

HOUSE FINANCE COMMITTEE
April 26, 2017
1:33 p.m.

[1:33:40 PM](#)

CALL TO ORDER

Co-Chair Foster called the House Finance Committee meeting to order at 1:33 p.m.

MEMBERS PRESENT

Representative Neal Foster, Co-Chair
Representative Paul Seaton, Co-Chair
Representative Les Gara, Vice-Chair
Representative Jason Grenn
Representative David Guttenberg
Representative Scott Kawasaki
Representative Dan Ortiz
Representative Lance Pruitt
Representative Steve Thompson
Representative Cathy Tilton
Representative Tammie Wilson

MEMBERS ABSENT

None

ALSO PRESENT

Matt Gruening, Staff, Representative Louise Stutes; Heather Fair, Chief Right-of-Way, Department of Transportation, In Room; Representative Dan Ortiz, Sponsor; Forrest Bowers, Deputy Director - Commercial Fisheries Division, Department of Fish and Game, In Room; Representative Dan Ortiz, Sponsor; Britteny Cioni-Haywood, Division Director, Division of Economic Development, Department of Commerce, Community and Economic Development; Elizabeth Bolling, Staff, Representative Dan Ortiz; Representative Sam Kito, Sponsor; Bianca Carpeneti, Staff, Representative Sam Kito.

PRESENT VIA TELECONFERENCE

Peter Pinnow, Senior Council, Wells Fargo, Minneapolis, MN.

SUMMARY

HB 76 MARICULTURE REVOLVING LOAN FUND

CSHB 76 (FSH) was REPORTED OUT of Committee with a "do pass" recommendation and with two previously published zero fiscal notes: FN1 (CED) and FN2 (DFG).

HB 124 BENEFIT CORPORATIONS

HB 124 was HEARD and HELD in committee for further consideration.

HB 128 SHELLFISH ENHANCE. PROJECTS; HATCHERIES

HB 128 was REPORTED OUT of Committee with a "do pass" recommendation and with two previously published fiscal notes, one with zero fiscal impact: FN1 (DFG); and one with an indeterminate fiscal impact: FN2 (DFG).

HB 131 RELOCATION ASSISTANCE FOR FED. PROJ/PROG

HB 131 was REPORTED OUT of Committee with a "do pass" recommendation and with a previously published zero fiscal note: FN1 (DOT).

Co-Chair Foster reviewed the agenda for the meeting. He indicated he intended to move all bills from committee.

#hb131

HOUSE BILL NO. 131

"An Act relating to relocation assistance for federally assisted public construction and improvement projects and programs; and providing for an effective date."

[1:34:55 PM](#)

MATT GRUENING, STAFF, REPRESENTATIVE LOUISE STUTES, introduced himself and read a prepared statement:

Good afternoon, Mister Chair and members of the House Finance Committee, for the record, Matt Gruening, staff to the House Transportation Committee.

It has been about a month since the committee has heard this bill and my intention is to provide a brief refresher.

I would be remiss, if did not mention that Laura Stidolph, who previously presented this bill has a very good reason for not being here today. I am pleased to announce that at 3:58 this morning, Laura gave birth to an 8 lb. 15 oz. baby boy. Both mother and baby are in perfect health.

In front of you is House Bill 131 "Federal Relocation Assistance Programs/Projects" which will bring Alaska into compliance with Federal law concerning reimbursement for relocation expenses incurred by individuals or businesses that were displaced due to a federally funded highway, bridge, or facilities project. Alaskans deserve to be fairly compensated in these circumstances. HB 131 will also protect Alaska's approximately \$700 million annual allocation of Federal Highway Administration (FHWA) and Federal Aviation Administration (FAA) funding by bringing the state into compliance. \$500 million is allocated annually from the FHWA and on average \$200 million is allocated from the FAA. Having an equivalent state statute is one of the requirements for a state to receive a delegated authority to independently administer the federal program. Additionally, being out of compliance, even for a short period of time, jeopardizes our relationship with our funding partners, putting our entire program at risk. These projects currently amount to approximately \$700 million annually in federal participation, as well as countless jobs.

In 2012, Congress relaxed the eligibility criteria and increased the maximum reimbursement limits for State's relocation assistance payment programs when they passed their transportation authorization and funding bill, the Moving Ahead for Progress in the 21st Century Act, aka MAP-21. Prior to MAP-21, the payment rates had not been changed for 30 years.

