

HOUSE FINANCE COMMITTEE

April 7, 2018

1:08 p.m.

1:08:59 PM

[Note: continuation of 4/6/18 1:30 p.m. meeting. See separate meeting document with that date for detail.]

CALL TO ORDER

Co-Chair Foster called the House Finance Committee meeting to order at 1:08 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 (via teleconference)
Representative Lance Pruitt
Representative Steve Thompson
Representative Cathy Tilton
Representative Tammie Wilson

MEMBERS ABSENT

None

ALSO PRESENT

Representative Adam Wool, Sponsor; Mike Navarre, Commissioner, Department of Commerce, Community, and Economic Development; Kris Curtis, Legislative Auditor, Alaska Division of Legislative Audit; Representative Andy Josephson, Sponsor; Tom Atkinson, Staff, Representative Adam Wool.

PRESENT VIA TELECONFERENCE

Erika McConnell, Director, Alcohol and Marijuana Control Office, Department of Commerce, Community and Economic Development; Linda Bruce, Legislative Counsel, Legislative

Legal Services; Kristin Ryan, Director, Division of Oil Spill Prevention and Response, Department of Environmental Conservation.

SUMMARY

HB 268 OPIOID PRESCRIPTION INFORMATION

CSHB 268(FIN) was REPORTED out of committee with an "amend" recommendation and with one previously published fiscal impact note: FN1(CED).

HB 299 EXTEND: ALCOHOLIC BEVERAGE CONTROL BOARD

CSHB 299(FIN) was REPORTED out of committee with a "do pass" recommendation and with one new fiscal impact note from the Department of Commerce, Community and Economic Development.

HB 322 OIL SPILLS/POLLUTION: PENALTIES; PREVENTION

CSHB 322(FIN) was REPORTED out of committee with four "do pass" recommendations, four "do not pass" recommendations, and two "amend" recommendations; and with one new fiscal impact note from the Department of Environmental Conservation.

SB 158 OIL/HAZARDOUS SUB.: CLEANUP/REIMBURSEMENT

SB 158 was SCHEDULED but not HEARD.

Co-Chair Foster reviewed the meeting agenda.

#hb299

HOUSE BILL NO. 299

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

1:10:46 PM

Co-Chair Foster noted the bill had been heard the previous day and three amendments had been passed. A letter of intent had been drafted, which may not be needed because he anticipated an amendment may be rescinded.

REPRESENTATIVE ADAM WOOL, SPONSOR, reviewed the committee action from the previous day. Three amendments had been adopted, after which the committee was interested in a letter of intent. After more consideration he believed Amendment 2, which gave the commissioner power to reverse board decisions, may not be the best way to achieve his intended goal. He provided a scenario where a licensee objected to a ruling made by the board. He had been searching for an expedited way for another set of eyes to look at the issue through a Department of Commerce, Community and Economic Development (DCCED) lens rather than a Department of Public Safety or law enforcement lens. The division had been moved to DCCED in the past, but he was uncertain there had been a transformation in the way things were viewed.

Representative Wool believed the attachment to DCCED should have been more significant, which was one of the reasons he had included the appeal process that could happen within 30 days. Additionally, if someone had a grievance or disagreement with the board they could appeal - the board met every three months and an administrative law judge could get involved. He explained the process could take many months and two or three board meeting cycles. The timeframe could close a business down, especially if a business was forced to close during the period due to a board decision. When a small business operating on tight margins closes for a few months, it could mean going out of business. He hoped DCCED staff understood the issue as well. He surmised it may not be the best process where the commissioner was only able to see the records the board was able to see and was not able to discuss the issues with the director because they may be adjudicating the case.

[1:14:22 PM](#)

Co-Chair Foster MOVED to RESCIND the adoption of Amendment 2 [adopted on 4/6/18].

Representative Wilson OBJECTED for discussion.

MIKE NAVARRE, COMMISSIONER, DEPARTMENT OF COMMERCE, COMMUNITY, AND ECONOMIC DEVELOPMENT, relayed that he had not spoken with the Department of Law (DOL), but he had spoken with Representative Wool and Alcohol and Marijuana Control Office Director Erika McConnell since the previous

meeting to gain a better understanding of the current process. He had also reviewed whether Amendment 2 would help accommodate Representative Wool's goal of achieving quicker decisions in the appeal process. Ms. McConnell had communicated there was an informal appeal process (in addition to the formal process) that could be made within the division or by the board. He believed it may be a better opportunity to truncate the conflict resolution issues Representative Wool was trying to get to. He believed the ability for an appeal to go to the commissioner would compromise commissioner's ability to participate in the process because he would not be able to gather information in an informal process if he was adjudicating an appeal.

Mr. Navarre had also spoken with Representative Wool about the fact that it was an administrative issue; it had not been something identified in the audit with respect to the board and "this is an extension of the board." He was disinclined to deal in a rushed manner in a process that should be deliberative in terms of changes that could manifest as unforeseen impacts within the division and for individuals regulated by the division. He would work with Ms. McConnell and the board to develop a better conflict resolution process that would hopefully meet the needs of individuals being regulated and the unique responsibilities the division had for the protection of public safety.

[1:17:14 PM](#)

ERIKA MCCONNELL, DIRECTOR, ALCOHOL and MARIJUANA CONTROL OFFICE, DEPARTMENT OF COMMERCE, COMMUNITY AND ECONOMIC DEVELOPMENT (via teleconference), relayed that she had spoken with the ABC Board chair and he did not support the amendment. She shared that the chair had called an emergency meeting for the following Tuesday with the board to discuss the amendments. She also had concerns with the amendments. She spoke to her concern about Amendment 2 with prepared remarks:

Regarding Amendment 2, the five member ABC Board is comprised of 2 industry members, a public safety member, a rural member, and a general public member. The members are vetted by the governor's Boards and Commissions Office, appointed by the governor, and confirmed by the legislature. These individuals are familiar with the industry and with the statutes and

regulations that govern the manufacture, possession, and sale of alcohol. They manage over 1,800 alcohol licenses. As required by statute, the board meets at least once per year in each judicial district in the state "to study this title and to modify existing board regulations in light of statewide and local problems." The board may hold public hearings to ascertain the reaction of the public or a local governing body to a license application and where a local government protest or public objection is received, such a hearing is required.

