

ALASKA STATE LEGISLATURE
HOUSE SPECIAL COMMITTEE ON OIL AND GAS

February 21, 2002

11:05 a.m.

MEMBERS PRESENT

Representative Scott Ogan, Chair
Representative Hugh Fate, Vice Chair
Representative Mike Chenault
Representative Vic Kohring
Representative Gretchen Guess
Representative Reggie Joule

MEMBERS ABSENT

Representative Fred Dyson

COMMITTEE CALENDAR

HOUSE BILL NO. 439

"An Act removing provisions providing an opportunity to petition for review of proposed consistency determinations under the Alaska coastal zone management program."

- HEARD AND HELD

PREVIOUS ACTION

BILL: HB 439

SHORT TITLE: COASTAL ZONE PETITION

SPONSOR(S): OIL & GAS

Jrn-Date	Jrn-Page		Action
02/15/02	2287	(H)	STA, RES
02/15/02	2287	(H)	READ THE FIRST TIME - REFERRALS
02/19/02	2321	(H)	STA REFERRAL REMOVED
02/19/02	2321	(H)	O&G REFERRAL ADDED BEFORE RES
02/21/02		(H)	O&G AT 10:00 AM CAPITOL 124

WITNESS REGISTER

KEN DONAJKOWSKI, Permitting Manager
Phillips Alaska, Inc.
P.O. Box 100360
Anchorage, Alaska 99510

POSITION STATEMENT: Testified in support of HB 439.

JERRY GALLAGHER (ph), Manager
of Government and Community Relations
Phillips Alaska, Inc.
P.O. Box 100360
Anchorage, Alaska 99510

POSITION STATEMENT: Answered question pertaining to HB 439.

JUDY BRADY, Executive Director
Alaska Oil and Gas Association (AOGA)
121 West Fireweed, Suite 207
Anchorage, Alaska 99503

POSITION STATEMENT: Expressed AOGA's appreciation for introduction of HB 439 and explained what AOGA hopes to accomplish with the legislation.

PAMELA LaBOLLE, President
Alaska State Chamber of Commerce
217 2nd Street
Juneau, Alaska 99801

POSITION STATEMENT: Testified in support of HB 439.

PATRICK GALVIN, Director
Division of Governmental Coordination (DGC)
Office of the Governor
P.O. Box 11030
Juneau, Alaska 99811-0030

POSITION STATEMENT: Testified that DGC doesn't oppose HB 439 but said there needs to be discussion with regard to another vehicle; offered history and answered questions.

ACTION NARRATIVE

TAPE 02-10, SIDE A
Number 0001

CHAIR SCOTT OGAN called the House Special Committee on Oil and Gas meeting back to order at 11:05 a.m. Present at the call back to order were Representatives Ogan, Chenault, Fate, Kohring, Guess, and Joule. [For minutes on the overviews of Alberta Energy and Anadarko, see the 10:05 a.m. minutes for this same date.]

HB 439 - COASTAL ZONE PETITION

Number 0046

CHAIR OGAN announced that the committee would hear HOUSE BILL NO. 439, "An Act removing provisions providing an opportunity to petition for review of proposed consistency determinations under the Alaska coastal zone management program." [HB 439 was sponsored by the House Special Committee on Oil and Gas.]

CHAIR OGAN informed listeners that at the current meeting the committee would hear invited testimony in order to establish the need for the legislation. However, there would be a full public hearing February 26.

Number 0114

CHAIR OGAN explained the reasons for the bill. A number of people in the industry had approached him, and there had been discussions with the [U.S.] Department of the Interior. He expressed concern that the petition for review [being deleted by HB 439] is being used as a "dilatory stalling tactic" by people who want no oil development. Chair Ogan said he was encouraged that the Alaska Oil and Gas Association (AOGA), the Alaska Support Industry Alliance ("Alliance"), and a number of industry people had stepped up to the plate. He said he'd introduced the bill for those reasons and to ensure that there are reasonable regulations.