These changes went into effect October 1, 2014. Unfortunately, Alaska Statute continues to reflect the

more stringent eligibility criteria and the smaller maximum reimbursement limits.

During the second half of the 29th Alaska Legislature, this inconsistency between state and federal law was nearly fixed. Language similar to HB 131 was proposed and passed the House unanimously. It passed through the Senate State Affairs and Senate Finance. However, the bill was held in Senate Rules and never calendared for a Senate floor vote.

HB 131 assures Alaskans that their Legislature wants them to be compensated the same as a resident of any other state.

Thank you for the opportunity to present this bill on behalf of the House Transportation Committee. Heather Fair, the Department of Transportation & Public Facilities' Statewide Right-of-Way Chief, is here to answer any questions you may have.

Representative Wilson conveyed that last time the committee heard the bill there would be approximately \$12 thousand or 9 percent in state funding, although the fiscal note was zero. She wanted to make sure the fiscal note was accurate. Mr. Gruening responded that the zero fiscal note was correct. He added that federal funding was approximately 91 percent with a 9 percent state match.

Representative Wilson asked why the fiscal note would be zero if there was a 9 percent state note. She was fine with the bill.

[1:39:19 PM](#)

HEATHER FAIR, CHIEF RIGHT-OF-WAY, DEPARTMENT OF TRANSPORTATION, answered that the state would design projects based on available state funding and absorb the additional costs when the department allocated projects.

Representative Wilson noted that the fiscal note was retroactive to 2014. She wondered if the department was confirming that even though there might be funding, the department had enough in its budget to absorb the costs. Ms. Fair responded affirmatively. She indicated that the department estimated about \$12 thousand liability to the

state, a small enough amount that the department could absorb the cost back to 2014.

Representative Wilson suggested that in the future the committee might want to take a closer look at the department's budget.

[1:40:24 PM](#)

Representative Guttenberg spoke about the railroad recently acquiring a significant amount of right-of-way. The railroad's authority to make that acquisition was in question. He asked if the bill would cover what the railroad was doing. Right-of-way was required but not for capital projects. The bill encompassed compensating people for property right of ways. He asked if the railroad's actions were covered in the legislation. Ms. Fair responded that the railroad was a separate corporation.

Vice-Chair Gara understood the explanation about the zero fiscal note. He thought it was due to the projects being dependent on there being a federal project in the future and the legislature having to pay to relocate a family. He suggested that the department would not know when or how frequently it would happen and when it would be in the capital budget. He remarked it was an ongoing operating budget expense normally seen in a fiscal note. He queried the reason for the zero fiscal note. Ms. Fair responded that it was very difficult to estimate how the department would impact businesses, farms, and families with future projects. The department took it into consideration when it had the Statewide Transportation Improvement Program (STIP). The department prioritized projects based on available funding and need.

Vice-Chair Gara asked if there would be a capital expense request of 9 percent. Ms. Fair responded, "That's correct, and again we expect it to be a de minimis impact to the state."

Representative Wilson suggested that in the future relocation funds would be part of federal funding which would be matched with 10 percent state funding. She thought that what had been discussed applied to retroactive funds and which accounts they would come out of. She reiterated that going forward the relocation of funds would be part of the grants from the transportation program and would be

seen in the capital budget. She asked if she was correct. Ms. Fair responded affirmatively. She added that roughly \$12 thousand of the state liability was retroactive to-date as well as what the department could foresee in the following 1 to 2 years on known projects.

Representative Guttenberg commented that in a capital appropriation for a project it included engineering costs and costs associated with property acquisitions including right-of-way properties. He thought the legislation would authorize DOT to add 10 percent or absorb the cost. However, it was enclosed inside a capital project bid document going forward. He did not believe the legislature would see the amount in a budget item. He asked if his assessment was accurate. Ms. Fair responded that the legislature would not see the detailed line items in the request. She added that the legislature was currently not seeing a line item, as it was already something the department paid. There would be new limits.

[1:45:44 PM](#)

Vice-Chair Gara reviewed one zero fiscal note:

Department: Department of Transportation and Public Facilities

Appropriation: Design, Engineering, and Construction

OMB Component: 2357

Vice-Chair Gara MOVED to report HB 131 out of Committee with individual recommendations and the accompanying fiscal note.

There being NO OBJECTION, it was so ordered.

