

**ALASKA STATE LEGISLATURE  
HOUSE RESOURCES STANDING COMMITTEE**

March 14, 2002

1:03 p.m.

**DRAFT**

**MEMBERS PRESENT**

Representative Mike Chenault, Co-Chair  
Representative Hugh Fate, Co-Chair  
Representative Beverly Masek, Vice Chair  
Representative Carl Gatto  
Representative Bob Lynn  
Representative Kelly Wolf  
Representative David Guttenberg  
Representative Beth Kerttula

**MEMBERS ABSENT**

Representative Cheryll Heinze

**COMMITTEE CALENDAR**

HOUSE BILL NO. 160

"An Act relating to the emission control permit program; relating to fees for that program and to the accounting of receipts deposited in the emission control permit receipts account; and providing for an effective date."

- MOVED HB 160 OUT OF COMMITTEE

HOUSE BILL NO. 163

"An Act relating to an annual wildlife conservation pass and the fee for that pass; relating to nonresident and nonresident alien big game tag fees; and providing for an effective date."

- HEARD AND HELD

**PREVIOUS ACTION**

BILL: HB 160

SHORT TITLE:EMISSION CONTROL PERMIT PROGRAM

SPONSOR(S): RLS BY REQUEST OF THE GOVERNOR

Jrn-Date	Jrn-Page		Action
03/05/03	0430	(H)	READ THE FIRST TIME -

			REFERRALS
03/05/03	0430	(H)	RES, FIN
03/05/03	0430	(H)	FN1: (DEC)
03/05/03	0430	(H)	GOVERNOR'S TRANSMITTAL LETTER
03/14/03		(H)	RES AT 1:00 PM CAPITOL 124

BILL: HB 163

SHORT TITLE:NONRES.GAME TAG FEES/WILDLIFE TOUR PASS

SPONSOR(S): RLS BY REQUEST OF THE GOVERNOR

Jrn-Date	Jrn-Page		Action
03/05/03	0433	(H)	READ THE FIRST TIME - REFERRALS
03/05/03	0433	(H)	RES, FIN
03/05/03	0433	(H)	FN1: (DFG)
03/05/03	0433	(H)	FN2: (DFG)
03/05/03	0434	(H)	GOVERNOR'S TRANSMITTAL LETTER
03/05/03	0434	(H)	REFERRED TO RESOURCES
03/14/03		(H)	RES AT 1:00 PM CAPITOL 124

**WITNESS REGISTER**

ERNESTA BALLARD, Commissioner  
 Department of Environmental Conservation (DEC)  
 Juneau, Alaska  
 POSITION STATEMENT: Testified in support of HB 160.

TOM CHAPPLE, Acting Director  
 Division of Air and Water Quality  
 Department of Environmental Conservation  
 Anchorage, Alaska  
 POSITION STATEMENT:

JOHN KUTERBACH, Program Manager  
 Air Permits  
 Division of Air & Water Quality  
 Department of Environmental Conservation  
 Juneau, Alaska  
 POSITION STATEMENT:

TADD OWENS, Executive Director  
 Resource Development Council  
 Anchorage, Alaska  
 POSITION STATEMENT: Testified in support of HB 160.

CHARLOTTE MacCAY, Member

Air Permits Work Group  
Anchorage, Alaska

POSITION STATEMENT: Testified on HB 160.

MARILYN CROCKETT, Deputy Director  
Alaska Oil & Gas Association  
Anchorage, Alaska

POSITION STATEMENT: During hearing on HB 160, testified that following the work group's recommendations DEC will be able to maintain a high level of protection while concurrently making air permitting more attractive to developers and industry.

KEVIN DUFFY, Acting Commissioner  
Alaska Department of Fish & Game  
Juneau, Alaska

POSITION STATEMENT: Presented HB 163 on behalf of the governor.

MICHELLE SYDEMAN, Assistant Director  
Division of Wildlife Conservation  
Alaska Department of Fish & Game  
Juneau, Alaska

POSITION STATEMENT: Testified on HB 163.

ROBERT NAUHEIM, Assistant Attorney General  
Natural Resources Section  
Civil Division (Anchorage)  
Department of Law  
Anchorage, Alaska

POSITION STATEMENT: Answered questions pertaining to HB 163.

#### **ACTION NARRATIVE**

#### **TAPE 03-16, SIDE A**

Number 0001

**CHAIR HUGH FATE** called the House Resources Standing Committee meeting to order at 1:03 p.m. Representatives Fate, Chenault Masek, Gatto, Lynn, and Wolf were present at the call to order. Representatives Guttenberg and Kerttula arrived as the meeting was in progress. Representative Heinze was excused.