CHAIR OGAN remarked that if it were up to him, he would like to see the whole program eliminated; however, he didn't think it would be possible. Therefore, he was looking to "do something with great restraint that will just simply be helpful."

Number 0268

KEN DONAJKOWSKI, Permitting Manager, Phillips Alaska, Inc., offered the following testimony:

I am the manager that's responsible for permitting in the state of Alaska for Phillips, Alaska, Inc. And thank you for the opportunity to testify today.

Phillips Alaska, Inc., is testifying in support of HB 439 because the Alaska Coastal Management Program (ACMP) ... petition process addressed in this bill significantly delayed a total of five consistency determinations for Phillips Alaska during the months of December and January just past. This petition process enables an individual to easily hamper

responsible oil and gas development. House Bill 439 appropriately removes this needless component from the overall ACMP process.

The Alaska Coastal Management Program project approval process is extremely complex, and in the short time I have to address Chairman Ogan and this committee, I cannot attempt to fully discuss its complexity. However, although the following overview is necessarily simplified, I assure you it is accurate in characterization and sufficient to highlight Phillips' concerns.

The ACMP is set out in Alaska Statutes, Title 46, Chapter 40, and its implementing regulations appear at 6 AAC 50. The ACMP is primarily a procedural and not a substantive process. For most projects, the state Division of Governmental Coordination - or DGC - is charged with coordinating, on behalf of the state, the determination of whether or not a proposed project in and around the state's coastal areas is consistent - that is, in compliance with - the applicable standards of the ACMP at 6 AAC 80 and ... the standards of the applicable coastal district.

Now, during this coordinated review process each local, state, and federal agency is not only involved in helping DGC make the consistency determination, but is also responsible for reviewing, analyzing, and issuing their own numerous permits and authorizations. Moreover, the public has an opportunity to be involved in and comment on the ACMP consistency review and each and every one of the agency permits.

Number 0534

MR. DONAJKOWSKI continued:

And it is here where the petition process, in our view, is being manipulated and misused. If a single individual living in the district where the project is proposed submits comments to DGC during the public comment period, and then the agency subsequently issues a proposed determination that the project is consistent, this lone individual has the right to notify DGC of intent to petition the Coastal Policy Council [CPC].

This single act - the act of notifying of intent to petition - automatically extends the ... consistency review period by up to a total of 50 days, which includes 20 days for the petitioner to actually draft their formal petition and then, if it's submitted, another 30 days for the Coastal Policy Council to be convened and make its decision.

Now, in this case, neither DGC nor the Coastal Policy Council [gets] to review the merits of the notice of petition or the petition itself. If the petitioner meets certain basic requirements such as being a citizen in the district and they submitted comments during the public comment period, regardless of the merits of those comments, the right to petition is automatically granted.

Removal of the petition process will not decrease the right of the public to provide comments on a project. It will simply eliminate what is now a right to needlessly delay a project. The specific responsibility of the Coastal Policy Council is solely to answer the question, "Did DGC fairly consider the comments made by the petitioner during the public process?" The CPC does not review or address the merits of the petitioner's comments, just whether [the] comment was considered.

Number 0703

MR. DONAJKOWSKI continued:

Now on to the specifics: one Kuparuk field development project, drill site 3S, was delayed through this process for 35 days, only ... to have Phillips, our outside attorney, a representative from the North Slope Borough, ... numerous agency personnel, and the entire Coastal Policy Council show up at the scheduled hearing, only to find out that the petitioner had withdrawn the petition minutes before we were to begin.

In addition to this needless delay of the project, this resulted in several hundred hours of wasted preparatory work done by DGC employees as well as Phillips' own employees. And an entirely unrelated

project package was impacted for 15 days because DGC staff needed to prepare for the Coastal Policy Council hearing.

