

HOUSE FINANCE COMMITTEE
April 7, 2021
9:01 a.m.

[9:01:49 AM](#)

CALL TO ORDER

Co-Chair Merrick called the House Finance Committee meeting to order at 9:01 a.m.

MEMBERS PRESENT

Representative Neal Foster, Co-Chair
Representative Kelly Merrick, Co-Chair
Representative Dan Ortiz, Vice-Chair
Representative Ben Carpenter
Representative Bryce Edgmon
Representative DeLena Johnson
Representative Andy Josephson
Representative Bart LeBon
Representative Sara Rasmussen
Representative Steve Thompson
Representative Adam Wool

MEMBERS ABSENT

None

PRESENT VIA TELECONFERENCE

Treg Taylor, Governor's Appointee, Attorney General,
Department of Law

SUMMARY

CONSIDERATION OF GOVERNOR'S APPOINTEES: TREG TAYLOR,
ATTORNEY GENERAL, DEPARTMENT OF LAW

Co-Chair Merrick reviewed the meeting agenda.

^CONSIDERATION OF GOVERNOR'S APPOINTEES: TREG TAYLOR,
ATTORNEY GENERAL, DEPARTMENT OF LAW

[9:02:31 AM](#)

Representative Josephson stated that his questions related to Mr. Taylor's testimony on the statute from the Alaska Executive Branch Ethics Act (AS 39.52.180) related to restrictions on employment after leaving state service. He stated that Mr. Taylor had noted a preference for not granting Mr. [Ben] Stevens a waiver because the state would be unprotected if it did so. He asked Mr. Taylor if he recalled the testimony [from the 3/31/21 1:30 p.m. meeting].

TREG TAYLOR, GOVERNOR'S APPOINTEE, ATTORNEY GENERAL, DEPARTMENT OF LAW (via teleconference), replied that he recalled the testimony.

Representative Josephson wondered, based on Mr. Taylor's position on the issue, why the state would ever grant a waiver to anyone.

Mr. Taylor answered that the statute laid it out. He elaborated there were times in the course of a person's duties while working for the state that they had worked on things in a personal and substantive manner and once they left state service, they wanted to engage in the same issue outside of state service. He stated there were times it was in the public interest to allow an individual to engage in the work. The statute allowed for setting up a process for the governor and attorney general (AG) to review the request for a conflict waiver. He explained that the governor and AG could grant the waiver if they determined it was appropriate for the person to work on an issue they had worked on during their state service. The governor and AG could also determine it was not in the public interest to grant the conflict waiver. He elaborated that if the waiver was denied, the individual would be prohibited from engaging in work in the specific area for a period of two years after leaving state service.

[9:05:30 AM](#)

Representative Josephson stated that Natalie Loman, the public facing person (other than the president) of ConocoPhillips AK had told the media that Mr. Stevens' would be working on legislative affairs. He referenced Mr. Taylor's previous testimony that he had met with ConocoPhillips. He asked how Mr. Stevens could do the work without coming into conflict with personal and substantive

work as [the governor's] chief of staff. He asked how Mr. Stevens could do the job he was being paid to do.

Mr. Taylor answered that just because a person had been an engineer for the State of Alaska did not prevent them from engaging in engineering after leaving state service. He explained that the conflict arose when a person was working on issues they had specifically worked on as a state employee in a personal and substantive way. He stated that just because as chief of staff, a person engaged in working with the legislature on issues, did not mean the person could not engage in the same general work following state service. He stated it was issue specific, which was the time a conflict waiver would be necessary.

Representative Josephson referenced a document in members' packets showing that previous administrations believed a former state psychiatrist should get a waiver from a future employer in the field of psychiatry. He stated it was hard to imagine how performing the psychiatric care for patients at the Alaska Psychiatric Institute (API), knowing about the psychiatric care, and talking about it with a future employer could be a threat to public interest. However, he stressed that the former public employee had been required to get a waiver. He emphasized that while in the current case, Mr. Taylor believed it was up to Mr. Stevens, under the Executive Branch Ethics Act, to be the judge and jury of whether he needed to contact Mr. Taylor to talk about a conflict. He asked Mr. Taylor if that was what he believed had been passed as the law.

