

HOUSE FINANCE COMMITTEE

April 27, 2018

9:06 a.m.

9:06:33 AM

CALL TO ORDER

Co-Chair Foster called the House Finance Committee meeting to order at 9:06 a.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 Louise Stutes (alternate)
Representative Steve Thompson
Representative Cathy Tilton
Representative Tammie Wilson

MEMBERS ABSENT

None

ALSO PRESENT

Mike Barnhill, Deputy Commissioner, Department of Revenue;
Ken Alper, Director, Tax Division, Department of Revenue;
Bill Milks, Department of Law; Mary Gramling, Assistant
Attorney General, Department of Law; Representative
Charisse Millett.

PRESENT VIA TELECONFERENCE

Jim Beckham, Deputy Director, Division of Oil and Gas,
Department of Natural Resources

SUMMARY

HB 331 TAX CREDIT CERT. BOND CORP; ROYALTIES

HB 331 was HEARD and HELD in committee for further consideration.

Co-Chair Foster reviewed the agenda for the meeting.

[Note: Representative Grenn was absent for a portion of the morning segment of the meeting. During that time Representative Louise Stutes served as alternate.]

#hb331

HOUSE BILL NO. 331

"An Act establishing the Alaska Tax Credit Certificate Bond Corporation; relating to purchases of tax credit certificates; relating to overriding royalty interest agreements; and providing for an effective date."

[9:07:22 AM](#)

^AMENDMENTS

[9:08:11 AM](#)

Co-Chair Seaton MOVED to ADOPT Amendment 30-GH2863\A.11 (Nauman, 4/24/18) (copy on file):

Page 9, following line 14:

Insert a new bill section to read:

"*Sec. 6. AS 43.55.028(b) is amended to read:

(b) The oil and gas tax credit fund consists of

(1) money appropriated to the fund, including any appropriation of the percentage provided under (c) of this section of all revenue from taxes levied by AS 43.55.011 that is not required to be deposited in the constitutional budget reserve fund established in art. IX, sec. 17(a), Constitution of the State of Alaska, less the amount described in (o) in this section; and

(2) earnings on the fund."

Renumber the following bill sections accordingly.

Page 14, following line 26:

Insert a new subsection to read:

"(o) The legislature may reduce an appropriation made under (b)(1) of this section by an amount equal to the amount appropriated to the Alaska Tax Credit Certificate Bond Corporation for maintenance of the required debt service reserve in the Alaska Tax Credit Certificate Bond Corporation reserve fund, as calculated under AS 37.18.040(g)."

Representative Wilson OBJECTED for discussion.

Co-Chair Seaton explained the amendment with a prepared statement. He explained the amendment would prevent a double appropriation. He shared that currently, if the bill were to pass, the statutory formula for appropriation to the Oil and Gas Tax Credit Fund remained unchanged. Therefore, the legislature would be directed by statute to make a statutory appropriation to the fund, and the debt service obligation payment to the new Bond Corporation Reserve Fund. He stated that the amendment would change the current Oil and Gas Tax Credit Fund statute, so any payments made under debt service to the newly created Alaska Tax Credit Certificate Bond Corporation would be subtracted from an appropriation made to the Oil and Gas Tax Credit Fund.

Co-Chair Foster invited the Department of Revenue (DOR) to the table for questions.

MIKE BARNHILL, DEPUTY COMMISSIONER, DEPARTMENT OF REVENUE, introduced himself.

Representative Wilson spoke to her objection. She felt that they did not know who would be taking advantage of the program. She maintained her objection.

Representative Pruitt wondered whether the language prevented the state from at least paying those individuals who may not participate in the program.

Co-Chair Seaton replied that he believed those payments would be made. He explained that there would only be a subtraction of the amount that was made to the bond.

Co-Chair Foster asked to hear from the department.

[9:12:31 AM](#)

KEN ALPER, DIRECTOR, TAX DIVISION, DEPARTMENT OF REVENUE, agreed the amendment was meant to be subtractive. He explained that one must examine the statutory appropriation. The guidance from the legislature would be to take the statutory appropriation number, and subtract the number that was, per the actuarial chart, directed to the debt service and bond payback formula. Therefore, only the difference should be appropriated to the Tax Credit Fund. He noted that it would be a smaller number, but still a positive number, and used for those who may choose not to participate in the program.

Representative Pruitt wondered whether the amount required for the bonds be larger than one of the two calculations, should there be a change in the out years.

Mr. Barnhill responded that there were multiple meetings, and an attempt to provide assurance of preserving the option to not participate. He stated that if one chose not to participate, they would be able to present for payment their tax credits under the statutory schedule as interpreted by DOR. He stressed that, no matter what occurred in the bill and to be consistent with the optionality, the administration would present the numbers in the budget for those tax credit holders that did not participate in the program. He restated that the legislature had the appropriation option. He stressed that, because of the way that the bill was constructed, he had not heard from any tax credit holder that they intended not to participate.

Co-Chair Foster wished Mr. Alper happy birthday. He recognized Representative Charisse Millett in the audience.

Representative Pruitt stated that he had received an answer to his question.

[9:17:31 AM](#)

Mr. Alper believed there was another amendment later in the packet, but stated that DOR was comfortable with the amendment language.

Representative Wilson asked if the program was supposed to be voluntary.

Mr. Barnhill replied in the affirmative.

Representative Wilson wondered whether a company would still consider a program "voluntary" if the legislature was still finding ways to "screw" them.

