

SENATE FINANCE COMMITTEE  
April 30, 2018  
9:15 a.m.

9:15:52 AM

CALL TO ORDER

Co-Chair MacKinnon called the Senate Finance Committee meeting to order at 9:15 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 Neal Foster, Sponsor; Brodie Anderson, Staff, Representative Neal Foster.

PRESENT VIA TELECONFERENCE

Brandon Spanos, Deputy Director, Tax Division, Department of Revenue.

SUMMARY

SB 76-ALCOHOLIC BEVERAGE CONTROL; ALCOHOL REG

CS SSSB 76(FIN) was REPORTED out of committee with a "do pass" recommendation and with one new fiscal impact note from the Department of Commerce, Community and Economic Development, and one previously published zero fiscal note: FN 2(DHS).

HB 398-CORP TAX:PUBLIC UTILITY INCOME ALLOCATION

HB 398 was HEARD and HELD in committee for further consideration.

#sb76

SENATE BILL NO. 76

"An Act relating to alcoholic beverages; relating to the regulation of manufacturers, wholesalers, retailers, and common carriers of alcoholic beverages; relating to licenses, endorsements, and permits involving alcoholic beverages; relating to the Alcoholic Beverage Control Board; relating to offenses involving alcoholic beverages; amending Rule 17, Alaska Rules of Minor Offense Procedure; and providing for an effective date."

9:16:38 AM

Co-Chair MacKinnon offered a brief history of the bill in committee.

Senator Micciche informed that the bill modernized the alcoholic beverage Title 4, changing some of the fees and regulations. He said that the bill demonstrated the expectation that licensees would perform at a level that did not jeopardize the public.

Vice-Chair Bishop MOVED to report CS SSSB 76(FIN) out of Committee with individual recommendations and the accompanying fiscal notes. There being NO OBJECTION, it was so ordered.

CS SSSB 76(FIN) was REPORTED out of committee with a "do pass" recommendation and with one new fiscal impact note from the Department of Commerce, Community and Economic Development, and one previously published zero fiscal note: FN 2(DHS).

9:18:40 AM

AT EASE

9:21:06 AM

RECONVENED

#hb398

HOUSE BILL NO. 398

"An Act relating to the allocation and apportionment of income of a public utility for purposes of the Alaska Net Income Tax Act; and providing for an effective date."

Vice-Chair Bishop MOVED to ADOPT proposed committee substitute for HB 398, Work Draft 30-LS1231\0 (4/30/18, Nauman).

Co-Chair MacKinnon OBJECTED for discussion.

REPRESENTATIVE NEAL FOSTER, SPONSOR, explained that the bill would repeal the specific exemption for multi-state corporations operating public utilities in the state. He relayed that the 2015 Indirect Expenditure report put out by the Department of Revenue (DOR) had identified that the exemption did not closely relate to the legislative intent and could be considered a loophole that would allow certain multi-state corporation to reduce their corporate tax liability. The bill would repeal the exemption and require multi-state public utility corporations to follow the formula currently used by other non-oil and gas corporations. He said that DOR had identified that passage of the legislation would result in ne revenue for the state.

[9:23:42 AM](#)

BRODIE ANDERSON, STAFF, REPRESENTATIVE NEAL FOSTER, stated that the CS had two changes:

Page 1, line 7:  
add: "and apportion"

Page 2, line 5:  
**Sec. 4.** Section 3 of this Act takes effect immediately under AS 01.10.070(c).

Mr. Anderson addressed the Sectional Analysis (copy on file):

**Section 1:** adds new Section 43.20.146. This removes the exemption of multistate public utilities from water's edge reporting within the Multistate Tax Compact.

**Section 2:** adds new section: Applicability Language; Section 1 does not take effect under AS 43.20 (Alaska Net Income Tax Act) until the effective date.

**Section 3:** adds new section: Transition Language; Regulations shall change to implement the legislation but not be adopted before January 1, 2019.

**Section 4:** Effective date: Sections 1 and 2 take effect on January 1, 2019.

Senator Micciche thought that the range on the indeterminate fiscal note of \$100 thousand and \$5 million was problematic. He wondered whether a description of the factors between those amounts could be determined.

Mr. Anderson stated that the department was careful to keep the information confidential. He said it was known that the bill did not apply to corporations or utilities that were 100 percent Alaskan. He shared that in 2015 when the indirect expenditure report originally came out, three beneficiaries were identified, with the possibility of five. Due to the small pool, a large span had been used because of the size of the potential revenue.

[9:27:25 AM](#)

Senator Micciche assumed that there were no interstate commerce or equal protection issues with the bill.

Mr. Anderson revealed that there had been legal discussions about the use of the Multistate Compact Act. He relayed when the compact was first written both financial organizations and public utilities had been exempted, then in the mid-80s regulation had been changed to remove financial organizations and at that point there were no utilities utilizing the act. Now that taxpayers were utilizing the act it was felt that authority should be given.

Co-Chair MacKinnon asked when the tax credit was put into effect, and whether it showed up in the indirect expense report.

