

HOUSE FINANCE COMMITTEE  
April 22, 2021  
9:03 a.m.

[9:03:45 AM](#)

CALL TO ORDER

Co-Chair Merrick called the House Finance Committee meeting to order at 9:03 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

ALSO PRESENT

Representative Geran Tarr, Chair of the House Fisheries Committee, Sponsor; Thatcher Brouwer, Staff, Representative Geran Tarr.

PRESENT VIA TELECONFERENCE

Jeffrey Schmitz, Director, Division of Motor Vehicles, Department of Administration; Dale Kelley, Commissioner, Commercial Fisheries Entry Commission; Frances Leach, Executive Director, United Fishermen of Alaska; Leslie Isaacs, Administrative Service Director, Department of Administration, Office of Management and Budget, Office of the Governor; Ryan Fitzpatrick, Commercial Analyst, Division of Oil and Gas, Department of Natural Resources.

SUMMARY

HB 28 REGISTRATION OF BOATS: EXEMPTION

HB 28 was HEARD and HELD in committee for further consideration.

HB 81 OIL/GAS LEASE:DNR MODIFY NET PROFIT SHARE

HB 81 was HEARD and HELD in committee for further consideration.

Co-Chair Merrick reviewed the meeting agenda.

#hb28

HOUSE BILL NO. 28

"An Act relating to the registration of commercial vessels; and providing for an effective date."

[9:04:27 AM](#)

REPRESENTATIVE GERAN TARR, CHAIR OF THE HOUSE FISHERIES COMMITTEE, SPONSOR, introduced the legislation. She identified HB 28 as a House Fisheries Committee bill. She detailed that Representative Louise Stutes had carried the bill in the last legislature, but it had not made it through the committee process due to the onset of COVID-19. There had been agreement by all House Fisheries Committee members to sponsor the bill during the current session.

Representative Tarr explained that the bill addressed a problem shared by all coastal communities and statewide due to the number of vessels in Alaska. She highlighted that several years back, the legislature had passed a derelict vessel bill [SB 92] with the intention of creating a fund to provide funding for the removal and associated cleanup of derelict vessels around the state. She reported that the passage of the legislation had created an inadvertent problem and redundant registration requirement. She elaborated that HB 28 sought to fix the error. She asked her staff to explain the bill and provide a sectional analysis.

THATCHER BROUWER, STAFF, REPRESENTATIVE GERAN TARR, introduced himself. reviewed the legislation with a prepared statement:

This bill exempts active commercial fishing vessels from a duplicated registration requirement that was created with the passage of the derelict vessel bill in 2018. Since the passage of the derelict vessel bill, commercial fishermen who already register with the Commercial Fisheries Entry Commission, now also have to register with the Division of Motor Vehicles. Prior to the passage of the derelict vessel bill, documented commercial fishing vessels only had to register with the Commercial Fisheries Entry Commission every year.

The rationale behind the derelict vessel bill was to provide the state and local municipalities with a state maintained database on who owned and operated vessels in Alaska's waters, as well as how to contact those individuals. As you all know in this committee, derelict vessels are a big problem coastwide in Alaska. At times, an owner can abandon a vessel because they can no longer afford to maintain it or properly dispose of it and an abandoned vessel such as the Lumberman that sat in the Gastineau Channel for years, can cost millions of dollars to properly dispose of. If the owner of the vessel cannot be contacted or held liable, the cost is often passed on to the city where the vessel is moored or anchored, or sometimes to state and federal governments.

Commercial fishermen understand the problem with derelict vessels and often pay the price if a vessel sinks and pollutes important fish habitat.

Mr. Brouwer relayed that while HB 28 was a fix to the derelict vessel bill, it maintained the registration requirement. He stated that commercial fishermen understood the need to address derelict vessels.

[9:08:17 AM](#)

Mr. Brouwer communicated that with the passage of the derelict vessel bill, commercial fishermen were required to register with the Division of Motor Vehicles (DMV). He explained that registration with the DMV was unnecessary because the Commercial Fisheries Entry Commission (CFEC) already maintained a public online database containing information on all commercial fishing vessel owners and

their vessels. He elaborated that commercial fishing vessels were required to renew their license annually with CFEC and were mandated to display their five digit registration number on both sides of the vessel in 12 inch numbers. Additionally, owners were required to display a new placard annually on the port side of the vessel. He explained that the display of the license number and the decal provided enforcement officers with the tools needed to ensure commercial fishing vessels were registered.

Mr. Brouwer explained that the legislation exempted undocumented fishing vessels, a smaller subset of vessels, from registering with the DMV. He elaborated that the legislation would require undocumented fishing vessels to register with CFEC only. He reported that the bill instituted an annual \$8 fee for all CFEC registered vessels, which was in addition to fees already paid by commercial fishing vessel owners for vessel renewal and permits. The \$8 annual fee was in lieu of the current three-year \$24 fee charged by DMV. He expounded that the bill would be cost-neutral as commercial fishing vessel registration was transferred back to CFEC. He detailed that the \$8 annual fee helped support programs including the Kids Don't Float and the Alaska Marine Safety Association boating safety programs. Additionally, a small portion of the fees would go to the derelict vessel fund.

