

SENATE FINANCE COMMITTEE  
January 31, 2022  
1:16 p.m.

1:16:51 PM

CALL TO ORDER

Co-Chair Bishop called the Senate Finance Committee meeting to order at 1:16 p.m.

MEMBERS PRESENT

Senator Click Bishop, Co-Chair  
Senator Bert Stedman, Co-Chair  
Senator Donny Olson  
Senator Bill Wielechowski  
Senator David Wilson

MEMBERS ABSENT

Senator Lyman Hoffman  
Senator Natasha von Imhof

ALSO PRESENT

Representative Dan Ortiz, Sponsor; Representative Bart LeBon, Sponsor; Joseph Byrnes, Staff, Representative Bart LeBon.

PRESENT VIA TELECONFERENCE

Sam Rabung, Director of Commercial Fisheries, Department of Fish and Game, Juneau; Robert Schmidt, Director, Division of Banking and Securities, Anchorage; Tiffany Larson, Director for Division of Spill Prevention and Response, Department of Environmental Conservation, Fairbanks; Sara Chambers, Director, Division of Corporations, Business and Professional Licensing, Department of Commerce, Community and Economic Development; Joe Schierhorn, President and CEO, Northrim Bank, Juneau; David Durham, Mt. McKinley Bank, Alaska Bankers Association, Fairbanks.

SUMMARY

CSHB 41 (FIN)

SHELLFISH PROJECTS; HATCHERIES; FEES

SCS CSHB 41(FIN) was REPORTED out of committee with two "do pass" recommendations, and three "no recommendation" recommendations and with a new zero fiscal note from the Department of Commerce, Community and Economic Development, new zero fiscal note from Department of Fish and Game, new indeterminate fiscal note from Department of Fish and Game, new indeterminate fiscal note from the Office of the Governor, and new indeterminate fiscal note from the Department of Revenue.

CSHB 85(FIN)

FINANCIAL INSTITUTIONS; LIABILITY

CSHB 85(FIN) was HEARD and HELD in committee for further consideration.

#hb41

CS FOR HOUSE BILL NO. 41(FIN)

"An Act relating to management of enhanced stocks of shellfish; authorizing certain nonprofit organizations to engage in shellfish enhancement projects; relating to application fees for salmon hatchery permits and shellfish enhancement project permits; relating to the marketing of aquatic farm products by the Alaska Seafood Marketing Institute; and providing for an effective date."

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REPRESENTATIVE DAN ORTIZ, SPONSOR, reintroduced the bill. He stated that the legislation was a shellfish enhancement bill. He remarked that mariculture was an opportunity to expand Alaska's fishing industry economy. He stated that certain things must be put in place in order to expedite the mariculture industry. He explained that the bill allowed qualified nonprofits to pursue enhancements and/or restoration projects involving shellfish species including red and blue king crab; sea cucumber; abalone; and razor clams. He stated that the bill created a regulatory framework in which the Department of Fish and Game (DFG) could manage shellfish enhancement projects.

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Senator Olson wondered whether there was opposition to the bill.

Representative Ortiz replied that there were some longstanding critics over the years, and stated that there were some recent emails from some folks in the state. He felt that the concerns had been previously addressed in the legislation.

Senator Olson wondered whether there were subsistence groups opposed to the bill.

Representative Ortiz replied that he was not aware of any subsistence groups opposed to the bill.

Co-Chair Stedman asked that DFG present their position on the bill.

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SAM RABUNG, DIRECTOR OF COMMERCIAL FISHERIES, DEPARTMENT OF FISH AND GAME, JUNEAU (via teleconference), had not heard from the governor about the position on the bill. He remarked that the governor's mariculture task force had identified the issue as one of its top five priorities.

Senator Wielechowski wondered whether any DFG scientists or biologists were opposed to the legislation.

Mr. Rabung replied that scientists and biologists had opinions, and there were some concerns about wild organisms to ensure that there were safe measures. He felt that there were safeguards to address those concerns.