Mr. Barnhill would not speak for the companies' perspective. The goal was getting to a balanced and fair situation. He stressed that the intent was to administer for the opt-out as if the bill had never passed.

Representative Wilson remarked that currently, there was a schedule on when a company could anticipate payment. She wondered whether an increase in oil price would allow for everyone to be paid sooner, because people would be removed from the formula.

Mr. Alper answered that if the appropriation was higher than the statutory formula, everyone would receive more for the pro-rata, and receive a higher percentage of their credit paid. He stated that the number built into the bill itself would not change, because it was tied to the formula change and forecasted numbers.

Representative Wilson stressed that she wanted to understand how the bill would currently function. She remarked that there was not a set time for credit payment, because it still depended on the amount of money that was given. She stressed that it was a voluntary program, and the state would not want to make people to be forced into the program. She felt that the company could not make the final decision until the program was functioning properly.

Vice-Chair Gara asked about the anticipation if the bill passed and the bond sale was successful. He asked how quickly the companies applying for funds would have their debts paid.

Mr. Barnhill answered that it would be as immediate as possible.

Vice-Chair Gara stated that if everything went smoothly and \$600 million in credits were bonded and paid to companies. He stressed that if the amendment passed, the legislature

would appropriate \$600 million in the first year to the bond payment .

Mr. Alper answered the intent of the amendment was not about the \$600 million, but about the \$200 million. He stressed that DOR was not looking to screw anyone, because their pro rata share would increase. He explained that the amendment would reduce the statutory appropriation for the amount going to the bond debt service.

[9:24:13 AM](#)

Vice-Chair Gara surmised it was not the full amount paid on the bonds, rather the debt service reduced the amount owed under the statutory formula.

Mr. Alper replied in the affirmative. He explained that the amount going to the debt service was defined, and could not be changed once there was a bond obligation. He stated that the amount would be subtracted from the statutory formula to reduce the amount that would go to the non-participating companies.

Vice-Chair Gara did not think anyone was being screwed. He felt that paying \$600 million in tax credits, and paying in addition the remaining portion of the statutory obligation would make it seem it was in excess of the direction from the many years prior. He felt that there would be more tax credit payments than under the status quo.

Representative Guttenberg appreciated hearing from an employee of ING in a recent meeting because there was a unique conversation about the situation. He remarked that ING supported the program, because it "answered the problem." He queried the influence of ING on the companies that owed them money.

Mr. Barnhill believed ING had testified to the exact question. His recollection was they had answered that it would be a joint decision. He could not speak to other creditors.

Representative Wilson stated it was her understanding that the bill had been put before the legislature to provide an option for companies to get their tax credits sooner. She believed the bill was supposed to hold harmless companies that chose not to participate. She thought the amendment

appeared to penalize companies that decided not to participate. She focused on the original intent of the bill.

9:30:46 AM

Representative Wilson MAINTAINED her OBJECTION.

A roll call vote was taken on the motion.

IN FAVOR: Gara, Stutes, Guttenberg, Kawasaki, Ortiz, Foster, Seaton

OPPOSED: Wilson, Pruitt, Thompson, Tilton

The MOTION PASSED (7/4). There being NO further OBJECTION, Amendment 1 was ADOPTED.

Co-Chair Foster moved Amendment 2 to the bottom of the list.

Co-Chair Seaton MOVED to ADOPT Amendment 3, 30-GH2863\A.25 (Nauman, 4/25/18) (copy on file):

Page 1, line 2, following "certificates;":
Insert "relating to the oil and gas tax credit fund;"
3
4 Page 9, line 24, following "year.":
5 Insert "The total amount of purchases made by the
department with money from
6 the oil and gas tax credit fund from a person in a
year may not exceed the assumed
7 payment amount for each year, as calculated under CD
of this section without the
8 discount provided in (m) of this section."
9
10 Page 13, line 17, following the first occurrence of
"in":
11 Insert "the"
12
13 Page 13, line 24:
14 Delete "a year applies"
15 Insert "applies each year after the first year"
16
17 Page 13, line 30, following "year":
18 Insert "after the first year"
19
20 Page 14, line 4, following "year":

21 Insert "after the first year"
22
23 Page 14, line 6:
L -1- Drafted by legal Services
30-GH2863\A.25
Delete "was required to submit"
2 Insert "submitted"
3
4 Page 14, line 14, following "incur":
5 Insert ".n
6
7 Page 14, line 15:
8 Delete "or•
9 Insert"."
10
I I Page 14, line 16:
12 Delete "provided"
13 Insert", and"
14
15 Page 14, following line 26:
16 Insert a new subsection to read:
17 "(o) After bonds are first issued by the Alaska Tax
Credit Certificate Bond
18 Corporation established under AS 37.18.010, the
legislature may determine the
19 amount of an appropriation under (b)(1) of this
section by multiplying the percentage
20 under (c) of this section by the net revenue from
taxes levied by AS 43.55.011 ."

Representative Wilson OBJECTED for discussion.

[9:32:04 AM](#)

AT EASE

[9:33:02 AM](#)

RECONVENED

Co-Chair Seaton explained that the intent of the amendment was that if a company decided not to take advantage of the bonding corporation, the company would not benefit from other companies taking the pay out from the bond company. The language was suggested by the department, and included language was that after the first issuance of bonds, the statutory formula for determining the calculation of appropriation to the Oil and Gas Tax Credit Fund would be based on net revenue. He stated that the action was

included in the House-approved budget, which was based on the Fall forecast number.