As all of you are aware, alcohol has both significant negative effects on communities in our state as well as significant positive economic effects. Under the current Title IV, the legislature has committed to the five member board with expertise, knowledge base, and sensitivity to the issues to appropriately ascertain the public interest in controlling alcoholic beverages within the state.

The amendment adopted yesterday could cede this authority to the commissioner who has none of the same requirements relating to the establishment of a knowledge base, development of an understanding of statewide and local problems relating to alcohol, through travel and public meetings, and actions in the public interest. To replace the judgement of five individuals with the judgement of one is puzzling at best.

There are additional sections of statute that authorize the board to take particular licensing actions that may be affected particularly by Amendment 2, which has the potential to create regulatory confusion. Those sections are AS 04.06.090, AS 04.11.040, and AS 04.11.480. Yesterday's Amendment 2 in Section 3 would appear to muddy the appeal process for applicants and licensees. AS 04.11.510(b)(1) states that if an application is denied the applicant is entitled to a formal hearing conducted by the office of administrative hearings in accordance with the Administrative Procedures Act, Section 44.62.330 through Section 44.62.630. AS 44.62.500 states that the proposed decision of the administrative law judge may be adopted by the agency, which would be the board, and is considered the final decision for the

purposes of AS 04.11.560, which may then be appealed to superior court. It is entirely unclear where the appeal to the commissioner of Commerce would fit within that process.

Another concern, having participated in several administrative hearings in my tenure as director, is who would be assisting the commissioner in his or her review of the records and how the review of the record would proceed. In some of these cases the record can go to hundreds of pages and can require significant time and resources to adequately review. Thank you for the opportunity to speak on Amendment 2.

[1:22:14 PM](#)

Representative Wilson asked if the removal of Amendment 2 impacted the other two adopted amendments.

Ms. McConnell replied that based on Representative Wool's testimony from the previous day, she believed Amendment 3 had been offered because of Amendment 2. She questioned the purpose of Amendment 3 if Amendment 2 was repealed.

Representative Wool agreed that Amendment 3 followed Amendment 2 since it was no longer only for administrative purposes. He stated that to have something in a department for administrative purposes only, it was possible to put the ABC Office or the Alcohol and Marijuana Control Office (AMCO) in any department (e.g. the Department of Corrections) - he wondered what the difference was. He stated, "they're moving them around from different departments with intent." He did not have the legislative intent on hand describing the reason the office had been moved from DPS to DCCED. He believed the intent was to make the division more sensitive to the needs of private business.

Representative Wool referenced testimony by Ms. McConnell that alcohol had a negative impact on society in Alaska and a positive economic impact. He stressed alcohol also had a positive impact on society - there were people who enjoyed a glass of wine with dinner, which was not a negative thing. He was in favor of Amendment 3 that would delete the language specifying the ABC Board was under DCCED for administrative purposes only. He supported a connection between the AMCO and ABC Board with DCCED. He reiterated

there was economic value. He reviewed Ms. McConnell's explanation of the appeal process the previous day, which required going to the board, an administrative law judge, and the state superior court. He stated the process took a year on average. He stressed the average mom and pop business owner should have access to a shorter recourse to try to resolve issues. He was not claiming resolution did not occur in an informal way, but he had read about cases that were not resolved.

Representative Wool supported having eyes on the issue that were more commerce friendly. He wanted to keep Amendment 3. He understood the confusion that could be caused by Amendment 2, but he did not believe the current process was all that great. He specified that when someone had a disagreement it could take months. He continued that if someone's license was denied because they did not have a set of finger prints and the operation of their business was on hold, they may close. He did not believe it was fair. He wanted to hear from someone else on the topic besides the board and the director.

[1:25:48 PM](#)

Representative Wilson referenced Ms. McConnell's mention of an ABC Board meeting the coming Tuesday. She asked if the meeting would look at the impact of the amendment changes during the meeting. She wondered if the agency planned to weigh in on the bill's impact on the board after its Tuesday meeting.

Ms. McConnell answered in the affirmative. The intent was for the board to provide its opinion to the legislature on whatever amendments remain in the bill.

Vice-Chair Gara stated that Amendment 2 was the guts of the agency review. He asked for verification that Representative Wool was comfortable that without Amendment 2, Amendment 3 still satisfied the goal of having a more independent review.

Representative Wool answered in the negative. He understood the concern that as written, Amendment 2 may hamper the ability for someone in the commissioner's office to interface with the division to resolve an issue in a timely manner, while offering another set of eyes. He did not really want to go through the administrative law judge

process - he noted he was not claiming there was not a place for that. He wanted to resolve some of the issues in a timelier manner. He was amenable to the elimination of Amendment 2 if it could help the situation. He thought perhaps there would be another solution down the road. He noted there was a Title IV rewrite going through and perhaps that was a more appropriate time.

[1:27:57 PM](#)

Commissioner Navarre commented on Ms. McConnell's testimony that the board had five vetted members. He remarked that the members were also lay members who came together at four meetings per year (or more if called into special meetings). He stated the individuals could not speak to each other to make decisions prior to meetings. He added the members all had lives they were leading. The information that came to the board came in a truncated period of time when meeting for board deliberations. He explained that most of the board packet information was provided by the division. He explained from his perspective and he believed the frustration experienced by Representative Wool, reflected a desire to find a better way to do conflict resolution. He did not think usurping the appeal process had that outcome. He believed the issue had more to do with an administrative function. He would try to have the discussion with the board and further discussions with Ms. McConnell to determine something that worked for everyone.

Representative Wool referenced Commissioner Navarre's mention of an informal hearing process. He did not recall Ms. McConnell mentioning the process in her testimony the previous day. He asked to hear from Ms. McConnell that it was part of the process. Additionally, he wondered if it was something that someone from the department could be notified of or asked for advice on. Alternatively, he wondered if that was off limits.

Ms. McConnell replied that after the board denied a license application, the applicant had the opportunity to request an informal conference with either the director or the board. She believed it would be up to the board to determine whether or not other individuals within DCCED could be included. She stated it was something that Commissioner Navarre and the board could discuss.

[1:30:34 PM](#)

Representative Wilson WITHDREW her OBJECTION. There being NO further OBJECTION, action on Amendment 2 was RESCINDED.