Senator Wielechowski asked for documentation in writing of opposition from the scientists and biologists.

Mr. Rabung replied that there was nothing in writing, but there were continual and constant conversations. He stressed that there were efforts to take into account all concerns, which were built into the permitting process. He stated that, in the long run, more permits were declined than were approved.

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Senator Wielechowski wondered whether the department could make the scientists available to the legislature.

Mr. Rabung stated that he did not have concerns about commercial fishing staff available for questions.

Senator Olson wondered whether the discussion was ongoing discussions or outright opposition.

Mr. Rabung replied that it was an ongoing discussion, and the discussions would continue about permitting.

Senator Wielechowski queried the definition of "traditional fisheries."

Mr. Rabung replied that the enhancement projects were intended to benefit existing common property fisheries. The intention was for them to be harvested in already existing fisheries.

Senator Wielechowski queried the definition of "already existing fisheries."

Mr. Rabung replied that enhancement projects would have the resultant organisms from an existing fishery.

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AT EASE

[1:30:23 PM](#)

RECONVENED

[1:30:33 PM](#)

Senator Wielechowski wondered whether there was funding for the bill.

Co-Chair Bishop replied that he would cover the fiscal note later in the meeting, but stated that each fiscal note were zero.

Senator Wielechowski wondered how the administration intended to fund the bill with zero fiscal notes.

Co-Chair Bishop stated that the back up related to the fiscal notes would answer the question.

[1:31:19 PM](#)

AT EASE

[1:31:26 PM](#)

RECONVENED

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Co-Chair Bishop highlighted the fiscal notes.

Senator Wilson remarked that the difference with the committee substitutes was the removal of purview of the Alaska Seafood Marketing Institute (ASMI).

Co-Chair Bishop wondered whether Senator Wilson wanted to address the remaining fiscal notes.

Senator Wilson replied that he would not, but merely want to point to the change that was not included in the backup for the fiscal notes.

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AT EASE

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RECONVENED

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Co-Chair Bishop continued to address the fiscal notes.

Senator Wilson MOVED to REPORT SCS CSHB 41(FIN) from committee with individual recommendations and attached fiscal notes. There being NO OBJECTION, it was so ordered.

SCS CSHB 41(FIN) was REPORTED out of committee with two "do pass" recommendations, and three "no recommendation" recommendations and with a new zero fiscal note from the Department of Commerce, Community and Economic Development, new zero fiscal note from Department of Fish and Game, new indeterminate fiscal note from Department of Fish and Game, new indeterminate fiscal note from the Office of the Governor, and new indeterminate fiscal note from the Department of Revenue.

#hb85

CS FOR HOUSE BILL NO. 85(LandC)

"An Act relating to the Alaska Banking Code; relating to mutual savings banks; relating to interstate state banks and international banks; relating to the pledging of bank assets as collateral security to tribal organizations; relating to the pledging of bank assets for interest swap agreements; relating to state business licenses; relating to persons who make loans secured by interests in vessels or facilities; relating to liability for the release or threatened release of hazardous substances; relating to the Model Foreign Bank Loan Act; and providing for an effective date."

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REPRESENTATIVE BART LEBON, SPONSOR, introduced the bill. changes and to bring regulatory parity between state-chartered and national banks. He stated that HB 85 provides Alaska's state banking regulator tools to level the playing field and promote healthy competition among state and national banks. Over the course of the pandemic, the Alaska economy has been tested like never before and has more than proven its resilience. That is thanks in no small part to our diverse financial system: a network of financial institutions of all sizes, charters and business models that are dedicated to providing the products and services that consumers and businesses need to thrive. The diversity of our financial system is something that is uniquely American. It is important that we preserve that diversity—but we must do so in a manner that ensures a level playing field between providers of financial services. Banks play a critical role in the Alaska and United States economies, channeling funds from savers to borrowers and thereby facilitating economic activity. The U.S. has what is referred to as a "dual banking system," in which banks can choose to apply for a charter from a state banking authority or a federal charter from the Office of the Comptroller of the Currency (OCC), a bureau within the Department of the Treasury. A bank's choice of chartering authority is also a choice of primary regulator; state regulatory agencies serve as the primary regulators of state-chartered banks, and the OCC serves as the primary regulator of national banks. Over time, due to increasingly broad powers granted to national banks by the OCC, state banks have experienced difficulty in remaining competitive with national banks.

