

SENATE FINANCE COMMITTEE

May 11, 2018

6:28 p.m.

6:28:56 PM

CALL TO ORDER

Co-Chair MacKinnon called the Senate Finance Committee meeting to order at 6:28 p.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

Juli Lucky, Staff, Senator Anna MacKinnon; Heidi Drygas, Commissioner, Department of Labor and Workforce Development; Fred Parady, Deputy Commissioner, Department of Commerce, Community, and Economic Development; Juli Lucky, Staff, Senator Anna MacKinnon; Heather Carpenter, Staff, Senator Pete Kelly; Representative John Lincoln; Representative Dan Ortiz; Rynnieva Moss, Staff, Senator John Coghill; Senator John Coghill; Representative Chuck Kopp; Darwin Peterson, Legislative Director, Office of the Governor.

PRESENT VIA TELECONFERENCE

Glenn Brown, Attorney for Ketchikan Gateway Borough, Ketchikan.

SUMMARY

CSHB 79 (FIN)

OMNIBUS WORKERS' COMPENSATION

SCS CSHB 79(FIN) was REPORTED out of committee with a "do pass" recommendation and with three previously published fiscal impact notes: FN5(ADM), FN7(LWF), and FN8(LWF).

CSHB 119(FIN)

AIDEA:DIVIDEND;INCOME;VALUE;PROJECTS;TAX

SCS CSHB 119(FIN) was REPORTED out of committee with a "do pass" recommendation and with three previously published fiscal notes, one with fiscal impact: FN4(EED/Fund Cap); and two zero notes: FN2(CED), and FN3(EED).

#hb79

CS FOR HOUSE BILL NO. 79(FIN)

"An Act relating to workers' compensation; relating to the second injury fund; relating to service fees and civil penalties for the workers' safety programs and the workers' compensation program; relating to the liability of business entities and certain persons for payment of workers' compensation benefits and civil penalties; relating to civil penalties for underinsuring or failing to insure or provide security for workers' compensation liability; relating to preauthorization and timely payment for medical treatment and services provided to injured employees; relating to incorporation of reference materials in workers' compensation regulations; relating to proceedings before the Alaska Workers' Compensation Board; relating to the authorization of the workers' compensation benefits guaranty fund to claim a lien; excluding independent contractors from workers' compensation coverage; establishing the circumstances under which certain nonemployee executive corporate officers and members of limited liability companies may obtain workers' compensation coverage; relating to the duties of injured employees to report income or work; relating to misclassification of employees and deceptive leasing; defining 'employee'; relating to the Alaska Workers' Compensation Board's approval of attorney fees in a settlement agreement; and providing for an effective date."

6:30:00 PM

Vice-Chair Bishop MOVED to ADOPT proposed committee substitute for CSHB 79(FIN), Work Draft 30-GH1789\E (Wallace, 5/11/18).

Co-Chair MacKinnon OBJECTED for discussion.

JULI LUCKY, STAFF, SENATOR ANNA MACKINNON, discussed the changes to the bill. She explained that most of the changes to the bill were removals. She referenced an Explanation of Changes document (copy on file), and read sections of the document:

The Senate Finance CS contains the sections of HB 79 that:

- Ensure Adequate Funding
- Reduce Administrative Costs
- Define Independent Contractors

The SCS also creates a Legislative Workers' Compensation Working Group to act as an interim committee to continue work and develop new legislation for consideration during the 31st Alaska State Legislature.

Ms. Lucky noted that the new Section 23 of the bill, which formed the Legislative Workers' Compensation Working Group, could be found on page 10, Line 12 of the bill. She relayed that the committee had been concerned about making sure the bill was balanced and ensuring there was legislative intent to discuss the issues over the interim. The working group would be comprised of six members, with three from each body. The members would consult with stakeholders from the Department of Commerce, Community and Economic Development (DCCED); the Department of Labor and Workforce Development (DLWD); the Medical Services Review Committee; organized labor; school district administrators; and the state business community.

Ms. Lucky continued discussing the legislative working group proposed in the bill. The goal of the group would be to recommend improvements to the laws relating to workers' compensation and put forth a report that would be due on or before December 1, 2018. The intent was to ensure that there was adequate time for review and put forth legislation in front of the next legislature. She noted

that the Explanation of Changes document showed items removed from the bill with a strikethrough, and a renumbering of those items that would remain in the bill.

Ms. Lucky relayed that she had conferred with the department and there was no change to the fiscal notes.

