

SENATE FINANCE COMMITTEE  
April 11, 2018  
9:44 a.m.

9:44:50 AM

CALL TO ORDER

Co-Chair MacKinnon called the Senate Finance Committee meeting to order at 9:44 a.m.

MEMBERS PRESENT

Senator Lyman Hoffman, Co-Chair  
Senator Anna MacKinnon, Co-Chair  
Senator Click Bishop, Vice-Chair  
Senator Peter Micciche  
Senator Donny Olson  
Senator Gary Stevens  
Senator Natasha von Imhof

MEMBERS ABSENT

None

ALSO PRESENT

Representative Dan Ortiz, Sponsor; Mary Hakala, Staff, Representative Dan Ortiz; Sam Rabung, Chief, Statewide Aquaculture Planning and Permitting, Department of Fish and Game; Ginny Eckert, Professor College of Fisheries and Ocean Sciences, University of Alaska Fairbanks; Representative Sam Kito, Sponsor; Deborah Kelly, Director, Division of Occupational Safety and Health, Department of Labor and Workforce Development; Caitlyn Ellis, Staff, Representative Sam Kito.

SUMMARY

HB 121 OCC. HEALTH AND SAFETY CIVIL PENALTIES

HB 121 was HEARD and HELD in committee for further consideration.

HB 128 SHELLFISH ENHANCE. PROJECTS; HATCHERIES

HB 128 was REPORTED out of committee with a "do pass" recommendation and with one new indeterminate fiscal note from the Department of Fish and Game, one new zero fiscal note from the Department of Fish and Game, and one new zero fiscal note from the Department of Revenue.

#hb128

HOUSE BILL NO. 128

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

[9:45:58 AM](#)

Co-Chair MacKinnon highlighted the history of the bill in committee.

[9:46:40 AM](#)

REPRESENTATIVE DAN ORTIZ, SPONSOR, introduced himself.

[9:46:51 AM](#)

MARY HAKALA, STAFF, REPRESENTATIVE DAN ORTIZ, introduced herself.

Representative Ortiz stated that the bill dealt with shellfish enhancement projects, and set up the regulatory framework for the mariculture industry. He announced that the bill was a priority for the Mariculture Task Force that had worked for two years to present a cohesive, well-considered plan to move mariculture forward in the state. He shared that the bill was an important component of the plan, and was excited about the economic opportunities presented within the bill. He thanked Senator Stevens for being a cosponsor of the bill, and for carrying mirror legislation in the Senate.

Senator Olson queried any opposition to the fee. Representative Ortiz stated that the increase in the fee was due to an unchanged fee in the past. He stated that he had not heard concern about the fee increase from the industry. He felt that there would not be a restriction in accessing the funds.

Senator von Imhof wondered whether the bill addressed any for-profit organizations. Representative Ortiz replied that the enhancement organizations had been historically nonprofit organizations. He asserted that he was not opposed to profit-based organizations in the industry.

[9:50:42 AM](#)

Senator von Imhof wondered how the nonprofit and for profit organizations interact through the cycle of a biological species. Ms. Hakala stressed that the bill related to only nonprofit organizations, and mirrored the salmon enhancement statutes.

Co-Chair MacKinnon noted that there were some questions from Department of Fish and Game (DFG). She remarked that there would be questions about the cost recovery fishery in the bill. She asked for a contemplation about crabs. She noted that there were different creatures that reproduced differently, and were different than the salmon enhancement.

[9:54:29 AM](#)

SAM RABUNG, CHIEF, STATEWIDE AQUACULTURE PLANNING AND PERMITTING, DEPARTMENT OF FISH AND GAME, introduced himself.

Senator von Imhof remarked that she was concerned about when it was appropriate for the state to insert itself into a commercially viable profit cycle. She noted that there was a point in this industry where there was not commercial viability, so perhaps a kickstart was a requirement. She wondered why no commercial entity would insert itself into the niche that the state sought to fill. Mr. Rabung replied that the bill was modeled after the salmon fishery enhancement bill, which had been law since 1974. The model was developed because the fisheries resources of the state were owned by all the people of the state. He shared that allowing enhancement programs be for profit allowed an ownership aspect. He stated that the for profit aspect came in during harvest, therefore anything produced by the programs were available for all of the common property fisheries of the state. He noted that the nonprofit corporations must pay taxes, and operated similarly to a

for profit with the exception of the ability to pay dividends.