Number 0768

MR. DONAJKOWSKI continued:

Furthermore, four of Phillips' exploration permitting packages, which also received proposed consistency determinations, were similarly petitioned. In the one case where the petitioner actually appeared, the Coastal Policy Council ... unanimously dismissed that petition. Two of the remaining three petitions were withdrawn by the petitioner, and the last one was dismissed because the actual petition itself was submitted after the stated 20-day period had expired. But even in this last case, a project which met the state's test for consistency was delayed 20 days merely through the submittal of comments and a notice that a petition was going to be filed.

Exploratory drilling on the North Slope is conducted during the few winter months when ice roads can be used to mitigate impacts to tundra. As a consequence, weather delays and uncertainties narrow that window of opportunity. Consequently, the delays that are brought about by this petition process can, in fact - even with 10 to 15 days' delay - result in abandoning a drilling program.

As mentioned above, the ACMP process and the various agency permits required offer the public significant opportunity to raise their substantive concerns. This particular petition process, in our view, has no constructive application. As I've described above, its only use is as a tool to hold hostage responsible projects that would develop the state's resources. House Bill 439 appropriately does away with this tool. Thank you for the opportunity to comment.

Number 0921

CHAIR OGAN asked how far inward coastal zone management reaches from the shoreline.

MR. DONAJKOWSKI suggested DGC might be able to answer that. In response to further questions, he said [Phillips] had "five project packages - four permits submitted" that were impacted by this specific petition process in about two months' time. He also affirmed that recent North Slope weather trends have [resulted in] ever-later opening of tundra access to build the ice roads in order to get out to the projects.

CHAIR OGAN asked if permits to build ice roads involve a coastal zone permit.

MR. DONAJKOWSKI said no, but added:

We are not going to spend a lot of money constructing ice roads in anticipation of an uncertain outcome. We already have considerable millions of dollars invested upfront in planning and preparing for these projects. To do more just puts more dollars at risk, and ... really becomes a risk assessment, businesswise, to say, "Do you want to start this work when you still have the uncertainty of permit processes that may not, in fact, allow you to capitalize on those expenditures?" And, like ice roads, the dollars you've spent simply melt away at the end of that season.

Number 1007

CHAIR OGAN asked when [Phillips] can usually get out there and have acceptable conditions for building ice roads.

MR. DONAJKOWSKI answered that it was January this year; in the past, it has been as early as November. He noted that there are other delay factors besides the weather [patterns], including inclement weather. He said the permitting process is already lengthy, and this [recent delay caused by the permitting process] was unanticipated.

MR. DONAJKOWSKI highlighted the extensive period of analyzing data from the previous year's work: a considerable amount of seismic and exploration information has to be processed in order to figure out where to put the next well and optimize the success ratio. That can delay even initiating the permit process, and the potential for "delay tactics" further hampers the ability [to proceed].

Number 1234

REPRESENTATIVE JOULE asked whether passage of [HB 439] would in any way hamper the ability of people to get their concerns addressed.

MR. DONAJKOWSKI referred to his testimony and numerous avenues, which he said he'd outlined, that are available to citizens and agencies in order to comment, apart from this petition process.

REPRESENTATIVE JOULE inquired whether the answer was no, then.

MR. DONAJKOWSKI replied, "That's my answer, Mr. Chairman. It would not hamper that."

Number 1281

CHAIR OGAN referred to Mr. Donajkowski's testimony regarding perhaps hundreds of hours of staff time tied up. He asked how much time and money it takes Phillips to go through this process, prepare, and show up for the hearings ready to testify, [even if the] issue is dropped.

MR. DONAJKOWSKI answered that he hadn't added up the dollars. He acknowledged that the amount pales when compared to the potential expenditure to do the work. He said it is certainly worth the effort, but to do it for no purpose is clearly a waste of valuable time. Mr. Donajkowski then commended DGC for doing its homework during the ACMP process. He added, "That's what gave us assurances that, in the end, these petitions couldn't change the outcome, ... plus they certainly did a lot of effort just preparing for the Coastal Policy Council. So I commend Director [Patrick] Galvin and his staff for the work that they did in that regard."