Co-Chair MacKinnon WITHDREW her OBJECTION. There being NO further OBJECTION, it was so ordered. The CS for CSHB 79(FIN) was ADOPTED.

[6:34:06 PM](#)

AT EASE

[6:38:58 PM](#)

RECONVENED

Co-Chair MacKinnon informed that the Committee Substitute (CS) for CSHB 79(FIN) was posted online.

Co-Chair MacKinnon thanked the commissioner of DLWD for all of the work that had been done on the issue of workers' compensation. She explained that the CS was a trimmed down version of the bill. The committee had identified many issues that were important to workers; and had learned of issues to balance for employers before accommodating some of the administration's requests. She understood that the CS was not the complete package as proposed by the administration.

[6:40:58 PM](#)

HEIDI DRYGAS, COMMISSIONER, DEPARTMENT OF LABOR AND WORKFORCE DEVELOPMENT, thanked the committee for consideration of the bill. She described the bill as an "efficiencies bill." She mentioned provisions kept in the CS including funding for the Division of Workers' Compensation, electronic filing, and the definition of independent contractor. She stated that there were several things left out of the CS that would make the division work better and hoped the items would be addressed by the working group over the subsequent summer.

Commissioner Drygas remarked that there had been a lengthy conversation between labor and industry about addressing substantive benefits in the interim. She thought the stakeholders were the best groups (rather than the

department) to address the issues. She stated that she was eager to see how the working group came together, and that the department was ready to assist in the endeavor. She supported the bill with the understanding that there were sections the department had not supported removing.

Co-Chair MacKinnon indicated that the committee understood the sentiments of the department. She discussed the challenge of passing legislation. She considered that if elected officials could hear both sides of the proposals, progress would be made. She referenced the work of Representative Josephson in his proposed legislation pertaining to damages for workers' compensation. She emphasized the importance of understanding all sides of the issue.

6:44:30 PM

Senator Olson referenced the working group as proposed in the bill. He was pessimistic about making monumental changes in age-old conflicts such as workers' compensation and wondered how to make progress.

Commissioner Drygas stated that the bill language did not come from the department, but she had reviewed it. She was aware that it was an election year and thought work during the interim might be difficult. She referenced a group called The Workers Compensation Ad Hoc Committee, which included stakeholders from organized labor and industry to discuss substantive benefits and reform to workers' compensation. She understood that the committee had worked very well together for many years. She hoped that the committee could be revived. She qualified that the group came from the stakeholders rather from the department. She noted that it had been 18 years since substantive benefits had been increased for workers.

Co-Chair MacKinnon stated that the concept of the working group had come from her office. She referenced a working group on reducing sexual assault and noted that the legislature had since implemented every single recommendation. She referenced implementation of recommendations from an oil and gas working group. The CS proposed for the legislature to bring together stakeholders to share perspectives and subsequently elected officials would implement the recommendations. She emphasized the need for accord.

Senator Olson understood that the ad hoc committee was frustrated after its recommendations were not taken.

Commissioner Drygas could not recall the past actions of the ad hoc committee and outcome of its recommendations. She suspected that the work of the ad hoc committee halted because legislation it worked on was passed over in favor of legislation that did not include stakeholders. She reiterated that the events in question took place long before her tenure in the department.

[6:49:24 PM](#)

Vice-Chair Bishop discussed the fiscal notes. He addressed FN 5 from the Department of Administration, a fiscal impact note that showed a cost of \$40,000 in the first year and \$12,900 in the out years. He read from the Analysis section on page 2 of the fiscal note:

This bill will have a financial impact on the Division of Risk Management (DRM).

This bill will clarify, amend, add and repeal several statutes within workers' compensation. Changes that will impact DRM include reporting changes to the Alaska Workers Compensation Board. The Board will move from a manual process to an Electronic Data Input (EDI) process, with changes to the appropriate forms used for reporting.

DRM anticipates a first year cost of \$40.0 for the initial implementation, including changes to the software and costs related to submitting forms via EDI. Costs are estimated at \$12.9 annually in the out years. Costs will be absorbed by agencies through the annual rate process.

Vice-Chair Bishop addressed FN 8 from DLWD, which was a fiscal impact note. There was an increase in the percent of fees deposited into the Workers' Safety and Compensation Administrative Account (WSCAA). The increase did not add to any premiums from any employers but was built into what was collected by the Division of Insurance.