Co-Chair Seaton was unsure of the purpose of Amendment 3. He stated it meant DCCED would have some regulatory and intermediate function, without identifying what that function was. He was uncertain it would help the situation. He thought the interaction could be quite different than what the legislature intended because it was not identifying anything. He continued that the committee had just eliminated the process discussed in Amendment 2 to allow that normal interaction and control in a department and one of its agencies. The amendment would have dramatically changed the structure when the agency had been placed under the department for administrative purposes. He was uncertain how the legislature would be implementing the desire by leaving some amorphous goal to have the department control the board or interact with the board.

[1:32:51 PM](#)

Representative Wilson agreed. She no longer saw the connection with Amendment 3. She understood there was a rewrite of Title IV. She thought perhaps Title IV was the more appropriate place to consider the issue. She reasoned that the bill's purpose was to provide a board extension, which was necessary. She asked how Amendment 3 could be beneficial. She wondered what could happen by changing the board to a regulatory and quasi-judicial agency. She reiterated her belief there was no longer a connection for Amendment 3.

Representative Wool thought taking away the language [specifying that the board was under DCCED for] administrative purposes only did not give the department more power. He believed for example, if the commissioner was called upon to advise or listen in on a case, suddenly the board would no longer be under DCCED for administrative purposes only. He did not believe that was a bad thing. He reasoned that if there was a need for communication it would not be forbidden [if the amendment was adopted]. He liked the amendment even without Amendment 2.

Co-Chair Foster asked if Ms. McConnell had comments on Amendment 3.

1:35:08 PM

Ms. McConnell shared the same uncertainty as Co-Chair Seaton and Representative Wilson on Amendment 3.

Representative Wilson MOVED to RESCIND the adoption of Amendment 3 [adopted on 4/6/18].

Vice-Chair Gara OBJECTED.

Representative Wool believed moving the board from DPS to DCCED for administrative purposes only seemed like a waste. He thought the move should have some meaning, otherwise he believed it was for naught. He opined that removing the language "for administrative purposes only" gave some intent to the move between two departments. He added he could look up the historical record to determine why the move had taken place.

Vice-Chair Gara thought they were arguing over semantics. He thought the semantics in Amendment 3 were more accurate. Under DCCED, the ABC Board was allowed to issue regulations. Part of the amendment specified the board was regulatory because it issued regulations. He elaborated that the board made decisions on licenses, penalties, renewals, and revocations. Amendment 3 classified the board as a quasi-judicial agency, which he believed was accurate. He believed the amendment merely specified what the board does. He did not see a problem with the amendment. He did not see the amendment getting where Representative Wool wanted in terms of giving the commissioner the ability to make decisions, but he believed the amendment accurately described what the board did.

1:37:24 PM

Co-Chair Seaton stated that normally departmental regulations had to be approved by the commissioner. The wording in Amendment 3 specified it would not be the way the board would work. He elaborated that the commissioner would not be able to override regulations. He believed removing the language would mean the commissioner would be in charge of and the final decision maker on regulations. He speculated the language had originally been included because the intent had been to move the board for administration to get it out of DPS, but not for the final

approval of regulations made by the board to be made by the commissioner. He thought the amendment muddied the question of regulations and approval of regulations.

Co-Chair Foster listed individuals available for questions.

Vice-Chair Gara addressed a question to Legislative Legal Services. He reviewed that the committee had rescinded its action on Amendment 2, which would have given the [DCCED] commissioner certain decision making authority. The committee was currently considering a motion to rescind Amendment 3. His understanding was the board proposed regulations (confirmed by others) and made decisions on licenses including revocations and penalties. Therefore, he did not believe it seemed odd to classify the board as a regulatory and quasi-judicial agency. He asked for comment on Amendment 3.

[1:41:00 PM](#)

LINDA BRUCE, LEGISLATIVE COUNSEL, LEGISLATIVE LEGAL SERVICES (via teleconference), stated her understanding of the question. She questioned whether Vice-Chair Gara was asking if the amendment would affect the board's regulatory and quasi-judicial authority. Alternatively, she wondered if he was asking what would happen if the "for administrative purposes" language was removed.

Vice-Chair Gara clarified he wondered what the effect would be of leaving Amendment 3 in the bill. He thought the amendment seemed consistent with the board's activities. Alternatively, he wondered what the removal of the amendment would do.

Ms. Bruce responded that by removing the language "for administrative purposes only," the department would have the power to manage the ABC Board like any other board as permitted within the statutory power of the department. The department would have potentially oversight over operating and administrative procedures of the board. However, within Title IV there was no specification where duties and powers were directed towards the department over the board. She stated it was a little unclear. She noted she had not had a chance to fully analyze the question and would be happy to provide a written response with more detail.

[1:42:32 PM](#)

Co-Chair Seaton pointed out that the duties of the board were listed in current statute. The only change Amendment 3 would make was the removal of "for administrative purposes only" language. He stated that if the amendment did not pass, current statute already contained the amendment's language in lines 7 through 12.

Representative Wilson stated that normally when the legislature changed the duties of a board, the process involved seeking the board's input. She was uncomfortable that the amendments had sparked an emergency board meeting.

Representative Guttenberg supported the motion to rescind the amendment. He looked at AS 04.06.010 and relayed he had been present when the board had been moved from DPS to DCCED. He believed one of the reasons the move had taken place was they wanted to deal with DCCED instead of being a police board. He continued that under current statute the board was a regulatory and quasi-judicial agency. He recalled dialogue about the commissioner having discussion with the board. He stated that if the amendment was adopted, the commissioner would have no function remaining. He believed there was a positive aspect of having the commissioner serve an administrative role in the discussion with the administrative function of the board. He stated if the language was removed, the commissioner's role was removed.

Representative Wool replied that the amendment would remove the language "administrative purposes only," but would not take away administrative purposes. He thought Representative Guttenberg was saying the department would lose all administrative purposes.

Representative Guttenberg believed the amendment would remove the department's role for all administrative purposes. He stated the situation had arisen before when the board had specified it was independent from the department and that the department had nothing to do with how the board operated. He stated it had led to some problematic situations in the past. He wanted to ensure the commissioner had some role in oversight. He stated that the board would have the regulatory, quasi-judicial agency role, but the commissioner had some purpose as well.