HB 131 was REPORTED OUT of Committee with a "do pass" recommendation and with a previously published zero fiscal note: FN1 (DOT).

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AT EASE

[1:50:01 PM](#)

RECONVENED

#hb128

HOUSE BILL NO. 128

"An Act relating to management of enhanced stocks of shellfish; authorizing certain nonprofit organizations to engage in shellfish enhancement projects; relating to application fees for salmon hatchery permits; and providing for an effective date."

1:50:10 PM

Co-Chair Seaton relayed that the last time the committee heard the bill on April 14, 2018 at which time there were no amendments offered. He invited the bill sponsor to refresh the committee about the bill.

REPRESENTATIVE DAN ORTIZ, SPONSOR, reviewed the legislation dealing with shellfish enhancement projects. He explained that the purpose of the bill was to advance mariculture opportunities in Alaska through shellfish enhancement projects. It allowed non-profits to apply for and pursue enhancement or restoration projects involving shellfish. They might include red and blue king crab, sea cucumber, abalone, geoduck, razor clams, plus other shellfish species not yet on the radar.

Representative Ortiz continued to explain the purpose of the bill. He reported that HB 128 held the Department of Fish and Game (DFG) to a high standard in the process of issuing permits specifically requiring the commissioner to make a finding of substantial public benefit and a determination that the project would not jeopardize natural stocks. It was important to note that when shellfish were released back into the wild by a permit holder, the shellfish became a common property resource available for common use.

Representative Ortiz summarized that the project held the promise of diversifying and strengthening Alaska's fishery portfolio by establishing a sound, sustainable approach to growing the state's fledgling mariculture industry. The bill had 2 zero fiscal notes.

Representative Wilson appreciated the bill. She quarried about enhancement for hatcheries. She referred to the title on page 1, line 3 and salmon hatchery permits. Representative Ortiz responded that the bill was specifically designed to enhance Alaska's mariculture industry. There were several salmon hatcheries in Alaska

that came into existence many years ago. There was nothing preventing the state from putting other hatcheries forward in the future. The bill being discussed addressed the issue of the mariculture industry.

Representative Wilson asked if someone from DFG was available.

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FORREST BOWERS, DEPUTY DIRECTOR, COMMERCIAL FISHERIES DIVISION, DEPARTMENT OF FISH AND GAME, introduced himself and asked Representative Wilson to restate her question.

Representative Wilson suggested that in the bill the state was enhancing shellfish, which she favored. She brought up the Interior hatchery. It had a plentiful stock, but the fish could not be placed into the river. Since the bill provided a vehicle, she thought there might be some enhancement the state could provide for its hatcheries creating more opportunities. She asked for his feedback.

Mr. Bowers responded that currently there were laws in place that allowed for enhancement or rehabilitation for fish including salmon, trout, and char. Those laws had been in place for many years. Currently, there was no law that allowed for shellfish enhancement, the intent of the bill. Currently, a person could not apply for a permit to do a shellfish fishery enhancement project. The bill would allow enabling regulations and a permitting process to be put into place where a person could apply for and receive a permit to enhance a shellfish fishery. As Representative Wilson pointed out, there was already a fish enhancement hatchery program in place for fish. The legislation would establish a parallel program for shellfish.

Representative Wilson asked if there was a non-profit means of doing salmon enhancing products similar to what was being proposed for shellfish. She wondered if salmon hatcheries could release stock into the Chena River or the Yukon River, or wherever the need existed. Mr. Bowers responded affirmatively. There were examples in many coastal areas of Alaska. Representative Wilson was pleased with Mr. Bowers answer. She had been told that the state could not. She thanked him.

Co-Chair Seaton added that releasing fish into the wild could be different than raising fish. Permits were required to allow an entity to release fish without competing with natural stocks. Enhancement was done by hatcheries or non-profit entities all along the Gulf. He noted there were several letters of opposition to the massive amounts of pink salmon going through non-profit hatcheries and being released. There was some contention.

Representative Thompson was aware of the hatchery on the Gulkana River between Summit Lake and Paxon Lake. The hatchery was funded by the fishing industry. The fish were fertilized and taken to a lake in the Interior, and subsequently were put back into the river. He asked if Mr. Bowers was speaking of such a type of set up.

