

SENATE FINANCE COMMITTEE
March 24, 2017
9:02 a.m.

9:02:29 AM

CALL TO ORDER

Co-Chair MacKinnon called the Senate Finance Committee meeting to order at 9:02 a.m.

MEMBERS PRESENT

Senator Lyman Hoffman, Co-Chair
Senator Anna MacKinnon, Co-Chair
Senator Click Bishop, Vice-Chair
Senator Mike Dunleavy
Senator Peter Micciche
Senator Natasha von Imhof

MEMBERS ABSENT

Senator Donny Olson

ALSO PRESENT

Senator Shelley Hughes, Sponsor; Joshua Banks, Staff,
Senator Shelley Hughes; Ben Brown, Chair, Alaska State
Council on the Arts.

PRESENT VIA TELECONFERENCE

Alice Bioff, Council Member, Alaska State Council on the
Arts, Nome; Andrea Noble-Pelant, Executive Director, Alaska
State Council on the Arts, Anchorage.

SUMMARY

SB 66 ST. COUNCIL ON THE ARTS: PUBLIC CORP.

SB 66 was HEARD and HELD in committee for further
consideration.

#sb66

SENATE BILL NO. 66

"An Act redesignating the Alaska State Council on the Arts as a public corporation and governmental instrumentality of the state; defining the powers and duties of the Alaska State Council on the Arts; providing exemptions from certain statutes for the Alaska State Council on the Arts; making conforming amendments; and providing for an effective date."

9:03:46 AM

SENATOR SHELLEY HUGHES, SPONSOR, offered a sponsor statement:

Senate Bill 66 quasi-privatizes the Alaska State Council on the Arts (ASCA) by restructuring it as a public corporation in order to help the ASCA to continue its work with self-employed Alaskan artists and art businesses during these challenging fiscal times. This new status will allow the ASCA to increase its ability to leverage funds from non-governmental contributors and better adapt to the shifting economic climate. This effort responds to the widespread interest in governmental entities, as much as they are able, to at least partially privatize their operations and increase their operating efficiency.

Under SB 66, ASCA will remain within the Department of Education & Early Development. Changes to the ASCA include exemption from the State Procurement Code, while still providing for formal, appropriate procurement protocols for ASCA. Restructuring will keep ASCA's operating budget under the Executive Budget Act for openness and transparency. Transition language in SB 66 will allow ASCA's advisory committees, public processes, and public participation to remain in place as ASCA administers grants, programs, and services.

As the State of Alaska evolves and grows in response to fiscal challenges, ASCA wants to ensure that it is in a position to expand its important work to serve all Alaskans. Private funders across the nation are increasingly approaching ASCA to offer support for the work of the Council, and carefully considered restructuring efforts have the potential to allow the Council to advance the opportunity to grow the development base of ASCA, as well as reduce its

reliance on State funds, including in its work with students in Alaska's schools.

SB 66 will improve the ability of ASCA to leverage non-state funding and represents a real opportunity to realign ASCA to better perform in the environment which exists in Alaska today.

[9:06:49 AM](#)

JOSHUA BANKS, STAFF, SENATOR SHELLEY HUGHES, discussed the Sectional Analysis (copy on file):

Section 1 (Pages 1-4): Amends AS 39.25.110 concerning exempt state employees to add all employees of the Alaska State Council on the Arts (ASCA), thus making employees of ASCA exempt from the State Personnel Act.

Section 2 (Pages 5-7): Adds artists' submissions made in response to an inquiry or solicitation initiated by the Alaska State Council on the Arts, to the list of records that are exempt from public inspection under AS 40.25.120.

Section 3 (Page 7): Repeals and re-enacts AS 44.27.040 regarding the creation of ASCA, to establish the Council as a separate and independent public corporation of the state of Alaska within the Department of Education and Early Development (DEED).

Section 4 (Page 7): Amends AS 44.27.041 to charge ASCA to be governed by an 11 member board of trustees, adds literary arts as a field represented within the board, and a member's expertise, rather than interest, as a factor for consideration for board membership.