[1:46:41 PM](#)

Representative Wool was confused with the interpretation. He thought by removing the language "for administrative purposes only" meant the department's role was not limited to administrative purposes. He explained that it would remove the commissioner from the process. He directed the question to Legislative Legal Services and asked if the marijuana board also had similar language.

Ms. Bruce asked for the question to be restated.

Representative Guttenberg complied. He asked about the commissioner's role and what the language "for administrative purposes only" meant in the statute.

Ms. Bruce answered that currently the department only had oversight over the board for administrative purposes. The deletion of the language "for administrative purposes only" would still mean the department had oversight over the board for administrative purposes. She confirmed that the same language was used for the Marijuana Control Board under AS 17.38.080, which provided the board was under DCCED for administrative purposes only.

Representative Guttenberg asked what role the commissioner would have in relationship to the board if the amendment was maintained.

Ms. Bruce was uncertain. There would potentially be operating and administrative oversight by the commissioner, but it depended on the statutory authority given to the department and commissioner, which she had not had time to analyze.

[1:49:50 PM](#)

Representative Guttenberg asked if anyone had the information.

KRIS CURTIS, LEGISLATIVE AUDITOR, ALASKA DIVISION OF LEGISLATIVE AUDIT, relayed that the Division of Legislative Audit looked at numerous quasi-judicial entities including the Commercial Fisheries Entry Commission and the Parole Board. The entities were required to be independent in their judicial function. She believed that the "for administrative purposes only" language would almost always appear associated with the various entities. She suggested

the language likely existed when the board had previously been under DPS and the Department of Revenue (DOR).

Representative Pruitt believed the board had been moved from DPS to DCCED because DPS had been too involved and there was a feeling of punishment of license holders and the desire to move the board to a more of a business mindset. He reasoned the existing statutory language went along with that line of thinking. He wondered about the intent and thought the current language aligned with the move from DPS to DCCED.

[1:52:22 PM](#)

Ms. McConnell answered that she had not worked in her current position in 2012 when the board had been moved from DPS to DCCED. She offered to research the legislative history and provide a written response to the committee. She added that under AS 04.06.070 "appointment and removal of the director," the director was appointed by the governor, but absent some malfeasance only the board could remove the director. She worked for the board; if the interpretation of the effects of the amendment was to give the commissioner of DCCED the authority over the agency it became very confusing in her role. She elaborated that she answered to the board, yet under the amendment the commissioner would have undefined authority. She believed the intent needed clarification. She planned to ask the board for its opinion on the amendment during its meeting the coming Tuesday.

Representative Pruitt stated they were having to piece the items together to fully understand. He referenced the testimony by Ms. Curtis and testimony by Ms. McConnell about trying to keep the independence of the board. Based on the testimony he believed the current language should be maintained. He did not believe the debate was merely over semantics. He thought rescinding the amendment was the appropriate action.

Co-Chair Seaton directed a question to Ms. Bruce with Legislative Legal Services. He stated that normally agency regulations were approved by the commissioner of the department. He asked if the removal of the language "for administrative purposes only" would call into question whether the board could independently set regulations.

Alternatively, he wondered if the regulations would fall under the commissioner.

Ms. Bruce answered that the commissioner would not have final say on regulations adopted by the board.

Co-Chair Foster noted Representative Ortiz had joined the meeting earlier via teleconference.

Vice-Chair Gara spoke to the Amendment 3 language. He thought he had heard statements that the amendment would make the department a regulatory and quasi-judicial agency. However, he believed the amendment would make the board a regulatory and quasi-judicial agency. He read from the amendment. He asked if his understanding was accurate.

[1:57:33 PM](#)

Ms. Bruce responded that the board was the regulatory and quasi-judicial agency under current statute and would remain so under Amendment 3.

Commissioner Navarre relayed that the board had previously been housed under DOR before moving to DPS and then DCCED. He believed the transfers had occurred because there had been some frustration about maintaining the independence of the board and administering of a division or department. He believed maintaining the board's independence was important. He thought the head of the department should have some ability to advise a division about how the laws were administered, but he did not believe the amendment language would fix the issue. He thought the language would be inconsistent with the way independent boards were administered throughout various departments.

Vice-Chair Gara MAINTAINED his OBJECTION.

A roll call vote was taken on the motion to rescind the adoption of Amendment 3.

IN FAVOR: Tilton, Wilson, Kawasaki, Pruitt, Thompson, Seaton

OPPOSED: Gara, Grenn, Guttenberg, Ortiz, Foster

The MOTION PASSED (6/5). There being NO further OBJECTION, the adoption of Amendment 3 was RESCINDED.

Vice-Chair Gara reviewed the fiscal note from DCCED. The note reflected annual board operation costs of \$1.66 million (through FY 23) to be paid for with fees.

Co-Chair Seaton MOVED to REPORT CSHB 299(FIN) out of committee with individual recommendations and the accompanying fiscal note.

CSHB 299(FIN) was REPORTED out of committee with a "do pass" recommendation and with one new fiscal impact note from the Department of Commerce, Community and Economic Development.

[2:02:05 PM](#)

AT EASE

[2:09:00 PM](#)

RECONVENED

#hb322

HOUSE BILL NO. 322

"An Act relating to penalties for discharges of oil and other pollution violations; relating to oil discharge prevention and contingency plans for commercial motor vehicles transporting crude oil; and providing for an effective date."

[2:09:06 PM](#)

Co-Chair Foster indicated that the bill had been heard on March 29, 2018. He asked the sponsor of the bill if he had any comments before taking up amendments.

[2:09:41 PM](#)

REPRESENTATIVE ANDY JOSEPHSON, SPONSOR, referenced prior committee discussion about the bill's purpose. He shared the department's [Department of Environmental Conservation (DEC)] belief it was important to update penalty authority at present in case it was needed; it was not possible to "retroactively work our way out of that and look to 1977 and 1989 penalty schedules." Additionally, it was expensive and time consuming for the department to deal with small penalties without going through the legal system (under current law). The bill would allow administrative penalties. He continued it was easier for the department to

obtain cost recovery if the option was available. He elaborated that the department noted, and the law reflected, that penalties of an administrative nature were available for food safety, public drinking water, and monitoring of contaminants. The Environmental Protection Agency required administrative penalty authority for all programs where the state had taken primacy. He stated that the idea was not novel. Relative to the types of spills, he agreed with the Alaska Oil and Gas Association's (AOGA) position that it was generally not the main offender. About 90 percent of the spills requiring DEC's intervention were not related to the oil industry, but were related to fishing boats, abandoned mines, and other incidences. The bill was not designed to come after any one industry.