Mr. Taylor believed the statement by Representative Josephson was a mischaracterization of what he had stated. He clarified that under the ethics act, any violation of the act would be personal to Mr. Stevens. He elaborated that Mr. Stevens had an obligation under the act to follow the statute under discussion. He stated that Mr. Stevens was not the judge and jury, there were outside sources. He elaborated that the AG's office received ethics complaints all of the time from third parties. He relayed that if the Department of Law (DOL), another department, or the governor became aware of actions a former employee was taking, they could raise the issues at the time. He clarified it was not completely up to Mr. Stevens to police himself, there were other safeguards in place under the ethics act. He stated that for a waiver to be necessary, Mr. Stevens would have to engage in an issue for

ConocoPhillips that he directly engaged in as a state employee in a personal and substantive manner. He did not understand how a general waiver would protect the state under the current circumstance. He believed giving a general waiver to Mr. Stevens on the issue, it would circumvent what the legislature had put in place to protect the State of Alaska. He explained it was the reason he was insistent on looking at each individual issue on a case-by-case basis. He added that he fully expected issues would arise in the coming months and years where the AG and governor would need to evaluate whether to grant Mr. Stevens an issue-specific waiver.

[9:10:58 AM](#)

Representative Josephson paraphrased Mr. Taylor's statement [from a previous meeting] that he was doing some rethinking about the future of the Janus litigation. He asked for verification that Mr. Taylor had signed many of the pleadings in the past couple of years for the state on Janus related litigation.

Mr. Taylor replied that it was a distinct possibility that his name appeared on some of the pleadings. He expounded that typically the AG's name was on the pleadings. He could not specifically recall whether his name had appeared on the documents, but he had been involved in his role as the deputy attorney general on the issue.

Representative Thompson asked what the state was doing about the 9th circuit court's decisions on the open carry in Hawaii and on the magazine limitations in California. He asked how the decisions impacted Alaska.

Mr. Taylor responded that the State of Alaska cared deeply about the 2nd Amendment. He found the two specific cases to be alarming in a number of ways. He shared that Alaska had joined an amicus brief in the 9th Circuit, challenging the California law. He detailed that the law banned certain capacity magazines and it was the state's contention that the law was unconstitutional under the 2nd Amendment. He reported that DOL was monitoring the Hawaii case and believed the 9th Circuit got the ruling wrong. He elaborated that the case eviscerated the 2nd Amendment's protection of the right to bear arms. He explained that the Hawaii law prohibited people from carrying firearms unless they could show a good reason to the state.

Mr. Taylor relayed that the cases did not directly impact Alaska's law or current right to bear arms under the state and U.S. constitutions. He explained that if the legislature decided to pass legislation banning magazines or prohibiting the right to carry firearms without demonstrating a good reason, the laws would be constitutional in the eyes of the California court and the 9th Circuit court. He reiterated that the cases did not change anything pertaining to Alaska law; however, it allowed future legislatures to delve into the two areas.

[9:14:32 AM](#)

Representative Thompson asked what the state was currently doing to defend its statehood and resource development rights.

Mr. Taylor replied that it was an area of law that had always been a priority for DOL; the department had been dealing with the issues and sorting them out since statehood. There were currently many ongoing cases related to statehood defense including navigable water issues, RS 2477 issues, resource development issues, and management of fish and game. He highlighted the Tongass where there was a federal exemption from the roadless rule. He detailed there had been two lawsuits challenging the exemption. He explained that Alaska had intervened with 22 other parties asking the court to uphold the exemption from the roadless rule. He stated that within the Natural Petroleum Reserve-Alaska (NPRA) the Bureau of Land Management (BLM) had issued a revised management plan. There had been two lawsuits filed by environmental groups challenging the revised plan and Alaska had intervened in both actions.

Mr. Taylor continued to address the question by Representative Thompson. He reported that the state had intervened in multiple lawsuits challenging decisions related to the Alaska National Wildlife Refuge (ANWR). He stated that the Obama Administration had limited hunting in the Kenai Wildlife Refuge, which DOL had appealed to the 9th Circuit. He cited the Ambler Road as another example. He detailed that the federal government had approved the road but there had been several cases from environmental groups challenging the approval. He relayed that the state had intervened in the cases. He addressed an issue related to Cook Inlet waters where the 9th Circuit found the

federal government needed to manage the federal waters adjacent to the state waters, whereas previously the state had management over those waters. The department was currently working with the federal government on the issue as it developed the management plan. The department wanted to ensure the management plan worked in conjunction with the state plan in state waters.