Co-Chair Foster asked for comments by the department.

Mr. Barnhill explained that there was an intent to take care of the tax credit holders who did not participate, as if the bill did not exist - therefore receiving the payment that that would have otherwise. He furthered that, for those that did not participate, the statutory formula would be on a net basis. He stated that he was concerned with that aspect of the amendment. He recalled conversations with the tax credit holders about the attempt to preserve the optionality. The optionality represented to the tax credit holders would be a calculation of their payments under the gross formula. The amendment would change the optionality going forward to a net formula, and expressed concerns with that change. He recommended the number that preserves the gross optionality.

[9:35:59 AM](#)

Representative Wilson spoke to her objection. She surmised that the amendment would "break everything done thus far." She expressed concern about holding more money out, which resulted in more liability for a longer period of time. She felt that it was a precedence going with the net revenue as a new norm. She felt that it sent the wrong message.

Representative Pruitt remarked that there would still be an opportunity for those who chose to not participate in the program to result in certain people taking a discount to receive their credits earlier. He felt that the program would only work if it were "all or nothing." He felt that there may be a compromise to achieve the goal. He felt that payments should be based on growth revenue. He restated that everyone should participate in the program.

[9:39:34 AM](#)

Mr. Alper pointed that there were a number of small technical edits located by the drafter, which may clean up some minor points and concerns. He stressed that those middle sections were materially important.

Representative Wilson MOVED to ADOPT conceptual Amendment 1. She explained that the conceptual amendment would not set precedence, should the bill fail to pass.

Co-Chair Seaton OBJECTED. He stated that the amendment was consistent with the House's passed budget. He would not be in favor of saying its interpretation of drafting the budget.

Vice-Chair Gara understood the intent of the conceptual amendment, but did not believe it would work.

9:43:50 AM

AT EASE

9:50:13 AM

RECONVENED

Co-Chair Foster noted that Representative Grenn had joined the meeting online.

Co-Chair Seaton MAINTAINED his OBJECTION to conceptual Amendment 1.

A roll call vote was taken on the motion.

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

The MOTION to adopt conceptual Amendment 1 FAILED (4/7).

Representative Wilson MAINTAINED her OBJECTION to Amendment 3.

A roll call vote was taken on the motion.

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

The MOTION PASSED (9/2).

Representative Guttenberg MOVED to ADOPT Amendment 4, 30-GH2863\A.32 (Nauman, 4/26/18) (copy on file):

Page 14, lines 14 ~ 20:

Delete all material and insert:

"(3) that the applicant commits to incur, not later than 24 months after the purchase of the certificate, qualified capital expenditures in an amount greater than or equal to the purchase amount, and (A) the applicant provides to the department evidence of the commitment and a plan to (i) use the qualified capital expenditures for the purpose of increasing production of oil or gas from leases or properties in the state; and (ii) maximize the hiring of state residents and use of state business related to qualified capital expenditures; (B) the applicant agrees in writing to pay the department the difference between the rate paid and the rate the applicant would have paid had this subsection not applied. plus interest on the amount that is consistent with the interest rate provided for a delinquent tax under AS 43.05.225, if the applicant does not incur qualified capital expenditures in an amount greater than or equal to the purchase amount within 24 months after the purchase of the certificate; and (C) after reviewing documents submitted under (A) and (B) of this paragraph, the commissioner approves the lower discount rate for the purchase."

Representative Wilson OBJECTED for discussion.

Representative Guttenberg explained the amendment.

[9:55:25 AM](#)

Representative Kawasaki asked to hear from the Department of Natural Resources (DNR).

JIM BECKHAM, DEPUTY DIRECTOR, DIVISION OF OIL AND GAS, DEPARTMENT OF NATURAL RESOURCES (via teleconference), introduced himself.

Representative Kawasaki understood that the intent was to ensure that the money be spent in the state. He felt that the language in the current bill was fairly vague, and only talked about providing evidence of the commitment to the department. He remarked that there was an amendment that addressed qualified capital expenditures for purposes of increasing production. He wondered whether that also included building a rig, but not building the rig in state, but still obtaining through the qualified capital expenditures.

Mr. Beckham deferred the capital expenditure question to Mr. Alper.

Mr. Alper asked to hear the question again.

Representative Kawasaki pointed to page 1, subsection (i) of the amendment, which stated that the qualified capital expenditure (QCE) would be for increasing oil production on leases or properties in the state. He wondered whether a person could use a QCE to build something in Washington, bring it to Alaska, and use it for increasing production of oil and gas leases.

Mr. Alper replied in the affirmative. He stated that the expenditure must be upstream, and on the lease itself. He remarked that it was not unusual to have something built out of state, shipped to Alaska, and used as part of the oil production operations on the field.

Representative Kawasaki wondered how DNR would establish the focus on hiring among the state businesses related to the QCE.

Mr. Beckham replied that, currently, there was similar language in leases involving pipelines, land leases, and other endeavors related to oil and gas. He shared that several companies provided an internal policy guide for employees to show that they were actively recruiting Alaskans.

[9:59:25 AM](#)

Representative Kawasaki wondered whether there was an audit whether those efforts were followed through.

Mr. Beckham replied that he was not aware of a time when there was an audit of a company's hiring program.

Representative Kawasaki asked for verification the answer was no.