Section 5 (Page 7): Amends AS 44.27.042 to replace the term "members" with the term "trustees" and "council" with "board of trustees".

Section 6 (Page 8): Amends AS 44.27.043 to replace the term "member" with "trustee".

Section 7 (Page 8): Replaces the term "members" with the term "trustees" in AS 44.27.044 and replaces language that entitles trustees to be reimbursed for

travel expenses at the same rate of members of state boards under AS 39.20.180.

Section 8 (Page 8): Amends AS 44.27.045 to use gender-neutral terms for board members.

Section 9 (Page 8-9): Amends AS 44.27.050 to require the council to encourage literary arts as well as other disciplines, invest in arts throughout the state, and conduct research into artistic and cultural activities throughout the state.

Section 10 (Page 9): Amends AS 44.27.052(a) to replace "educational" objectives with "strategic" objectives as it relates to the council's ability enter into contracts and accept gifts, contributions, and bequests.

Section 11 (Page 9-10): Amends AS 44.27.054 to replace language with the proper terms "chair" and "trustees" previously established and makes a conforming amendment to Section 1.

Section 12 (Page 10): Adds a new section to AS 44.27 detailing the administration of affairs of the board of trustees. The board of trustees shall manage the assets of the council, establish and amend bylaws governing the business of the corporation, and employ an executive director to supervise the administration of ASCA. This section also exempts ASCA from the State Procurement Code (AS 36.30), instructs the board of trustees to establish procedures for procurement, and requires consistency with the Alaska Veterans preference established in AS 36.30.32(f). The operating budget of ASCA is subject to the provisions established in the Executive Budget Act (AS 37.07).

Section 13 (Page 10): Amends AS 44.27.058 to require that ASCA comply with the 20 U.S.C 951 - 960 (National Foundation on the Arts and the Humanities Act of 1965) as it relates to the receipt and disbursement of funds from the National Endowment for the Arts.

Section 14 (Page 10-11): Amends AS 44.27.060 to add new subsections (e) and (f) regarding confidentiality of artist submissions and adds a provision for public disclosure to submissions when the artist is awarded a

commission for said submission. However, under subsection (g), subsections (e) and (f) do not apply if the submission was created as a work for hire under 17 U.S.C. 101 or if the artist's copyright has been transferred under 17 U.S.C. 204.

Section 15 (Page 11): Amends AS 44.27 to add definitions for "board of trustees" and "council".

Section 16 (Page 11-12): Creates transition language for ASCA to allow council members to remain on the board of trustees until their term is over, allows current employees to remain with ASCA, allows regulations, contracts, rights, liabilities, and obligations created under current law to remain in effect, and allows ASCA to retain all records, equipment, appropriations, and other property.

Section 17 (Page 12): Creates an effective date for this legislation as July 1, 2017.

[9:12:56 AM](#)

Senator Hughes noted Page 10, section 13, which referenced the National Foundation and the Arts and Humanities Act of 1965. She stated that the section was unnecessary, because the compliance was required regardless of the legislation. She remarked that the reason for the larger number of members was to create ambassadors from across the state. She stated that there could be "regional ambassadors" who could represent the ASCA.

Co-Chair MacKinnon wondered whether the creation of trustees required a different appointment process than that of the current board.

Mr. Banks deferred to Mr. Brown.

Senator Dunleavy wondered whether there was a time in the future when the corporation could be privatized completely.

Senator Hughes replied that Mr. Brown could speak to the question. She shared that state funding was currently required to maintain eligibility for federal funding.

Senator Dunleavy wondered whether per diem for board members had been removed and wondered how per diem was addressed in the bill.

Mr. Banks directed committee attention to Section 7, which contained language consistent with the restructuring of the council to a corporation.

