \$2.2 billion in anticipated revenue. Ms. Mills replied that she believed that the borrowing was based on the evidence of the revenue at the time. She stated that the current anticipated revenue was based on the spring forecast, and furthered that the fall forecast may show a different possibility for the year.

Co-Chair MacKinnon noted that the state had enormous reserves and an outstanding credit rating. The state needed to access the reserves, and wondered if it was a finance question that limited the ability to borrow or was it the annual revenue.

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Ms. Mills explained that Section 10 of the Constitution limited the circumstances. She stressed that there must be anticipated revenue.

Co-Chair MacKinnon surmised that the limiting factor was currently \$2.2 billion. Ms. Mills agreed.

Senator Dunleavy felt that Section 11 made exceptions to Section 10. Ms. Mills responded that Section 11 was more an exception to Section 8 on state debt. Section 11 stated that the public enterprise revenue could take out the

issuance of revenue based on their revenue, but did not take the general obligation of the state.

Senator Dunleavy surmised that Section 11 contemplate revenue bonds to be used by subdivisions. Ms. Mills replied that Section 11 related to public corporations, not subdivisions.

Senator Dunleavy wondered if Alaska Housing Finance Corporation (AHFC) was considered a public corporation. Ms. Mills replied in the affirmative.

Senator Dunleavy asked if school districts could be considered public corporations. Mr. Milks replied that Section 11 related to revenue bonds, which were usually for a project. He offered that a school district could use those bonds for a specific project.

Ms. Mills furthered that Section 10 was meant to be the exception to cover operating expenses.

Co-Chair MacKinnon asked for Senator Dunleavy to read Section 11. Senator Dunleavy read Section 9, Article 11. Exceptions of the constitution:

The restrictions on contracting debt do not apply to debt incurred through the issuance of revenue bonds by a public enterprise or public enterprise or public corporation of the State or a political subdivision, when the only security is the revenues of the enterprise or corporation. The restrictions do not apply to indebtedness to be paid from special assessments on the benefited property, nor do they apply to refunding indebtedness of the State or its political subdivisions.

Senator Dunleavy did not believe that there could be bonds to cover operations under Section 11. He was attempting to understand how Section 11 related to Section 10. He asked if a school district could be considered a public corporation. Ms. Mills replied that Section 10 and 11 were separate provisions to address different circumstances. She announced that Section 10 was envisioned for the operations of the state, and not considering any project.

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Vice-Chair Micciche felt that Section 11 may have been useful with a traditional capital budget. Ms. Mills agreed.

Co-Chair MacKinnon looked at Article 9, Section 17, and noted the inclusion of the CBR.

Senator Dunleavy interjected that Section 10 determined that the state was considered the "administration" not the legislature, because of AS 43.08.035. Ms. Mills agreed.

Co-Chair MacKinnon looked at Article 9, Section 17, and noted the inclusion of the "Budget Reserve Fund." She stated that it was related to the CBR. Ms. Mills agreed.

Co-Chair MacKinnon addressed sub-articles (b) and (c) of Article 17. She queried a court provision on (b) that precluded and required the three-quarter vote. She wondered why the legislature needed a three-quarter vote during a substantial revenue shortfall, which inhibited an automatic withdrawal from the CBR. Mr. Milks replied that (c) was more expansive in the use of the funds, because it was for "any public purpose." He furthered that (b) was the majority vote, but only with access to the difference between previous and current fiscal years.

Co-Chair MacKinnon announced that the legislature had reduced the budget by over \$800 million, and felt that it had met the criteria outlined in those sub-articles.

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Mr. Milks explained that sub-article (b) related to the majority vote and (c) was related to the supermajority vote. He explained that (b) addressed the issue of current year appropriations being lower than the previous year. He stated that the Alaska Supreme Court in the case of Hickel vs. Cooper addressed that issue. Based on their determination, significant funds would be available for appropriation.

Co-Chair MacKinnon surmised that the court made that determination. Mr. Milks agreed.

Co-Chair MacKinnon remarked that the legislature has chosen to fund the budget with the CBR.

Senator Dunleavy wondered if the ruling was from the Supreme Court. Mr. Milks responded that the ruling was from the Alaska Supreme Court.

Vice-Chair Micciche commented that the Senate had a three-quarter vote to access the CBR.

Senator Dunleavy thanked the co-chairs for their efforts during the current legislative session.

Co-Chair MacKinnon hoped that there would not be any more Senate Finance meetings for the current session.

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ADJOURNMENT

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The meeting was adjourned at 2:35 p.m.