Mr. Beckham affirmed. He stated that most companies felt that it was good business to hire Alaskans.

Representative Kawasaki wanted to ensure that the amendment was constructed narrowly to ensure that Alaskan workers got back to work.

Representative Wilson asked if all the companies under discussion were within two years of production.

Mr. Beckham answered it would be difficult to say, because some were and some were not.

Representative Wilson asked if Mr. Beckham had the amendment.

Mr. Beckham answered in the affirmative.

Representative Wilson how else they would measure for the production of oil and gas aside from the amount of oil in the pipe.

Mr. Beckham answered that he did not know. He would have to follow up with the commercial section chief.

Representative Thompson asked if the amendment would impact refineries or other non-producer companies.

Mr. Alper replied no. He stated that there were four different ways to obtain the better discount rate. He explained that the refineries had a different method; the seismic credit holders also had a different method. He stated that it was limited to the option of reinvestment, rather the idea of reinvestment in an oil field to attempt to obtain the lower rate. He stressed that the existing bill required that there be proof that the money be spent within three years. He remarked that the maker of the amendment placed three conditions to ensure that the money

be used toward progressing a field toward actual development and increased production.

[10:03:50 AM](#)

Representative Pruitt felt that a follow thru for ensuring hiring Alaskans may be difficult, because there would be an attempt to find qualified individuals; and passing drug and alcohol tests. He stressed that the companies would need to focus on the best to fill the position. He supported a "plan", but felt that there should not be actions beyond a plan. He asserted that there would be a movement to another rate plus interest on the whole amount.

Mr. Barnhill answered that the department had similar questions. He directed members to a slide from a prior DOR presentation [State of Alaska Department of Revenue HB 331: Oil and Gas Tax Credit Bond Proposal dated April 21, 2018 (copy on file)]. He looked at page 11, which had a tax credit holder with \$100 million in credits. He noted that, under the 10 percent option, with a plan of qualified capital expenditures to expend \$91.5 million over the next two year, then they would receive the lower discount rate. Otherwise, they would receive the higher discount rate, with \$84.7 million.

Mr. Alper elaborated that the company would need to payback, and remarked that there could be a conceptual amendment to "square that circle."

Representative Pruitt did not want to penalize the entire amount, so he supported the idea of a conceptual amendment. He stressed that delays would occur.

[10:09:30 AM](#)

AT EASE

[10:10:54 AM](#)

RECONVENED

Co-Chair Foster moved Amendment 4 to the bottom of the list to rewrite the amendment.

[10:11:28 AM](#)

RECESSED

[12:44:50 PM](#)

RECONVENED

Co-Chair Foster called the meeting back to order.

Representative Guttenberg reported that the new Amendment 4 was not available yet. He WITHDREW Amendment 4.

Co-Chair Seaton MOVED to ADOPT Amendment 5, 30-GH2863\A.29 (Nauman, 4/25/18) (copy on file):

Page 16, lines 26 - 27:

2 Delete all material and insert:

3 "(h) The department shall separately account for the revenue collected from an

4 overriding royalty interest agreement that the department deposits in the general fund.

5 The legislature may appropriate the annual estimated balance in the account to the

6 Alaska tax credit certificate bond corporation reserve fund established under

7 AS 37.18.040."

Representative Wilson OBJECTED for discussion.

Co-Chair Seaton explained the amendment. He stated that the amendment would address the overriding royalties. He stated that overriding royalty interest, coming from the agreements of the section, may be appropriated to the bond council reserve fund to have a revenue stream to help pay off the bond.

Representative Wilson asked for a better understanding of the overriding royalty interest agreements.

Mr. Barnhill responded that the amendment would require the revenue collected be deposited in the general fund and separately accounted, if the state went into an agreement with a tax credit holder through which they would access the lower discount rate through proving an overriding royalty interest

Representative Wilson queried the source of the money.

Mr. Alper replied that the overriding royalty agreement was signed between the producer and DNR, and would be an extra payment. He stated that, because it was a state lease on state land, there would be an agreement to pay some

additional amount. He furthered that the money would be an additional revenue source.

Representative Wilson asked about the constitutional concerns being addressed in the amendment.

Mr. Barnhill responded that it was not clear to what degree it addressed the constitutional concerns expressed to the committee from Legislative Legal Services. He stated that t

Representative Wilson suggested the committee hear from the Legislative Legal Services.

Co-Chair Foster asked his staff to see if someone from Legislative Legal Services could get online.

12:50:30 PM

Representative Guttenberg wondered whether there were any situations where the overriding royalty interest would be lower in the negotiation.

Mr. Alper responded in the negative. He stated that the concept of overriding royalty was separate from the concept of royalty. He explained that royalty was a land owner share, and was a part of the lease. The royalty was part of the underlying rules around producing oil on land that belonged to somebody else. He stated that the overriding royalty was a side deal unrelated to the land ownership interest. The overriding royalty was an agreement to pay a third party a fraction of the value, for whatever reason. He stated that, in this case, the state would also be the third party. He remarked that there may be circumstances where DNR might agree to a royalty relief for the existing statute, it would be separate from any overriding royalty or additional payment associated with the bond program.

Co-Chair Seaton looked at line 5 of the amendment, which showed that the legislature "may appropriate", which was like many of the designated funds. He noted that the direct question of the constitutionality problem was not solved, but established a separate revenue source that would be generated from the bonds. The overriding royalty was the side deal, which made up for the 5 percent drop.