Mr. Brouwer highlighted that commercial fishing vessels were the backbone of the state's most vital industry and the legislation would streamline the registration requirements for the vessels, while still providing the necessary contact information created under the past derelict vessel bill.

Co-Chair Merrick asked to hear the sectional analysis.

[9:11:12 AM](#)

Mr. Brouwer provided a sectional analysis (copy on file):

Section One

Amends AS 05.25.055(i) to exempt commercial vessels with a valid license issued by the Commercial Fisheries Entry Commission, under AS 16.05.490 or AS 16.05.530, from the provision that requires owners to register their vessel with the Division of Motor

Vehicles and display the registration number issued by the Division.

#### Section Two

Amends AS 05.25.056(a), the existing Division of Motor Vehicles titling statute, to clarify that undocumented registered Commercial Fishing Entry Commission licensed vessels, will still be required to title through the Division of Motor Vehicles.

Mr. Brouwer noted that the derelict vessel legislation [passed several years back] had included a title requirement for undocumented vessels. He continued reviewing the sectional analysis:

#### Section Three

Adds a new section to AS 16.05.475, that assesses an annual \$8 registration fee for vessels licensed with the Commercial Fisheries Entry Commission, beginning January 1, 2022. This is in lieu of the current 3-year \$24 fee collected by the Division of Motor Vehicles at the time of registration or registration renewal.

The fee will be accounted for separately for as provided in AS 05.25.096(b), to be made available for use by the Departments of Administration, Natural Resources and Commerce, Community and Economic Development.

#### Section Four

Adds a new section to the uncodified law of the State of Alaska which requires the Commercial Fisheries Entry Commission waive the \$8 dollar registration fees for calendar year 2022 for vessel owners that already paid the registration fee to the Division of Motor Vehicles for 2020.

Mr. Brouwer elaborated that if a vessel owner had paid the three-year fee in 2020 to the DMV, the owner would not be charged again by CFEC as the state transitioned back to registering vessels with CFEC only. He continued reviewing the sectional analysis:

Additionally, the commission will waive the \$8 registration fee for both calendar year 2022 and 2023 if a vessel owner has paid their registration fee to the Division of Motor Vehicles in 2021.

This section ensures that as vessel owners' transition to paying an extra \$8 to register with the Commercial Fisheries Entry Commission, that do not pay the Commission for the years they have already registered for with the Division of Motor Vehicles.

#### Section Five

Adds a new section to the uncodified law of Alaska to make section one of this act retroactive to January 1, 2021.

Mr. Brouwer expounded that if the legislation passed, vessels that did not register with the DMV in 2021 would be fine. He concluded his review of the sectional analysis with Section 6:

#### Section Six

Establishes an immediate effective date for the remainder of the bill.

[9:14:14 AM](#)

Representative Edgmon recalled that when Senator Peter Micciche's bill SB 92 had passed three years back, the Department of Public Safety (DPS) had essentially stood down. He clarified he was speaking in the context of the Bristol Bay region and explained that he had been contacted numerous times. He detailed that he had recently been contacted by a fisherman in Bristol Bay who was concerned the department would enforce the rule under SB 92 if the current legislation did not pass. He asked whether Representative Tarr had heard the department would stand down for another year in terms of enforcing the provision. Alternatively, he asked if fishermen would be required to comply with the duplicative registration requirement if HB 28 did not pass.

Mr. Brouwer replied that he did not have the answer. He notified the committee that the DMV director was available online for questions. He added that he had not personally reached out to DPS to ask whether the department planned to stand down another year. He reported that information provided by DMV showed there were commercial fishing vessel owners registering with the DMV in case the provision was enforced. He would follow up with the information.

Representative Edgmon highlighted a problem in Bristol Bay where thousands of people congregated in small areas where there were minimal DMV services. He explained the situation created a bottleneck. He noted that as innocuous as the bill may appear, it was important to many fishermen.

JEFFREY SCHMITZ, DIRECTOR, DIVISION OF MOTOR VEHICLES, DEPARTMENT OF ADMINISTRATION (via teleconference), replied that in regard to Representative Edgmon's question, he did not have information about what law enforcement would do.