#hb160

HB 160-EMISSION CONTROL PERMIT PROGRAM

**DRAFT**

CO-CHAIR FATE announced that the first order of business would be HOUSE BILL NO. 160, "An Act relating to the emission control permit program; relating to fees for that program and to the accounting of receipts deposited in the emission control permit receipts account; and providing for an effective date."

Number 0134

ERNESTA BALLARD, Commissioner, Department of Environmental Conservation (DEC), testified, noting that John Kuterbach, Program Manager, Air Permits, Division of Air and Water Quality, and Tom Chapple, Acting Director, Division of Air and Water Quality, were present to answer questions but would have to leave later in the afternoon due to another commitment.

COMMISSIONER BALLARD talked about Governor Murkowski's commitment to enhancing Alaska's economy through resource development and his equal commitment to protecting Alaska's environment. She said it is not an either/or proposition; a strong economy will generate the revenue base to continue funding the important regulatory programs.

COMMISSIONER BALLARD said without a strong economy, one cannot hope to have a strong government. She explained that over the last 30 years, [the state] has learned much about the environmental and health hazards associated with air pollution; much had also been learned about emission-control technologies, air modeling, and the need for and nature of ambient air-protective standards. Through national and state legislation, the shared value for environmental protection for citizens has been recognized, along with many other core values that form the framework for government regulatory programs. Environmental protection is not incompatible with resource development, she suggested; rather, it is as fundamental a component of resource development as are labor and worker safety laws.

Number 0335

COMMISSIONER BALLARD said Governor Murkowski and members of his cabinet recognize that Alaska's laws form the framework for a successful resource development strategy. Environmental laws are one of the equally important pieces of public policy. She said this bill will improve the process and the function of underlying state policy to protect the environment. It does change the protective standards already in place and administered by the department through existing regulation, she

explained. Through DEC's fiscal year 2004 (FY 04) budget, [the department] intends to sharpen its focus on the core permitting and protection responsibilities. She said HB 160 is essential to achieving the results promised in [DEC's] budget proposal.

COMMISSIONER BALLARD noted that she had made a commitment to the committee and each member personally to revisit [DEC's] core mission of developing protective standards and implementing them through efficient and fair regulations. She said this bill is essential to her success in that undertaking.

Number 0423

COMMISSIONER BALLARD said [DEC's] legislative proposal is based on two important developments of the several years. One was a benchmark study [DEC] conducted in the department over the last two years; the study reviewed funding and workforce allocation in air programs of states that are considered comparable in workload and complexity to Alaska. She said committee members may be interested to know those states that were compared with Alaska: Colorado, New Mexico, California - two different air quality programs because they're organized in air districts, Oklahoma, Montana, Vermont, Washington, and Oregon. She said states with small populations were chosen, as well as states with resource development activities similar to [Alaska's], although there is nothing comparable to Alaska.

Number 0494

COMMISSIONER BALLARD explained that it was felt that these states formed a similar benchmark group. Alaska has an unusual air [control] program, she explained. Although the state has a small population, it has a high number of air permits. Alaska has as many operating permits as Colorado and as many new major permits as New Jersey. She explained that this is because Alaska doesn't have a power grid and thus a far greater dependence on diesel generation and a modern, well-organized air program. It was discovered during the benchmark study that [the department] had not funded, staffed, or organized the program adequately to the job that the applicants expect. Commissioner Ballard said HB 160, and the program increase proposed by the department in the governor's budget, will allow the department to remodel the permit program in line with the successful programs in other states.

Number 0577

COMMISSIONER BALLARD explained that the second development that guided the department's proposal for FY 04 and for the development of this legislation was the Air Permits Work Group, a stakeholder group convened by the department last year. The work group carefully reviewed the department's program against the federal Clean Air Act and against the EPA [Environmental Protection Agency] rules that have been amended several times in recent years, establishing new programs and control concepts.

COMMISSIONER BALLARD reported that the state permitting program has not kept pace with the national regime or with the needs of Alaskan communities and industries. She told the committee that the work group report is in the bill packet, and the work group recommendations are incorporated into HB 160. Commissioner Ballard explained that this bill will create a predictable, timely, and rational permitting program. It will allow the regulation of minor sources by standardizing permit conditions that are based on best management practices. She said, for example, the department currently has a permit program that is a self-management implementing best practices program for oil drilling rigs. The [department] wants to expand it to include more situations. For Alaska's population size, there are many more mobile and portable plants and machinery than most states. She said the [department] needs the "tools" to work with this unusual but essential fleet. The bill will also exempt sources from permitting to the extent allowed under federal law, and it will achieve efficiency through adopting several rules by reference.