[2:12:15 PM](#)

Vice-Chair Gara thought it was an open question on whether the state could retroactively adopt penalties.

Co-Chair Foster MOVED to ADOPT Amendment 1, 30-LS1015\U.2 (Nauman, 3/16/18) (copy on file) sponsored by Representative Ortiz:

Page 2, line 27:
Delete "\$20"
Insert "\$40"

Page 2, line 30:
Delete "\$5"
Insert "\$10"

Page 3, line 1:
Delete "\$2"
Insert "\$4"

Representative Wilson OBJECTED.

Representative Ortiz explained that the amendment aligned with the spirit of HB 322 in the sense it would update penalties last changed in 1989. He did not believe the increase fully accounted for inflation. The amendment's purpose was to update the penalties.

Representative Wilson directed a question to DEC. She stated the department had raised the penalties from \$10 to \$20 and \$2.50 per gallon to \$5.00 per gallon. She asked why

the department had selected the numbers in the original bill.

KRISTIN RYAN, DIRECTOR, DIVISION OF OIL SPILL PREVENTION AND RESPONSE, DEPARTMENT OF ENVIRONMENTAL CONSERVATION (via teleconference), explained that the numbers included in the bill by Representative Josephson accounted for the cost of inflation. She deferred to Representative Josephson for further detail.

Representative Josephson replied that with exception to Amendments 1 and 2 the bill contained an update reflecting inflation. The figures in Section 2 of the bill (Amendment 1) doubled the existing out-of-date figures. The amendment was to be consistent with other parts of the legislation that increased to inflation.

Representative Wilson observed that the updated penalties appeared to be four times the amount of the existing penalties.

Representative Josephson responded that he would have to check to see if the proposed numbers were four times the existing amounts. The changes in Amendments 1 and 2 were designed to be consistent with the increases in the rest of the legislation.

[2:16:12 PM](#)

Representative Kawasaki referenced a presentation [by the sponsor] from a previous bill hearing ["HB 322: The Spill Bill" provided on March 29, 2018 (copy on file)]. He pointed to Section 2, which specified the 2018 equivalent value would be closer to \$39.70. He asked why the sponsor had decided to set the penalties at half of what inflation would have been in Sections 2 and 3 of the bill.

Representative Josephson replied that the figures in the bill reflected the will of the House Resources Committee. He elaborated that the committee had chosen to update the figures for inflation with the exception of the figures included in Amendments 1 and 2. The amendments would give the House Finance Committee an opportunity to weigh in.

Representative Wilson looked at page 5, lines 8 and 9 of the bill. She noted the bill updated various penalty thresholds from \$500 to \$1,000, \$100,000 to \$200,000, and

\$10,000 to \$25,000. She turned to page 6, lines 5 and 6 and observed the same thing was happening. She believed the initial numbers in the bill had to be close to inflation if pages 5 and 6 reflected it.

Representative Josephson deferred to his staff.

TOM ATKINSON, STAFF, REPRESENTATIVE ADAM WOOL, replied that the numbers had been adjusted for inflation in most of the bill sections. He stated that often it had worked out to be approximately double the current penalty. In some cases, the daily penalty had been multiplied by 5. How the penalties had been set throughout the bill varied. He referenced Section 2 where the number veered from inflation. He elaborated that the Section 2 penalties had been set in December 1977; if the penalties were changed to reflect inflation they would be four times the existing numbers, which seemed extreme. The reasoning had been it seemed more acceptable to double those penalties.

Representative Wilson remarked on a statement made that all of the other penalties had been increased to reflect inflation. She thought the numbers would be closer to four times their existing amounts if the goal was to keep everything the same [increase levels equally].

Representative Josephson answered that the penalties had not all been created at the same time, meaning there were different inflation rates.

[2:19:54 PM](#)

Representative Kawasaki pointed out that the presentation previously given by the sponsor showed that original penalties in Section 2 were adopted in 1977, the penalties in Section 4 were adopted in 1989, the penalties in Section 6 were adopted in 1976, and the penalties in Section 8 were adopted in 1984. He believed keeping things consistent by inflation proofing the entire bill was accurate.

Vice-Chair Gara requested to be added as a cosponsor to the amendment.

Representative Wilson MAINTAINED her OBJECTION.

A roll call vote was taken on the motion to adopt Amendment 1.

IN FAVOR: Gara, Guttenberg, Kawasaki, Ortiz, Foster, Seaton
OPPOSED: Wilson, Grenn, Pruitt, Thompson, Tilton

The MOTION PASSED (6/5). There being NO further OBJECTION,
Amendment 1 was ADOPTED.

Co-Chair Foster MOVED to ADOPT Amendment 2, 30-LS1015\U.3
(Nauman, 3/16/18) (copy on file) sponsored by
Representative Ortiz:

Page 4, line 7:
Delete "\$1,000"
Insert "\$2,000"
Delete "\$200,000"
Insert \$400.000"

Representative Wilson OBJECTED for discussion.

[2:21:47 PM](#)

Representative Ortiz explained the amendment was the same
as Amendment 1 but applied to a different section of the
bill.

Representative Wilson MAINTAINED her OBJECTION.

A roll call vote was taken on the motion.

IN FAVOR: Guttenberg, Kawasaki, Ortiz, Gara, Seaton, Foster
OPPOSED: Grenn, Pruitt, Thompson, Tilton, Wilson

The MOTION PASSED (6/5). There being NO further OBJECTION,
Amendment 2 was ADOPTED.

Co-Chair Seaton MOVED to ADOPT Amendment 3, 30-LS1015\U.5
(Nauman, 4/2/18) (copy on file):

Page 3, line 10:
Delete "annually"
Insert ", every three years,"

Page 3, line 28:
Delete "annually"
Insert ", every three years,"

Page 7, line 17:

Delete "annually"
Insert", every three years,"

Page 8, line 24:
Delete "annually"
Insert ",every three years,"

Representative Wilson OBJECTED for discussion.

Co-Chair Seaton explained the amendment aimed to increase administrative efficiency and would mean the consumer price index calculation would be computed every three years instead of annually. He elaborated the change would mean the number would not have to be updated annually in publications. He believed a three-year inflation adjustment was adequate.