Number 1375

CHAIR OGAN asked how this is affecting the policy setters at Phillips - specifically, the board of directors that is deciding to invest in Alaska, and the senior management personnel. He asked whether this [petition process] is having a dampening effect on those decisions.

MR. DONAJKOWSKI answered:

If you look at your options here in Alaska and opportunities elsewhere, throughout the world, and you compare how much uncertainty you have before you can

even begin work, and the millions of dollars you have to invest upfront before you begin that work, and that you have to live with uncertainty right up until the very last day that you have an opportunity to begin that work, just due to weather conditions, it obviously gives pause to deciding whether or not and how much capital you're going to allocate to that particular type of project.

Number 1464

CHAIR OGAN asked what the total dollar amount was for one project delayed this year.

MR. DONAJKOWSKI deferred to Mr. Gallagher.

Number 1521

JERRY GALLAGHER (ph), Manager of Government and Community Relations, Phillips Alaska, Inc., responded that tens of millions of dollars of work was delayed this year, although in the end it moved forward. He mentioned the importance of continuing to explore, keeping delays to a minimum, and keeping the regulatory process as predictable and straightforward as possible.

CHAIR OGAN requested that some hard figures be provided either in writing or at the next committee hearing.

Number 1581

REPRESENTATIVE JOULE asked, "Do you believe that the state is providing adequate resources, in your experience with DGC, to deal with the issues of permitting?"

MR. DONAJKOWSKI answered:

I believe so, if you keep the process efficient and effective. Now, ... like I pointed out, they didn't have the resources completely to deal with, in our view, this issue, because we had DGC stop the clock for other permits because, appropriately, they put their personnel on this issue.

This is not something, I believe, that Director Galvin and his staff can anticipate the need [for], to be able to respond to this kind of activity. And so,

they're obviously not going to, I wouldn't think, be able to budget or ... staff up for that kind of activity. And I'm here to suggest that it's not money well spent by the state, either, to have to put energy into responding to ... this kind of effort that we just saw, which really amounted to delay tactics, in our view.

Number 1658

CHAIR OGAN asked Mr. Donajkowski, "Do you believe it takes [DGC] away from other work and other permits as well, by tying up that staff time?" He said he would ask the same question of DGC.

MR. DONAJKOWSKI answered, "From our perspective, that was our experience, yes, that it did do exactly that."

Number 1675

REPRESENTATIVE FATE asked whether this legislation might reduce the potential for litigation or "legal risk" or, in the alternative, might actually raise that potential.

MR. DONAJKOWSKI acknowledged that it is more a question for [Phillips'] legal counsel, but added:

Just from my experience, I don't ... see where it creates any additional, or less, liability through the process, and that's because I'm confident that the opportunities to raise issues and deal with them through the public comment period [are] appropriately handled through the standard process. It's just this petition piece that, again, as I said in my comments, has no value other than to delay responsible projects. I don't see it opening up the liability question.

Number 1750

JUDY BRADY, Executive Director, Alaska Oil and Gas Association (AOGA), testified via teleconference, noting that AOGA is a private, nonprofit trade association with member companies representing oil and gas exploration, production, transportation, refining, and marketing activities in Alaska. Expressing AOGA's appreciation for the introduction of HB 439, she addressed what AOGA hopes to accomplish with passage of the bill. Ms. Brady said:

We are supportive of legislation that's very clear, that's very focused on ... the petition process itself. In the past, there [have] been two attempts that I know of by the legislature to clarify and, quote, "fix" the problems raised by the petition process. Both times, groups have found ways around legislative intent and ... managed to use the process ... as a delay tactic. So ... we're going to be very focused on solving that issue this time. ...

In response to the question about what else can be done, ... we are going to be concentrating over the next few months [on] putting together ... a package of things addressing permitting issues in this state so that over the next two years, ... as the new administration comes on, when the legislature says, "What can we do to help," we will have some clear ideas about how that could work. And we also intend to work with other stakeholder groups so that this is not ... as contentious as things have been in the past, but as a way for all of us to move forward to help the permitting process.