Number 0778

COMMISSIONER BALLARD said there are many changes that [the department] is proposing to change the terminology in state statute. That terminology change is essential to reflect federal terminology, she said. If a federal rule is adopted using a term of art and Alaska's statute uses a different term for the same thing, that rule can't be adopted easily; the [department] has to go through a more elaborate rule-making process. Commissioner Ballard said this is time consuming and does not give the advantage that "we believe our permitting applicant's deserve." The efficiency that [the department will achieve] will also make it easier for the permitting of rural power plants in the state's small, outlying Bush communities, she explained. She said the [department] will be able to use

the so-called "clean unit test" to avoid what is done now, which is a detailed, site-by-site technology analysis.

Number 0778

COMMISSIONER BALLARD addressed the fiscal note and said the bill itself does not warrant an increase in staffing; however, without additional staff as proposed in [the department's] budget for FY 04, the important statutory changes that will be achieved through the legislation cannot be delivered because [the department] will not have adequate staff to implement them. In order to operate an air permitting program that issues timely permits, [the department] has requested additional staff through the budget process, she explained.

COMMISSIONER BALLARD said in the spirit of full disclosure, the entire permit increment was put in this fiscal note and the box was checked that stated this amount is [included] in the governor's FY 04 proposal. Therefore, the fiscal note represents the cost for reinvigorating the entire air permit program for the state. She told members that while there is an increase in this very important program, other services in the department have been reduced, so that only services that are essential to [the department's] mission of protecting public health and the environment are being provided. With this increment, as well as several other small increases in core permitting programs, the department still has an overall net reduction of 13 FTE [full-time employees] and \$553,000. She said she was pleased to bring forward a true example of what permit streamlining will look like. Commissioner Ballard told the committee that [HB 160] represents an effort to truly take advantage of "all of the tools in the federal tool box" to the benefit of state permit applicants.

Number 0964

REPRESENTATIVE GUTTENBERG noted that the work group's final report was very helpful and informative.

Number 1009

TOM CHAPPLE, Acting Director, Division of Air and Water Quality, Department of Environmental Conservation, testified, noting that Commissioner Ballard had given a good overview of the bill. He mentioned that there are a lot of changes in definitions that take advantage of the federal program. Mr. Chapple said the

sectional analysis provides a helpful "walkthrough" of the bill. He offered to meet with committee members to help in their understanding [of the changes].

Number 1068

REPRESENTATIVE KERTTULA referred to changes made in the definitions section and asked what's happening with stationary sources versus mobile sources. She also asked if the mobile sources are covered or if they are somehow removed from the permitting process.

MR. CHAPPLE said the bill doesn't change the system [currently in place]. This bill and the permitting program are designed, principally, for stationary sources, he explained. Sources like oil drilling rigs, asphalt plants, or soil-remediation units move around and have been under state permit for a number of years and will continue to be so. The cutoffs for the size of the facility that will be permitted won't change; however, some of those currently listed in the "major source" category will be moved to the newly created "minor source" permitting program for which there is hope to accomplish more streamlining.

REPRESENTATIVE KERTTULA highlighted that reconstruction doesn't seem to be included in the list of permits requiring a construction permit. Therefore, she asked how reconstruction situations will be addressed. Will it be picked up in federal language, she asked.

MR. CHAPPLE deferred to Mr. Kuterbach.

Number 1223

JOHN KUTERBACH, Program Manager, Air Permits, Division of Air & Water Quality, Department of Environmental Conservation, explained that the term "reconstruction" wasn't used because it isn't found in federal law for major source permits. Under federal law, reconstruction is used to qualify changes at a facility as a new facility. Therefore, the concept of reconstruction would be carried through, although the term itself wouldn't.

REPRESENTATIVE KERTTULA asked if the lack of the term "reconstruction" would result in any change in the current manner in which review occurs. She asked, "Would we drop anything out?"

MR. KUTERBACH answered that currently reconstruction at the federal level is under review, and some of the recently adopted federal rule changes were intended to clarify what is reconstruction versus routine maintenance. The state would follow suit with those federal changes, and thus that change would be reflected in the state's program. In further response to Representative Kerttula, Mr. Kuterbach explained that a reconstruction is a replacement of components at a facility without necessarily increasing emissions. However, a modification is an increase in emissions, and thus the [department] would continue to regulate the modifications.

Number 1354

REPRESENTATIVE KERTTULA turned to Section 23, which says adjudicatory hearings will only be allowed if a public hearing process is required or solicited. She asked if anything is being lost with the aforementioned language.

MR. KUTERBACH specified that current law provides that anyone who wanted to appeal a decision made by the department [on a permit] must have provided comment during the time a permit was out for public review. He pointed out that another part of HB 160 gives the department discretion for minor sources for which the department may choose not to have a public review. Therefore, Section 23 specifies that [the department] isn't removing the right of an individual to appeal a departmental decision if there wasn't a comment period.