Vice-Chair Bishop addressed FN 7 from DLWD, which was a fiscal impact note. He read from the fiscal note Analysis on page 2:

This legislation will sunset the Second Injury Fund (AS 23.30.040). Future claim payments will only be made on those claims accepted by the effective date. There will be no reduction in the near future in the staffing required to process these claim payments because it will likely take decades for the Fund to pay these ongoing claim obligations. Ninety-five percent of these claims are categorized as permanent total disability (PTD) benefits. PTD benefits are paid until disability ends or until death.

The reduced Fund liability reflected in this fiscal note assumes the average age of the claimant at closure would be 80 years old and two to three cases would be closed per year due to the death of the claimants. The reduced revenue reflected in this fiscal note is because employer and insurance carrier contribution rates will decline over time as the Fund's liability is exhausted as prescribed in statute.

Revenue to the Second Injury Fund (SIF) comes from an annual assessment on Workers' Compensation insurance providers and self-insured employers through a contribution rate that changes every year based on statute designed to ensure sufficient revenue to cover expenses. Insurance companies are able to pass this assessment on to employers through premiums. As SIF claims decline costs to insurance providers and self-insured employers will decline, including the State of Alaska through the Department of Administration's Risk Management division.

In FY2017, the State of Alaska comprised 11.5 percent of total SIF revenue (\$343,150 of \$2,984,507). The State of Alaska could save as much as \$46,000 if it represented 11.5 percent of the projected total savings of \$400,000 starting FY2020, and this savings would grow incrementally in the following years. This cost savings will be passed on to all state agencies through decreased personal services benefit costs and included in future year budget salary and benefit adjustments.

Vice-Chair Bishop noted that the reason that the Second Injury Fund would sunset was due to the fact that it was no longer legal to ask an employee if they had a disability.

[6:54:31 PM](#)

AT EASE

[6:54:57 PM](#)

RECONVENED

Vice-Chair Bishop MOVED to report SCS CSHB 79(FIN) out of Committee with individual recommendations and the accompanying fiscal notes. There being NO OBJECTION, it was so ordered.

SCS CSHB 79(FIN) was REPORTED out of committee with a "do pass" recommendation and with three previously published fiscal impact notes: FN5(ADM), FN7(LWF), and FN8(LWF).

[6:55:36 PM](#)

AT EASE

[6:58:04 PM](#)

RECONVENED

#hb119

CS FOR HOUSE BILL NO. 119(FIN)

"An Act relating to a mandatory exemption from municipal property taxes for certain assets of the Alaska Industrial Development and Export Authority; relating to dividends from the Alaska Industrial Development and Export Authority; relating to the meanings of 'mark-to-market fair value,' 'net income,' 'project or development,' and 'unrestricted net income' for purposes of the Alaska Industrial Development and Export Authority; and providing for an effective date."

[6:58:04 PM](#)

Co-Chair MacKinnon informed that the committee had heard the companion bill for HB 119 (SB 57) on March 2, 2017.

[6:58:29 PM](#)

AT EASE

6:58:43 PM

RECONVENED

Co-Chair MacKinnon asked for an overview of the bill from the perspective of the department.

FRED PARADY, DEPUTY COMMISSIONER, DEPARTMENT OF COMMERCE, COMMUNITY, AND ECONOMIC DEVELOPMENT, explained that he had served as the commissioner's delegate to the Alaska Industrial Development and Export Authority (AIDEA) and the Alaska Energy Authority (AEA) for the previous three and a half years. He thought that the bill had major pieces that were familiar. He thought the bill specifically addressed concerns that AIDEA had with two issues in accounting for purposes of dividend calculation for payment to the state. The first issue pertained to market valuation adjustments. Under current Governmental Accounting Standards Board (GASB) rules it was required to estimate the value of an asset on a particular day, which inflated or deflated valuation and thereby impacted AIDEA's dividend calculation. He stated that there was a solution contained in the bill would take the non-cash adjustments out of income calculations before dividend calculation to reflect real net income.

Mr. Parady discussed the second problem he had identified with accounting, which was an AIDEA dividend penalty that was triggered by non-AIDEA-based project funding. He detailed that in 2002, the legislature instructed AIDEA to disregard project funding from non-AIDEA sources when calculating the dividend so as to not artificially inflate net income. The legislation did not account for circumstances when a project using non-AIDEA funds might be cancelled and expenditures were written off. Without correction, the periodic adjustments could artificially decrease net income. The solution was the same as for the first problem, which was to back out losses for projects funded from non-AIDEA funding and return the dividend calculation to real net income.

Mr. Parady informed that AIDEA had paid the state dividends of approximately \$380 million to since the early 1990s and was working strongly to continue to do so. He asserted that passage of the bill would make the yearly dividend amount more predictable for planning purposes.