[9:17:09 AM](#)

BEN BROWN, CHAIR, ALASKA STATE COUNCIL ON THE ARTS, responded to Senator Dunleavy's question about full privatization, and stated that it would not be possible under current federal law. He said that the National Foundation on the Arts and Humanities Act required that recipients of National Endowment of the Arts funds (NEA) be state agencies, and that a state appropriation would be made to match each dollar the amount set out in the three-year partnership agreement. He stated that the board would be happy to explore ways to augment earned income, but that they would not be able to match at 50 percent. He relayed that the current appropriation was approximately \$700,000 and would not increase. He explained that the arts license plate program that was soon to be established would generate some income. He related that there was also the possibility of eventually raising funds through art rentals through the Alaska Contemporary Art Bank. He expounded that the possibilities for raising funds would be furtively explored. He explained that the bill contained new conforming language pertaining to per diem terms but was not a change from the current practice.

[9:19:30 AM](#)

Co-Chair MacKinnon reiterated her question about how current board members were appointed, and whether the process changed with the use of the word "trustee."

Mr. Brown replied that the nomenclature change from "council" to "trustee" was necessary to reflect the fact that the council would become a board of trustees of a corporation, with the fiduciary duties attached to that role. He furthered that the selection process would remain the same going forward.

[9:20:10 AM](#)

Co-Chair MacKinnon wondered whether the list of boards came before the legislature for approval.

Mr. Brown replied no. He said that council members served at the pleasure of the governor.

[9:20:25 AM](#)

Co-Chair MacKinnon felt that the legislature would want a voice in confirming trustees.

Mr. Brown replied that the issue of legislative confirmation had been carefully examined by the council. He relayed that the council had decided that things had worked well without legislative confirmation. He felt that having 11 members, rather than 9, provided more opportunity for the governor to find people from a variety of communities across the state.

[9:22:26 AM](#)

Co-Chair MacKinnon queried the attendance record of the council and wondered if there had been any problems establishing quorums.

Mr. Brown replied that he had only ever missed one meeting. He could not speak to a single council member who had been problematic.

[9:23:04 AM](#)

Co-Chair MacKinnon restated her question surrounding whether there had been trouble to establish a quorum at board meetings.

Mr. Brown replied in the negative.

[9:23:15 AM](#)

Vice-Chair Bishop wondered whether the trustees would be trained in a different manner from the current process.

Mr. Brown replied that the trustees would most likely be given primer on the fiduciary duties of being a trustee on the board of a public corporation. He asserted that he would personally

[9:24:21 AM](#)

Co-Chair MacKinnon solicited comments on the legislation.

[9:24:30 AM](#)

Mr. Brown expressed appreciation for the sponsor of the legislation and noted the companion bill in the other body. He shared that art councils in other jurisdictions had moved to commerce departments in order to become economic development agencies. He believed that the council had a good working relationship with the Department of Education and Early Childhood Development, and he stressed the importance of assuring that Alaska's students had access to the arts. He relayed that educational opportunities offered by the council were what had drawn some of the greatest interest from private funders. He stated that the procurement code had been one of the main drivers of the legislation because it had hamstrung the council in operating efficiently in spending foundation money for beneficial programs. He provided the example of the difficulties the Children's Trust had faced when operating as a line state agency before specific reforms were done that enable it to do a better job expending money on behalf of its intended purpose. He thought that it would be foolish to downsize the members of the council from 11 to 9, when staff had decreased from 6.5 to 4.5 over the past several years. He said that 11 members were necessary as working trustees and council members to maximize the potential impact that the agency had on the lives of Alaskans. He said that he had been in contact with Alaska's federal representatives concerning the continued existence of the National Endowment for the Arts (NEA). He shared that the leveragability of federal dollars would serve to help prevent the elimination of the National Endowment for the Arts. He noted that the administration of the federal level was unpredictable, but he felt confident that the NEA would continue to exist and would remain a partner for the council into the future.

[9:29:33 AM](#)

Co-Chair Hoffman asked whether appointment to the board were staggered.