Representative Wilson asked for verification the amendment would still inflation proof for the years between the three-year period. She surmised it would not necessarily mean inflation proofing once.

Co-Chair Seaton confirmed the inflation would be cumulative. The amendment merely removed administrative burden.

Representative Wilson WITHDREW her OBJECTION.

There being NO further OBJECTION, Amendment 3 was ADOPTED.

[2:22:44 PM](#)

Co-Chair Seaton MOVED to ADOPT Amendment 4, 30-LS1015\U.6 (Nauman, 4/3/18) (copy on file):

Page 9, following line 2:
Insert a new bill section to read:
"*Sec. 13. AS 46.03.900 is amended by adding a new paragraph to read:
(38) "produced water" means water that is the byproduct of the exploration, extraction, development, production, refining, processing, or disposal of energy-related products;"

Renumber the following bill sections accordingly.

Page 9, line 29:

Delete "Section 15"
Insert "Section 16"

Page 9, line 30:
Delete "sec. 16"
insert "sec. 17"

Representative Wilson OBJECTED for discussion.

Co-Chair Seaton explained the amendment. He stated that the bill addressed penalties. Produced water volume was included in the bill, but the term was not defined in statute. He had worked with DEC, the Department of Natural Resources (DNR), and Legislative Legal Services to craft a definition for produced water. He read the definition the amendment proposed to include:

"produced water" means water that is the byproduct of the exploration, extraction, development, production, refining, processing, or disposal of energy-related products

Co-Chair Foster asked to hear from DEC.

KRISTIN RYAN, DIRECTOR, DIVISION OF OIL SPILL PREVENTION AND RESPONSE, DEPARTMENT OF ENVIRONMENTAL CONSERVATION (via teleconference), shared that the committee had discussed concerns about how produced water would be defined by the department if the bill passed. Produced water was associated with the exploration and production of oil. The division found cleaning up produced water spills to be very difficult and damage to the environment was significant; therefore, DEC requested produced water to be a factor when calculating penalties associated with spills.

Representative Pruitt stated they had discussed the issue at a previous bill hearing. He asked for verification that DEC had not taken into account penalties related to produced water.

Ms. Ryan answered in the affirmative. The current statute limited the department's ability to only calculate oil when it considered the volume of a spill, for the sake of a penalty.

Representative Pruitt asked how often Ms. Ryan anticipated the issue would come into play. He asked how many produced

water spills the division knew about, but did not have the ability to do anything about. He remarked that DEC made the offender clean up produced water spills, but was unable to issue a fine. He asked how many cases there would be where the department missed out on being able to fine for the offense.

Ms. Ryan answered that it was not possible to clean up a produced water spill. Typically, the water was saline and when it ran into tundra, plants were killed quickly. She elaborated that the spills occurred in older fields on the North Slope where more and more water came up as the oil was pumped down. She noted when spills occurred it was becoming more common for the volume to be more water than oil. From DEC's perspective, the damage was as significant to the environment. The fact that the spill could not be cleaned up and that spills could occur in large volumes, was the reason DEC proposed to include produced water in its volume calculation for penalties. She added the request was not unusual. She detailed that Oklahoma and Texas included produced water in their penalty calculations. She explained it was difficult for the spiller to calculate and prove what portion of the spill was water and what portion was oil. The amendment would simplify the calculation process.

[2:29:19 PM](#)

Representative Pruitt did not believe there was a unanimous agreement between the department and partners about the damage from produced water. He asked for verification that DEC's position was the water caused immediate damage and killed tundra, while some industry individuals felt the damage was not at the same level.

Ms. Ryan believed there were many opinions about the effects of produced water versus oil. From the department's perspective, it was easier to clean up oil than it was to clean up salt water. She elaborated that salt water was absorbed and oil tended to sit on the surface. The department's view was the water damaged the environment.

Representative Pruitt stated there was a substantial amount of wind on the North Slope and the wind pushed the salt onto the tundra. He asked about the difference.

Ms. Ryan answered that salt water spray from the ocean impacted a small amount of land near the shore. A spill of produced water was inland and in the thousands of gallons in an area of tundra that was not typically impacted by ocean spray. She added that produced water salinity could be much higher than ocean water salinity.

Representative Pruitt asked how many spills happened annually and how many were off-pad.

Ms. Ryan would have to follow up with the information.

Representative Pruitt asked if a spill on-pad in a contained environment was considered damaging to tundra.

Ms. Ryan responded that DEC was focused on spills that caused damage to the environment. A spill on a pad was captured in gravel and was not impacting the environment. There were many spills on-pad, which the department did not issue penalties for. Penalty language would apply for spills off the pad.

Representative Pruitt highlighted Ms. Ryan's testimony about thousands of gallons [of produced water]. He thought there would be significantly more reporting of the spills [if spills were at that level]. He thought Ms. Ryan was making it sound like the problem was frequent. He was trying to determine the frequency of the spills. He wondered if there were bad actors. He thought the discussion from the previous bill hearing was that people would rather do something inappropriate because the penalties were so low. He asked if the problem was happening without abandon, which was the reason the amendment was necessary.

[2:34:10 PM](#)

Ms. Ryan did not have the numbers on hand, but there were several [produced water] spills per year (not more than 10). The spills were semi-frequent.

Vice-Chair Gara was comfortable with the amendment. He believed the point of the legislation was to deter individuals from taking less care. There was a history of companies that had acted very responsibly and those that had acted irresponsibly at times. He cited the Exxon Valdez oil spill and Deepwater Horizon as spill examples in the

past. He reasoned that everyone did not always act as desired, which was the reason for penalties.

Representative Kawasaki stated that the scope of Amendment 3 was limited to adding a definition of produced water. He asked if the definition included in the amendment was typical when defining produced water. He wondered if it was inclusive or exclusive.

Co-Chair Seaton answered that a couple of different suggestions had been provided including "water that is brought to the surface as a byproduct of extraction and hydrocarbons" and "produced water means extracted in the development, extraction or disposal of energy related products." He elaborated that Legislative Legal Services had developed the definition as there was not one in statute. The goal was to avoid confusion as to what constituted produced water. His objective was to have the ability to solve a problem and to avoid going to court to determine what the definition of produced water was. The amendment was limited to defining produced water and made no changes to fines or fees.