7:01:53 PM

Mr. Parady addressed the topic of the reestablishment of the Red Dog Port and transportation valuation exemption as proposed by the bill. The language would clarify some reinstates the property tax exemption for the Red Dog Port and the DeLong Mountain Transportation System. The exemption was implemented for the structure during the early 2000s but had sunset in 2017. The language also clarified that the exemption applied to the AIDEA-owned port. It had been assumed as such, but there had been a reinterpretation. He wanted to ensure that the mine and port were treated as a unit and were excluded from taxation. He pointed out the retroactivity of the exemption to November 2017.

Mr. Parady continued discussing the bill. He stated that there was a revised fiscal note for the bill that did not show an increase in state education aid for the Red Dog Mine, because the funds were already contained in the base education budget and would continue to be so. He stated that although the Northwest Arctic Borough did not levy a property tax; Teck, Alaska (Red Dog Mine owner) made negotiated payments through a payment in lieu of taxes (PILT) agreement. The PILT had been renegotiated and was increasing to between \$14 million and \$18 million. In the current year, the borough appropriated \$4 million to its school district, which exceeded any required local contribution.

Mr. Parady addressed the issue of the Ketchikan Shipyard valuation exemption. The bill would clarify that the property tax exemption applied to the Ketchikan Shipyard, which was owned by AIDEA. From 1997 until 2012 the shipyard was considered to be covered by the existing statutory property tax exemption; but in 2012 the state assessor's office ruled that possessory interest of the agreement with AIDEA did not qualify for the mandatory exemption. The effect of the required local contribution under the change was that Ketchikan Gateway Borough had been paying an increased local contribution to education for a number of years, including the shipyard. The increase would require approximately \$79,000 in increased education funding starting in FY 20.

Mr. Parady asked Co-Chair MacKinnon if he should address the Interior Energy Project (IEP) bond exception as proposed in the CS.

Vice-Chair Bishop MOVED to ADOPT proposed committee substitute for CSHB 119(FIN), Work Draft 30-GH1677\U (Laffen/Nauman, 5/11/18).

Co-Chair MacKinnon OBJECTED for discussion.

Co-Chair MacKinnon explained that other bills had been attached to the bill. She wanted to consider all the proposed elements of the bill at once.

7:06:00 PM

JULI LUCKY, STAFF, SENATOR ANNA MACKINNON, addressed an Explanation of Changes document (copy on file):

Adds language to AS 42.40.350 (a) that states that the Alaska Railroad Corporation does not have authority over any right, title, or interest in property transferred under this subsection that was not vested in the United States at the time of transfer. [Section 3]

Requires notification of adjacent landowners by registered mail as part of the public notice process before the Alaska Railroad Corporation sells land under AS 42.40.352. [Section 5]

Adds language to AS 42.40.410 that states that land or interest in land that is not conclusively owned by the United States at the time of transfer is not available and does not satisfy the exception from legislative approval under AS 42.40.2085 (5)(C). [Section 6]

Repeals unnecessary and unused bond authority. [Sections 7, 8, 13 & 14]

Extends the allowable time for the Alaska Industrial Development and Energy Authority (AIDEA) to issue bonds for the Interior Energy Project (IEP) to June 30, 2023. [Section 12]

Authorizes transfer and exchange of real property from the Alaska Railroad Corporation to various entities.
[Sections 15 - 22]

Requires the Alaska Railroad Corporation to annually report on the land transfers and exchanges.
[Section 23]

Ms. Lucky pointed out that Section 1 of the bill had been in HB 118 and pertained to the tax assessment previously discussed by Mr. Parady. She detailed that Section 2 of the bill contained the sunset for the same provisions. The effective date of Section 2, which was included in HB 119 as it came to the committee, would be November 30, 2027. She described that Section 3 of the bill was a technical change and was made necessary by the inclusion of Section 6. She furthered that Section 4 was a new section sourced from a bill related to railroad land disposals and had to do with railroad ownership for corporations.

Ms. Lucky continued to discuss the changes to the bill. She hoped that Section 5 would be familiar to members; it was a provision put into the bill regarding railroad property transfers. It required notification to adjacent landowners when the railroad sold property. Section 6 was also new language regarding the interest in land. Section 7 and Section 8 removed some bond authority and had been in the bill related to railroad property disposals. Section 9 correlated to Section 3 of the bill and related to mark to market calculations. She continued that Section 10 was also in HB 119 as it came to the committee; as well as Section 11, which was concerned with the definitions of mark to market and project and developments.