Representative Wilson had her question answered.

Representative Wilson WITHDREW her OBJECTION. There being NO OBJECTION, it was so ordered. Amendment 5 was ADOPTED.

Representative Kawasaki MOVED to ADOPT Amendment 6, 30-GH2863\A.27 (Nauman, 4/25/18) (copy on file):

Page 2, line 12, following "administration.":

2 Insert "The Corporation may issue bonds under this section only if it makes a finding

3 that, both before and after the issuance of the bonds, the state bond rating will be the

4 equivalent of AA- or better."

5

6 Page 6, line 31, following "inhabitants":

7 Insert "and the state bond rating, both before and after the issuance of refunding

8 bonds, will be the equivalent of AA- or better"

Representative Wilson OBJECTED for discussion.

Representative Kawasaki explained the amendment. He remarked that the discussion of the bill was related to the construction of the Alaska Pension Obligation Bond Corporation formation. He stated that he had looked at Section 37.16, and compared it to the discussion in the Oil and Gas Tax Credit Corporation bond scheme. He felt that there were some differences related to the bond authorization. He noted that, in the pension obligation bond corporation, the bond authorization could only occur if the bond rating was an equivalent of AA- or better. He felt that the amendment was in line with the pension obligation bond. He wondered why it was removed.

[12:54:50 PM](#)

Mr. Barnhill did not know why it was removed. He felt that it was intended to replicate the pension obligation bond corporation statute to the fullest extent possible. Currently, the state's credit rating could go down further over the next 10 year. The anticipation was that the bond issuance would not have a problem with the credit rating. However, the state might not be able to maintain bonding capacity for 10 years.

Representative Kawasaki summarized that the credit rating would remain in place, and recalled that Devon Mitchell

asserted that the bond capacity would be lower. He wondered why that would represent a lowering of the credit rating.

Mr. Barnhill did not testify that there would be an impact to the state's credit rating.

Representative Kawasaki restated his question.

Mr. Barnhill clarified that, prior to the issuance of the bonds, it would be difficult for DOR to make a finding that the state would maintain the credit rating for the entirety of the life of the bonds. He noted that the Department of Law may have comments related to the topic.

[12:59:41 PM](#)

BILL MILKS, ASSISTANT ATTORNEY GENERAL, DEPARTMENT OF LAW, looked at AS 37.16.030, and felt that the representation regarding the state bond rating did not have a representation regarding after the issuance of the bond. He stressed that it was a representation that the bonds would only be issued if the equivalent of AA- or better at the time of the issuance of the bonds.

Representative Kawasaki recalled the reason for the language at AA- was put in statute.

Mr. Barnhill was with the state of the time but did not recall the reason for the language.

Representative Kawasaki asked if there was a reason to be worries about jeopardizing the state's bonding.

Mr. Barnhill reiterated that it would impact the state's debt capacity but not its rating. The department anticipated that the state's credit rating would remain the same after the bonds were issued.

Representative Kawasaki queried the opposition to language that required a AA- or higher subsequent to the time of the issuance of the bond and afterward.

Mr. Barnhill replied he could never make the bond statement.

Representative Wilson queried what would occur, should there be a sudden drop.

1:04:04 PM

Representative Kawasaki replied that the amendment was the protection. He stressed that there was a hope to keep the bond rating at least AA- now and immediately following the issuance of the bond. He stated that, over that life span, the state would also like to maintain at least that rating. He also wanted validation from the bank and administration that those goals would be accomplished.

Representative Wilson remarked that there would be inability to go after the bonds without any substance. She did not support the amendment.

Co-Chair Seaton felt that, looking into the future, there were no guarantees. He did not feel that the amendment would work within the bill.

Vice-Chair Gara would have to oppose the amendment. He thought the temperature would be raised with the adoption of the amendment.

1:08:41 PM

Representative Kawasaki clarified that the focus was related to a subject to annual appropriation bond, and the administration stated that it was not debt pledging the full faith and credit of the state. He disagreed with that assertion. He felt that the amendment would allow the corporation to issue the bonds, only with finding that, both before and after issuance, the state would be protected at AA- or higher. He felt that it was prudent investment to a bond authorization that could be \$1 billion. He stressed that he was looking to support and protect future legislatures.

Representative Wilson MAINTAINED her OBJECTION.

A roll call vote was taken on the motion.

IN FAVOR: Kawasaki, Ortiz

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

The MOTION MOVED to ADOPT Amendment 6 FAILED (2/9).

1:11:00 PM

Representative Kawasaki MOVED to ADOPT Amendment 7 30-G1-12863 A.22 (Nauman, 4/25/18) (copy on file):

Page 5, line 12, following "variable":

Insert "A bond issued under this chapter must state on its face that

(1) the legislature is not required to appropriate money to the

corporation for any purpose;

(2) the state is not liable if the legislature does not appropriate to the

corporation the amount necessary) to maintain the required debt service reserve; and

(3) an appropriation of money to the corporation for maintenance of

the required debt service reserve docs not obligate the legislature to make a subsequent appropriation to the corporation."

Representative Wilson OBJECTED for discussion.