Mr. Taylor continued to answer the question by Representative Thompson. He highlighted an issue where the federal subsistence board delegated authority to local land managers, which the state felt violated the Alaska National Interest Lands Conservation Act (ANILCA). He addressed the proposed Pebble mine project and clarified the issue was not about support or opposition to the project. He referenced the Army Corps of Engineers denial of the 404 clean water permit and explained that the Army Corps could deny a permit based on several criteria. He stated that the Army Corps' denial was not based on any of the specified criteria. He shared that DOL had tried to intervene in the case, which was an agency decision. He explained that the state had been denied due to not having sufficient interest even though the mining project was planned on state land. The department was continuing to monitor the situation and was asking the Army Corps to follow its own process. He remarked that if the Army Corps failed to follow the process in the Pebble project, it could fail to follow the process in any development within Alaska.

Mr. Taylor provided a final example in response to Representative Thompson's question. He explained that Hilcorp had received a federal permit to conduct seismic testing in Cook Inlet. He detailed that a group had sued to challenge the federal permit and the state had intervened to thwart the federal decision. He relayed that the examples were just a handful of the many cases in regard to statehood rights and resource development. He expected many more cases in the coming years. He thought the state was in for a considerable expenditure of resources in defense of statehood rights.

[9:19:12 AM](#)

Representative Johnson referenced Mr. Taylor's previous statements about working with LBGTQ groups. She believed former Senator Chris Birch and former Representative Chuck Kopp had taken up a law passed in Utah, which she believed

had merit. She asked if Mr. Taylor had been referring to the legislation.

Mr. Taylor confirmed it was the legislation he had referred to [during a previous meeting]. Former Senator Birch and Representative Kopp had agreed to sponsor the bill and it was something he had worked on with them for many years to try to weigh the individual rights of the LGBT community with the religious freedoms guaranteed under the state constitution.

Representative Johnson stated that one of the items that came out of the DOL budget subcommittee was a carve-out in the Civil Division related to Janus litigation. She asked how much contractual Janus legislation Mr. Taylor anticipated. She stated the action was unprecedented and was typically done through intent language. She asked how the budget action telling DOL what it could not do would impact his job.

Mr. Taylor replied that the department had taken a number of measures to scale back on spending related to Janus. He shared that the department had worked hard with the opposing party (the union) to stipulate the facts. He explained that agreeing on the facts took out much of the litigation and the motions typically seen in litigation and made for a streamlined record during appeal. He detailed that the agreement on facts saved a significant amount of time and effort. The department had also pulled back the role of outside counsel substantially. He relayed the department was taking a serious look into whether to appeal the decision and it had worked with opposing counsel in the action to delay a decision on appeal.

Mr. Taylor explained the case was before the [U.S.] Supreme Court and cert had been requested. He noted that not all of the thousands of cases that asked for cert were granted a hearing before the court. The department was hoping cert would be granted in the Belgau litigation currently before the court. He discussed that the state had been sued by two employees in the Janus litigation alleging the state and union failed to follow their constitutional rights. He stated that both cases had been stayed while awaiting the court's decision on Belgau. The state had put off an appeal decision directly with the union until the decision had been made. He explained that all of the measures substantially reduced spend on the case.

9:24:29 AM

Mr. Taylor addressed the second part of Representative Johnson's question related to a cut to the DOL budget in the subcommittee. He explained that the subcommittee had thought cutting the chief of staff position was a cut to general funds. He clarified that the chief of staff was funded through IAs [inter-agency receipts] between the different divisions. He explained that the chief of staff served the Criminal Division, Civil Division, and AG; therefore, the divisions shared the funding for the position. He stated that unfortunately the reduction actually went to the AG's executive assistant. He depended on the position to help keep track of matters and for outreach to the public and the legislature. Additionally, the cut went to the department's legislative liaison. He hoped the funding could be retained for the chief of staff position. He wanted the position to help coordinate efforts on addressing sex crimes in Alaska. He elaborated on his plan to involve multiple departments and the governor's office in the multifaceted issue.