Ms. Lucky stated that Section 12 of the bill, concerning the IEP, which extended authorization bonds until June 30, 2023. If the bill were not to pass, authorization would sunset on June 30, 2018. Section 13 and Section 14 removed the unneeded bond authority that had been a provision of the bill the committee passed that was related to railroad land transfers.

Ms. Lucky elaborated that when the committee had passed the bill related to railroad land transfers, it contained authority for the Alaska Railroad Corporation to sell land without legislative approval. Changes in the other body proposed to give the corporation authority for certain

projects rather than a blanket authority. She detailed that Sections 15 through Section 22 all pertained to various projects for which the corporation had wanted to dispose of the associated real estate.

Ms. Lucky explained that Section 23 contained a reporting requirement, which had been added to provide understanding for the legislature regarding selling land for commercial interest. Section 24 was a retroactivity section and referred back to Section 1. Section 25 was an immediate effective date for the rest of the bill, and Section 26 was a delayed effective date of November 30, 2027 for Section 2 (the repeal of the tax assessment sections).

[7:12:09 PM](#)

Co-Chair MacKinnon WITHDREW her OBJECTION. There being NO further OBJECTION, it was so ordered. The CS for HB 119 was ADOPTED.

Mr. Parady stated that the IEP bond authorization would extend the bond authorization for a five-year period. It allowed for AIDEA (in working in conjunction locally with the Interior Gas Utility) to access bond financing. There was no other change to the bond financing previously authorized. He noted that construction on the project was underway, and the construction of the 5 million gallon liquified natural gas storage tank was ongoing.

HEATHER CARPENTER, STAFF, SENATOR PETE KELLY, informed that the IEP provision of the bill in Section 12 (originally in SB 125) would extend the allowable time for AIDEA to issue bonds for the energy project by five years to June 30, 2023. She reminded that the committee had heard the associated legislation on Feb 12, 2018; and had passed it out of committee on February 16, 2018. The bill had passed the Senate unanimously.

Ms. Carpenter continued to discuss Section 12 of the bill. She reminded that the interior suffered from the most volatile energy costs of any community on the Railbelt. Cold winters and high energy costs resulted in many households that burned wood and coal, which exacerbated high energy costs and air quality issues. There was an existing gas distribution system in Fairbanks that did not serve more than 1,200 customers. There was a lack of sufficient local LNG storage that prevented the addition of

new residential customers. The IEP was developed to address the issues and expand availability of clean and affordable natural gas in the greater Fairbanks and North Pole areas. She discussed the funding for the IEP, which had all been spent or obligated.

Ms. Carpenter detailed that the AIDEA team had diligently deployed its resources but needed to extend the authorization for the bond component of financing. The bonding was necessary for increasing production capacity for the LNG plant at Point McKenzie and further expansion of the gas distribution network in the Interior. She discussed accomplishments by the IEP, including the passage of the Property Assessed Clean Energy Project. She detailed that on its present schedule, the project would provide its first expanded gas availability was expected in the winter of 2019. Further expansion of converting homes to gas would occur in the construction season of 2020. She emphasized that extending the sunset for AIDEA's bonding authority for IEP would ensure continued success.

[7:18:42 PM](#)

REPRESENTATIVE JOHN LINCOLN, spoke to Section 1 of the bill, which clarified and reauthorized a property tax assessment exemption for the DeLong Mountain Transportation System. The exemption was implemented in the early 2000's, was reauthorized in 2012, and had expired in November 2017. He relayed that the Northwest Arctic Borough did not have a property tax, and most likely would not for some time. Much of the property in the borough was tax exempt per federal law. The region struggled with high costs and low employment. He stated that a property tax would create a significant inequity in the community. He stated that despite not having a property tax, the state partially set the state's funding for a school district and municipality's local minimum contribution based on an estimate of what a hypothetical property tax would generate in revenue.

Representative Lincoln continued to address Section 1. He stated that the transportation system was a tax-exempt state-owned asset could not be taxed despite AIDEA receiving millions of dollars per year for the use of the facility. He detailed that the exemption would be retroactive to November 2017 to provide seamless extension for the facility. The fiscal note did not show a change

relative to the transportation system, because funds were already budgeted and expected to be maintained in future years.