Number 1539

TADD OWENS, Executive Director, Resource Development Council (RDC), began by informing the committee that RDC is a statewide nonprofit trade association that represents Alaskan individuals and companies in the mining, oil and gas, timber, tourism, and fisheries industries. The mission of RDC is to help grow Alaska's economy through the responsible development of the state's natural resources. Mr. Owens said that while RDC didn't formally participate in the work group referenced by Commissioner Ballard, several of RDC's members were directly involved in the process.

MR. OWENS noted that RDC is very pleased that the administration and DEC have come forward with this legislation, which is the implementation of many of the work group's recommendations. The

RDC believes that HB 160 is a very important part of a comprehensive effort to streamline the state's permitting regime. He noted that RDC has worked closely with DEC and the legislature over the years in regard to streamlining fees and making permit fees more predictable. Furthermore, RDC has worked to move permitting toward general permits based on best management practices, as well as to move the agency toward consistency with federal requirements. As has been stated, HB 160 achieves progress on all of the aforementioned fronts, he told members. Therefore, the RDC strongly supports HB 160.

Number 1662

CHARLOTTE MacCAY, Member, Air Permits Work Group, began by informing the committee that the work group emphasized the need for air permitting that is more simplified, timely, and predictable. This legislation removes the necessary obstacles in order to allow DEC to follow the work group's recommendations. However, the work to reconstruct is yet to be done and the (indisc.) will help enable this process to continue. Ms. MacCay noted that DEC has been very open and receptive to the outside suggestions that the work group has been making. She related her belief that following the work group's recommendations DEC will be able to maintain a high level of protection while concurrently making air permitting more attractive to developers and industry.

Number 1724

MARILYN CROCKETT, Deputy Director, Alaska Oil & Gas Association (AOGA), noted that AOGA is a trade association whose members represent the majority of the oil and gas activity in the state. She informed the committee that AOGA was a participant in the work group process and supports the recommendations coming out of that process. Ms. Crockett mentioned that AOGA is in the process of thoroughly analyzing HB 160 and was recently involved in a meeting held by DEC to discuss the intent behind the changes, which AOGA supports. She said DEC has done a good job putting down on paper the changes necessary to get the state's program to look more like a federal program, to make it easier to administer, and to reduce the burden on the department as well as the permittees. From that perspective, Ms. Crockett said that AOGA supports the intent of HB 160, although it will continue to review it and participate in future hearings.

Number 1862

REPRESENTATIVE KERTTULA directed attention to Section 17 on page 9 and relating her understanding that it deleted the portion of the statute requiring the permit to be issued before operation. Furthermore, Section 17 seems to allow a 12-month operation before obtaining a permit for stationary source. She asked if that's correct, or whether another section in federal law requires that the permit be obtained before operating.

MR. KUTERBACH explained that the current federal law for major operating permits doesn't require that the permit be issued before the source can begin operation; rather, it allows for 12 months of operation to issue the permit. The federal major source operating permit does not authorize new pollution, but merely collects existing requirements into a legal document. [Alaska's] current statute established an additional deadline - beyond federal law - for application for an operating permit, not for issuance of an operating permit.

MR. KUTERBACH said the proposal is to eliminate the additional application deadline that is currently in statute but not in federal law, because with the change to the minor source program, virtually all the major source operating permit facilities will first have to obtain a construction permit. Therefore, there is no need for an advanced application deadline for those facilities. In further clarification, Mr. Kuterbach specified that any entity [in those classified facilities] that is [producing] new pollution will have to obtain either a major or minor permit. For those the authorization would be before the new pollution happens. For existing operating minor source, the department doesn't see the need to have that before operation.

Number 2031

REPRESENTATIVE KERTTULA highlighted that a construction permit would have to be obtained before building the plant. The [department] is just addressing the operating for the air.

MR. CHAPPLE said that is true. He pointed out that in Alaska there is a "line" such that [a source of pollution] that is large relative to the amount of pollution a year is required to obtain a permit, while those [smaller entities relative to the amount of pollution] aren't required to do so. He explained that every state is obligated to determine what size sources will cause an air quality problem. He related that in

California, small sources of pollution such as lawnmowers and household furnaces are regulated, while Alaska's regulation targets larger sources of pollution. For those sources that look large enough to necessitate obtaining a permit [under the existing statutes], under the proposed changes the construction permit would still be required, as would the operating permit.

Number 2087

REPRESENTATIVE MASEK referred to a memorandum from the commissioner of [DEC], which she quoted as follows: "Our state permitting program has not kept pace with the national regime or the needs of the Alaskan community or the industry." She asked about the size of the backlog with this permit program.

MR. CHAPPLE answered that the department hasn't been able to issue permits in the timeframe that it believes to be responsible for business or community needs. In a multi-year average for a construction permit, it takes 254 days to issue a permit. The department believes that those permits should be issued in 90-110 days. Furthermore, the EPA has notified Alaska that Alaska isn't meeting the schedule for the relatively new federal requirement for operating permits. He noted that the department is under a commitment to complete all outstanding permits by November 2003. Alaska is one of several states that are lagging behind.