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JOSEPH BYRNES, STAFF, REPRESENTATIVE BART LEBON, discussed the Sectional Analysis:

Sec. 1. AS 06.05.005(a)

Conforming language to changes made under Section 10 to provide Alaska chartered banks parity with credit unions when establishing a bank branch.

Sec. 2. AS 06.05.005

Prohibits the Department from placing a regulatory limitation on a credit card that a state bank issues to an officer of a state bank, the statutory authority for which is amended in Section 5 and the regulation (3 AAC 02.121) annulled in Section 24.

Prohibits the Department from adopting regulations relating to the setting of time limits on the disposal of real and personal property, the statutory authority for which is amended in Section 6 and the regulation (3 AAC 02.135) annulled in Section 24.

Sec. 3. AS 06.05.050

Publication of reports: Directs a bank to post statutorily required reports on the bank's website and makes it optional to post those reports in the bank's physical lobby.

This change recognizes that information is more commonly available on the Internet and provides the option for publication of reports online to better meet customer expectations. National banks do not have a similar requirement to post notices of publication of financial and other information that state banks are required to report. In 2019, the FDIC repealed the "lobby notice" rule, which had required posting notices in bank lobbies. 84 Fed. Reg. 9698 (Mar. 18, 2019) (repealing 12 C.F.R. Part 350). In the final rule, the FDIC noted that reports are widely available through bank websites.

Sec. 4. AS 06.05.166(c)

Defines the timeframe - not later than 15 days - for which a bank must notify the Department after an emergency non-opening or closing of the bank. This

change provides additional clarity for reporting requirements.

Sec. 5. AS 06.05.210(a)

Increases the amount a director or executive officer of a state bank may borrow to \$500,000 (from \$100K or \$250K for a primary residence). This change aligns with the regulatory limit established for national banks, which is \$500,000. 12 C.F.R. § 215.4(b)(2) ("Regulation O").

Sec. 6. AS 06.05.245

Disposition of property not needed in the conduct of a banking business: Removes the Department's authority to set a time limit on the disposal of real and personal property. Instead, the carrying value and right-down will be dictated by Generally Accepted Accounting Principles (GAAP). Federal regulations allow national banks to dispose of other real estate owned according to GAAP. 12 C.F.R. § 34.83(a).

Sec. 7. AS 06.05.260

Allows a state bank to pledge bank assets as collateral security to secure funds deposited by consortiums of federally recognized tribes in the same way as national banks, which are authorized to pledge bank assets as collateral security to secure funds deposited by federally recognized Indian tribes. 12 U.S.C. § 90.

Sec. 8. AS 06.05.260

Adds a new subsection to replace the Division of Banking's Parity Orders 12-B (3-6) regarding the pledging of assets for interest rate swaps. National banks are regulated by Section 610 of the Dodd-Frank Wall Street Reform and Consumer Protection Act, and implementing regulations at 12 C.F.R. Part 32. This change achieves parity by authorizing state banks to pledge assets for interest rate swaps according to the same regulations as national banks.

Adds a new subsection to define:

- "federally recognized tribe" as an Indian tribe under the Federally Recognized Indian Tribe List Act of 1994; and

- "interest rate swap agreement" as a stream of future interest payments that are exchanged for another stream of future interest payments.