Representative Kawasaki shared that the amendment showed the intent of how HB 331 was introduced by the governor. He stated that it said that a bond issued under the chapter did not require the legislature to appropriate money to the corporation for any purposes; the state was not liable if the legislature did not appropriate the amount necessary to maintain the service; and it did not obligate the legislature to make a subsequent appropriation to the corporation. The testimony on HB 331 surrounding the legal aspect and whether the bill incumbered future legislatures was an important issue with no resolution. He understood that there may never be an agreement about the bill's constitutionality before there would be a vote on the legislation. He stressed that he did not want to bind the legislature to make subsequent appropriations in the future.

Vice-Chair Gara felt that he trusted the administration's perspective on the constitutionality. He supposed that an investor would know that it would be a subject to appropriation bond. He wondered whether an investor would know that without the amendment.

Mr. Barnhill replied in the affirmative.

1:15:20 PM

Vice-Chair Gara indicated that there was a number of statements that may denigrate the reputation of the state. He felt that everyone would honor the obligation to pay back the bonds, even though they may be subject to appropriation.

Representative Wilson would not be supporting the amendment because of the Department of Law stated in its letter dated April 27, 2018 on page 2, that there would be a clear statement. She read, "bonds were not state debt, and did not constitute a general obligation of the state, and that payment was subject to appropriation."

Representative Kawasaki thought the discussion was about what the state was going to do and perhaps obligating future legislatures without the vote of the public. He remarked that the legislature must pay its debt in order to maintain its credit rating. He stressed that he wanted the legislature to consider the future.

Representative Wilson MAINTAINED her OBJECTION.

A roll call vote was taken on the motion.

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

The MOTION FAILED (3/8).

Representative Kawasaki would not be offering Amendment 8.

1:19:49 PM

Representative Kawasaki MOVED to ADOPT Amendment 9, 30-GH2863\A.18 (Nauman, 4/25/18) (copy on file):

Page 2. lines 19 - 22:
2 Delete "The bonds do not constitute a general
obligation of the state and are not state
3 debt within the meaning of art. IX. sec. 8.
Constitution of the State of Alaska. Authorization

4 by the voters of the state or the legislature is not
required."

5 Insert "The bonds

6 (I) do not constitute a general obligation of the
state and are not state

7 debt within the meaning of art. IX. sec. 8.
Constitution of the State of Alaska:

8 authorization by the voters of the state or the
legislature is not required; and

9 (2) are not revenue bonds of a public corporation
within the meaning of art. IX, sec. II, Constitution
of the State of Alaska."

Representative Wilson OBJECTED for discussion.

Representative Kawasaki explained the amendment. He stated that the amendment did not constitute the general obligation to the state, and was not state debt within Article 9, Section 8 of the constitution. He stated that the intent of the use of a public corporation to issue bonds within HB 331 and SB 176 was not to fall into the exception clause of the Alaska constitution, Article 9, Section 11. Further, item 2 discussed the idea that was also not a revenue bond. He shared that a revenue bond was a specific type of instrumentality for financing. A revenue bond was a bond in which the principal and interest were to be paid solely from the project they finance. He stressed that they were common instruments. He explained that it was a different instrument planned to be used under HB 331. He stated that it was in line with the other amendments that he had sponsored that evening.

Co-Chair Foster invited comments from the department.

Mr. Barnhill felt that the language was already in the bill. He stressed that the Department of Law had advised that the revenue bonds were subject to appropriation bonds. There was not an attempt to seek an exemption under Article 9, Section 11 of the constitution by constructing a corporation and receiving revenue. He noted that the committee adopted Amendment 5, which segregated the revenue, which was an attempt to provide revenue back to the corporation in an attempt to preserve the argument that the structure fell within Section 11 of Article 9 of the constitution.

Vice-Chair Gara understood Mr. Barnhill's argument. He remarked that the court could see that it was a constitutional issue.

Mr. Barnhill did not want to say it was a tiny argument. He believed that through advice and decades of practice that it would not be an issue. He remarked that it was now an issue, and he felt that it was an issue that should be resolved by the Alaska Supreme Court, so there was not a lack of clarity. He remarked that there would be multiple opportunities for the legislature to consider similar ideas on how to advance state interest through the issuance of debt.

[1:25:28 PM](#)

Mr. Milks thought Mr. Barnhill and Vice-Chair Gara had described the Department of Law's viewpoint accurately. He stated that the issue was addressed on page 4 of the bill, and the alternative. He noted that there was a possible notion that it would be considered a revenue bond. He remarked that Article 9, Section 11 critical condition was that a public corporation issuing those bonds provided the security from the corporation, not from the state.

Representative Guttenberg remarked that the amendment's concerns were tied to Amendment 5. He queried the percentage of a bond revenue would make it a "revenue bond." He remarked that Amendment 9 would delete that concern.

Mr. Milks responded that the primary position was related to the subject of appropriation bonds. He could not respond to the question of how much revenue. He remarked that there was a memorandum that identified some other states that had tackled that issue. He remarked that the New Jersey Supreme Court had explicitly stated that they would not assess how much revenue was behind a revenue bond, because there was the critical factor of whether the state's full faith in credit was pledged. He remarked that under Article 9, Section 11, the requirement was when the only security was from the corporation not the state.

[1:30:02 PM](#)

Co-Chair Seaton expressed concern regarding the statement about lines 9 and 10, and whether they meant that it did

not fall into any exception in Section 11. He remarked that Section 11 had subsections that did not apply to refunding indebtedness of the state or its potential subdivisions. He felt that the exceptions within Section 11 did not relate to the amendment.