[9:16:50 AM](#)

DALE KELLEY, COMMISSIONER, COMMERCIAL FISHERIES ENTRY COMMISSION (via teleconference), introduced herself as one of the two CFEC commissioners. She provided a PowerPoint presentation titled "Commercial Fishing Vessel Licensing in Alaska," dated March 2021 (copy on file). She read from prepared remarks beginning on slide 2:

Owners and operators of commercial vessels used by the seafood industry are subject to many state, federal, and international requirements. Each state and country handles licensing according to their unique needs. CFEC has licensed Alaska's commercial fishing fleet for decades and has amassed a significant amount of information on these vessels and their owners. It's our hope that CFEC experienced, extensive database will be of assistance in helping the state achieve the goals and objectives of the derelict vessel prevention program.

[9:18:46 AM](#)

Ms. Kelley turned to slide 3 and addressed 2021 commercial fishing vessel licensing rules:

Generally, all commercial fishing vessels, tenders, processors, and transporters, must be licensed by CFEC every year. However, some vessels are exempt like those used solely at salmon setnet sites or in some westward Alaska waters. Fees for commercial fishing vessels are based on the overall length of the vessel, as defined by the U.S. Coast Guard. A commercial vessel license consists of a triangular metal ADF&G numbered plate issued when the vessel is first licensed with CFEC and then a color-coded sticker and

receipt are issued each year. If the vessel owner is licensed for salmon net fishing, the license will also include an area tab specific to the fishing permit.

Ms. Kelley advanced to slide 4 and continued reading from prepared remarks:

CFEC is the licensing agency for commercial vessels operating in Alaska, but we require specific information from DMV and U.S. Coast Guard as part of that process. Either U.S. Coast Guard documentation or state registration is required for all motorized vessels used in commercial fishing activities. The U.S. Coast Guard registers and titles documented vessels, the DMV registers and titles undocumented vessels that require registration. Each year, CFEC licenses roughly 5,000 documented and 4,000 undocumented vessels. The U.S. Coast Guard requires documentation for any U.S. vessel over 5 net tons that engages in commerce between two U.S. ports. Documented vessels are usually 32 feet or longer. Owners must prove that U.S. citizens own a 75 percent interest in the vessel and that the vessel meets all U.S. build requirements. U.S. Coast Guard documentation includes an Abstract of Title, which tracks the full history of the vessel.

Undocumented vessels are generally under 5 net tons and 32 feet or less in length. These vessels must be registered and titled by the Department of Motor Vehicles. In order to be eligible for an annual vessel license, vessel owners must first provide CFEC with either U.S. Coast Guard documentation or a DMV title and registration.

Vessel licenses must be renewed annually, and fees are based on Coast Guard definition of length with few exceptions, all permitted commercial fishing activities in state waters must be associated with a CFEC licensed vessel. Due to COVID-19, fewer vessels were licensed in 2020 than normal. So, 2019 provides a more typical snapshot of recent year vessel numbers. That year, CFEC licensed 8,806 vessels and took in over \$629,000 in fees.

Ms. Kelley showed a screenshot of the CFEC website on slide 5:

Slide 5 should be a screenshot of CFEC's webpage, where commercial fishermen and commercial vessel owners can access all CFEC licensing forms. Vessel owners have two options, they can download and submit CFEC license application forms or apply through CFEC's online licensing portal, which we refer to as Leon.

[9:21:13 AM](#)

Ms. Kelley turned to slides 6 through 8 and continued reading from prepared remarks:

There are multiple forms available to assist vessel owners with their licensing needs from change of information to securing a duplicate license in the event the original is lost.

Slide 7 is the vessel license application. I have highlighted various information CFEC gathers in order to verify vessel ownership. Whether the owner or an agent secures the vessel license, they are required to provide all of the requested information about ownership. Both paper and online applications are signed by the applicant under penalty of perjury.

Vessel information is also required on the commercial fishing permit application. The name of the vessel is embossed on the fishing permit card, which is not printed until the permit is associated with a vessel for the fishing season. Note that it isn't unusual for one person in a fishing operation to own the permit and the other to own or lease the vessel.

[9:22:18 AM](#)

Ms. Kelley addressed slide 9 with prepared remarks:

Finally, the Leon online renewal system requires the applicant to state whether or not they are the owner or the agent of the vessel owner before even advancing to the licensing document.

Ms. Kelley advanced to slide 10 showing various documents commercial fishermen and vessel owners may receive from CFEC during the annual licensing process. She read from prepared remarks:

All permit cards and associated paperwork are color-coded by year for ease of enforcement. The permit card in the lower left includes essential information about the permit holder and vessel and is used when making fishery landings. Note that a fisherman will not receive that card until a fishing permit has been linked to a properly licensed vessel for the fishing year in question. A triangular shape and numbered ADF&G vessel plate must be prominently posted on the side of the vessel. A licensing sticker is affixed to it as visible proof of current year licensing, similar to DMV's vehicle license and registration stickers. The vessel license receipt includes key information about the vessel and its owner. If the vessel is used in a salmon net fishery, there will be a letter designating the permitted fishing area. If the license holder has a salmon net license for more than one region and wishes to change areas during a season, they must contact CFEC and often ADF&G to get permission to trade out the area tab.