Number 2180

REPRESENTATIVE MASEK asked what industries HB 160 would impact beyond the construction industry, the oil industry, and the rural power plants.

MR. CHAPPLE said Representative Masek had identified the largest entities impacted by this legislation. He pointed out that most facilities in Alaska burn fuel and thus cause a large enough emission to require a permit. He noted that all of the rural hubs have power plants large enough to be identified as major sources. The smaller rural communities are a mixed bag. He mentioned that any significant seafood processing plant has diesel-powered generators and other heat sources. Most mines in Alaska have to generate their own power, and thus mines have large enough power plants to require permits. He said that Mr. Kuterbach could describe the size of communities that are generally small enough that a permit isn't required and those communities that are large enough and thus require a permit.

REPRESENTATIVE MASEK asked if, after the passage of HB 160, Alaska would face any federal Clean Air Act or EPA rules and thus more changes to the existing law would be required.

MR. CHAPPLE answered that the statutory changes have been reviewed [and constructed] such that the statute would provide the ability to adopt federal regulations and do so in a streamlined manner. He related his expectation that there will be other federal regulation changes. For instance, there are a number of industrial classifications that the EPA will be reviewing due to its obligation under the Clean Air Act. Some of those industrial classifications will impact sources in Alaska. Therefore, there will be new federal rules, he said.

Number 2315

REPRESENTATIVE GATTO highlighted that the word "contaminant" had been replaced by the word "pollutant". He asked about the definition of pollutant.

MR. KUTERBACH explained that the federal definition is that pollutants are basically those compounds regulated under the Clean Air Act. He said [the federal government regulates] pollutants: six actual compounds, and 189 hazardous air pollutants that are listed in the Act. Thus [pollutants] are a well-defined set of chemical compounds.

Number 2395

REPRESENTATIVE GATTO inquired as to what happens as more [pollutants] are discovered. For example, if an individual generates a pollutant that has never been identified, would that pollutant have to be added to the list and be approved, and meanwhile, the pollutant could be generated freely until added to the list? Or is the pollutant covered until it's excluded?

MR. CHAPPLE responded that the statute would allow the department to adopt changes that are necessary when the EPA has defined a new pollutant. Mr. Chapple said for these 189 hazardous air pollutants, the EPA hasn't set what are safe or hazardous levels to breathe like it has for pollutants such as sulfur dioxide and carbon monoxide. He explained that sometimes the EPA takes a different approach: it suspects a compound to be a carcinogen and there is fairly good medical data to show that it's a carcinogen, and thus the EPA establishes emission

limitations for certain types of operations that emit or process that [carcinogen]. When the EPA adopts those new emission rules, this statute and the existing law would allow Alaska to implement those requirements because they are federally mandated and the state is obligated to implement them. That would occur without another statutory change, he noted.

MR. CHAPPLE highlighted that if Alaska is going to do something different from federal law, there is a provision in current law that places certain requirements on the department to show that there is a compelling scientific need to do it and that the work done by the department is peer-reviewed by another entity before an action is taken.

Number 2523

REPRESENTATIVE GUTTENBERG turned to Section 30 and asked how Title 5 defines "small business."

MR. CHAPPLE answered that generally "small business" is defined as 25 employees or less, and there may be other requirements linked to the definition. He noted that current statutes and this legislation provide certain free services for small businesses. When the statute was adopted originally in 1993, he said Alaska thought it was necessary to have the small business assistance program efforts available for small rural communities; however, most rural communities don't qualify because they are a government [entity].

Number 2600

REPRESENTATIVE WOLF moved to report HB 160 out of committee with individual recommendations and the accompanying fiscal notes. There being no objection, HB 160 was reported from the House Resources Standing Committee.

**DRAFT**

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The committee took a brief at-ease at 1:41 p.m.

hb163

HB 163-NONRES.GAME TAG FEES/WILDLIFE TOUR PASS

**DRAFT**

CHAIR FATE announced that the final order of business would be HOUSE BILL NO. 163, "An Act relating to an annual wildlife conservation pass and the fee for that pass; relating to nonresident and nonresident alien big game tag fees; and providing for an effective date."

Number 2657

KEVIN DUFFY, Acting Commissioner, Alaska Department of Fish & Game (ADF&G), announced that he was presenting HB 163 on behalf of the governor. He explained that HB 163 establishes requirements for nonresidents; he mentioned commercial providers of opportunities to view wildlife to obtain a wildlife conservation pass. Noting that the cost of the annual pass is \$15, he said this legislation also raises nonresident and nonresident alien big game tag fees for moose, caribou, sheep, and goats. With regard to the wildlife pass, nonresidents under age 16 and all nonresidents who hold any Alaska hunting or fishing license prior to utilizing the commercial viewing service will be exempt from purchasing this pass. The \$15 fee is estimated to raise approximately \$7 million annually, he related.