Mr. Brown replied that the appointments were staggered and explained that there were 4 positions up for appointment in

2017. He said that 3, 3, 3, and 2, was the general order of rotation.

[9:30:32 AM](#)

Vice-Chair Bishop understood that Mr. Brown was referring to the National Endowment for the Arts when he said "NEA".

Mr. Brown replied in the affirmative.

[9:31:08 AM](#)

Co-Chair MacKinnon probed how the 1 percent for art was being utilized in Alaska. She expressed concern that the state was paying for foreign artists to bring their art to Alaska.

Mr. Brown replied that when there was a capital project, the percent for art if 1 percent of the cost of the project be set aside for artistic enhancements to the project. He relayed that the role that the council provided were the administrative expertise to convene a panel that would help the agency that was building whatever was being built come up with a merit-based process to put out to bid the opportunities for the percent for art project. He continued that then people would make submissions, which the panel would review and then make a recommendation. He felt that it could be nice to say that only Alaskans could apply for the bids, but he thought that action would run afoul of the Privileges and Immunities Clause. He stressed that the council did not aggressively solicit out-of-state. He said that ultimately the panel would decide which artist was the best based on merit. He concluded that there were limits of what the agency could do to promote Alaskan artists only, but that promoting the possibilities as widely as possible in the state would lead to a higher proportion of Alaskans getting the bids successfully.

[9:35:51 AM](#)

Senator von Imhof cited a letter from Andrea Noble-Pelant (copy on file):

SB66 provides flexibility for the Alaska State Council on the Arts to manage fast flow projects in a timely manner and to increase our work across sectors, such

as health, economic development, tourism, and transportation.

Senator von Imhof asked Mr. Brown to clarify the language.

Mr. Brown replied that the procurement code created red tape for the council. He offered the example of "Creative Forces" a new initiative of the NEA, in conjunction with the Department of Defense, and elaborated on the way that the procurement code complicated the flow of funding to programs.

[9:38:41 AM](#)

Vice-Chair Bishop noted that Page 10, section 12, spoke to the dealing outside the state procurement code for veteran issues.

Mr. Brown replied that the language had been added to make sure that if the council was exempt from the state procurement code, which had a veterans' preference, that the council's self-adopted procedures would also have the preference. He elaborated on the goals of the Creative Forces program to meet the acute needs of veterans to heal and be productive members for society; he stressed that it would be beneficial to have veterans on both sides of the transaction.

[9:40:02 AM](#)

Co-Chair MacKinnon asked whether the bill had an Alaskan bidder preference.

Mr. Brown replied that he could see no good reason why the provision could not be written into the legislation.

[9:40:55 AM](#)

Senator Micciche apologized for being late to the meeting.

[9:41:32 AM](#)

Senator von Imhof announced that she sat on both the Rasmussen Foundation and Atwood Foundation boards, which had provided financial support to the council in the past. She thought that if money could be leveraged more quickly and with more flexibility that the state would benefit.

9:42:38 AM

ALICE BIOFF, COUNCIL MEMBER, ALASKA STATE COUNCIL ON THE ARTS, NOME (via teleconference), spoke in support of the legislation. She offered prepared testimony:

My name is Alice Bioff, resident of Nome, Alaska, currently employed at Kawerak, Inc. and Alaska State Council on the Arts (ASCA) council member. Thank you all for the opportunity to testify in support of SB66. I am testifying today in my capacity as an ASCA council member. I am a tribal member of the Native Village of Koyuk, and grew up there and in Nome. My family and I have lived in Nome for the last 17 years. For much of that time, I have been employed by Kawerak, Inc., the regional Native non-profit consortium of tribes for the Bering Strait region, as a Business Planning Specialist.

Through our work here at Kawerak, I am honored and privileged to work with artist entrepreneurs within our communities. We provide direct technical assistance offering tools and resources to assist artists to continue their work so that they can sustain themselves, their families and their communities. It is through this work that I have seen firsthand how important it is for these artists who live in communities with very few resources and infrastructure, to grow their business through opportunities such as those that become available through ASCA and others.