[7:21:45 PM](#)

REPRESENTATIVE DAN ORTIZ, spoke to Section 1 of the bill, which pertained to the Ketchikan Shipyard. The section would clarify the question of whether the perceived value of Vigor Alaska's long-term operating agreement for use of the AIDEA-owned tax-exempt property should be included in the state's calculation of the Ketchikan Gateway Borough's minimum local contribution to schools. He referenced Mr. Parady's explanation of when AIDEA took control of the shipyard in 1997, there had been an exemption as a part of the agreement for AIDEA's ownership. The exemption had lasted until 2012, at which time state assessor's put a different calculation forward. He stated that the bill provision reestablished the exemption, based on the idea that it was state-owned property and part of the initial operating agreement when AIDEA took ownership in 1997.

Representative Ortiz continued discussing the Ketchikan Shipyard, which serviced vessels for the Alaska Marine Highway. He detailed that AIDEA owned the shipyard and Vigor Alaska operated the facility based on a ten-year contract with AIDEA that expired in 2025. The shipyard employed 226 workers at an average salary of \$80,000 per year. He asserted that the shipyard served the needs of the state and did a good job of recruiting workers from around the state. He thought the facility did a good job cooperating with other entities on workforce development and recruitment including Northern Industrial Training, Alaska Native corporations, high schools, and regional training centers.

[7:24:54 PM](#)

GLENN BROWN, ATTORNEY FOR KETCHIKAN GATEWAY BOROUGH, KETCHIKAN (via teleconference), added to the testimony of Representative Ortiz. He stated that the operating agreement in place had been negotiated in 2005 was premised on an up to 30-year term, with the understanding that the mandatory exemption was in place. It was only by virtue of a change in the state assessor's view of the shipyard that brought about the full assessment value increasing by \$74 million. He stated that the change impacted the required

local contribution significantly. At the time of the change the impact was \$196,000 per year. Through litigation and settlement the impact was \$79,000 per year; which was reflected in the fiscal impact statement.

Mr. Brown asserted that the commonality between the Delong Mountain Transportation System and the shipyard were poignant, in that they were both under operating agreements rather than simply leased by AIDEA. Further, the facility in Ketchikan primarily served as a maintenance facility for the Alaska Marine Highway and had significant competition from shipyards farther south. It was only recently that the shipyard began to produce profits. He asked the committee to consider the exemption.

[7:28:01 PM](#)

RYNNIEVA MOSS, STAFF, SENATOR JOHN COGHILL, addressed Section 15 of the bill, which pertained to properties sold by the Alaska Railroad Corporation. Section 15 was a land swap and exchange of cash (depending on the valuation of both properties) between the Eklutna Native Corporation and the railroad corporation. She explained that Eklutna wanted to acquire property owned by the railroad to develop a gravel excavation operation and other development in conjunction with adjacent land already owned by Eklutna. In return, there would be a swap of land in Birchwood, which was adjacent to land already owned by the railroad.

Ms. Moss explained that Section 16 related to the railroad selling approximately 20 acres of land to the Municipality of Anchorage for \$1.5 million, and the termination of a 102-acre long-term lease, freeing up over 80 acres to revert back to the railroad's operations at the port facility. The municipality was looking to obtain title to allow for expansion of the port facilities. She relayed that Section 17 of the bill sold land to the Usibelli Coal Mine. In the early days of the mine, housing had been provided for workers at the mine camp. As the camp grew, the federal government told the mine to move workers and workers' families from the mine property. Most of the land in the surrounding area was owned by the railroad. The railroad had leased property to provide residential and related infrastructure including schools, churches, and a community center. Usibelli subleased the land to homeowners; as well as organizations such as the Denali Borough, churches, and day cares. If Usibelli had the

opportunity to purchase the land, it would then go through a process to make the lots available for purchase by current subleases.

Ms. Moss addressed Section 18 of the bill, which pertained to a two-phase subdivision across the Chena River from Carlson Center. Phase 1 had already been subdivided, and included the development of 23 lots into residential housing. She continued that Section 19 of the bill pertained to development of an area of almost 30 acres near Otto Lake. Alaska Tourism Development had proposed to spend \$30 million constructing a tourist lodge and associated resort facilities. Section 20 of the bill was the approval of a transfer of rural property to NeighborWorks, Alaska; a non-profit organization that sought to make improvements to its housing. The organization was having difficulty getting financing due to leasing rather than owning the property.

Ms. Moss addressed Section 21 and Section 22, which pertained to approval of land sales in the Anchorage terminal reserve. The approval had not been solicited by the railroad, however Lynden had expressed interest in negotiating with the railroad to purchase the long-term leases it had with the Anchorage reserve.

[7:32:56 PM](#)

Vice-Chair Bishop asked if Ms. Moss' remarks were regarding a lease purchase of land in Anchorage.