Representative Wilson wondered whether the language resulted in the state more likely to lose in a lawsuit versus the current language.

Mr. Milks indicated that the amendment did not provide helpful language for the purpose in the bill. He remarked that there were some who felt that the issues should be analyzed under Article 9, Section 11.

Representative Kawasaki wondered whether a public corporation could be created designed to bond revenue to help fund education in the future.

Mr. Barnhill replied that he believed the answer was "yes." He explained that the difficulty with using debt instruments to fund operating expenses was that the debt purchasing market did not look upon those instruments in very favorable terms. He stated that there would probably be a substantial premium added to the coupon in order to attract interest in purchasing those bonds. He noted that multiple states had issued debt instruments to be used for current year revenues. He remarked that those states were roundly criticized for using those mechanisms, and they payed for that activity with additional debt service and potential impacts to the credit rating.

Representative Kawasaki argued that there were states with different constitutions than Alaska. He felt that the framers of the constitution wanted to ensure that debt was used very sparingly in all cases.

Representative Wilson MAINTAINED her OBJECTION.

A roll call vote was taken on the motion.

IN FAVOR: Guttenberg, Kawasaki

OPPOSED: Ortiz, Pruitt, Thompson, Tilton, Wilson, Gara, Grenn, Foster, Seaton

The MOTION FAILED (2/9).

[1:35:47 PM](#)

Co-Chair Seaton did not offer Amendment 10.

Co-Chair Foster asked Co-Chair Seaton if he wanted to offer Amendment 2.

Co-Chair Seaton responded that Legislative Legal Services were considering the language of the amendments.

Co-Chair Foster asked if corrected language for Amendment 4 had been submitted by Legislative Legal Services.

Representative Guttenberg replied that did not believe so.

[1:37:31 PM](#)

AT EASE

[2:10:06 PM](#)

RECONVENED

Co-Chair Foster indicated there were 3 amendments to finish with.

Representative Guttenberg MOVED to ADOPT NEW Amendment 4, 30-GH2863\A.33 (Nauman, 4/27/18) (copy on file):

Page 14, lines 14- 20:

Delete all material and insert:

"(3) that the applicant commits to incur, not later than 24 months after the purchase of the certificate, qualified capital expenditures in an amount greater than or equal to the purchase amount, and

(A) the applicant provides to the department evidence of the commitment and a plan to

(i) use the qualified capital expenditures for the purpose of increasing production of oil or gas from leases or properties in the state; and

(ii) maximize the hiring of state residents and use of state businesses related to qualified capital expenditures;

(B) the applicant agrees in writing that, if the applicant does not incur qualified capital expenditures in an amount greater than or equal to the purchase amount within 24 months after the purchase of the certificate, the applicant shall pay the department the lesser of

(i) the difference between the purchase amount and the amount the applicant would have been paid had this subsection not applied; or

(ii) the difference between the purchase amount and the actual amount of qualified capital expenditures incurred by the applicant in the 24-month period; and

(C) after reviewing documents submitted under (A) and (B) of this paragraph, the commissioner approves the lower discount rate for the purchase."

Page 14, following line 26:

Insert a new subsection to read:

"(o) An agreement under (m)(3)(8) of this section may require the applicant to pay the department interest on the amount due under (m)(3)(B) of this section. The interest rate must be consistent with the interest rate provided for a delinquent tax under AS 43.05.225."

Representative Wilson OBJECTED.

Representative Guttenberg asked Mr. Alper to explain the amendment.

Mr. Alper remarked that there may be conceptual amendments required to move forward with an explanation of the amendment.

Representative Guttenberg indicated the changes were in the new amendment.

Mr. Alper requested a copy of the amendment.

Co-Chair Foster asked Representative Guttenberg to explain the changes.

Representative Guttenberg stated that the amendment would ensure that the capital expenditures would be for the purpose of increased production.

Representative Wilson asked if a point system would be applied. She indicated that with the amendment there would be additional conditions. She was wondering how the companies would measure progress.

[2:15:51 PM](#)

Mr. Alper responded that the original amendment required a plan to spend the money. He looked at the final clause, which said that the commissioner of DOR would approve the plan. He stated that there had been added language to put some "meat" into the plan. The plan must state that the company would spend the money, but would be spent on things that would move closer to production.

Representative Wilson asked if the commissioner was online.

Commissioner Fisher was available online.

Representative Wilson wondered if tangible items would be required.

Commissioner Fisher explained that it needed to be a capital expenditure. It was appropriate to capitalize the project which included the labor necessary to bring production online.

Representative Wilson asked how the state would measure hiring Alaskans. He queried the detail requirements of the reports.

Commissioner Fisher replied that there was a conversation with DNR, because they had similar requirements in place. He stated that it was the intent to follow the lead of DNR. He explained that DNR would examine how the companies

hired, where the ads were posted, and the recruitment policies.

[2:20:55 PM](#)

Representative Wilson referred to the 2-year requirement. She asked when the 2-year period would begin.

Commissioner Fisher indicated that the department would be looking at mid to late August. It would likely take 90 to 120 days to issue the bonds. The companies were motivated to provide the plans in a timely matter.

Representative Wilson asked the commissioner had any concerns with the amendment.

Commissioner Fisher responded in the negative.

Mr. Alper wanted to further clarify the timeline. He stated that the amendment discussed application for the lower discount rate. He looked at the subsection (k) of the bill, which was the location where companies would say that they would offer their certificates in the bond program. He noted that there was an examination of whether the company sought the better discount rate. He remarked that there would be a process of application before the company went into production.