Vice-Chair Bishop wondered whether the nonprofit corporation employed an Alaskan workforce. Mr. Rabung replied in the affirmative.

Senator Micciche noted that the bill set a regulatory framework for some species that were either challenged in production or were new commercially. He queried the function of the bill. Mr. Rabung replied that the bill enabled several models of fisheries enhancement.

Senator Micciche asserted that the reason for the bill allowed for the regulation of the new species. Mr. Rabung agreed.

[10:01:35 AM](#)  
AT EASE

[10:03:36 AM](#)  
RECONVENED

[10:03:43 AM](#)

Senator Stevens queried similarities in other parts of the world. Mr. Rabung replied that there were similar behaviors in other parts of the world, but Alaska was very unique. He noted that Alaska had high sideboards in the salmon enhancement program. Alaska was restricted to using local genetically appropriate stocks for each projects. He furthered that there was no breeding. He remarked that there were other very stringent health policies. He stressed that there was no empirical evidence of any harm to natural production to salmon from the salmon fishery enhancement program. He stressed that there was an ability to maintain sustainability certifications.

[10:05:38 AM](#)

Co-Chair MacKinnon queried feedback about invasive species in Alaskan waters.

Senator Micciche asked about monitoring of the health and disease in the raising process prior to release. Mr. Rabung replied that there was a stringent fish health policy. He stated that it specifically dealt with practices and

disease prevention, and monitoring for all species. The species must be inspected and approved before release. He noted that there were pathology labs in Juneau and Anchorage that processed every sample.

Co-Chair MacKinnon announced the current discussion for the children in the audience.

Co-Chair MacKinnon queried the species who would be in the enhancement project.

10:11:33 AM

GINNY ECKERT, PROFESSOR COLLEGE OF FISHERIES AND OCEAN SCIENCES, UNIVERSITY OF ALASKA FAIRBANKS, (UAF) replied that the bill applied to shellfish. She stated that the definition was in the bill as a species of crustacean mollusk or other invertebrate in any stage of its life cycle that was indigenous to state waters, and excluded any invasive species. She stated that any species of crab and clam would fall into that category.

Co-Chair MacKinnon asked how to prioritize approval toward a species that might be closed to harvesting in Alaskan waters. Mr. Rabung replied that it was designed to be a user-driven project. He stressed that the department would not take action until there was an application. He noted that there would be guidance about the appropriate review process, which was the same as salmon.

Vice-Chair Bishop queried the work of Ms. Eckert. Ms. Eckert replied that she worked as faculty at the university. She explained that faculty taught classes, conducted research, and provided service. She shared that she had done research on king crab, and their early life history to determine rehabilitation.

10:15:04 AM

Co-Chair MacKinnon noted that there was a predator problem on shellfish. She remarked that there was an attempt to get national attention especially about abalone. She noted that the otters were causing an unsustainability. Ms. Eckert replied shared that she had conducted research on sea otter diets, and the complex ecological interactions. She remarked that there had to be an examination of where to do the enhancement.

Co-Chair MacKinnon wondered whether the review process would include a geographic location of the application. Mr. Rabung replied that each project would be assessed locally. The projects were intended to enhance localized fisheries, and would be evaluated on a case by case basis.

Senator Micciche noted that there were public opportunities in the process. Mr. Rabung responded that there was no ownership of the resource until harvest.

Senator Micciche stressed that it was heartbreaking when batches were required to be destroyed.

Vice-Chair Bishop discussed the fiscal notes.

[10:23:33 AM](#)

Vice-Chair Bishop MOVED to REPORT HB 128 from committee with individual recommendations and accompanying fiscal notes. There being NO OBJECTION, it was so ordered.

HB 128 was REPORTED out of committee with a "do pass" recommendation and with one new indeterminate fiscal note from the Department of Fish and Game, one new zero fiscal note from the Department of Fish and Game, and one new zero fiscal note from the Department of Revenue.

[10:23:46 AM](#)

AT EASE

[10:26:05 AM](#)

RECONVENED

#hb121

HOUSE BILL NO. 121

"An Act relating to occupational safety and health enforcement penalties; and providing for an effective date."