Number 1903

MS. BRADY offered some history, saying both the CPC itself and this administration have made attempts to eliminate the petition process. In 1984, when the CPC passed regulations creating the consistency review process, it deleted the section of the regulations that allowed petitions to the CPC; however, the statutory language was left intact and some environmental groups used that as the way to petition on "state action." She said perhaps 15 attorney general's opinions related specifically to "petitions and that whole issue."

MS. BRADY related her belief that in 1997 the Knowles Administration, with SB 186, attempted to end the petition process. Referring to when the CPC and DGC were implementing regulations on the petition process in 1998, she said, "We suggested that, in fact, if the fix they were trying to do at the time didn't work and, in fact, ended in more petitions, that [the] Coastal Policy Council and DGC invite discussion and reconsideration of the need for the petition process, and if they decided that change should have to be made, that ... we go to the legislature together with that."

MS. BRADY informed the committee that AOGA's goal is to work with the legislature and the administration in "fixing this issue" - which through the years has caused confusion, hundreds of thousands of hours of work, and hundreds of thousands of dollars - once and for all. She said the state's system, through the permitting system, the agencies, and the consistency process itself, has multiple opportunities for individuals and agencies to comment. Ms. Brady indicated Alaska is the only state with both an elevation process and a petition process; furthermore, there is an appeals [process] for each agency decision. She added, "We already have a very complex process."

MS. BRADY explained that the petition process isn't considered part of the Administrative [Procedure] Act; therefore, someone can go directly to court. She remarked, "That's what the Coastal Policy Council intended when they ... tried to eliminate the petition process in the '80s." She concluded by saying there have been consistent problems with the petition process, which doesn't improve people's ability to get their day in court or in front of an agency. She expressed hope that "this time we can finally eliminate ... the need for future ... litigation or attorney general opinions."

Number 2106

CHAIR OGAN asked about the process AOGA goes through. Calling AOGA a "consensus organization," he offered his understanding that if one member objects to a particular policy statement by the organization, "it doesn't happen." He asked whether that is a fair assessment.

MS. BRADY answered that [AOGA has] a committee-driven process. She explained:

This proposal for this committee comes out of permit streamlining. On the committee process, you need a 50-percent vote. This happened to be a unanimous vote. And the further process is, if a company objects, then they can ask for the board to take some action. ...

The Alaska Oil and Gas Association is going to be working again with you, and with the administration, on probably final language, to make sure that everyone is in agreement about how to move forward on this. But we certainly do endorse, unanimously, the concept that this has to be taken care of.

Number 2185

CHAIR OGAN said he'd been informed by people in the industry that this is probably one of the strongest positions [AOGA] has taken in quite some time.

MS. BRADY agreed, saying the concern about the permitting process is high. There are new companies and interests, and because of the short season on the North Slope, there is continuing concern about a predictable process whereby someone will know how long it will take to get a permit, what will be required, and what the stipulations will be.

Number 2225

CHAIR OGAN requested confirmation that this hasn't been a problem anywhere except the North Slope.

MS. BRADY answered that the permitting process is a statewide issue. She added, "We ... had one early petition in Kenai, but these have been mostly North Slope petitions."

CHAIR OGAN suggested it isn't quite as critical on the Kenai [Peninsula], where the "weather windows" aren't as big an issue, for example, although it might be just as frustrating.

MS. BRADY agreed but said she'd heard from, to her belief, "every single one of the Cook Inlet companies who, watching what happened to Phillips on this last round, are very committed to ... fixing this issue."

Number 2296

PAMELA LaBOLLE, President, Alaska State Chamber of Commerce, came forward to testify in support of HB 439, specifying that her private, nonprofit organization represents approximately 700 businesses in Alaska that employ approximately 70,000 individuals. She agreed that the provision removed by HB 439 adds needless costs and delays to the permitting process. The oil companies that are so involved in the permitting process must compete globally, she said, emphasizing how vital these projects are to the state. Ms. LaBolle said:

I was told by an executive of one company that the permitting process alone in Alaska adds \$500 million a year to the cost of doing business in Alaska over that

of doing business in other places. And I thought that was just an astronomical cost.

