

HOUSE FINANCE COMMITTEE
May 07, 2002
3:04 PM

TAPE HFC 02 - 104, Side A
TAPE HFC 02 - 104, Side B

CALL TO ORDER

Co-Chair Williams called the House Finance Committee meeting to order at 3:04 PM.

MEMBERS PRESENT

Representative Con Bunde, Vice-Chair
Representative Eric Croft
Representative Richard Foster
Representative John Harris
Representative Bill Hudson
Representative Ken Lancaster

MEMBERS ABSENT

Representative Eldon Mulder, Co-Chair
Representative Bill Williams, Co-Chair
Representative John Davies
Representative Carl Moses
Representative Jim Whitaker

ALSO PRESENT

Zach Warwick, Staff, Senator Therriault; Tom Chapple, Director, Division of Air and Water Quality, Department of Environmental Conservation; Sally Saddler, Legislative Liaison, Department of Community and Economic Development; Darwin Peterson, Staff, Senator Torgerson; Will Abbott, Regulatory Commission of Alaska; Chip Dennerlein, Director, Division of Habitat, Department of Fish and Game

PRESENT VIA TELECONFERENCE

Keith Bayha, Alaska Public Water Coalition, Anchorage.

SUMMARY

CSSB 140(FIN)

"An Act relating to regulation and licensing of certain water-power development projects; and providing for an effective date."

HCS CSSB 140(FIN) was REPORTED out of Committee with a "do pass" recommendation and with three previously published fiscal notes: DCED - #1, DNR - #2, and DFG - #3.

CSSB 326(FIN)

"An Act relating to evaluating state assumption of the wastewater discharge program under the federal Clean Water Act; and providing for an effective date."

CSSB 326(FIN) was REPORTED out of Committee with a "do pass" recommendation and with a new fiscal impact note by the Department of Environmental Conservation.

#sb326

CS FOR SENATE BILL NO. 326(FIN)

"An Act relating to evaluating state assumption of the wastewater discharge program under the federal Clean Water Act; and providing for an effective date."

ZACH WARWICK, STAFF, SENATOR THERRIAULT, testified in support of the legislation. He observed that SB 326 is a companion bill to HB 503. The effective date was changed to January 1, 2003 and the fiscal note was reduced accordingly. The Department of Environmental Conservation indicated that the fiscal note would not be sufficient to run the program. They have applied for additional federal funding. If federal funding is not received the new administration would have to decided if the project can be done within the general fund appropriation.

TOM CHAPPLE, DIRECTOR, DIVISION OF AIR AND WATER QUALITY, DEPARTMENT OF ENVIRONMENTAL CONSERVATION, testified via teleconference. The Department does not object to changing the duration of the project from 18 to 12 months. He did not think that that the project could be successfully executed with the funding contained in the current fiscal note, which was reduced by two-thirds. The question is whether the state should assume primacy and operate the federal National Pollutant Discharge Elimination System program. He recommended a fiscal note of \$315 thousand dollars, which would be achieved by adding \$63 thousand dollars in federal funds for FY03 and \$46 thousand dollars in FY04. The state would know by September if the federal funds were available.

Representative Foster MOVED to report CSSB 326 (FIN)) out of Committee with the accompanying fiscal note. There being NO OBJECTION, it was so ordered.

CSSB 326(FIN) was REPORTED out of Committee with a "do pass" recommendation and with a new fiscal impact note by the Department of Environmental Conservation.

#sb140

CS SENATE BILL NO. 140(FIN)

"An Act relating to regulation and licensing of certain water-power development projects; and providing for an effective date."

DARWIN PETERSON, STAFF, SENATOR TORGERSON, testified in support of the legislation. Senator Murkowski sponsored federal legislation, which amended the Federal Energy Policy and Conservation Act. Title V of this Act provides state jurisdiction over small hydroelectric projects. The legislation transferred federal licensing and regulatory authority over hydroelectric projects that are 5,000 kilowatts (5 megawatts) or less. He maintained that bringing this regulatory authority closer to home would reduce the time and expense associated with federal licensing and regulation of small hydro projects in Alaska. The time and money required for federal licensing is virtually prohibitive for some small utility projects. Before Alaska can acquire jurisdiction from the federal Energy Regulatory Commission the legislature must approve the legislation and the Governor must submit a program satisfying the Federal Energy Regulatory Commission's (FERC) regulatory requirements. The Regulatory Commission of Alaska (RCA) would be the regulatory agency responsible and all current environmental protections under federal law would still apply and could not be pre-empted by the legislation.

Vice-Chair Bunde clarified that the authority emanates from the FERC. Mr. Peterson explained that FERC would have the ultimate veto over whether or not the state program satisfies all of their requirements. Representative Bunde questioned if federal funding would accompany the state assumption of the work. Mr. Peterson explained that user fees from the utilities support the federal program. The program would need initial start up support from the state. Once the program is running it would be paid by user fees. He did not know if the user fees would reimburse the start up costs.