[10:26:53 AM](#)

REPRESENTATIVE SAM KITO, SPONSOR, introduced the legislation:

House Bill 121 brings Alaska's Occupational Safety and Health (AKOSH) state plan into compliance with federal requirements, ensuring continued eligibility for federal grant funds and helping to protect workers from workplace injuries, illnesses, and fatalities.

In 2015, Congress passed the Federal Civil Penalties Inflation Adjustment Act Improvements Act, requiring many federal agencies to adjust penalties for inflation going back to 1990, and requiring subsequent yearly adjustments according to changes in the Consumer Price Index. Occupational Safety and Health Administration complied by adjusting their maximum penalties in July 2016, including a six-month grace period for states to comply. In order to comply with federal program requirements, AKOSH must have at least equivalent maximum and minimum penalties. AKOSH fell out of compliance with this requirement on January 1, 2017, when the six-month buffer period expired.

Maximum and minimum penalties for violations of Alaska's occupational safety and health laws are specified in AS 18.60.095, the Penalties section of Prevention of Accident and Health Hazards. House Bill 121 allows the Department of Labor and Workforce Development to set penalty amounts by regulation, and limits the penalties to corresponding federal maximums for each violation type. This enables the department to adjust to federally required changes while placing a cap on increases.

[10:28:05 AM](#)

DEBORAH KELLY, DIRECTOR, DIVISION OF OCCUPATIONAL SAFETY AND HEALTH, DEPARTMENT OF LABOR AND WORKFORCE DEVELOPMENT, (DLWD) explained that in 2015 congress passed an inflation-adjustment act that required many agencies to adjust their penalties for inflation. She stated that in 2016 the Occupational Safety and Health Administration (OSHA) adjusted their maximum penalties, and required state plans to do the same. She stated that Alaska was required to follow suit by January 1, 2017. She explained that the bill brought the state into compliance by requiring the department to set the maximum OSHA penalties by regulation, and capped those maximum penalties at the corresponding federal levels. She stressed that the bill allowed the state to come into compliance with federal requirement, and

to stay in compliance with the yearly required adjustments by the CPI.

Senator von Imhof noted the three types of violations on the fact sheet for the current maximum penalty and the new maximum penalty. She asked whether it was Alaska data, and whether there were additional issues in the bill. Ms. Kelly replied that the fact sheet was from the year prior, so the number was adjusted in the fiscal note. She remarked that each bill section was a different category. She stated that the categories: willful and repeat violations, serious violations, other than serious violations, failure to correct a violation, and posting requirement violations.

Senator von Imhof requested a one-page table of the categories, the fee penalties, and the range of the state's noncompliance. She noted that there was an assertion that the state would save \$619 in state funds. She asked for more information. Ms. Kelly replied that it was \$619,000 yearly that the state would lose in state funds by reverting the enforcement program to federal OSHA.

Senator von Imhof wondered whether the net loss meant that the state was not paying the penalties or was the state receiving revenues. Ms. Kelly replied that the cost savings would be in the reduction of the personal services and associated costs. The penalties would go to the federal treasury rather than the state penalty. Therefore, the reference was to the state funds and not private business.

Senator von Imhof surmised that the reference was about noncompliance with the federal government. Ms. Kelly replied, "broadly yes."

Senator Micciche asserted that moving jurisdiction to the federal government would not result in "noncompliance." Ms. Kelly replied that the decision to have a state plan was always up to the state.

Senator Micciche wondered whether the \$1.31 million was a constant, and whether it was an average over ten years. Ms. Kelly replied that she believed that it was a three-year average. She stated that there was a calculation based on the actuals for, she believed, three years. She noted that they varied year to year, because one case could add or subtract \$100,000 penalty amount for the year.

10:35:10 AM

AT EASE

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Ms. Kelly stated that the numbers in the letter were from the fiscal note from the previous year, and the number used the FY 16 actual penalties collected. The current year's fiscal noted used a two-year average of the previous year and FY 16.

Co-Chair MacKinnon queried the reason for the inconsistency in the number of years. Ms. Kelly replied that there was a desire to use as many fiscal years as possible, but because of the IRIS migration there was a desire for a consistent number; therefore, a maximum number of years was used under the new financial accounting system.