Ms. Moss answered in the affirmative.

Co-Chair MacKinnon noted that legislative approval did not force the railroad to sell land it did not choose to sell.

Ms. Moss answered in the affirmative.

Co-Chair MacKinnon asked if all the different parcels for which sales were in question were included in the bill.

Ms. Moss explained that there were five parcels for which the railroad was interested in negotiating sales. The last three parcels were those that lessees had been interested in purchasing.

Senator von Imhof observed that the bill previously considered had non-identification of exact parcels, and a

three-year sunset. She wondered if there was a time limitation in the current bill.

Ms. Moss answered in the negative. She stated that five of the projects had been in a long-term negotiation with the lessees, with the exception of Chena Landing, which did not have a lessee. The land was owned by the railroad, and it had been subdivided and developed.

Co-Chair MacKinnon stated that the Senate (in a previous bill it had passed) had authorized a general purchase agreement with parameters to allow the railroad to go forward with three years to do a test run of the proposed land changes. The House had not accepted the structure of the proposal and had proposed to approve individual projects. She relayed that the language in HB 119 was closer to what had been proposed by the House.

Ms. Moss referenced Ms. Lucky's testimony regarding a provision of the bill that eliminated bonding authority and approved public notice.

Co-Chair MacKinnon referenced approved notification to adjacent land owners.

SENATOR JOHN COGHILL, reminded the committee that there was a reporting mechanism in the bill that would inform the legislature.

[7:37:36 PM](#)

REPRESENTATIVE CHUCK KOPP, spoke to Section 4 and Section 6 of the bill. He recounted that two years previously he became aware that there were some contested land use issues involving the railroad right-of-way extending from Fairbanks to Seward. The issues in question all focused on sections of the right-of-way that had to do with homestead patent properties that had gone from the federal government into state hands. Questions had been raised because land owners started receiving invoices for sections of lawn and gardens that were in the right of way. Land owners questioned the invoice as homestead patents showed the railroad was reserved a surface easement (right-of-way for rail, telegraph, and telephone) but nothing more.

Representative Kopp continued discussing the contested land use. Properties were affected in South Anchorage, Midtown

Anchorage, and up through Eagle River. The railroad agreed that there was a question of legality and had stopped invoicing people. He had realized that there was no long-term legislative oversight to say the railroad should not claim an interest in the right-of-way if the federal government never owned the interest to give to the state in the first place.

He had researched the matter with public lands lawyers and the Alaska Congressional Delegation, he had received a letter highlighting the legal opinion that the state was correct in trying to pursue a correction. He referenced a letter from United States Congressman Don Young (copy on file). The letter suggested there was a clear direction from congress to dutifully recognize basic tenets of due process. the congressmen suggested that there had been a failure by agencies which had resulted in a lack of clarity. He read from the letter:

House Joint Resolution 38 outlines what can only be described as a failure by the agencies to understand clear direction from Congress and to dutifully recognize basic tenets of due process, needlessly resulting in a cloud on title for both the Alaska Railroad and its neighbors along the right- of-way. There is no way a bill quietly annexing private property rights, especially without any notice or compensation, would have passed Congress in 1982. You only have to read the plain language of ARTA to know that-the transfer of rail properties of the Alaska Railroad" over privately-owned land only included the "Federal interest" in those lands. If the federal government did not own it, it was not included in the transfer. There is no canon of statutory construction, or even common-sense reading, that could argue an unconstitutional taking of private property rights was the intent of Congress.

The intent was to transfer the federally owned Alaska Railroad's existing assets, which can be clearly noted throughout the Act itself and the record. Where the underlying estate was federally owned, as well, the issue became how much of an interest to pass along in the right-of-way over those lands, which is spelled out in the Act. The federal government obviously had sufficient proprietary interest in the transfer of rail properties - defined in ARTA as federally held

rights, titles, and interests - which were directed to be transferred; but, nowhere in ARTA did Congress authorize the transfer of privately owned property interests, nor could it do so in such a cavalier and vague manner as is being suggested.

[7:41:32 PM](#)

Representative Kopp stated that the language in Section 4 had the legal effect of providing direction and clarification in statute to prevent the railroad from exercising perceived authority to continue to require privately owned property interests in violation of federal and state law. He used the example of a fence across private property that required a land owner to drive 20 miles to a public crossing to access the other side of the same property. He cited an example of an access issue for holders of an original homestead patent North of Eagle River. He emphasized that no part of the bill would independently result in a change of ownership of any property interest. The bill would not independently operate to disclaim or restore any property rights. The railroad would simply not make a claim unless the title recording system showed that the claim was in the federal interest at the time it was transferred.