[9:24:06 AM](#)

Ms. Kelley showed a sampling of color coded fishing cards issued annually on slide 11. She reviewed slides 12 through 14 with prepared remarks:

CFEC has developed and maintained a sophisticated online public permit and vessel lookup system. Using a few key pieces of information, we can find out a great deal about both documented and undocumented vessels. Note the tabs along the top, which will help guide you to select search options. Just this week a change was made to this page. The status column now shows the dates the vessel license is valid. In this case, we used quite a bit of information to search for the documented fishing vessel Ida Lee, who was owned by a person some of you might remember. Note that the first search attempt will provide the information seen in the white rows that begin with the year. Clicking on the plus sign in a white row will reveal a dropdown box with additional information as seen in the blue area with the green circle. Data here includes vessel weight, engine type, whether the vessel has refrigeration, and other details.

This slide shows the search of an undocumented vessel [slide 13] using only the owner's name, in this case a well-known set netter. As you can see, a more streamlined search will lead you to a similar array of information.

Those folks who would like even more information on vessels and owners can use the yearly downloads tab to obtain spreadsheets that can be sorted to create spreadsheets that can be sorted to meet specific data needs.

[9:25:45 AM](#)

Ms. Kelley provided a summary on slide 15:

With few exceptions, all commercial fishing vessels, tenders, floating processors, and transporters must be licensed by CFEC every year. USCG provides registration and title for documented vessels. DMV titles and registers undocumented vessels. CFEC requires both title and registration documents before issuing an ADF&G plate and annual vessel license. CFEC licensing materials require accurate information on the vessel and its ownership; applications are signed under penalty of perjury. CFEC maintains an extensive database on each commercially licensed vessel, which is both searchable and downloadable from our public website.

[9:26:48 AM](#)

Representative Carpenter was curious how an owner of a documented or undocumented boat would remove their registration from the database if they sold their boat or were otherwise no longer responsible for a boat.

Ms. Kelley believed Representative Carpenter was asking whether a prior owner's name would be removed from the database. She explained that the CFEC database showed a boat's entire ownership history. She did not know if there was a process for removing a name upon request.

Representative Carpenter made a comparison to vehicle registration where there was a way to show the vehicle had been sold. He was curious whether there was a similar process for boats. He thought it sounded like there was not

a similar process. He stated his understanding that it sounded like the next owner registration would prove the boat was owned by a new person. He wondered what would happen if a new owner failed to register the boat.

Ms. Kelley answered that by law, fishermen were required to notify CFEC if a vessel was sold. She referenced slides 12 and 13 showing the CFEC online database and listing. She explained that if someone did not register a vessel in their own name, it would not be licensed for the current year. She elaborated that the placard displaying the DFG number remained with a vessel for its entire lifespan. She confirmed that if someone did not license their vessel, the database would not reflect the new owner.

Representative Carpenter observed that if a person sold their boat, the individual should either keep proof of the sale or sell to a responsible party.

[9:29:39 AM](#)

Representative Wool asked what distinguished a documented vessel from an undocumented vessel. He referenced Ms. Kelley's testimony that DMV titled and registered undocumented vessels.

Ms. Kelley answered in the affirmative. She explained that documented vessels had papers showing the U.S. Coast Guard titled and documented a vessel.

Representative Wool observed that according to the CFEC chart [on slide 4] an undocumented vessel was less than 5 tons and less than 32 feet. He asked for verification that if a vessel fit the aforementioned dimensions, it was considered undocumented and required the owner to go to the DMV.

Ms. Kelley replied in the affirmative. She confirmed that undocumented vessels would still go through the DMV if the bill passed. She elaborated that it was documented vessels that had run into a problem under the derelict vessel bill, where suddenly the requirements had changed. She explained that approximately 5,000 people who had not previously been required to go through the DMV were required to go through the DMV [as a result of the passage of the derelict vessel bill]. She stated it was her understanding that HB 28 was intended to correct the problem.

Representative Wool referenced the \$8 registration fee with CFEC. He pointed to the table on slide 4 and noted that the CFEC fee for the smallest vessel was \$24. He asked where the \$8 fee came in, which he believed seemed very low.

Mr. Brouwer clarified that the fees shown on slide 4 were already being charged by CFEC for the purpose of registering commercial fishing vessels. He explained that the \$8 fee would be in addition to existing fees. He added that the \$8 fee was in lieu of the current three-year fee of \$24 with DMV. He elaborated that if documented vessels no longer had to register with DMV and only registered with CFEC, owners would pay an additional \$8 annually.

Representative LeBon recalled his past work financing vessels and bank loans. He shared that the bank had used the DMV method to report a lien as a public record. He asked how a bank would show it had a lien or a security interest against a vessel.