Now, of course, the permitting process is very important, and it's very much needed. And no one is questioning that. And by removing this provision, you still have safeguards. You still have a consistency review, and you still have a process by which the council can be petitioned to determine whether or not the coastal management program is being implemented, enforced, and complied with.

This is only one extra, needless step that has been in there, that has caused great problems for the oil companies and could be applied needlessly in future projects and at great cost to the State of Alaska.

Number 2431

REPRESENTATIVE FATE asked whether the \$500 million additional cost was in relation to other states or other areas globally.

MS. LaBOLLE said she didn't know.

Number 2462

PATRICK GALVIN, Director, Division of Governmental Coordination (DGC), Office of the Governor, came forward to testify, noting that DGC is charged with implementing the Alaska Coastal Management Program. He offered some history of the petition process:

As most of you probably know, the Alaska Coastal Management Program is the state's response to the federal Coastal Zone Management Act, which was passed by Congress in 1972 and basically offered a deal to coastal states, that if the states developed a coastal plan that met the criteria that the federal government established, ... the federal government would basically waive portions of its sovereign immunity and would agree to comply with the program in the activities that it does as well as the permitting decisions that it makes, and would abide by the rules that the state established. And the federal government would provide money to both develop the program and to continue to implement it.

The state decided to take on that, and in the late '70s developed the Alaska Coastal Management Program and designed it, rather than having a centralized structure - which was an option under the federal law - [to] instead [have] what was basically a decentralized structure, and put a lot of the power that's in the program with the local governments and with the local districts, for them to be able to both develop their own plans and to have a strong hand in how they are implemented and interpreted.

In order to continue to comply with the federal requirement to show that the state still was able to demonstrate that the plan as a whole was being implemented according to the rules that were put into place, the state needed to have a vehicle for ensuring that implementation. And the petition process was that vehicle.

At the time that the ... program was put into place, there was no consistency review process envisioned. The idea was that the program would be implemented through the existing permitting decisions that each of the state agencies and the local governments ... would be doing independently, and that they would make a consistency determination in conjunction with their own permitting decision.

Within a few years, it ... became obvious to everyone that that wasn't working, that we were getting inconsistent decisions with regard to the same issues of consistency from different agencies, and the state needed to have a way to establish a single state determination.

Number 2601

MR. GALVIN continued offering history:

So, in 1984, the coordinated consistency determination was put into place. And in addition to doing that single state consistency determination, it also provided some level of coordination of the individual permits. And so, as was indicated earlier by Mr. Donajkowski, what DGC does is both coordinate the consistency determination ... as well as coordinate

the individual agency permits that might be associated with the project.

As Ms. Brady indicated, when that initial consistency review process was put into place, there [were] no project-specific petitions put into the regulations; in fact, if her testimony is accurate, it was removed deliberately by the Coastal Policy Council when those were put into place. And it wasn't until later, in the 1980s and early '90s, that there were petitions filed under the statute that remained unchanged, [that] allowed for petitions under the coastal management program. And they were used to challenge individual consistency determinations.

That raised a number of problems, both procedurally with regard to how the Coastal Policy Council actually hears those petitions - because nobody had really thought about it before - and legally; there [were] some due-process problems because of the other appeal processes that were established in the rules.

Number 2684

MR. GALVIN continued:

And so in 1994 the legislature passed a bill that created, basically, two petition processes: the so-called (b)(1) petitions, which were designed for individual project reviews and - as basically a compromise when that bill was put together by a workgroup - limited the scope of that review to the standard of whether or not the comments of the petitioner were fairly considered during the review.

And so, in essence, what the petition process is today - and became with that legislation - was merely a check on whether or not the process was fair and whether or not, when the individual who submitted the comments requested certain things to be looked at, as part of the review, ... their comments [were] considered as part of that review.