Mr. Anderson stated that the credit was enacted in 1970, when the state had first adopted the multistate compact. In 1985, the department had changed regulation and the issue

had not been addressed until the 2015 Indirect Expenditure Report.

[9:29:55 AM](#)

Vice-Chair Bishop asked about the impact of the bill considering the federal government had recently passed sweeping tax overhaul. He wondered whether the bill was a job-creator or job-killer for the businesses that would be impacted.

Mr. Anderson stated that all other non-oil and gas currently followed the three-factor apportionment for calculating tax liability. The bill put all multi-state corporations (non-oil and gas) on equal footing; they would all be treated the same way in how they calculated their tax liability for Alaska. He deferred further explanation to DOR.

[9:31:47 AM](#)

BRANDON SPANOS, DEPUTY DIRECTOR, TAX DIVISION, DEPARTMENT OF REVENUE (via teleconference), explained that the bill was not a tax exemption. He shared that the compact had exempted public utilities and financial institutions from the three-factor formula; they were not exempt from corporate income tax, but they could choose their own method of allocating their income to Alaska. The three-factor formula used in the compact applied to all non-oil and gas corporations. He discussed the distribution of income for public utilities and financial institutions to the state. He said that the department had determined that all corporations should file with the same three-factor formula; multistate public utilities operated similar to other multistate corporations and should use the three-factor formula. He asserted that the state was not beginning to tax a corporation that had not been taxed before, the method for distribution of income would be regulated, rather than letting corporations determine their own method.

[9:34:55 AM](#)

Vice-Chair Bishop asked Mr. Spanos whether the bill would affect employment for the companies involved.

Mr. Spanos was unable to determine whether the bill would affect employment. He noted that the fiscal note reflected a positive impact for the state, which would negatively affect a utility filing under the different method.

Vice-Chair Bishop qualified that he thought it was important to understand how the bill would affect jobs.

Senator von Imhof asked whether the words "apportionment" and "appropriated" had been used purposefully in the original writing of the compact.

Mr. Spanos replied that when the Multistate Tax Compact was formed, public utilities were usually highly regulated by states, who often ran them. At that time most public utilities were 100 percent within the state, which made apportionment unnecessary. He said that in trying to predict what public utilities would look like in the future, assuming that they would cross state lines, a method of allocation was determined. He stated that since multistate utilities operated similarly to all other corporations, most other states had adopted the three-factor formula to apportion and allocate their income.

[9:38:14 AM](#)

Senator von Imhof understood that as utilities had gone multistate, other states had moved to the three-factor formula. She asked if he could tell her three states that had made the change.

Mr. Spanos clarified that not all states used the three-factor formula any longer, many used a single sales or double weighted sales factor in an attempt to encourage manufacturing in their states. He said that public utilities in other states did tax public utilities in the same method that they taxed all other corporations.

Senator Micciche asked how many multi-state public utilities were currently operating in the state.

Mr. Spanos stated that there was more than a dozen.

Vice-Chair Bishop referenced a letter from Mr. Spanos (copy on file):

Currently, there are 3 public utilities utilizing a method other than the standard three-factor apportionment formula to apportion or allocate income to Alaska.

Vice-Chair Bishop understood that the other utilities operating in the state were using the formula referenced on page 1 of the letter, Sec. 2, Art. IV of AS 43.19.

Mr. Spanos replied in the affirmative.

[9:40:49 AM](#)

Senator Olson asked what affect the bill would have on the end user.

Mr. Spanos replied that the tax was a net income tax and was on the corporations total U.S. income and depended on many factors. He

[9:41:59 AM](#)

Senator Olson wondered whether the bill would affect international corporations with operations in Alaska.

Mr. Spanos responded that if the corporation had other U.S. operations, they would be affected but if the company had only operations in Alaska it would have no effect. He clarified that non-oil and gas companies did not consider non-U.S. income.

[9:43:03 AM](#)

Co-Chair MacKinnon WITHDREW her OBJECTION. There being NO OBJECTION, it was so ordered. SCS HB 398(FIN) was ADOPTED.

Co-Chair MacKinnon OPENED public testimony.

Co-Chair MacKinnon CLOSED public testimony.

[9:44:24 AM](#)

Vice-Chair Bishop discussed FN 1(REV), which was indeterminate. He read from the note's analysis on page 2:

Currently there are a small number of public utilities utilizing a method other than the standard three-factor apportionment formula to apportion or allocate

income to Alaska. Because of the limited number of impacted taxpayers, including one taxpayer who could generate over 80% of potential revenue, we are unable to provide an estimate of the additional potential revenue due to confidentiality concerns. However, we estimate that there will be a material amount of additional revenue collected, between \$100,000 and \$5,000,000, if this legislation were to pass.

This legislation would not require the Department of Revenue to update its Tax Revenue Management System (TRMS). There would also be no needed changes to forms. The only anticipated change would be to draft transition regulations. We would be able to draft transition language with current resources.

[9:45:35 AM](#)

HB 398 was HEARD and HELD in committee for further consideration.

Co-Chair MacKinnon discussed housekeeping.

#

ADJOURNMENT

[9:46:28 AM](#)

The meeting was adjourned at 9:46 a.m.