[2:36:35 PM](#)

Ms. Ryan confirmed that the definition in the amendment was consistent with what she had seen in other states. The definition was an explanation that produced water was related to the development, exploration, and production of oil or other oil related products.

Representative Kawasaki surmised the definition was a general concept of produced water that was inclusive and similar to definitions in other states. He was trying to ensure the definition was accurate. He added the amendment was in context to Section 5 dealing with fines associated with produced water. He believed it was appropriate for the public, industry, legislators, and courts to understand what was meant when the term produced water was used.

Representative Wilson WITHDREW her OBJECTION. There being NO further OBJECTION, Amendment 4 was ADOPTED.

[2:38:12 PM](#)

Co-Chair Seaton MOVED to ADOPT Amendment 5, 30-LS1015\U.4 (Nauman, 4/2/18) (copy on file):

Page 9, line 9, following "law.":

Insert "The person shall submit the oil spill response plan to the department electronically."

Representative Pruitt OBJECTED for discussion.

Co-Chair Seaton explained the amendment would require oil spill response plans to be submitted electronically. The idea was for plans to be viewable by people in more than one location. He elaborated that the process would be much more efficient for responders and could save time in cleanups when people knew exactly what the response plan was including items that would be available on scene or on board. For example, what a truck was hauling and who was designated in their response plan as the responder in order to avoid confusion.

Representative Wilson clarified that the oil spill response plans were submitted to DEC for the record and were approved by a separate entity. She surmised the purpose was to let people know what would take place in the event of a spill.

Co-Chair Seaton answered in the affirmative. The intent was for plans required of companies to be available for cleanup. The amendment did not require anything else to be done. Updating plans would also be much more convenient and everyone would be apprised of the current plan.

Representative Pruitt WITHDREW his OBJECTION. He did not believe DEC needed all of the plans; however, he believed if the state was going to make companies submit plans it was better to have them submitted electronically. He noted his concern there would be numerous documents that were not needed. He elaborated that the department had not known of the federal requirement until recently. He thought it showed either the failure of the department or that the issue had been managed in the past without needing [the spill plan]. He thought the documents would sit in an electronic file that may not be needed.

There being NO further OBJECTION, Amendment 5 was ADOPTED.

[2:42:13 PM](#)

Vice-Chair Gara reviewed the fiscal note from DEC. The amendment reflected a cost of \$10,800 in FY 19 and an ongoing expense of \$2,700 in outyears from the Oil and Hazardous Substance Release Prevention and Response Fund. The note also reflected the gain in revenue of \$74,700 in FY 20 up to \$80,100 in FY 24.

Representative Wilson asked if the inflation calculation would cost \$2,700.

Ms. Ryan replied in the negative. The only cost associated with doing the inflation adjustments was the publishing of the regulations, which would be on a three-year cycle (based on an amendment that passed).

Representative Wilson asked for verification it would cost \$2,700 to update for inflation every three years. The note included language that regulations would need to be reviewed annually, which would be changed to every three years based on an amendment that passed. She did not understand the cost.

Ms. Ryan answered that it would not cost that much to do the inflation regulations. She believed the language implied the overall cost of doing regulation changes for updating penalties over several cycles.

Representative Wilson assumed the \$10,800 was for the initial regulation in FY 19. She wondered if other regulations had to be done annually because of a federal government requirement. She asked if the cost was associated with something the department already did that had nothing to do with the legislation.

[2:44:45 PM](#)

Ms. Ryan answered that the bill assumed DEC would update regulations every year, but it had been changed to every three years. She believed the cost in the fiscal note would be slightly reduced due to the change.

Representative Wilson stated the only thing the bill required every three years was inflation. She asked if there was some other regulation update requirement the department would have to update every three years.

Ms. Ryan answered in the negative.

Representative Wilson remarked that calculators were pretty inexpensive.

Co-Chair Foster relayed there may be a new fiscal note forthcoming with more revenue.

Vice-Chair Gara clarified that the cost reflected in the fiscal note was not for someone using a calculator, but for the RSA [Reimbursable Services Agreement] with the Department of Law to address the regulations. There was also a cost when regulations went to public notice. He did not see anything in the fiscal note attributing the cost to someone calculating the inflationary effect.

Representative Wilson pointed to language on page 2 of the fiscal note specifying that regulations would need to be reviewed annually to reflect inflation.

[2:46:17 PM](#)

Vice-Chair Gara countered that it was not what the full sentence said.

Representative Wilson read the sentence on page 2 of the fiscal note:

Contractual costs reflect estimated RSA with the Department of Law for consultation and legal review during the development of new regulations as well as required public notice in Anchorage, Juneau, and Fairbanks. Regulations would need to be reviewed annually to reflect inflation.

Representative Wilson stated the fiscal note included \$2,700 in FY 20 through FY 24 associated with the work.

Co-Chair Foster asked Ms. Ryan to provide a written response with clarification.

Ms. Ryan agreed.

Co-Chair Seaton MOVED to REPORT CSHB 322(FIN) out of committee with individual recommendations and the accompanying fiscal note.

Representative Wilson OBJECTED. Stated there was opposition to the bill from the Alaska Trucking Association and AOGA. She did not believe the committee had addressed the entities' concerns. Conversely, she thought the bill added additional things for the trucking industry to do.

Representative Thompson corrected the motion to move the bill.

Co-Chair Seaton restated his motion.

Representative Wilson OBJECTED.

[2:49:09 PM](#)

Representative Kawasaki supported the updates dealing with inflation. He remarked there had been myriad inflation changes since 1976, 1984, and 1989. He had concern about the policy dealing with resource issues. He appreciated clarity on the definition of produced water. He had a bit of trouble with some of the other policy issues dealing with punitive administration fees in Sections 1 and 6. Additionally, he had overriding concerns about how a penalty deters or changes bad behavior. He did not know that it had proven to be the case. He appreciated the sponsor bringing the bill forward and wanted to see it move forward. He believed the bill was ready for a more thorough debate on the House floor.