Mr. Brouwer believed there were two different ways to show the information. He detailed that one method was through the U.S. Coast Guard documentation process. He believed members' packets included a document describing the U.S. Coast Guard documentation process ["Documentation and Tonnage of Smaller Commercial Vessels" (copy on file)]. He explained that when an owner went through the process, a certificate was received from the Coast Guard. He reported that the certificate could be used to secure the lien with a bank. Additionally, undocumented vessels would still be required to title with the DMV. He relayed that he would double check, but he believed it could be used for the lien.

Representative LeBon asked for assurance there would not be a loophole that would exclude banks from publicly showing their lien interest. He was very familiar with the Coast Guard preferred marine mortgage process that showed the bank's interest.

Mr. Brouwer answered that it was not the intent of the bill and he did not believe there were any loopholes. He would verify and follow up.

[9:34:22 AM](#)

FRANCES LEACH, EXECUTIVE DIRECTOR, UNITED FISHERMEN OF ALASKA (via teleconference), spoke in support of the legislation. She provided prepared remarks:

We represent 37 commercial fishing groups across the state, ranging from commercial crabbers in the Bering Sea down to commercial divers in southern Southeast Alaska. UFA fully supports House Bill 28, which will allow vessels registered with the Commercial Fisheries Entry Commission [to be] exempt from needing to register with the DMV. When the derelict vessel bill was first introduced, UFA was supportive of the bill. Fishermen know all too well the problem with derelict vessels as they are known for causing navigational hazards and environmental issues. We support the registration of vessels so that owners may be linked back to vessels in case of abandonment; however, at the inception of this bill, UFA asked the bill sponsor that vessels registered with CFEC be exempt from having to take that extra step to register with the DMV. However, as you know, this didn't happen, so here we are today trying to fix that oversight.

The purpose of this bill [SB 92] was to have a state managed database to track vessel owners. This is already what the CFEC does. Commercial fishermen register their boats annually with CFEC. Their information such as owner name, boat size, fuel carrying capacity, and many other details are all housed in a state managed database operated by the CFEC. As previously mentioned, vessels are also required to display their registration sticker on the port side of their fishing vessel, making them easy to identify. Requiring commercial fishermen to register with the CFEC and DMV is reinventing the wheel. Not to mention, making fishermen have to jump through more hurdles and pay more money.

In closing, we thank everyone who has been involved in correcting this issue so that boat owners may be held liable for abandonment while not having to duplicate what they already do as responsible boat owners.

9:37:01 AM

Representative Carpenter asked about responsible boat owners selling their boats. He asked if there was currently a way for prior owners to notify the state about the sale of a vessel, which would then be reflected in the database.

Ms. Leach answered that new owners were required to register with CFEC as a vessel permit holder. She elaborated that a person was required to register with CFEC if they planned to use a vessel for fishing. She hoped that within the process, a transfer of ownership would be shown.

Representative Carpenter explained he was trying to gauge whether there had ever had a problem with the issue.

Representative LeBon shared that he had just been told that CFEC was the vehicle for recording a lien on a vessel. He asked whether individuals looking to confirm that a vessel was free of any bank liens could easily find the information through CFEC. He was looking for assurance that the information was not complicated to access.

Mr. Brouwer answered that the publicly accessible database showed current registered vessels and vessel owners including address and contact information. He deferred to Ms. Kelley for additional detail.

Ms. Kelley clarified that CFEC was not a titling agency, which was the reason it needed U.S. Coast Guard documentation or DMV registration and title. She did not believe CFEC was the appropriate entity to talk to about liens. She suggested that DMV may be able to provide more clarity on the question.

Representative LeBon shared that in the past when he had been approached to finance the purchase of an aircraft, he had called the Federal Aviation Administration (FAA) with the aircraft N-Number and had received an immediate response. He explained that the aircraft N-Number was the only information required to initiate a search. He asked if it was possible to use the vessel information number to determine whether a boat of any size had an outstanding lien. He asked if the system was transparent and easy to use.

9:40:19 AM

Ms. Kelley replied that the DFG number assigned to a vessel remained with the vessel for its lifespan and was included in the CFEC database; however, lien information was not available on the database. She explained that she was not the best qualified to answer because CFEC was not a title agency. She suspected it would be necessary to look for lien information through a title agency.

Co-Chair Merrick asked Mr. Schmitz to weigh in on the question posed by Representative LeBon.

Mr. Schmitz asked for verification that the question was about whether DMV recorded liens on boats.

Representative LeBon stated that it depended on what a lender was financing. He provided tracking methods for other assets including the N-Number used to track aircrafts, the legal description used for a piece of real property, and the license plate or serial number used for automobiles. He detailed there was an easy process to determine whether there was a lien on any of the aforementioned asset types. He elaborated that the process gave purchasers assurance they were purchasing something that was free of any liens. He guaranteed that if a bank discovered a vessel with a lien was sold, it would move against the vessel immediately.