Representative Kopp emphasized that the language in Section 4 used the phrase "to not have authority over real property." The railroad corporation had been given its authority to act in state law. The bill language clarified that the authority did not include the ability to take action or otherwise manage property if it was unlawfully obtained. No determination of as to what was lawful or unlawful was required for the direction to be appropriate from the legislation.

Representative Kopp addressed Section 6 of the bill, which included the terminology "conclusively owned," which was to say that generally that any individual parcel's chain of title clearly demonstrated that the federal government was the fee owner of the right, title or interest, at the time it was transferred to the state. The direction from the legislature would come into play regarding the right-of-way that crossed private property. Each parcel in the right-of-way would need to be individually evaluated to determine what the federal government owned when it transferred the rail properties to the Alaska Railroad, which only included

what the United States owned. If it became reasonably clear during the analysis that the railroad was only in possession of the federal interest in the parcel, then the amendments proposed in the bill would have no effect.

Co-Chair MacKinnon asked if the railroad was in favor of the amendment.

Representative Kopp stated that the railroad was not in favor of the change, because it provided oversight it was not comfortable with. The railroad admitted that there was a strong legal argument in favor of the bill and had seen the letter from the congressional delegation.

[7:46:01 PM](#)

Co-Chair MacKinnon asked if the change to Section 4 and Section 6 had the support of the administration.

Representative Kopp stated that the sections of the bill had strong support of the administration. All the governor's appointees on the railroad commission supported the provisions, and the governor's office had conveyed support for the language in the bill.

DARWIN PETERSON, LEGISLATIVE DIRECTOR, OFFICE OF THE GOVERNOR, stated that the Department of Law had reviewed the CS for HB 119. The administration did not have any opposition to the bill.

Co-Chair MacKinnon OPENED public testimony.

Co-Chair MacKinnon CLOSED public testimony.

Vice-Chair Bishop addressed FN 2(CED), which was a zero fiscal note. He read from the Analysis on page 2 of the fiscal note:

A prediction of future market conditions, future actuarial estimates, or potential impairments, and thereby, their effect on AIDEA's dividend to the State of Alaska cannot be made.

Vice-Chair Bishop addressed FN 3(EED), which was a zero fiscal note. He read from the Analysis on page 2 of the fiscal note:

The funding mechanism is a general fund transfer to the Public Education Fund (PEF). The fiscal note effect for FY2018 through FY2023 is reported in the fiscal note for the PEF, as the funding is deposited to the PEF not into the Foundation Program funding component. The above analysis is presented here for explanation purposes only.

Vice-Chair Bishop addressed FN 4 (GOV/Fund Cap), which had fiscal impact. Starting in FY 20, there was a fiscal impact of \$79,600 per year. He read from the Analysis on page 2 of the fiscal note:

Under the optional exemption, Ketchikan Gateway Borough's annual Required Local Contribution (RLC) payment for the possessory interest value of the shipyard was \$79,596 for 2017. For purposes of this fiscal note the \$79,596 per year represents the current RLC which may change in the future. If the bill as amended is adopted, the obligation for this funding for the RLC for the Ketchikan Gateway School District would shift and become the funding obligation of the State of Alaska under AS 14.17.410 Public School Funding program.

Additionally, the statutory exemption for the Red Dog Mine sunset in November 2017. Under this bill, the exemption for the Red Dog Mine would be retroactively applied back to November 30, 2017 and continue the prior exemption which would result in no fiscal impact to the state.

It is understood the exemption for the Alaska Ship and Drydock will begin with calendar year 2018. Since there is a two year lag in the assessed full and true values being applied to the public school funding formula under AS 14.17.410, the cost to the state would not be realized until FY2020.

Vice-Chair Bishop MOVED to report SCS CSHB 119(FIN) out of Committee with individual recommendations and the accompanying fiscal notes.

SCS CSHB 119(FIN) was REPORTED out of committee with a "do pass" recommendation and with three previously published fiscal notes, one with fiscal impact: FN4(EED/Fund Cap); and two zero notes: FN2(CED), and FN3(EED).

7:51:36 PM

AT EASE

7:53:30 PM

RECONVENED

Co-Chair MacKinnon stated she would RECESS to the call of the chair. She discussed the schedule for the following day.

7:54:05 PM

RECESSED

[Note: This meeting was adjourned on 5/12/18 at 11:11:07 a.m., with no further action taken.]