Vice-Chair Gara stated that he had worked with some of the penalties when he had worked on the Exxon Valdez oil spill. There had been a debate at the time on whether to just use the penalties, which had been inadequate. He elaborated that the state would not have received the \$1 billion settlement if it had merely imposed the per gallon penalty. Additionally, in a big case there were resources to try to prove damages, but in a smaller case, trying to assess the value of a bird, 100 pink salmon, or other, was very difficult. He stated that the penalties were especially important in those cases, meaning someone did not have to go through the vast expense of measuring the value of the harm. He believed penalties were important. He reasoned the state might as well throw out the penalties in criminal and administrative law and driving violations if the belief was they were ineffective. He stressed there would be a cost if the state was not careful, especially at the expense of fishing streams and waters, which were a hallmark of the

state. He noted the state had always bragged to the federal government that Alaska did things right - that oil was produced in a way that protected those things. He believed the bill was important.

Representative Pruitt opposed the legislation. He thought the bill seemed to try to force certain actions as if they were not already being done. He referenced a letter from AOGA (copy on file) indicating the millions of dollars per year put into ensuring industry did everything possible to prevent spills. He pointed to the Alyeska Pipeline Service Company with over 200 drills and \$100 million annually spent on prevention and readiness. He recalled Alaska Clean Seas had specific equipment on the North Slope costing hundreds of thousands of dollars. He stressed that industry was already doing the things the bill aimed to force industry to do. He pointed to a report from the Division of Spill Prevention and Response showing the number of spills and volume had declined. He emphasized that many people working in the oil industry did not want to see damage done to the environment and were doing everything they could to prevent it. He was concerned the bill was aiming to attack a group of people as if they were bad actors. He did not believe the group was filled with bad actors. Alternatively, he believed the group was trying to put the investment, time, and energy into protecting the environment.

Representative Pruitt understood a conversation about penalty fees, but he did not support multiplying them by four. He discussed that the state had been going after the cruise ship industry - the penalties had been added in 2006 and would be increased beyond inflation under the bill. He believed the bill was wrapped in punitive policy as opposed to considering what the state was doing to partner with industry to protect the environment. He believed the focus should be on partnering with industry/groups instead of pitting people against each other.

[2:55:41 PM](#)

Representative Guttenberg highlighted a recent occurrence as an example. He elaborated that someone had not checked their [truck] load and had taken out a bridge. He recalled that one woman waiting in traffic had a baby. He questioned how all of the people waiting in traffic felt about the company not following procedures. He supported the bill and

was happy there had not been a recent accident that would single out one company in Alaska. He referenced Ms. Ryan's testimony there was an Alyeska issue that was basically sabotage that Alyeska had nothing to do with - the company was not fined, and it participated in the cleanup. However, there had been instances where companies were bad actors. He noted the incidents occurred much less than in the past. When considering the punitive aspect, he asked members to consider how the individuals waiting in traffic for hours felt about the situation. He continued that if the truck had not taken out a bridge there would not have been a problem; however, one bad apple could cause significant damage that could hurt many people.

Co-Chair Seaton made it clear that he did not believe they were being overly burdensome on industry by adjusting for inflation. The goal from 1977 to present was not to continually reduce the penalties. He believed it was prudent to adjust for inflation. The passed amendments merely brought penalties up to account for inflation because the years the given penalties were established were 15 years earlier than the penalties in other bill sections (1977 versus 1985 and 1989). He did not believe prior legislatures that had set the penalties had been overburdensome at the time. He reiterated his belief that adjusting the fines for inflation was the right thing to do.

[2:58:54 PM](#)

Representative Wilson MAINTAINED her OBJECTION.

A roll call vote was taken on the motion.

IN FAVOR: Guttenberg, Kawasaki, Gara, Grenn, Foster, Seaton
OPPOSED: Pruitt, Thompson, Tilton, Wilson

Representative Ortiz was absent from the vote.

The MOTION PASSED (6/4).

There being NO further OBJECTION, CSHB 322(FIN) was REPORTED out of committee with four "do pass" recommendations, four "do not pass" recommendations, and two "amend" recommendations; and with one new fiscal impact note from the Department of Environmental Conservation.

3:00:26 PM

AT EASE

3:01:07 PM

RECONVENED

#hb268

HOUSE BILL NO. 268

"An Act relating to the prescription of opioids; relating to the Department of Health and Social Services; relating to the practice of dentistry; relating to the practice of medicine; relating to the practice of podiatry; relating to the practice of osteopathy; relating to the practice of nursing; and relating to the practice of optometry."

3:01:14 PM

Co-Chair Foster indicated that the bill was last heard on April 2, 2018.

Vice-Chair Gara MOVED to ADOPT Amendment 1, 30-LS1081\E.1 (Radford, 4/4/18) (copy on file):

Page 7, line 16:
Delete "February"
Insert "October"

Representative Wilson OBJECTED for discussion.

Vice-Chair Gara explained the amendment would extend the date boards shall adopt regulations to implement the CDC-type [Centers for Disease Control] regulations the committee had previously discussed. The CDC had recognized the national opioid epidemic. The bill asked various boards with prescribing authority to adopt regulations consistent with the CDC's national recommendations. The department had requested giving boards additional time to adopt the regulations; therefore, the amendment would move the date from February 2019 to October 2019. He reasoned 15 months should be ample time for the work to be done. He did not believe the regulations should be difficult to adopt, consequently he hoped the boards would adopt them more quickly. He explained that when the bill passed the boards could start working on the regulations, the department could put the information on its website for prescribing

practitioners to print out for patients. The amendment would mean regulations would be adopted by October 2019.

[3:04:05 PM](#)

Representative Wilson WITHDREW her OBJECTION.

There being NO further OBJECTION, Amendment 1 was ADOPTED.

[3:04:41 PM](#)

AT EASE

[3:04:54 PM](#)

RECONVENED

Co-Chair Foster asked Co-Chair Seaton to review the fiscal note.

Co-Chair Seaton reviewed the fiscal note from the Department of Commerce, Community and Economic Development, which reflected a cost of \$15,500 in receipt services for FY 19.

Co-Chair Seaton MOVED to REPORT CSHB 268(FIN) out of Committee with individual recommendations and the accompanying fiscal note.

There being NO OBJECTION, CSHB 268(FIN) was REPORTED out of committee with an "amend" recommendation and with one previously published fiscal impact note: FN1 (CED).

Co-Chair Foster reviewed the agenda for the next meeting.

#

ADJOURNMENT

[3:06:56 PM](#)

The meeting was adjourned at 3:06 p.m.