Artist Entrepreneurs are economic development drivers in their communities and the Alaska State Council on the Arts supports these communities through their work and advocacy. With their partnerships, resources and programs, we see a bright future and growth opportunity to support all artists across the State.

Through the restructuring initiative, we see ASCA services continued and strengthened to support the artists through improved ability to react to funding opportunities and better represent, support and advance the artists by offering the tools and services needed to strengthen and already existing and important economy. This is critical to strengthening

and sustaining our rural communities in this financially challenging time.

SB66 streamlines the process ASCA will use to present opportunities to artists all over Alaska, including those artists we have worked with for years here in the Bering Strait region. From my perspective, this will be a great benefit for all artists including those in rural Alaska.

Ms. Bioff recommended against changing the council from 11 to 9 members. She believed that minimizing the number of trustees would be detrimental to the overall functioning of the board.

[9:47:15 AM](#)

ANDREA NOBLE-PELANT, EXECUTIVE DIRECTOR, ALASKA STATE COUNCIL ON THE ARTS, ANCHORAGE (via teleconference), spoke in support of the bill. She spoke to the 1 percent for art program and elaborated on the evolution of the program. She read from a prepared statement:

Thank you all for the opportunity to testify in support of SB66. My name is Andrea Noble-Pelant, Executive Director of the Alaska State Council on the Arts (ASCA). I have worked for this agency for eleven years and in the arts sector for almost thirty years.

The Alaska State Council on the Arts, now in its 51st year, is ready for organizational change. The timing of SB66 is opportune as Alaska's creative industries are growing due to targeted public and private investment in our cultural infrastructure during the past ten years. As a result, the Alaska State Council on the Arts has experienced rapid growth in grants, programs and public/private partnerships.

We wish to continue this effort, and with the provisions in SB66, the Alaska State Council on the Arts is poised to continue grant-making as a public corporation that will also support new and existing programs to reach more Alaskans with increased impact and efficiency.

Our staff works on local, national and international levels to oversee projects, initiatives and policies

that build capacity for arts organizations, provide practical professional development and opportunities for individual artists, and boost students' chances for success through arts in education. SB66 provides flexibility for the Alaska State Council on the Arts to manage fast flow projects in a timely manner and to increase our work across sectors, such as health, economic development, tourism, and transportation.

In the past ten years, our mission has evolved to expand access to arts experiences. Our programs now reach military service members and their families who experience PTSD, incarcerated individuals who plan to produce and sell their artwork after release, pre-service teachers from rural communities, Alaskan children and youth who want opportunities to learn through arts and culture, and parents who want to raise their families in safe, sustainable communities. We have been very fortunate that partners with mutual goals have approached us with these initiatives. SB66 allows for responsive project implementation which affects our performance and the ability for the Alaska State Council on the Arts to seek and secure future private funding.

Keeping with our mission, revenue from funders goes back to Alaskan residents and communities as grants, programs and resources. Longstanding partnerships are in place with The Rasmuson Foundation, The Alaska Arts and Culture Foundation, The Atwood Foundation and The National Endowment for the Arts. New partners include Margaret A. Cargill Philanthropies, The CIRI Foundation, and Sealaska Heritage Institute. Other partners include the Alaska Humanities Forum and The Western States Arts Federation and Americans for the Arts who contribute in-kind support, resources and funding.

Thank you.

[9:54:56 AM](#)

Co-Chair MacKinnon solicited further public testimony.

[9:55:15 AM](#)

Co-Chair MacKinnon CLOSED public testimony.

9:55:39 AM

Co-Chair MacKinnon announced that the fiscal notes would be discussed at a later date, and amendments were due the following Monday by 5pm. She discussed housekeeping.

SB 66 was HEARD and HELD in committee for further consideration.

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ADJOURNMENT

9:56:32 AM

The meeting was adjourned at 9:56 a.m.