Representative Croft questioned if federal fees were too high for some individuals. Mr. Peterson clarified that the issue centers on the time that FERC takes to regulate and license small hydro projects. He assumed that the state run program would be cheaper.

Representative Croft referred to the fiscal note. He observed that the legislation directs the department to set up regulations to implement the program. Mr. Peterson agreed that federal law directs the state to establish its own program.

Representative Lancaster questioned why the Regulatory Commission of Alaska was chosen to oversee the program. He noted that there is a backlog at the Regulatory Commission of Alaska and questioned if they should be given additional

work. Mr. Peterson explained that after discussions with involved entities it was decided that RCA would be the best entity [to oversee the program].

WILL ABBOTT, REGULATORY COMMISSION OF ALASKA, testified via teleconference. He stressed that RCA would be an objective entity. The FERC operates as a mediator to decide if there is conflict between agencies and the applicant. He did not anticipate that RCA would write the environmental impact statement (EIS). The Regulatory Commission of Alaska would contract for the EIS or it would be written by the applicant and modify by the Regulatory Commission of Alaska. A state program would be submitted to FERC. He expressed concern that it would take longer than a year to get through the regulatory process. He did not know what the actual costs would be. Hydro projects reimburse FERC by the kilowatt-hour. Therefore funds are not received until projects are operational. The Regulatory Commission of Alaska would not receive funds immediately. He assumed that the licensees would pay money back to the Regulatory Commission of Alaska to fund the process.

Vice-Chair Bunde questioned if it would be the intent to recapture startup costs when utilities go on line. Mr. Abbott affirmed.

KEITH BAYHA, ALASKA PUBLIC WATER COALITION, testified via teleconference in opposition to the legislation. He felt that the proposal was a poor investment for the state of Alaska.

SALLY SADDLER, LEGISLATIVE LIAISON, DEPARTMENT OF COMMUNITY AND ECONOMIC DEVELOPMENT, provided information on the legislation. She noted that the Administration convened an interagency team including members from the Department of Natural Resources, Department of Fish and Game, Coastal Zone Management, Regulatory Commission of Alaska, and Department of Community and Economic Development to analyze the bill. The Administration believes that development of small hydro projects would support economic development and improve the availability/cost of power to rural Alaska. They understand that a state program may have advantages in allowing them to focus the process on issues pertinent to Alaska.

Ms. Saddler explained that in response to pending federal legislation, the Governor drafted a letter of support for Alaska jurisdiction over the FERC process. At the same time, the Governor recognized that this is a complex undertaking and that the state must be sure that the state program results in proper design and construction of the dams, while protecting fish, wildlife and the environment, as rigorously, as does FERC. The Governor also acknowledged that it is important to establish an appropriate funding mechanism. The Regulatory Commission of Alaska currently

finances itself through the regulatory cost charge. The Regulatory Commission of Alaska is coming up against their cost charge cap. It will be important to look at ways to recoup costs, whether it is through direct appropriation or a user fee system.

Ms. Saddler observed that agencies understand their existing role with the FERC process but the Administration expects to outline additional statutes and regulatory authority that they might have in place. She observed that FERC has jurisdiction over entire watersheds, while the Department of Fish and Game currently only has oversight of streambeds.

Ms. Saddler noted that it would be prudent to have the Regulatory Commission of Alaska and departments report back to the legislature with the results of the first two years, which would be spent establishing the regulations before they go to FERC. The report would address the impacts on the operating budget, funding mechanisms, staffing requirements, additional statutory timelines and the public process.

Representative Lancaster questioned if the Department of Community and Economic Development would be a partner. Ms. Saddler noted that RCA would take the lead. The Department of Community and Economic Development has acted as a coordinator.

Representative Croft questioned if additional receipt authority would be needed to charge for the services. Ms. Saddler deferred the question for later testimony.

Representative Hudson spoke in support of state primacy, but wanted to be assured that the state is not taking over the work of the federal government without additional resources or an assessment of how the process would be expedited. He questioned what kind of resources FERC has used in Alaska over the past few years to process claims and the basic cost to the applicants. He wanted to know that the state could do the work faster, cheaper and better and ensure that the state is not taking over federal responsibilities that will need additional state support. He did not want to take over federal responsibilities that require budget increases. He asked how the state could reduce expenses.

Ms. Saddler agreed and added that it was not clear whether the federal government would continue environmental impact statements or if the state would take over all aspects of the work. The Department of Fish and Game and the Department of Natural Resources are also involved.

CHIP DENNERLEIN, DIRECTOR, DIVISION OF HABITAT, DEPARTMENT OF FISH AND GAME, provided information on the legislation. The department supports the legislation with the caveat that it provides the same level of fish and wildlife protection

as provided by FERC. He noted that the proposal would result in small hydro projects in and around rural communities, which would be on streams and valleys already used by residents for sport and subsistence activities. The FERC allows the Department of Fish and Game to work with the issues on a watershed basis. He observed that the Alaska Coastal Management Plan process allows the state to step out of the stream bank, where the state authority lies, to deal with the issue of salmon production in the surrounding wetlands. He added that FERC allowed a creative solution to Brown Bears in the Kodiak area.