ACTING COMMISSIONER DUFFY informed the committee that the department would like to work with the administration and the legislature to secure a portion of these funds for use, in part to match significant new federal dollars coming to Alaska through state wildlife grant programs. Currently, Alaska's federal funding for these programs amounts to around \$3 million.

ACTING COMMISSIONER DUFFY reported that during the last session of Congress, then-U.S. Senator Frank Murkowski and U.S. Representative Don Young sponsored legislation known as the Conservation and Reinvestment Act (CARA), which would have provided a new and stable source for fish and wildlife management. In response to this, he said, new federal dollars are coming to Alaska. He noted that last year the state received approximately \$4 million in the new state wildlife grant funding source; this year the state will receive around \$3 million. He pointed out that the federal dollars must be matched one-to-one with state dollars.

ACTING COMMISSIONER DUFFY expressed hope that HB 163 is the vehicle because [the department] believes this legislation provides a way for visitors who use and enjoy Alaska's wildlife but don't purchase a hunting or fishing license to help support

this program and ensure that Alaska maintains healthy and productive wildlife populations. This legislation requires visitors who are taking a commercial tour to view wildlife to purchase an annual wildlife conservation pass. The funds from the pass will be placed in a special account in the general fund, and therefore may be appropriated for fish and wildlife management, viewing, and education programs.

ACTING COMMISSIONER DUFFY highlighted that the billion-dollar tourism industry draws substantial revenue each year for marketing Alaska's wildlife. Therefore, he opined that it's only fair for visitors and the industry that most directly benefits from [the fish and wildlife populations] to help sustain those populations. The department believes that most visitors will be happy to know that they're making a contribution to wildlife conservation in Alaska, he added.

Number 2861

REPRESENTATIVE WOLF recalled that the tourism industry projected two years ago that the state could have 1.6 million visitors come to Alaska. He related his understanding that HB 163 would impose a viewer fee on those taking tours. He asked whether [this fee would be imposed on those] taking charters. He inquired as to [whether this fee would be imposed on those] enjoying wildlife on the road from their recreational vehicles (RVs).

ACTING COMMISSIONER DUFFY explained that the commercial operators are the ones that [the department] is trying to work with in order to generate this revenue for the state. Therefore, those traveling through the state via an RV wouldn't be required to [pay this fee].

REPRESENTATIVE WOLF asked if there is a way to include broader participation [in the proposed fee].

ACTING COMMISSIONER DUFFY said that [the department] would be willing to work with the legislature to "cast a wider net."

Number 2955

REPRESENTATIVE LYNN asked if any consideration was given to a reduced fee for children, seniors, and disabled individuals.

ACTING COMMISSIONER DUFFY answered that he believes residents under 16 are exempt from this fee, as are those [60] or older and those who purchase a hunting or fishing license. In further response to Representative Lynn, Acting Commissioner Duffy said he believes the current construction of HB 163 would require nonresident seniors to pay this proposed fee.

CHAIR FATE inquired as to the use of the CARA funds.

**TAPE 03-16, SIDE B**

Number 3011

MICHELLE SYDEMAN, Assistant Director, Division of Wildlife Conservation, Alaska Department of Fish & Game, answered that [CARA funds] are used for wildlife recreation, primarily wildlife viewing, as well as wildlife-related education programs in the schools and community. Those funds also go toward the conservation of species that aren't hunted, trapped, or fished. The [CARA] legislation was to provide funding for nontraditional wildlife programs not currently funding with the Pittman-Robertson funds or license fees that are now collected.

REPRESENTATIVE GUTTENBERG turned attention to a document in the committee packet entitled "Background on H.B. 163 and S.B. 122: An act relating to an annual Wildlife Conservation Pass". The second paragraph of that document says:

For nearly a century, hunters and anglers have borne most of the cost of wildlife management. While they are willing to pay their fair share to conserve wildlife populations, many have asked why other wildlife enthusiasts have not stepped up to the plate.

REPRESENTATIVE GUTTENBERG said he thought the aforementioned to be commendable, but didn't see HB 163 supporting those efforts because the [proposed] fee is placed in the general fund; furthermore, there aren't any wildlife conservation proposals on the table. However, there do seem to be folks lining up for money for programs that aren't wildlife conservation programs.

ACTING COMMISSIONER DUFFY acknowledged that there is a wider range of usage of these fees. However, [the department] anticipates that a certain portion of these fees would return to the Division of Wildlife Conservation and specifically be used as a match for federal money received for these wildlife viewing

programs. The match is required in order to expend the federal funds, he noted.