Representative Guttenberg added that the 24 months was outlined in the bill already.

Representative Kawasaki thanked the maker of the amendment. He thought it did what the committee wanted. He wondered about the use of the QCEs.

[2:25:36 PM](#)

Mr. Alper replied that the department had written the bill somewhat broadly, which showed the indication of the intent to commit the funds. He remarked that there was a desire ensure knowing the exact commitment. He stressed that the language seemed to meet the goal. He did not have a problem with implementation.

Representative Kawasaki wondered whether there was enough ability to provide production.

Mr. Alper relayed that the primary commitment that the company would reinvest the money.

Representative Wilson WITHDREW her OBJECTION.

There being NO OBJECTION, NEW Amendment 4 was ADOPTED.

2:28:27 PM

Co-Chair Seaton MOVED to ADOPT Amendment 2, 30-GH2863\A.31 (Nauman, 4/27/18) (copy on file):

Page 6, line 12. following "them.":

Insert "The corporation shall publish a notice of the adopted resolution."

Page 7. following line 29:

Insert a new section to read:

"Sec. 37.18.110. Limitation on judicial action. A person may not bring a judicial action to contest the constitutionality or validity of this chapter or the constitutionality or validity of a bond issued and sold under this chapter unless the action is commenced in a court of the state of competent jurisdiction within 45 days after the corporation adopts a resolution under AS 37.18.060 authorizing the issuance of bonds. A person that fails to commence an action in the time provided under this section is barred from commencing an action to contest the constitutionality or validity of a bond issued and sold under this chapter."

Representative Wilson OBJECTED.

Co-Chair Seaton reviewed the amendment.

Representative Wilson asked the attorney from the Department of Law to the table.

2:30:05 PM

MARY GRAMLING, ASSISTANT ATTORNEY GENERAL, DEPARTMENT OF LAW, introduced herself.

Representative Wilson wondered whether the state could legally tell people that they could not sue.

Mr. Milks replied that, under Article 2, Section 21, of the constitution, referred to suits against the state. He deferred to Ms. Gramling.

Ms. Gramling furthered that she had not found anything that would show that it was not constitutional. She shared that other states had similar structures with dates ranging from 30 to 60 days, so she felt that 45 days was fairly reasonable. She remarked that there were other places in Alaska Statutes that limited actions on the legislature in the same manner.

Representative Wilson WITHDREW her OBJECTION.

Vice-Chair Gara OBJECTED. He wondered whether the other states had rulings by the highest court that determined that it was a valid exercise of state power.

Ms. Gramling replied that she had not researched the extent of other state law, but stated that a number of other states had similar statutes called "bond validation statutes."

Vice-Chair Gara did not hear Ms. Gramling say that there was a court precedent.

Ms. Gramling agreed, and stated that she had not researched it extensively.

Vice-Chair Gara wanted the amendment to work. He did not want to double up the concern that bonding costs may have increased. He wondered whether there would be a problem.

Ms. Gramling had not personally read anything that would give her pause on the issue.

[2:35:17 PM](#)

Vice-Chair Gara asked for a commitment to alert the legislators of an increased bond cost.

Ms. Gramling responded that it was part of her job, and would let the sponsors know of an issue.

Vice-Chair Gara wondered whether she would research the issue.

Ms. Gramling indicated that she would research the issue and report if she saw a problem.

Vice-Chair Gara WITHDREW his OBJECTION.

Representative Guttenberg asked if the courts had heard the justification for waiting an extra 5 days.

Ms. Gramling responded that it varied by case. She remarked that, if someone missed the deadline, there would be normally be an argument with justification.

Mr. Milks added that in the context was that another issue of the question of prospective rulings in a court decision.

There being NO OBJECTION, Amendment 2 was ADOPTED.

Co-Chair Foster indicated a conceptual amendment that would be forthcoming.

[2:40:17 PM](#)

AT EASE

[5:27:55 PM](#)

RECONVENED

Co-Chair Seaton MOVED to ADOPT Conceptual Amendment 11:

The intent of the amendment is that:

The Corporation will sunset on the final payment on any bond or refunded bond. We are going to allow Legislative Legal Services to determine where it best fits in the bill.

Representative Guttenberg queried the sunset time.

Representative Wilson replied that it was at the time when all the bonds were paid.

Co-Chair Seaton stated that they would sunset after the final payment on any bond or refunded bond.

There being NO OBJECTION, Conceptual Amendment 11 was ADOPTED.

Co-Chair Seaton MOVED to allow Legislative Legal Services to make technical and conforming adjustments to HB 331. There being NO OBJECTION, it was so ordered.

Representative Wilson asked when the committee would convene to address the bill.

Co-Chair Foster replied that he believed the committee would meet possibly on the upcoming Tuesday.

[5:30:05 PM](#)

AT EASE

[5:30:27 PM](#)

RECONVENED

Co-Chair Foster stated that the bill would be drafted, so the earliest meeting would be Monday or Tuesday.

HB 331 was HEARD and HELD in committee for further consideration.

Co-Chair Foster acknowledged Representative Dan Sadler in the audience. He indicated he would be leaving the meeting open. He recessed the meeting to a call of the chair [note: the meeting never reconvened].

#

ADJOURNMENT

[5:31:31 PM](#)

The meeting was adjourned at 5:31 p.m.