Mr. Bowers affirmed that Representative Thompson's comments reflected an example of a fish enhancement project for a private non-profit. He added that a permitting process was in place. However, it did not mean the department would necessarily grant or approve every application. He noted folks in Representative Thompson's district who had discussed a potential project with the department and who might have received some negative feedback. There was statutory and regulatory language in place that allowed them to apply for a permit.

Representative Wilson was told by the fish hatchery in Fairbanks that they could not install the fish in the Yukon. The co-chair had stated that the reason they were not allowed was because of the mixture of raised and wild fish. She wanted additional clarification. She mentioned a large amount of money going into the project and that there were issues about fish population. She was concerned with having built the hatcheries and them not working. She had heard from the hatchery that it could not insert stock.

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Vice-Chair Gara did not want to haphazardly add a fish hatchery provision in the bill. For example, recently there had been a significant amount of controversy about adding hatchery king salmon to a wild king salmon stream. He opined that considerations would have to be studied prior to going forward. Mr. Bowers agreed. The only part of the bill that did not relate to shellfish was the application fee. The legislation raised the application fee for a new

salmon hatchery permit from \$100 to \$1000. Everything else related to shellfish fishery enhancement. The piece related to the salmon hatchery permit application fee was in the bill and where the word "hatchery" was drawn into the title.

Vice-Chair Gara was comfortable with the bill being a "shellfish bill." He would be uncomfortable expanding it.

Co-Chair Foster directed Vice-Chair Gara to walk through the fiscal notes.

Vice-Chair Gara reviewed two zero fiscal notes:

[Fiscal Note Number: 2]

Department: Department of Fish and Game
Appropriation: Commercial Fisheries
Allocation: Statewide Fisheries Management
OMB Component Number: 2171

[Fiscal Note Number: 1]

Department: Department of Fish and Game
Appropriation: Commercial Fisheries
Allocation: Commercial Fisheries Entry Commission
OMB Component Number: 471

Vice-Chair Gara MOVED to report HB 128 out of Committee with individual recommendations and the accompanying fiscal notes.

There being NO OBJECTION, it was so ordered.

HB 128 was REPORTED OUT of Committee with a "do pass" recommendation and with two previously published fiscal notes, one with zero fiscal impact: FN1 (DFG); and one with an indeterminate fiscal impact: FN2 (DFG).

#hb76

HOUSE BILL NO. 76

"An Act relating to the mariculture revolving loan fund and loans from the fund; and providing for an effective date."

[2:02:05 PM](#)

Co-Chair Foster indicated there had been no amendments submitted to his office since the bill's last hearing. He invited the bill sponsor, Representative Ortiz, and his staff to the table.

REPRESENTATIVE DAN ORTIZ, SPONSOR, thanked the committee for considering the legislation. He read the sponsor statement:

This bill amends the existing Alaska Mariculture Revolving Loan Fund to allow up to forty percent of the fund to be used for loans to permitted shellfish hatcheries for planning, construction and operation.

Alaska shellfish farms currently do not have a stable supply of seed for the propagation of oysters, and no regular, in-state source of seed for resident aquatic plants and other shellfish. A stable supply of seed is one of many hurdles the industry must overcome to grow and become a viable Alaskan industry.

This bill will amend the program to shift its focus and eligibility from individual mariculture farmers to include shellfish hatcheries that would market stock to local Alaskan mariculture farmers.

The mariculture industry in Alaska is not yet fully developed, and is extremely high risk, from a financial standpoint. These obstacles make private financing difficult to obtain, but this bill will enable Alaskans to maintain their businesses and grow Alaska's mariculture industry.

Representative Ortiz reported that the bill had 2 zero fiscal notes. He was happy to answer any questions.

Co-Chair Foster reviewed the list of available testifiers. Co-Chair Foster directed Vice-Chair Gara to review the fiscal notes.

Vice-Chair Gara reviewed two zero fiscal notes:

[Fiscal Note Number: 2]

Department: Department of Fish and Game

Appropriation: Statewide Support Services
Allocation: Commissioner's Office
OMB Component Number: 2175

[Fiscal Note Number: 1]

Department: Department of Commerce, Community and Economic
Development
Appropriation: Investments
Allocation: Investments
OMB Component Number: 383

Representative Wilson referred to the last paragraph on the
fiscal note with OMB component number 383. She read from
the fiscal note (copy on file).

She asked if the department would be absorbing the costs.
She asked for the amount being absorbed.