9:26:30 AM

Representative Johnson referenced a "rather scathing" letter in members' packets [pertaining to the appointment of Mr. Taylor as AG]. She read from the letter:

He's announced a so called sincere desire prioritizing and addressing the sexual violence crisis that Alaska faces without any concrete plans of how to do so.

Representative Johnson asked Mr. Taylor to provide more detail on his plans.

Mr. Taylor replied that he had reviewed the letter earlier in the day. He categorically condemned the actions of his predecessor related to texts he had sent while in his position as the attorney general. He believed he had made it clear in various hearings that it was appropriate for his predecessor to be removed from his role as AG. He addressed his plan regarding sexual assault crimes, which had expanded in scope. He shared his hope to involve the Department of Public Safety, Department of Corrections, and Department of Health and Social Services in a multifaceted approach to combatting sex crimes in Alaska. He elaborated

that the first meeting had been held with the departments and governor's office the previous week. He stated that while the plans were in their infancy, there were certain things he could do immediately as AG. He detailed that the department would provide annual training on domestic violence and sexual assault for its prosecutors and support staff. The department had created a new full-time position to train the prosecutors and answer prosecutors' questions on the difficult trials. The department had asked for a budget increase to fund ten additional prosecutors and nine support staff to house the sex crimes section. He stressed it was not a problem the state could prosecute its way out of, but the effort reflected one prong in the approach.

Mr. Taylor shared that the department currently had a section of five prosecutors. He stated that all prosecutors had the ability to prosecute sex crimes, but the specific unit was designed to focus on the issue. He added there had been a turnover of six in a section of five attorneys in the past two years. He believed burnout was the cause of the turnover. He elaborated attorneys currently had about 67 cases per person. He added that given the average time it took to prosecute a sex crime, 30 cases alone would put the attorneys well over 40 hours per week. Additionally, the type of prosecution was emotionally taxing. He remarked that the attorneys felt passionate about their work, which included emotional stress caused by not having enough time to focus on each of the cases. He stated that the ten additional attorneys and nine additional support staff would go a long way to reducing the caseload. He was hoping to build up a cadre of seasoned officers in the area that could act as mentors to newer attorneys. He hoped to reduce the caseload into the 40s down from 67 with the new prosecutors. Additionally, he hoped the reduced caseload would reduce turnover. He hoped the changes would ultimately provide better support for survivors of sex crimes.

[9:32:10 AM](#)

Representative Johnson stated that with the new federal administration a number of things had come out from the White House. She stated that one current topic was about rights for women athletes and the ability for transgender athletes to compete. She considered whether the state needed related legislation or if it would hold up in light of what the federal government was saying about states'

rights. She stated that federal overreach could extend from criminal issues to the state's land rights. She remarked that it was another issue when the federal government stated it would withhold federal education funds if the state failed to comply. She asked how to push back against the federal government on a variety of issues. She asked Mr. Taylor to speak to the current rights and some of the legislation happening in other states.

Mr. Taylor replied that DOL was constantly weighing the decision on whether to push back on what it was seeing. He referenced the American Rescue Plan Act (ARPA) that provided funding to the state but prohibited states from decreasing taxes while receiving the federal funds. He stated that the entity responsible for taxation within Alaska was the legislature and he believed the federal government's requirement was an inherent conflict. He thought it was a direct attack on the legislature's right to decide tax issues within the state. He informed the committee that the department would push back on the requirement and felt strongly that the federal government had overstepped its bounds. He stated it was one example of how the department evaluated issues and when it decided to push back.

[9:35:35 AM](#)

Representative Carpenter believed there was somewhat of a stain on the reputation of DOL given the unprofessional behavior of the last two attorneys general. He thought the behavior had likely impacted the climate and possibly the culture of the department. He believed it may also impact the ability to address recruit and retention issues. He asked what Mr. Taylor would do to address the culture and climate in the department as well as recruitment and retention.