Vice-Chair Bishop remarked that there was state control, so the OSHA standards must be met at a minimum. The state standards could be higher than the OSHA standards. He felt that the bill was a housekeeping issue.

Co-Chair MacKinnon noted that the state was not in compliance, so queried the federal government's reaction to the noncompliance. She recalled that the sponsor suggested a consequence of inaction, like withholding federal financial support. Ms. Kelly replied that the out of compliance date was January 1, 2017. The federal government noted that the state was working toward a solution, so there was understanding in the meantime.

Co-Chair MacKinnon wondered whether the federal government required that it be in regulation, rather than statute, for setting a fine. Ms. Kelly replied in the negative. She stated that the regulatory avenue seemed like the most practical way to make yearly adjustments.

Co-Chair MacKinnon noted that there was consternation related to determining regulations rather than statutes. She queried the reason for choosing regulations rather than a statutory change. Representative Kito replied that the federal government was requesting that agencies tracked the consumer price index (CPI), and adjust the penalties to

adjust to modifications of the CPI. He remarked that it was unknown whether that examination would be on an annual or other periodic basis. He stated that setting regulation allowed for streamlined adjustments.

10:44:00 AM

Co-Chair MacKinnon noted that the department could not exceed the minimum set by the federal government. Representative Kito agreed.

Senator Micciche looked at Section 6, page 3, lines 1 through 3, which did not cover the minimum. He noted that the minimum was giving under the purview of the commissioner. He wondered why there was not a matching of the two.

Co-Chair MacKinnon agreed, and stated that she had already asked that question. She wondered whether the minimum was the maximum.

Representative Kito deferred to Ms. Kelly.

Ms. Kelly explained that the minimum penalty in statute was the only minimum penalty. She stated that most of the minimum penalties were zero, except for the single willful violation minimum penalty.

Co-Chair MacKinnon requested a sectional analysis.

10:47:06 AM

CAITLYN ELLIS, STAFF, REPRESENTATIVE SAM KITO, presented the Sectional Analysis (copy on file):

Section 1

Amends AS 18.60.095 (a) to establish that the maximum and minimum civil penalties the commissioner may assess an employer for a willful or repeat violation of occupational safety and health provisions shall be set by regulation under a new section (i) added by this bill.

Section 2

Amends AS 18.60.095 (b) to establish that the maximum civil penalty the commissioner may assess an employer for a serious violation of occupational safety and

health provisions shall be set by regulation under a new section (i) added by this bill.

Section 3

Amends AS 18.60.095 (c) to establish that the maximum civil penalty the commissioner may assess an employer for an other than serious violation of occupational safety and health provisions shall be set by regulation under a new section (i) added by this bill.

Section 4

Amends AS 18.60.095 (d) to establish that the maximum civil penalty the commissioner may assess an employer who fails to correct a violation of occupational safety and health provisions shall be set by regulation under a new section (i) added by this bill.

Section 5

Amends AS 18.60.095 (g) to establish that the maximum civil penalty the commissioner may assess an employer for violations of posting requirements shall be set by regulation under a new section (i) added by this bill.

Section 6

Amends AS 18.60.095 by adding a new subsection (i) that directs the commissioner to establish by regulation the maximum civil penalty amounts to be imposed under (a) - (d) and (g) of this section and the minimum imposed under (a). It stipulates that the maximum civil penalties may not be greater than the corresponding federal penalties and must include adjustments to correlate with inflation rates as specified under the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015.

Section 7

Establishes that this Act applies to violations occurring on or after the effective date of this Act.

Section 8

Allows the department to adopt regulations necessary to implement this Act.

Co-Chair MacKinnon wondered whether the CPI would affect a rate increasing or decreasing. Ms. Ellis replied in the

affirmative, stating that it would be adjusted on annual basis accordingly.

Co-Chair MacKinnon asked for agreement. Ms. Kelly replied in the affirmative.

Vice-Chair Bishop surmised that it could not exceed the federal maximum penalties. Ms. Kelly agreed.

Co-Chair MacKinnon OPENED public testimony.

Co-Chair MacKinnon CLOSED public testimony.

Co-Chair MacKinnon discussed committee business.

SB 121 was HEARD and HELD in committee for further consideration.

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ADJOURNMENT

[10:51:03 AM](#)

The meeting was adjourned at 10:51 a.m.