Representative Rasmussen asked whether proof of sale would remove liability from a prior vessel owner if the purchaser was a bad actor and chose not to register the vessel. She wanted to protect the individual acting in good faith and wanted to ensure responsibility fell where it should.

Mr. Brouwer replied that he would have to look into the lien information because he was unfamiliar with the specific topic. He relayed that to the best of his knowledge the bill did not make any changes involving liens and it was not the intent of the bill to make any changes related to liens. He would follow up on the questions.

Representative Rasmussen believed a lien would only apply if a loan were taken out. She referenced testimony by Ms. Leach and wanted to make sure that part of the goal was to identify the responsible party if a vessel was found abandoned. She thought that because there was not currently

a mechanism when a boat was sold, it could force someone into a cash sale. She believed a notarized purchase contract could be taken to the court to receive a ruling clarifying that the prior owner had sold the vessel in question and was not liable.

Representative Tarr remarked that "we're" operating under the assumption that people would follow the legal requirement to register after a sale. She considered what would happen in the case of a bad actor and believed it was prudent to seek out information from Legislative Legal Services. She would follow up.

[9:45:13 AM](#)

Representative Edgmon sympathized with the bill sponsor because the bill intended to correct an oversight from an omnibus bill that passed the legislature three years back. He remarked that questions from committee members were delving into the omnibus bill that had been very broad and contentious. He shared that he had been in the building when one of the first abandoned vessel bills had passed. He remarked that many issues attached to registering vessels were outside the scope of the bill. He clarified that HB 28 was intended to correct an oversight [in past legislation].

[9:46:13 AM](#)

Co-Chair Merrick requested a review of the fiscal notes beginning with a note from the Division of Motor Vehicles.

LESLIE ISAACS, ADMINISTRATIVE SERVICE DIRECTOR, DEPARTMENT OF ADMINISTRATION, OFFICE OF MANAGEMENT AND BUDGET, OFFICE OF THE GOVERNOR (via teleconference), reviewed the fiscal note from the Department of Administration, OMB Component Number 2348. The fiscal note showed the three-year registration fee at the \$24 level and the average collections from 2019 and 2020 projected out for the outlying years. He was available for any questions.

Representative Rasmussen noted that there were two fiscal notes included in members' bill packets. She highlighted that the DMV note showed [annual change in revenues of] slightly over \$79,000. She pointed out that the CFEC fiscal note showed \$17,000, \$35,000, \$52,000 [from FY 22 to FY 24], and 70,000 [from FY 25 to FY 27]. She wondered where

the disparity between the two notes came from. She thought the numbers should align.

Mr. Isaacs replied that the issue between the two fiscal notes related to timing. He explained that the Department of Administration, DMV fiscal note reflected the average of two known fiscal years. He pointed out that the note included a \$24 per registration fee on a three-year renewal basis. Additionally, there was the issue of a calendar year versus the fiscal year delineation. When looking at the two notes, they aligned over a period of time. He explained that the timing was slightly off. He explained that the DMV revenue forecast was \$79,200 in the same time period, whereas CFEC forecast revenue of \$70,500. The \$9,000 difference had to do with timing. He elaborated that when current registrations expired, they would have to be renewed on an annual basis. The numbers began to align over time more closely.

[9:49:48 AM](#)

Mr. Brouwer added the bill contained a provision that exempted commercial fishing vessel owners who had already paid their three-year registration fee with the DMV for 2020 and 2021 from also paying the fee with CFEC. He noted it was a large part of the reason there were smaller numbers in FY 22 through FY 24 [in the DMV fiscal note].

Co-Chair Merrick asked Ms. Kelley to review the CFEC fiscal note.

Ms. Kelley agreed with previous testimony regarding the fiscal notes. She reviewed the CFEC fiscal note, OMB Component Number 471. She explained there had been an effort to align numbers, some of which were not yet known. She detailed that the number of boats registering was not static and varied year-to-year. She explained that the number was always a projection. She elaborated that the \$24 referenced was a three-year payment of the \$8 fee. She reported that CFEC did not know the number of people who had paid the registration fee in advance. She added that part of the issue was about timing in terms of the money coming in and CFEC's ability to forecast. Additionally, the alignment of the numbers between the two fiscal notes also involved the timing of the notes and working on alignment with DMV while working to submit the note on time.

Representative LeBon supported the bill. He notified the sponsor that it was unnecessary to circle back with him regarding his question on protecting banks' interests. He explained that banks used the state's Uniform Commercial Code financing statement filing system to make any liens they were uncertain about a public record. He explained that the system could be used for vessels, equipment, or anything that banks had any uncertainty about. He thanked the bill sponsor.