Number 2895

REPRESENTATIVE GUTTENBERG said the operative word is "may". He asked if there have been any proposals for funding wildlife conservation efforts.

ACTING COMMISSIONER DUFFY replied no, and explained that HB 163 was developed as part of revenue-generating measures that the governor believes to be appropriate for the state. With regard to whether the [department] has incorporated this into fiscal notes for fiscal year 2004 in the division, that hasn't been done yet, he specified. However, that is anticipated, depending upon the outcome of HB 163.

Number 2850

REPRESENTATIVE GUTTENBERG noted that fish anglers and many other [groups involved in the fishing industry] have representation on the [Board of Fisheries and the Board of Game], which manage the resources. Therefore, he inquired as to why, on the boards, there isn't a group representing nonconsumptive users who are now being asked to pay a fee to use the state facilities. Representative Guttenberg reminded members that this nation began with the notion of no taxation without representation, which he said seems to be what is being done [with HB 163].

ACTING COMMISSIONER DUFFY said, with regard to representation on the Board of Game, that dialogue often occurs between the administration and the legislature. He stated that he didn't believe a discussion of the representation of the Board of Game relative to HB 163 was appropriate.

Number 2779

REPRESENTATIVE WOLF offered his belief that the Board of Game includes a member representing nonconsumptive use. He asked whether there is any wildlife animal that isn't hunted or trapped in Alaska. He also asked whether this will continue to promote the educational programs currently established within ADF&G. Referencing an unspecified person who he said does a fantastic job working with grade school children, he asked whether this will continue to promote that person's program.

MS. SYDEMAN replied that the hope is to enhance those educational programs, which work hand in hand with the needs of [ADF&G's] biologists and wildlife managers. For instance, if a moose population is in decline in a particular area, the biologist may believe it would be helpful for people there to understand that if they don't hunt cow moose for a certain number of years, it will help the moose population to recover. That is the kind of thing for which this educational program is intended, as well as to continue programs in the schools.

REPRESENTATIVE WOLF spoke positively of two unspecified programs in the department currently managed for both fish and game.

Number 2675

REPRESENTATIVE GUTTENBERG mentioned a supreme court case about the differential between resident and nonresident hunting, suggesting the state is looking at a huge liability. He asked whether there is any similarity here, since residents aren't being charged the same as nonresidents.

Number 2617

ROBERT NAUHEIM, Assistant Attorney General, Natural Resources Section, Civil Division (Anchorage), Department of Law, replied that he thinks there is. He cited what he suggested is a very helpful case, Shepherd v. State, Dep't of Fish & Game, a [1995 Alaska Supreme Court] case that challenged the statutory preference for resident hunting of moose, elk, and deer. He said it addressed whether that kind of resident preference was permissible under the "privileges and immunities" clause of the U.S. constitution, the commerce clause, and several provisions of the Alaska constitution including the equal protection or equal rights clause and the equal application clause.

MR. NAUHEIM explained that the court upheld that statute. The essential holding with respect to the state constitutional issues was this: residents and nonresidents aren't similarly situated with respect to access to recreational use of fish and game. The court declined to pursue any further analysis and said the state can make distinctions between residents and nonresidents for purposes of recreational access to fish and game; it also noted that Article VIII, Section 2, of the constitution seems to impose "a kind of obligation for the state, in some cases, to require a preference, especially when there's a shortage." He said the case doesn't specifically

address a shortage, but that he thought mentioning that provision was helpful.

Number 2522

MR. NAUHEIM, with respect to federal constitutional issues, reported that the court [in Shepherd] ruled that "articles of unharvested fish and game" not destined to be articles bought and sold in interstate commerce aren't subject to the kind of analysis imposed by the court on laws that seem to discriminate against interstate commerce. It essentially held that unharvested moose and game aren't articles of interstate commerce.

Number 2457

MR. NAUHEIM suggested that an argument made by the guides [in Shepherd] has some degree of relevance with respect to this bill. He explained:

It addressed an argument made by the guides that because there was a disparate opportunity for residents and nonresidents, ... any kind of burden that it placed on the guides in terms of their business - hurting their business if they ... catered to nonresidents - was a de minimis kind of burden and incidental, and so long as the state was attempting to address a scarcity or some other reasonable objective - reasonable state interest - that kind of discrimination wasn't fatal to the law.

MR. NAUHEIM told members that the provision raised most often in these kinds of cases is the privileges and immunities clause. He reported that the Baldwin case, a U.S. Supreme Court case well known to "fish and game" attorneys, said that a state can distinguish between residents and nonresidents for purposes of recreational access to fish and game; it did so on the basis that the privileges and immunities clause of the federal constitution was designed to protect those kind of essential activities or basic rights that are necessary to maintaining a union of states, and it specifically found that hunting game such as elk is not one of them. Mr. Nauheim added, "Our supreme court relied specifically on that case to hold that our preference for residents, in the case of certain big-game hunting, was ... sustainable, was permissible under that constitutional provision under Baldwin."