Mr. Taylor replied that the words accurately described his feelings about the situation. He agreed the former situations were a stain on DOL in public perception and within morale within the department. He stated that the issues weighed heavily on his mind, and he felt a responsibility to correct the issue within the public eye and within the department. He explained that when it had occurred, he acted quickly to address all of the questions from staff within the department. Additionally, he had left his position as deputy attorney general and there had been

numerous questions about what would happen there. He had addressed the issues quickly. He stated that some of the concern had been whether an outsider would be brought in for the deputy position. He decided they needed a trusted person within the department who would have full support from other staff. He had quickly reached out to Cori Mills who had taken over as the new deputy attorney general for the Civil Division. He stated that Ms. Mills was doing a fantastic job and he believed her selection had gone a long way toward calming the nerves of staff and other department attorneys.

Mr. Taylor continued to address the question by Representative Carpenter. He explained that the story of Mr. Ed Sniffen had broken over a weekend and the first thing employees saw when they returned to work was an email from Mr. Taylor addressing the elephant in the room and letting employees know he understood how difficult the situation was. He elaborated that Mr. Sniffen had been well loved and respected within the department and had worked for the department for over 20 years. He acknowledged that people were processing the news at different speeds and in their own way. Additionally, he had let employees know that the department's strength resided with the attorneys and staff and not the person residing at the AG's desk at a given time. He believed the quick and decisive action had gone a long way toward stabilizing internally.

Mr. Taylor shared that recruitment and retention had been an issue for the department for quite some time. He detailed that the department was in the process of finalizing a strategic plan and one of the four priorities identified was on recruitment and retention. He noted the other three priorities tangentially touched on the same issue. The department had identified a number of ways where recruitment could be improved. He detailed that the department wanted to expand the locations where recruitment notices were posted. He expounded that DOL planned to partner with law schools and other institutions to develop pipelines into the department and develop relationships to reach law students. Additionally, DOL wanted to better utilize its attorneys in the recruiting process. He stated that attorneys within the department all knew individuals with the same interests who may be willing to join the team. He highlighted the department's internship program and reported that he was looking into the possibility of developing an externship program where third-year law

students could work for the department and receive school credit. He stated that it DOL also needed to improve the recruitment website as well. He addressed the importance of accentuating the positive aspects about living in Alaska.

Mr. Taylor continued addressing ideas related to recruitment. He spoke about the need to be more creative in the process. He explained that when vacant positions were posted they sometimes received one or two applicants, which meant the position needed to be reposted. He shared that a fellowship position had been posted, which had received an overwhelming response. He believed fellowship positions needed to be better utilized. He detailed it was a two-year program. He explained that many times people in fellowships enjoyed working at the department and left the position early to take a full-time position within the department. He stated it was a great tool the department should better utilize.

Mr. Taylor discussed retention and shared that DOL was trying to improve training opportunities. He elaborated that the department had partnered with some outside groups to provide training and was working to increase internal training as well. The department was considering telecommuting options like all other departments. He relayed that the option had been discussed prior to COVID with the understanding it may be a good option for some of attorneys. The department believed it needed to clarify and expand its existing promotional tracks so that attorneys understood the criteria.

[9:43:03 AM](#)

Mr. Taylor continued to address the question. He loved that DOL served the people of Alaska and worked on a broad variety of law in the state. He detailed there were almost 300 attorneys and 15 sections within the Civil Division doing distinct work. He wanted to encourage attorneys to move around the department to gain experience in other sections. He wanted attorneys to feel like they could move to different section if they were dissatisfied with their work in order to keep attorneys within the department. He stated that the movement between sections would mean attorneys would be cross trained on various aspects, which would be useful for coverage if another attorney was out sick or on maternity leave.

9:44:12 AM

Representative Carpenter was encouraged by Mr. Taylor's response that he recognized the importance of addressing the elephant in the room with department employees. He remarked that unprofessional behavior impacted the quality of work done. He asked about strategic vision and what the largest challenges for the department were in the next several years.

Mr. Taylor replied that a backlog of criminal and civil trials that had piled up due to COVID. The department was currently pushing for misdemeanor criminal trials to start back up. The department believed misdemeanor trials were ideally suited for the COVID environment because the trials involved fewer people and were shorter than other types of criminal trials. The department was hoping to get the criminal matters moving through the courts. He relayed that misdemeanor criminal trials had shorter sentencing times. He stated that in order to comply with the constitutional requirement for speedy trials, the department felt a necessity to start pushing the courts to open and start conducting trials.