Representative Rasmussen echoed the sentiments by Representative LeBon. She clarified that she had not intended to make it appear that the sponsor and her staff were unprepared. She believed the bill was important and cleared up some [past] oversights. She appreciated the dialogue associated with identifying things that may possibly be overlooked in order to make any corrections before something went into effect and took a longer process to revise. She supported the bill.

Representative Tarr answered that her office would look into the issues discussed during the meeting.

HB 28 was HEARD and HELD in committee for further consideration.

[9:53:59 AM](#)

AT EASE

[9:55:35 AM](#)

RECONVENED

#hb81

HOUSE BILL NO. 81

"An Act authorizing the commissioner of natural resources to modify a net profit share lease."

[9:55:43 AM](#)

RYAN FITZPATRICK, COMMERCIAL ANALYST, DIVISION OF OIL AND GAS, DEPARTMENT OF NATURAL RESOURCES (via teleconference), notified the committee that the department was currently working on prior questions from the committee and would provide answers in writing.

Co-Chair Merrick alerted Mr. Fitzpatrick the meeting would end at 10:15 a.m. due to floor session.

Mr. Fitzpatrick continued with a presentation from a prior meeting titled "HB 81 - Net Profit Share and Royalty Modifications on Oil and Gas Leases," dated April 15, 2021 (copy on file). He began on slide 19 and addressed the primary objectives of the bill. The bill would give the Department of Natural Resources (DNR) the authority to modify net profit share lease (NPSL) rates. He relayed that the bill created an additional qualifying scenario for the modification of NPSLs.

Mr. Fitzpatrick noted he had described [in the previous hearing on HB 81] three scenarios in which modification of royalties were currently allowed. The bill would add a fourth scenario for end of field life where additional capital investments were required to increase production in order to keep the field in production. He elaborated that it was similar to the second scenario he had described the previous week, but instead of declining production resulting in an increased per barrel cost, the fourth scenario would require additional investment to increase production that would result in the field maintaining its status as economically producing oil and gas for an additional number of years. Currently, the additional scenario was limited to the modification of net profit share and did not include royalty.

Mr. Fitzpatrick addressed the last objective of the bill that would resolve an existing statutory ambiguity related to production [on slide 19] for the first scenario (production from a new oil or gas field). He explained that currently the modification scenario was only allowed if the field had not produced previously; however, during the exploration phase there may be test production during exploration. He clarified that the objective resolved that the test production would not disqualify the field or pool from modification; it was only referring to commercial production after the field had been developed. He added that it was the department's current interpretation and was not intended as a change in policy.

[9:59:09 AM](#)

Mr. Fitzpatrick advanced to slide 20 titled "What Type of Modification is Warranted?" The slide included information

about how the current modification process worked for royalty modification and how it may change under the legislation related to NPSL modifications. He explained that currently there was a minimum royalty percentage, which meant if a royalty modification were granted, DNR could not reduce royalties below 5 percent for a new field or pool or 3 percent for fields or pools at the end of their lifespan. He elaborated that the bill proposed a minimum net profit share of 10 percent. He detailed that even if a modification were granted, DNR would not have the authority to reduce the net profit share below 10 percent. He noted that the provision mimicked the minimum royalty rate currently in the modification statute.

Mr. Fitzpatrick drew attention to an error on slide 20, item C. He remarked that the item should read "the modification must be based on a sliding scale mechanism" instead of "may be based." Currently in statute, a royalty modification was required to be based on the sliding scale based on the price of oil and may also be based on other factors such as production or expenses. The bill allowed for the modification of net profit share royalties and added a fixed royalty component to one of the options DNR may consider. However, the package of modifications (such as fixed royalty, sliding scale royalty, or net profit share) was required to take the price of oil into account and apply the sliding scale mechanism built into at least one of the aspects. Additionally, production or per barrel cost could also be considered, similar to current statute. He noted that the modification could not only be to a fixed royalty and fixed net profit share rate. He explained that there had to be some element of a sliding scale included that recaptured foregone revenue if the price of oil increased, production increased, or costs were reduced.

Mr. Fitzpatrick addressed the last bullet point on slide 20. He relayed that current statute allowed the modification of royalty to be below or above the current royalty rate. The bill would allow net profit share rates to go below or above the current net profit share rate. He explained that in certain circumstances it may be in the state's interest to craft recapture mechanisms. He detailed that if there was foregone revenue because of a royalty modification earlier in a field's life or at low oil prices, under certain circumstances (especially if there was a significant increase in oil price), a modification could be crafted so the royalty rate or net profit share

rate increased above the original rate to allow the state to recapture foregone revenue. He expounded that similar to the way DNR may employ the mechanism with a royalty modification, the statute would allow DNR to do the same with the net profit share modification.

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Representative Josephson was sensing the proposal was more nuanced and had more caveats than contingencies. He observed that the proposal included language that contained more words. He thought the language described circumstances where the state instead of being "generous" would be a bit more self-serving when merited based on price increases or other similar situations.