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BRITTENY CIONI-HAYWOOD, DIVISION DIRECTOR, DIVISION OF
ECONOMIC DEVELOPMENT, DEPARTMENT OF COMMERCE, COMMUNITY AND
ECONOMIC DEVELOPMENT, relayed that the funding would come
out of the fund. She noted that there was potentially
another regulation package that would be coming out.

Representative Wilson asked what fund the monies would be
drawn from. She thought the amount should be reflected in
the fiscal note and asked Ms. Cioni-Hawood to comment.

Co-Chair Seaton read from the remainder of the last
paragraph on page 2 of the fiscal note (copy on file). He
remarked that the regulations were already being rewritten.
He asked for further clarification.

Ms. Cioni-Haywood understood that the department was not
asking for additional money or an additional appropriation,
therefore, the fiscal note was zero.

Representative Guttenberg pointed out that the note was
from DCCED. It was part of the loan programs, which they
had a significant amount. He pointed to the top line of the
analysis which indicated that the Mariculture Revolving
Loan Fund program was already authorized to issue loans. It
appeared the program was expanding to include other
projects.

Representative Wilson asked about other planned regulation projects that would include this project. Ms. Cioni-Haywood explained that the department was also considering a regulation project on HB 56 [Legislation introduced in 2017 - Short Title: COMMERCIAL FISHING LOANS] that would include changes for the commercial fishing loan limits.

Representative Wilson assumed that HB 56 did not have a zero fiscal note. Ms. Cioni-Haywood relayed there was a zero fiscal note for HB 56. She was informed that since the department was not asking for an additional appropriation, the fiscal note would be zero.

Representative Wilson was asking because the committee had heard about the budget and how much it had been reduced. She appreciated that the department was absorbing the cost. However, it would be nice to know the amount being absorbed. She specified that the loan people would be paying for the costs. She suggested that there were inconsistencies in the absorption of costs. She asked about the other fiscal note and the potential of more money for the hatchery portion. She read from the second page of the fiscal note from DFG (copy on file) regarding additional operating funds for operators of hatcheries. She realized that she was directing her question to DCCED and she should be asking DFG. She asked if the money for hatcheries went back into the hatcheries themselves. She wondered if that was the reason it stated there might be more money for the hatcheries as opposed to the state.

Representative Ortiz asked what she was referring to.

Representative Wilson was speaking to the fiscal note with the OMB component number 2175. She pointed to the second page. The language mentioned potential revenue going to hatcheries rather than to the state.

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Representative Ortiz deferred to his staff, Ms. Bolling.

ELIZABETH BOLLING, STAFF, REPRESENTATIVE DAN ORTIZ, explained that hatcheries would be able to apply for grants through the reshaped loan fund. Although the grants were small, it would be possible for operators to get some small grant money through the program that they might otherwise receive from DFG. All that the fiscal note conveyed was that a portion of the amount they paid out to the hatcheries to operate might be offset slightly by the grant program.

Representative Guttenberg highlighted that the loan program was sustainable as a revolving loan fund and was self-sustained. The legislation was expanding who could use the funds and how the funds would be used. The loan fund by itself was essentially a bank.

Representative Wilson clarified that her point was that the money would be designated general funds (DGF) and DGF was shown in state fiscal notes. She wanted the information provided on fiscal notes.

Co-Chair Seaton MOVED to report CSHB 76 (FSH) out of Committee with individual recommendations and the accompanying fiscal notes.

There being NO OBJECTION, it was so ordered.

CSHB 76 (FSH) was REPORTED OUT of Committee with a "do pass" recommendation and with two previously published zero fiscal notes: FN1 (CED) and FN2 (DFG).

[2:14:47 PM](#)

AT EASE

[2:15:49 PM](#)

RECONVENED

#hb124

HOUSE BILL NO. 124

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

[2:15:57 PM](#)

Co-Chair Foster indicated there was one amendment that he would be offering. He asked the bill sponsor to provide the committee with a recap of the bill.

REPRESENTATIVE SAM KITO, SPONSOR, reviewed the bill. He explained that the bill established a charter type of corporation that would allow a company to have, within its by-laws, operations plan, and activities more than just a fiduciary responsibility to its shareholders. They would be allowed, under the "B" corporation statute, to provide a public benefit. The public benefit would be defined in the organizing documents of the corporation. He had covered several questions. He would defer to his staff to present his position on the amendment.