Mr. Taylor anticipated there would be a substantial increase in statehood defense issues, which was one of the reasons the department was requesting for \$4 million over the next four years to help address the concerns. He reported that DOL was already working at capacity in the sections dealing with the topic. He relayed it would be a real challenge as the department addressed the necessary actions to deal with statehood defense. He stated that the department was addressing the issue with a multifaceted approach. In addition to the budget request, the department was communicating frequently with its counterparts in other states with large federal land holdings and resource development. He explained that the states kept each other apprised of federal actions that may have an impact. For example, he would call West Virginia to notify them if he heard about coal coming up on the federal register.

Mr. Taylor continued that he hoped to use combined resources to address some of the issues. He highlighted the executive order related to offshore/onshore oil leasing. He elaborated that the department had joined with other states led by Louisiana on the issue, which had saved an immense amount of resources within DOL. He detailed that the state

had been able to add Alaska-specific items to the complaints. He stated there would likely be much more of that type of thing. He remarked that Alaska was different than the Lower 48; it had ANILCA and numerous things guaranteed in statehood. There were many things that were Alaska specific that the state would have to address and defend on its own, which would be a big hurdle.

[9:48:45 AM](#)

Mr. Taylor mentioned that he thought there would be an increase in child in need cases as society returned to normal following COVID (as kids started returning to school, spending time at friends' houses, going to doctor appointments, and other). He believed there would be increased reports of child abuse and neglect. He remarked that COVID had been difficult financially and emotionally and those types of environments historically had resulted in more child in need cases. He shared that the department was gearing up for that possibility. He stated that the specific work could be a thankless job and he applauded attorneys in the section devoted to the issues. He shared that he and his wife had brought in her cousin's two children - they had gone through the system as infants and were with them for two years. He stated the system was near and dear to his heart. He worried about the state's capacity to address all of the cases.

[9:50:20 AM](#)

Representative Carpenter referenced a question he had previously asked about the state's land grant issue with the university. He asked if Mr. Taylor had looked into the issue. He wondered what could be done to increase the lands available to the land grant university.

Mr. Taylor replied that he had not thoroughly reviewed the issue. He shared that he had a memo in his inbox that he had received the previous afternoon outlining the issues. He relayed that after he had spoken with Representative Carpenter, he had reached out to other attorneys in the department to be briefed on the topic. He imagined there would be some follow up meetings after he reviewed the memo. He hoped to have more information to provide the next time he spoke with the committee.

[9:51:24 AM](#)

Co-Chair Foster stated he had been happy to hear Mr. Taylor mention RS 2477s or historic trails and Alaskans' ability to use the trails. He reported that there were numerous historic trails in the park on the Seward Peninsula in Nome. He highlighted the Serpentine Hot Springs 100 miles north of Nome. He stated that currently most people reached the hot springs by plane; however, most people did not have a plane. He explained that people would love to be able to take an ATV to access the area. He remarked that there were many trails throughout the state where access was restricted for similar reasons. He was glad to hear the state would push back against the federal government to allow greater access. He asked if there was anything specific the department was currently working on or any specific future plans to try to break the issue that had been around since ANILCA.

[9:53:05 AM](#)

Mr. Taylor answered that it was a challenging issue because it was place specific. He elaborated that each place the state asserted an RS 2477, it tried to work with federal counterparts and other land interest owners in developing the areas and asserting the easement through the areas. He noted that the federal government was an unwilling partner and in order to pursue the issue was almost always through some form of litigation. The department was hoping to find a way to prevent that in the future and to have a better relationship with federal counterparts on the issue.

Mr. Taylor stated that DOL was working hard to develop the relationship, which would hopefully bear fruit. The department was looking at ways to streamline the process because it was resource intensive. He stated that each RS 2477 required experts and significant research for historical evidence. He stressed it was a time consuming and expensive process; however, the department would continue to fight the fight. He believed it was important for all Alaskans to have access to the lands. He agreed that not everyone in the state had access to a plane where they could bypass some of the areas and they relied on easements to gain access to lands guaranteed at statehood. He fully understood the concern.

[9:55:01 AM](#)

AT EASE

9:56:56 AM

RECONVENED

Co-Chair Merrick relayed the committee would resume the confirmation hearing with Mr. Taylor at the afternoon meeting.

#

ADJOURNMENT

9:56:56 AM

The meeting was adjourned at 9:57 a.m.