And when the Coastal Policy Council hears these petitions, they are instructed and are limited to strictly that review. They don't look at whether or not the decision was right. They don't look at

whether or not the comments were appropriate and should have been incorporated into the decision. The question is whether or not they were considered as part of the review.

Number 2763

MR. GALVIN continued:

Following this legislative change, there was again some period of confusion over how the process would work, and there [were] a number of frustrations that developed. ... A few years ago, when the regulations were finally put into place to establish a process for dealing with petitions, at least the procedural questions were resolved. And since then, we've had a fairly straightforward process, but ... it's now an extremely limited process in terms of what is actually being reviewed and what function it's performing in the entire realm of the permitting decision making that's being done.

Number 2796

MR. GALVIN offered details relating to the current process:

And so, what we have now is a process where if a member of the public is concerned about a particular project, they submit comments, and those comments are considered as part of the review. If they disagree with the decision, they have the opportunity to appeal that to court and to request that the decision itself be reviewed and the court decide if it was an appropriate decision.

If they are a citizen of the district in which the project takes place and they submitted comments that referenced the local plan - not the state standards, but the local plan - then they have the opportunity to submit these petitions. And when the petition is filed, my division, as the staff to the Coastal Policy Council, reviews the notice of petition and makes a determination of whether or not they've met these various criteria. And oftentimes - in fact, more likely than not - one of the criteria is not met and the ... notice of petition is rejected from the outset.

If those criteria are met, then - as has been referenced earlier - it begins a process that could stretch outwards of 50 days, in which the Coastal Policy Council then provides an opportunity for the petitioner to submit the petition; DGC reviews the petition for recommendation to the Coastal Policy Council; the Coastal Policy Council is convened; we hold the meeting.

And, by the way, the Coastal Policy Council is made up of 15 members: 9 members are elected officials from throughout the state; 6 are state officials. And there is a great deal of coordination involved in just bringing them together and scheduling a meeting when we can get a quorum together.

Number 2890

MR. GALVIN continued:

And over the last two and a half fiscal years that we've been tracking this, since the regulations were put into place, we've had a total of 70 notices of petition filed. Of those, 9 have been rejected ... right from the outset - just the notice itself was deficient, for some reason. Of the 8 remaining, 3 were withdrawn - those were the 3 that were withdrawn this year - and 5 actually went to the Coastal Policy Council, and all 5 were dismissed. There were no remands back to the agency to reconsider. They were all basically unsuccessful.

So, in light of that history, when we look at this bill and what it does, we have to recognize that there are members of the public who would like to have the ability to appeal, through an administrative agency, the decisions that that agency is making, rather than having to go directly to court. This process, in my opinion, does not provide that in its current form. It, again, is a very limited review. It provides just a very narrow evaluation of whether the process was fair and has proven to basically confirm that, for the most part, the process is fair, ... that the comments are considered on a regular basis....

TAPE 02-10, SIDE B

Number 2957

MR. GALVIN referred to 1994 and an effort to bring a group together to look at whether there are alternatives to provide that vehicle for public participation in an appeal. He said this current version isn't doing that, however. He told members:

Therefore, this bill, which eliminates that, we do not oppose, because we don't feel that there is anything actually being lost. We do feel that there may be a need to have a discussion with the network or the group of folks that are involved in ... our program - including industry, the conservation groups, individuals who participate in our processes and local governments - to see if there's another vehicle. But we don't have the time, at this point in the session, to do that.

So, again, in closing, given the current nature of the petition process and the very limited effect that it has on the process, and what has been discussed earlier - the costs and time that's associated with actually implementing it - we do not oppose this bill.

Number 2884

MR. GALVIN, in response to a question by Chair Ogan relating to the number of required votes by the council, explained:

When the notice comes in, ... it doesn't go to the council. It's basically a staff decision to evaluate the notice, to determine whether or not it meets the criteria to actually be heard by the council. And that's the point, as I indicated, where a majority of the petitions have failed and haven't actually come to the council.

When the notice is sufficient and the petition then is filed, it goes to the council. And it's a majority of the council - a majority of the quorum - that would vote.