Sec. 9. AS 06.05.355(a)

Requires all banks to become a member of the FDIC as a condition for receiving a Certificate of Authority; Intended to maintain trust and level the playing field for the banking industry. All national banks must be members of the FDIC. 12 C.F.R. § 5.20.

Sec. 10. AS 06.05.399

Changes of location; branch banks. Provides Alaska chartered banks parity with credit unions when establishing a bank branch. Banks are currently subject to stricter bank branch application requirements under 3 AAC 02.215. The Division would establish in regulations similar requirements of credit unions as in 3 AAC 03.260. [Same as section 19 for Mutual Banks]

Sec. 11. AS 06.05.438(a)

Reduces the number of required meetings of a bank's board from 10 to 4 per calendar year. There is no required number of board meetings for national banks. 12 C.F.R. § 5.20. Sec. 12. AS 06.05.555(a)

Conforming language to changes made under Section 10 to provide Alaska chartered banks parity with credit unions when establishing a bank branch.

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Mr. Burns continued with the Sectional Analysis:

Sec. 13. AS 06.05.990(4)

Removes "remote service unit" (ATM, etc.) from the definition of "branch bank" and defines "remote service unit" directly under this section.

Sec. 14. AS 06.15.180

Allowing mutual banks to have similar borrowing options as state banks. AS 06.05.205 establishes a 15-percent limit on state banks.

Sec. 15. AS 06.15.190

Expands the deposits that mutual banks can accept. The federal Depository Institutions Deregulation and

Monetary Control Act of 1980 expanded the authority for national mutual banks to accept deposits. This change authorizes state mutual banks to accept the same deposits as national mutual banks.

Sec. 16. AS 06.15.220

Allows trustees to delegate their authority to approve interest on deposits.

Sec. 17. AS 06.15.240

Provides mutual banks with the same investment opportunities as state banks under AS 06.05.270. This change adopts nearly identical language: "In addition to loans and acquisitions expressly authorized by this chapter, a state bank may deal in, underwrite, and invest in for its own account the obligations that the department by regulation authorizes the bank to deal in, underwrite, or invest in for its own account." AS 06.05.270(a).

Sec. 18. AS 06.15.250

Provides mutual banks with the same lending opportunities as state banks. This change removes the mortgage lending limit that applies to mutual banks and authorizes mutual banks to invest in first mortgages subject to the same lending limits as state banks in AS 06.05.205-.206.

Sec. 19. AS 06.15.290

Changes of location; branch banks. Provides mutual banks parity with state banks and credit unions when establishing a bank branch. Alaska chartered banks are currently subject to stricter bank branch application requirements under 3 AAC 02.215. The Division would establish in regulations similar requirements of credit unions as in 3 AAC 03.260. [Same as section 10 for state banks]

Sec. 20. AS 43.70.105(a)

Exempts depository institutions (banks and credit unions) from the requirement to obtain business licenses for all headquarter and branch locations. Currently, state-chartered institutions receive a Certificate of Authority through the Division of Banking and Securities. Until each institution receives this certificate, they may not transact

business. This change would eliminate duplicate licensing, thus reducing regulatory burden.

Sec. 21. AS 46.03.822(a)

Adds reference to the new language in section 22.

Sec. 22. AS 46.03.822

Conforms state law to the Comprehensive, Environmental Response, Compensation, and Liability Act (CERCLA) standard for lender liability. CERCLA Section 101(20) contains a secured creditor exemption that eliminates owner or operator liability for lenders who hold ownership in a CERCLA facility primarily to protect their security interest in that facility, provided they do not "participate in the management of the facility." Generally, participation in the management applies if a bank exercises decision-making control over a property's environmental compliance, or exercises control at a level similar to a manager of the facility or property. Participation in management does not include actions such as conducting property inspections, requiring a response action to address contamination, providing financial advice, or renegotiating or restructuring the terms of the security interest. The secured creditor exemption also provides that foreclosure on a property does not result in liability for a bank, provided the bank takes "reasonable steps" to divest itself of the property "at the earliest practicable, commercially reasonable time, on commercially reasonable terms." Generally, a bank can maintain business activities and close down operations at a property as long as the property is listed for sale shortly after the foreclosure date or at the earliest practicable, commercially reasonable time.