Co-Chair Foster reviewed the list of available testifiers online.

Co-Chair Foster MOVED to ADOPT Amendment 1 (copy on file):

Page 15, following line 2:

Insert a new section to read:

"Sec. 10.60.725. Reliance by third parties. (a) A person who, in good faith, enters into a transaction with a benefit corporation may

(1) assume without inquiry that the transaction, and each action or inaction by any director or officer of the benefit corporation giving effect to the transaction, is in furtherance of the benefit corporation's general public benefit purpose or specific public benefit purpose; and

(2) enforce the transaction against the benefit corporation as if the transaction is in furtherance of the benefit corporation's general public benefit purpose or specific public benefit purpose.

(b) Nothing in this section exempts a covered financial institution from identifying and verifying the beneficial owner of a legal entity that is a customer as required under a federal or state law or regulation. In this subsection, "covered financial institution" has the meaning given in 31 C.F.R. 1010.605."

Representative Wilson OBJECTED for discussion.

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BIANCA CARPENETI, STAFF, REPRESENTATIVE SAM KITO, indicated that the amendment was a friendly safe harbor amendment proposed by the Alaska Bankers Association. The proposed language was intended to function much like Alaska's certificate of trust statute. In particular, the subsection of the trust statute was AS 13.36.079(f)(g). The provisions provided third parties transacting business with a trust. They could rely on a trust statement that the transaction was permitted by the trust, and, as such, enforceable against the trust. The intent of the amendment was to provide the same contractual certainty to third parties that contracted businesses with proposed public benefit corporations.

Ms. Carpeneti turned to Article 5, Actions and Claims, Sections 10, 60, 300, and 320 of the proposed legislation found on pages 9 and 10. The section provided that parties might bring action against a public benefit corporation for failing to pursue or create a public benefit. Since monetary damages were not permitted under the proposed legislation, the likely relief would be injunctive in nature. The relief could theoretically include a court, setting aside a contract under the theory that it did not satisfy or further a public benefit. Absent the proposed language, third parties might feel compelled to make an independent assessment of whether the transaction satisfied or furthered a public benefit. She relayed that there were some concerns that sort of analysis might increase the costs of completing transactions and might make some transactions more difficult to complete.

Ms. Carpeneti reported that the bill sponsor's position on the amendment was neutral. He consulted with William Clark, the lawyer that testified in front of the committee at the prior bill hearing, who understood the intent of the amendment but thought it might go too far. Specifically, he had concerns with subsection 2 regarding the non-benefit corporation part of the contract. He disagreed that the non-benefit corporation should not have a duty to inquire about the purpose of the contract, but it might have said too much to allow the other party to enforce a contract in all cases. If a court declined to enforce a contract, the other party would still be protected because it would be entitled to any damages it could prove. She relayed Mr.

Clark's suggestion was to strike subsection 2. Although he noted that his concerns were not extremely serious. Representative Kito's office also contacted DCCED to see if there were any concerns about the proposed amendment. Responses were received from Janey Hovenden, Director, Division of Corporations, Business and Professional Licensing. She noted that the division did not see an issue with the proposed changes. Representative Kito's office also heard from Kevin Anselm from the Division of Banking. The division requested the addition of subsection 3, as provided in the amendment before the committee.

PETER PINNOW, SENIOR COUNCIL, WELLS FARGO, MINNEAPOLIS, MN, referred to section 2 and indicated the intent was to track the same rights and the same protections afforded under the trust certificate statute that was referenced.

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Co-Chair Seaton commented that either the general public benefit or the specific public benefit were not the sole reason for the company's existence. He read from the amendment (see above). He understood that in a trust there was an obligation to only act on behalf of the beneficiaries of the trust. The amendment encompassed an additional benefit that was offered by a corporation but was not its sole benefit. He thought the language would interfere with a company's right to make a profit by not furthering the specific or benefit purpose. He wanted someone to address the issue of mixing trusts with an auxiliary purpose, which could become problematic.