Number 2834

MR. GALVIN, in response to further questions, specified that there is only one Coastal Policy Council, which has 15 members. Its public members are from different districts of the state.

CHAIR OGAN asked how far coastal zone management reaches into the state, and whether it follows any particular geographical features such as waterways.

MR. GALVIN answered that it depends on the districts, which have been given discretion to propose how far inland they want the coastal zone to reach. He said it generally follows the coastline and then follows anadromous streams inland, since the program recognizes anadromous fish as a coastal resource. In certain districts, particularly in Western and Northern Alaska, the coastal zone can reach more than 100 miles inland along anadromous streams. He added, "Outside of the anadromous streams, and in other places, the coastal zone is very narrow. In Anchorage, it's fairly narrow. And in the Southeast, because of the topography and because the elevation rises so quickly, it's fairly close to the coast as well."

Number 2752

CHAIR OGAN asked how much staff time is involved with the petition process, for example. He also inquired about the fiscal note.

MR. GALVIN answered, "I think we estimated that - with one or more of the petitions that actually reached the council and we had to produce the analysis - it was upwards of [200] to 300 man-hours." In further response, he clarified that only two petitions had reached the council this year, including the one withdrawn the day of the hearing. With regard to the fiscal note, he said [DGC] doesn't hire new staff for these. There is no fiscal impact per se, although other project reviews are delayed while staff members work on these petitions, which are a priority.

Number 2584

REPRESENTATIVE JOULE asked whether the council itself had looked at the bill and taken a position on it.

MR. GALVIN said no.

REPRESENTATIVE JOULE requested confirmation that this [bill] won't diminish local governments' input into the process.

MR. GALVIN explained that local governments have a separate appeal process, an "elevation" whereby they get a complete review of the decision, rather than a limited one. Therefore, local governments don't use the petition process.

Number 2574

REPRESENTATIVE JOULE asked whether Mr. Galvin foresees any unintended consequences as a result of passing [HB 439].

MR. GALVIN referred to an earlier question with regard to whether this will increase the amount of litigation. He said some believe having this petition process "kind of takes the steam off of somebody who might otherwise go to court, even if the petition is dismissed." He added, however, "We haven't necessarily seen that. We've seen projects that have been petitioned, and even after the petition, it ends up in court. So I think that's subject to debate. But there could be the ... consequence of additional litigation."

REPRESENTATIVE JOULE asked whether, if someone does go to court, the process would be longer than the current one.

MR. GALVIN explained that the main difference - a big one - is that going to court doesn't usually involve an injunction to stop the permits. The project therefore moves forward. For example, there is still litigation with regard to whether Northstar should be developed.

Number 2488

CHAIR OGAN surmised that there could be an injunction if there were "serious merits to the case." He offered his own experience that the granting of an injunction is usually a "pretty good sign that somebody's got a good case."

MR. GALVIN concurred.

Number 2464

REPRESENTATIVE JOULE inquired on behalf of Representative Guess, who was no longer present, about the number of petitions that have been accepted.

MR. GALVIN answered that in the last two and a half years, five [petitions] have gotten to the council; all were dismissed. He

also noted that what remains, since the bill targets strictly the project-specific "(b)(1)" petitions, is the longstanding ability to petition the Coastal Policy Council if somebody believes there is a chronic failure to implement a local plan. Therefore, citizens retain the ability to request that the CPC look at whether a plan is being continually ignored in a particular aspect, on a number of projects, and can ask the CPC to take action in that regard. "But, historically, we've not received a single one of those in the over-20-year history of the program," he added.

Number 2387

CHAIR OGAN announced that the committee would meet February 26 and possibly move the bill at that time, depending on the amount of public testimony. [HB 439 was held over.]

ADJOURNMENT

There being no further business before the committee, the House Special Committee on Oil and Gas meeting was adjourned at 12:05 p.m. [For minutes on the overviews of Alberta Energy and Anadarko, see the 10:05 a.m. minutes for this same date.]