Number 2364

REPRESENTATIVE KERTTULA said to Mr. Nauheim:

You may be on real good grounds here with increasing the tax. But in terms of viewing, aren't we really talking about tourism? And ... aren't Alaskans just as similarly situated as nonresidents? And isn't that where we're going to really have our problem? ... That's interstate commerce. And then we get shifted into a whole more difficult analysis, don't we?

MR. NAUHEIM replied:

Well, that's ... an argument. But I think the real purpose of the bill is to equalize the costs that are borne by residents and nonresidents. The notion that ... nonresidents would pay \$15 more than residents to ... view wildlife when they engage one of these commercial services - ... as I understand the policy objectives of the administration, of the Department of Fish & Game - is that that fee also reflects a difference in the amount ... that the state can be viewed as spending on residents versus nonresidents.

Nonresidents just simply don't pay anything unless they buy ... a hunting license or a fishing license or something of that sort. And if they don't buy one of those, there are still costs associated with managing fish and wildlife populations so that they're healthy, so that also the incidental benefits of viewing them [are] there for Alaskans ... and non-Alaskans.

But Alaskans do pay for government services by virtue of the stream of ... oil taxes and ... other user fees that the state charges. And those are ... revenues that state government decides to allocate in various ways. But they are the property of individual residents of ... Alaska, and ... there is a series of court cases - the Carlson case - that upholds those kinds of efforts to equalize the costs that are borne by residents, through the diversion ... of various revenues from the general fund, and ... has allowed the state to take those into account ... in looking at

how the costs of providing ... for fish and wildlife opportunities is borne. ...

Number 2222

MR. NAUHEIM said he realizes separate treatment for residents and nonresidents does raise constitutional issues, especially with respect to the commerce clause. He expressed confidence about advancing a vigorous case if it is challenged, but acknowledged that there is no guarantee of the outcome, especially for constitutional issues in a new area. Noting that he wasn't aware of another instance in the country of an attempt to assess a license for wildlife viewing, he concluded by saying, "That's not to say that some of these principles wouldn't apply with equal force. But it is ... admittedly sort of a foray into a new area."

Number 2176

REPRESENTATIVE KERTTULA noted that she wasn't up on the most recent permutation of the Carlson case, but requested confirmation that the state has had to "go through quite an onerous burden there to try to justify those differentials." Observing that the case has been around for years, she said, "That's just a risk; am I right?"

MR. NAUHEIM replied that he thinks it's a fair assessment. He added:

I don't think this law reflects the kind of ... fee disparity that's present ... in the Carlson case. That was a case involving ... taxing of a commercial activity, commercial fishing, and the fee disparity was in the hundreds of dollars. So ... we have, I think, very good advantages ... in the case of this bill for two reasons: one, we're really not ... directly taxing a commercial operation. We're ... assessing a user fee for those nonresidents who view wildlife. And the sort of enforcement mechanism is through the use of commercial providers. And ... in addition to that, again, we're just not assessing the kind ... of fee differential. But if ... this case were to go to court, there would be ... the transactional costs of litigation, which can be significant in those [kinds] of cases.

Number 2083

REPRESENTATIVE KERTTULA said she understands the arguments on roads and infrastructure, and how [the state's] oil money goes towards those things and thus can be counted as if it were a tax on Alaskans. However, she questioned what Alaskans pay specifically for [wildlife] viewing and how treating nonresidents differently can be justified. She clarified that she doesn't want to pay for being able to see wildlife, but is concerned about what will happen if this is imposed on nonresidents. Indicating some of her concern stems from her work on previous cruise ship legislation, she remarked, "The head tax there was clearly on everybody, and that's how we avoided constitutionality problems." She thanked Mr. Nauheim for his analysis.

Number 2022

REPRESENTATIVE GUTTENBERG referred to page 4, Section 7, which indicates the commissioner may appoint agents. He observed that a process is being set up to collect these fees, but noted that only one part-time employee is being added. He asked whether that same person would [be responsible for] Ketchikan, Anchorage, and Fairbanks, for example.

ACTING COMMISSIONER DUFFY answered:

We already have, under our current structure, about 1,600 licensed vendors statewide. A number of those people would be used [for] this program. So what we're trying to do from our side of the equation is, in terms of the personnel to do the specific administrative structure, we're trying to keep that to a minimum. That's why you have one part-time person reflected in there. But we already have a structure in place for the hunting licenses, and we anticipate using a similar structure ... on this wildlife viewing fee.

[The remainder of the minutes pertaining to HB 163 are forthcoming.]