Mr. Pinnow understood the representative's comment. He explained that whenever there was a public benefit requirement imposed by a statute Wells Fargo wanted to make sure it had contractual certainty. It did not want to run the risk of having its contracts set aside with 20/20 hind sight. The proposal was intended to ensure that parties transacting business with a public benefit corporation felt safe and secure that the contract they entered into would not be set aside in the future under the theory that the contract did not further the public benefit. He reiterated that the intent was to make sure there was contractual certainty. He explained that the reason he analogized it to the trust certificate was because, much like parties that transacted business with trusts, they needed contractual certainty that the transaction was authorized and in

furtherance of the trust purpose. As a third party who would be interacting and lending money to a benefit corporation, Wells Fargo would want to make sure it had certainty just as a third party relying on a trust certificate would.

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Co-Chair Seaton remarked that general benefits and specific benefits were additional values to the operation of the corporation. Neither were the sole purpose of the corporation. He thought that, the way the amendment was written, the entirety of the contract had to accomplish the accessory benefit, rather than the sole purpose of a corporation. A trust had a sole purpose. He suggested that the amendment was converting the general benefit or specific benefit into the sole purpose of the company and that everything in the contract would have to comply. He asked Mr. Pinnow to comment on the potential interpretation of the language contained in the amendment.

Mr. Pinnow did not believe the purpose of the language would require that a public benefit corporation only engage in transactions that would serve a public benefit. The purpose of the language was intended to make it clear and provide third parties with the protection against their contract right being set aside because of the contract not furthering a public benefit objective. He suggested that the language should not be interpreted as fundamentally changing the requirements of a public benefit corporation. It was intended solely to provide protection to third parties transacting with a public benefit corporation.

[2:29:42 PM](#)

Co-Chair Seaton highlighted line 5 and asked if Mr. Pinnow was saying that it was assumed without inquiry that the transaction and each action or inaction by any director or officer was to further the public benefit.

Mr. Pinnow responded that he could see Co-Chair Seaton's point that the contract might be for the benefit of the corporation but that the contract might not further the public benefit purpose. He was concerned that a contract might be set aside because someone argued that a contract did not serve a public benefit.

Co-Chair Seaton did not have a problem with the intent of the bill, but argued that the amendment did not accomplish that goal. He indicated he objected to adopting the offered specific language. He proposed having the Legislative Legal Services redraft the amendment. He recommended taking out the trust language as well.

Co-Chair Foster asked the bill sponsor how he wanted to proceed. Representative Kito was comfortable with revisiting the bill later and changing the language to better satisfy the chair.

Representative Guttenberg thought the amendment was, at best, neutral and potentially cloudy. He referred to the section of the amendment that contained the language causing confusion. He was concerned that someone would enter a contract with a benefit corporation and have it overridden. He asked Mr. Pinnow to comment.

Mr. Pinnow replied that the language spoke to the public benefit purpose or the specific public benefit purpose. The language was intended to deal solely with whether a transaction furthered the public benefit purpose. He suggested that if there were concerns about a contract that would otherwise apply under general corporate law, the language should not be interpreted to address that. The language was intended to deal with the specific and unique characteristics of the public benefit corporations and that they had a public benefit purpose requirement that could be enforced by shareholders.

[2:35:58 PM](#)

Co-Chair Seaton asked Mr. Pinnow about the concern the amendment was trying to address. He wondered if the intent was to ensure that when a party entered a transaction with a benefit corporation that the transaction did not have to further the general public benefit or the specific benefit purpose to be valid. Co-Chair Seaton provided an example regarding maintaining trails around Juneau. He asked if he was correct in his assumption about Mr. Pinnow's intent.

Mr. Pinnow responded in the affirmative. Wells Fargo wanted certainty. He provided the example of Wells Fargo lending money to a public benefit corporation to do an addition such as building a parking ramp that someone later questioned the public benefit. Wells Fargo would not want

to have a transaction or contract set aside or called into question as being outside of the corporate authority simply because with hind sight it did not accomplish, achieve, or further a public benefit.

Co-Chair Seaton understood what Mr. Pinnow was hoping to achieve. He thought that the intent could be accomplished by having Legislative Legal Services redraft the amendment. He thought the issue could be resolved with the use of different language.

Representative Wilson asked if the amendment could be provided in time for her to speak with bankers at home to make sure it worked for them.

Co-Chair Foster WITHDREW Amendment 1.

HB 124 was HEARD and HELD in committee for further consideration.

Co-Chair Foster reviewed the agenda for the following day. He recessed the meeting to a call of the chair [Note: the meeting never reconvened].

#

ADJOURNMENT

2:40:00 PM

The meeting was adjourned at 2:40 p.m.