Mr. Fitzpatrick did not believe the bill language was intended to change the thresholds for granting relief or to change the authority of the department to craft recapture mechanisms. He explained that the current statutory language allowed recapture mechanisms for royalties. He reported that if the department was allowed to modify net profit share rates, the recapture mechanisms could also be crafted through a modification of the net profit share rate (i.e., increasing the net profit share rate above the current rate); however, it was only intended to mimic the current system for royalty modifications.

Representative Josephson remarked that there was a give on the side of the state until such time as the profitability was apparent and then there was the takeback. He asked if it was the scenario Mr. Fitzpatrick was suggesting may happen in the reform of the NPSL.

Mr. Fitzpatrick replied it was the intent of the statutory language to allow the mechanism under the proper circumstances. He explained that the language did not require the recapture mechanism. He thought back to the different modification scenarios currently in statute and explained that the recapture mechanism would make a lot of sense for a new field or pool given the production time horizon of 20 to 40 years. He elaborated that during the course of production, the price of oil would vary fairly dramatically over the time period. He noted the dramatic change in oil prices over the past several years. He elaborated that if DNR granted a modification and the price of oil was in the lower price band, it may justify a

modification. He provided a scenario where the price of oil increased significantly two or three years following the modification. He explained that DNR wanted to craft the modification to phase out if the field was economic without the royalty modification or net profit share modification. Additionally, if a field or pool got to a point where the production was so economic that it could bear the additional royalty burden, it made sense for the state to increase the royalty rate or net profit share rate above the existing level to recapture some of foregone revenue that may have taken place earlier.

Mr. Fitzpatrick considered another scenario towards the end of field life. He explained that the recapture mechanism may not make sense if the anticipation was that a modification was being granted to keep a field in production for an additional year or two. He detailed that there would be a phase out mechanism for higher oil prices at that point in the life of a field, but perhaps not a recapture mechanism.

[10:07:40 AM](#)

Representative Wool understood why a producer may want to negotiate a lower royalty rate or net profit share rate because it was uneconomic without the lower rate and the state wanted to be able to negotiate to get some production. He considered a scenario where the rates were lowered, and production increased. He could not imagine producers would ask the state to raise rates when they were making a substantial amount of money. He reasoned the state would have to step in under the scenario. He asked for verification the state would only be able to raise rates that had already been lowered.

Mr. Fitzpatrick answered in the affirmative. He relayed that the only time the state could raise the rates above the initial rate, was when the state was granting the relief in the first instance. He elaborated that the royalty modification decision would grant a reduction in the royalty rate or net profit share rate. The decision would also include a schedule specifying when the modification would phase out with oil prices, increased production, reduced costs, and other. He explained that if the state elected to add a recapture mechanism in appropriate circumstances, the recapture mechanism would have to be included in the initial decision. He detailed

that the state and producer would have notice from the initial publication of the decision specifying when the recapture mechanism would go into effect.

Representative Wool thought the state would want to specify at the onset when the recapture mechanism would kick in. He reasoned that if the mechanism were based on price, the state would likely know upfront when something was profitable and when it was not. He asked if the mechanism would turn on and off as price fluctuated. Alternatively, he wondered whether a producer would get the reduction, the state would dial in the recapture if appropriate, and once the increase kicked back in, the process would conclude. He asked for verification that the reduction would not go back and forth depending on the price of oil. He thought the scenario would not be very efficient.

10:10:08 AM

Mr. Fitzpatrick replied that the situation could vary depending on the modification. He reported that current statute allowed for significant flexibility in crafting the modifications and the sliding scale reversion to the original rates or recapture mechanisms. He believed one of the modifications DNR had previously granted was based on the price of oil, where the modification phased in and out as oil prices increased or decreased. He reported that the mechanism had worked well from the administrative side for the particular field. He remarked that there could be scenarios where a modification was granted that only allowed modification for a certain term of years until a certain level of costs were recouped. He stated that whether or not a modification phased in and out with the price of oil or other factors, could be individually tailored to a particular field or pool.

Representative Wool thought the state would want to include a recapture in all of the reduction arrangements if certain parameters were hit. He thought it would be the prudent thing to do.

Mr. Fitzpatrick answered affirmatively. He explained that the phase out of the modification was statutorily required. He detailed that for scenarios where a recapture mechanism was warranted, DNR currently preferred including the recapture mechanism whenever it would be justified in one of the modifications.

Co-Chair Merrick apologized for running out of time. She noted that the presentation would continue during a future meeting. She thanked Mr. Fitzpatrick for his testimony.

Mr. Fitzpatrick thanked the committee.

HB 81 was HEARD and HELD in committee for further consideration.

Co-Chair Merrick reviewed the schedule for the afternoon.

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ADJOURNMENT

10:13:03 AM

The meeting was adjourned at 10:13 a.m.