Mr. Dennerlein reiterated the department's concern that the authority or ability to work effectively with the real fish and wildlife issues in watershed areas [not be adversely affected]. He pointed out that FERC is like an agent, which deals with threshold economic analysis similar to the Alaska Industrial Development and Export Authority (AIDEA) process. They have staff of hydrologists, engineers, biological resources and project managers. When the Department of Fish and Game needs information FERC can broker to get it from the applicant or other places.

Mr. Dennerlein continued expressing concerns by the department and questioned where the funding would come from and noted that FERC has a congressional budget with permanent staff. The Department of Fish and Game has a \$12 million dollar budget with less than \$2 million dollars in general fund. He stressed the need for a stable funding source and noted that the federal budget is now in a deficient and questioned what would happen to federal funding if the state of Alaska loses its seniority in Congress. The Federal Energy Regulatory Commission handles the on-going responsibilities of damn safety, monitoring and re-licensing. The Department of Fish and Game strongly supports the amendment [offered by Representative Croft.] He stressed that if a damn is going to be built in a rural area where people are hunting and fishing someone is going to have a problem. To be able to broker the problem, to have a program, pay for it and to do it right is very important. The FERC process can be arduous. There have been no licenses denied in Alaska. He observed that the False Creek project in Gustavus, which is in a national park in wilderness, would probably get a license because FERC worked out a creative solution on a land exchange. He stressed that "before launching" the state of Alaska should have one of the keys. He acknowledged that local concerns could be a little better [addressed through state primacy].

Representative Hudson questioned where FERC is located. Mr. Dennerlein clarified that there is an office in Anchorage and staff is brought up from outside of the state.

Representative Hudson questioned if the state would be held liable for authorizations that go sour. Mr. Dennerlein noted that FERC has liability, but emphasized that their experience and regulations minimizes their liability. He anticipated that there would be issues surrounding the re-licensing process. He reviewed issues surrounding the Gustavus project and observed that the issues were centered on local access and use. He emphasized that the process must be clear and noted that Alaskans can tie themselves in knots around the high stake issues that surround the use of productive valleys and streams. The industry has been pretty silent on the bill. He advocated that the state goes in with their eyes open. The Federal Energy Regulatory Commission does not have to approve the program; the program could be adopted by default.

Representative Croft MOVED to ADOPT Amendment 1:

Add:

The Regulatory Commission of Alaska, in consultation with DNR, DCED and DF&G, will report to the legislature by February 15th 2003 with their assessment of how the licensing and oversight of hydroelectric projects of 5 megawatts or less by the State of Alaska may be accomplished. This report will include budgetary impacts, funding mechanisms, staff requirements, potential statutory changes, timelines, the public process for developing regulations, and other items deemed important by the administration.

Co-Chair Williams OBJECTED. Representative Croft explained that the amendment would require a report to the legislature by February 15, 2003. He acknowledged that the state might want to implement state primacy, but emphasized that there is insufficient information to make the decision.

Mr. Abbott spoke in support of the amendment. He echoed concerns of the previous speakers. He emphasized that the Regulatory Commission of Alaska would be before the legislature with statutory recommendations and other concerns.

Vice-Chair Bunde questioned if the February 15, 2003 date was a realistic timeline.

Mr. Abbott felt that the date was realistic. He suggested that a target is needed and would allow them to work with other state agencies and FERC.

Mr. Peterson noted that the sponsor objects to the amendment. He pointed out that FERC would be the ultimate voice in deciding if the project is carried forward. The effective date is January 1, 2003.

Mr. Abbott stressed that the amendment formalizes what they anticipate is going to happen.

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Vice-Chair Bunde suggested that a January 31, 2003 effective date would allow the legislature to make a preempted strike if there were problems.

Mr. Peterson agreed that could be a consideration. He anticipated that the Administration would need to make statutory changes to assist in regulating the project and licensing.

Mr. Peterson reiterated that the sponsor would not object to moving the effective date to January 31, 2003, but would object to the date contained in the amendment.

Representative Croft reiterated that the report requires budgetary impacts, funding mechanisms, staff requirements and potential statutory changes. He emphasized that these requirements are unknown. The Regulatory Commission of Alaska cap might need to be changed.

Co-Chair Williams stressed that [primacy] should stay in state of Alaska.

A roll call vote was taken on the motion.

IN FAVOR: Croft,

OPPOSED: Bunde, Foster, Harris, Hudson, Lancaster, Williams

Co-Chair Mulder and Representatives Davies, Moses and Whitaker were absent from the vote.

Vice-Chair Bunde MOVED to ADOPT an effective date of January 31, 2003 on page 4, line 20. There being NO OBJECTION, it was so ordered.

Representative Foster MOVED to report HCS CSSB 140 (FIN) out of Committee with the accompanying fiscal note

HCS CSSB 140(FIN) was REPORTED out of Committee with a "do pass" recommendation and with three previously published fiscal notes: DCED - #1, DNR - #2, and DFG - #3.

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ADJOURNMENT

The meeting was adjourned at 3:58 PM