Sec. 23. Repealed Sections

- Repeals AS 06.05.265 Liability of directors for certain loans. Overbroad and unnecessary.
- Repeals AS 06.10.010-050 Model Foreign Bank Loan Act. The Act exempts out-of-state banks from Alaska taxation for certain business types and became obsolete in 1984 due to other tax measures. The Act is an unnecessary administrative burden.
- Repeals AS 06.15.150, 160 and 170 Surplus requirements, additions, and limitations.

Repealing these statutes would provide parity and allow a mutual savings bank to follow AS 06.05.305 for capital requirements. AS 06.05.305 establishes surplus requirements, additions, and limitations for state banks.

- Repeals AS 06.15.230 Withdrawal of Deposits: Language no longer relevant after deregulation of Thrifts and Savings and Loans.

#### Sec. 24. Annulled Regulations

- Annuls 3 AAC 02.121 Credit cards for officers: Removes the regulation limiting uncollateralized credit card balances up to \$10,000 for an officer of a state bank. See Sections 2 and 5.

- Annuls 3 AAC 02.135 Disposition of property not needed for banking business. The carrying value and write-down of property will instead be dictated by Generally Accepted Accounting Principles (GAAP). See Sections 2 and 6.

#### Sec. 25. Applicability

Uncodified law for sections 3, 4, 6, 9, 10, 12, 16, 18, and 19.

Cites definition locations for "branch bank", "department", "international bank", "interstate state bank", "mutual bank" and "state bank".

#### Sec. 26. Transition

Provides a transition period relating to sections 1, 10, 12, and 19; provides the Department time to promulgate regulations for changes of bank locations and establishing branch banks.

#### Sec. 27. Delayed Effective Date

Sets a delayed effective date of January 1, 2023 for sections 1, 10, 12, and 19 to provide the Department time to promulgate regulations for changes of bank locations and establishing branch banks.

#### Sec. 28. Immediate Effective Date

Sets an immediate effective date for all sections except for sections 1, 10, 12, and 19, relating to changes of bank locations and establishing branch banks.

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Senator Wilson asked for more information about Section 7 and Section 8. He surmised that Section 7 allowed for an exemption for federal recognized tribes, and queried the current process.

Representative LeBon stated that Northrim Bank was available for explanation. He shared that banks were required by certain depositors to secure their deposits with assets of the bank.

Senator Wilson asked for an example of an occurrence related to Section 08 of the bill.

Representative LeBon shared that the state banks were looking for equality and parity with the federal banks.

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ROBERT SCHMIDT, DIRECTOR, DIVISION OF BANKING AND SECURITIES, ANCHORAGE (via teleconference), announced that interest rate swaps would allow for state chartered depository financial institutions to do the same as federally chartered financial institutions.

Senator Wielechowski wondered whether state-chartered banks would treat the interest rate swaps differently than the national banks.

Representative LeBon replied that national banking laws changed over time, while the state banking laws remained the same without proposed legislation.

Senator Olson wondered whether the federal recognized tribes had offered an opinion on the legislation.

Representative LeBon had not heard of any opposition.

Senator Wielechowski looked at Section 14, and understood that the current aggregate amount of outstanding liabilities may not exceed 5 percent, but there was an increase to 15 percent. He queried the rationale behind the change.

Mr. Schmidt replied that Section 14 was merely matching the state banks with the federal banks.

Senator Wielechowski looked at Section 4, and queried the concerns on the provision.

Mr. Schmidt stated that the provision made a more concrete line, and stated that 15 days was easier to understand than "as soon as possible." He stated that there were no concerns with the change.

Senator Wielechowski looked at page 10, and noticed the phrase, "a person who holds or held interest in a vessel facility to secure a loan." He surmised that there was an exemption for a person, and queried the definition of a person. He thought the bill was limited to banks, but wondered if there was a broader inclusion.

Mr. Schmidt replied that it could include corporate entities and any person, bank, or credit union that help property as collateral for a loan.

Senator Wielechowski asked for Department of Environmental Conservation (DEC) to be available for comment.

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TIFFANY LARSON, DIRECTOR FOR DIVISION OF SPILL PREVENTION AND RESPONSE, DEPARTMENT OF ENVIRONMENTAL CONSERVATION, FAIRBANKS (via teleconference), stated that the inclusion of language matched the federal level language for broader inclusivity.

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Senator Wielechowski was concerned about "laundering of liability." He wondered whether DEC had concerns about liability.

Ms. Larson replied section 22(o) act as a lender, foreclose on the property and then act fast to avoid liability. Liability remains on the property whether or not the property was foreclosed on. The language allows a contender to find help addressing the contamination.

Senator Wielechowski offered a hypothetical and asked where the legal obligation lay.

Ms. Larson said that the liability extended to owner, operator, or contaminator. She believed that the lender was exempt up until the point of contamination.

Senator Wilson asked about PFAS contamination and regulations.

Co-Chair Bishop reframed the question. He queried whether if the bank load money on a property whether PFAS contamination would stay with the originator of the contamination and the bank would be held harmless on the loan.

Representative LeBon replied that the responsible party could be any number of people. He offered a personal story of contamination liability.

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Senator Wilson understood there was no requirement for disclosure of PFAS to a new owner.

Ms. Larson said that the new owner would be responsible.

Senator Wilson expressed concern with the absence of the requirement to disclose contamination information.

Senator Wielechowski felt that shell companies could be an issue. He thought that once a property was contaminated by a shell corporation the corporation could escape liability.

Representative LeBon said that language could be expanded to include protection for individuals.

Senator Wielechowski asked about Section 23 - liability for certain loans.

Representative LeBon shared that directors had responsibility for operation of their banks.

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Senator Wilson spoke to Section 20 and wondered about the number of locations and reduction in state revenue.

SARA CHAMBERS, DIRECTOR, DIVISION OF CORPORATIONS, BUSINESS AND PROFESSIONAL LICENSING, DEPARTMENT OF COMMERCE,

COMMUNITY AND ECONOMIC DEVELOPMENT (via teleconference), estimated that approximately 50 business licenses would be foregone with the legislation. She stated that there were approximately five primary corporations with many branches. She stated that the cost of the business license was so minimal that the annual loss of revenue to the state would be less than \$1500.

Co-Chair Bishop opened invited testimony.

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JOE SCHIERHORN, PRESIDENT AND CEO, NORTHRIM BANK, JUNEAU (via teleconference), stated that there were three state chartered banks and all three banks supported the legislation. He noted that the association had worked on the development of the legislation. He felt that the bill would help banks to better serve Alaskans. He offered posthumous thanks to a fellow colleague. He also spoke to pledging assets. He said that the reason for the provision was to give institutions the ability to pledge assets for federally recognized tribes.

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Mr. Schierhorn spoke to Senator Wielechowski's question about Section 23 and the repealing liability was covered in other areas.

Senator Wielechowski was curious about the loans under the statute and what the nature of the violation would be.

Mr. Schierhorn said he could get the information to the committee.

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DAVID DURHAM, MT. MCKINLEY BANK, ALASKA BANKERS ASSOCIATION, FAIRBANKS (via teleconference), testified in support of the bill. He detailed the specifics of how the bill would benefit the

Mr. Schmidt testified in support of the bill.

Co-Chair Bishop OPENED and CLOSED public testimony.

CSHB 85(FIN) was HEARD and HELD in committee for further consideration.

#

ADJOURNMENT

2:37:05 PM

The meeting was adjourned at 2:37 p.m.