ALASKA STATE LEGISLATURE
HOUSE RULES STANDING COMMITTEE
May 12, 2002
4:10 p.m.

MEMBERS PRESENT

Representative Pete Kott, Chair
Representative Brian Porter
Representative Vic Kohring
Representative Carl Morgan
Representative Lesil McGuire
Representative Ethan Berkowitz
Representative Reggie Joule

MEMBERS ABSENT

All members present

COMMITTEE CALENDAR

SENATE BILL NO. 268
"An Act relating to the issuance of state-guaranteed revenue bonds by the Alaska Housing Finance Corporation to finance mortgages for qualifying veterans; and providing for an effective date."

- MOVED SB 268 OUT OF COMMITTEE

CS FOR SENATE BILL NO. 371(RES) am
"An Act exempting the use of munitions in certain areas from a waste disposal permit requirement of the Department of Environmental Conservation; relating to general or nationwide permits under the Alaska coastal management program and to authorizations and permits issued by the Alaska Oil and Gas Conservation Commission; and providing for an effective date."

- HEARD AND HELD

PREVIOUS ACTION

BILL: SB 268
SHORT TITLE:GUARANTEED REVENUE BONDS FOR VETERANS
SPONSOR(S): RLS BY REQUEST OF THE GOVERNOR

Jrn-Date	Jrn-Page		Action
02/01/02	2086	(S)	READ THE FIRST TIME -

			REFERRALS
02/01/02	2086	(S)	STA, FIN
02/01/02	2086	(S)	FN1: (GOV)
02/01/02	2086	(S)	FN2: ZERO(REV)
02/01/02	2086	(S)	GOVERNOR'S TRANSMITTAL LETTER
02/12/02		(S)	STA AT 3:30 PM BELTZ 211
02/12/02		(S)	Moved SB 268 Out of Committee
02/12/02		(S)	MINUTE(STA)
02/13/02	2175	(S)	STA RPT 5DP
02/13/02	2175	(S)	DP: THERRIAULT, PHILLIPS, STEVENS,
02/13/02	2175	(S)	DAVIS, HALFORD
02/13/02	2175	(S)	FN1: (GOV)
02/13/02	2175	(S)	FN2: ZERO(REV)
05/06/02		(S)	FIN AT 9:00 AM SENATE FINANCE 532
05/07/02		(S)	FIN AT 9:30 AM SENATE FINANCE 532
05/07/02		(S)	Heard & Held -- Time Change --
			MINUTE(FIN)
05/09/02	3255	(S)	FIN RPT 8DP
05/09/02	3255	(S)	DP: DONLEY, KELLY, GREEN, AUSTERMAN,
05/09/02	3255	(S)	HOFFMAN, OLSON, WILKEN, LEMAN
05/09/02	3255	(S)	FN1: (GOV)
05/09/02	3255	(S)	FN2: ZERO(REV)
05/11/02		(H)	RLS AT 9:30 AM BUTROVICH 205
05/11/02		(H)	<Pending Referral> -- Recessed to a call of the Chair --
05/11/02		(S)	RLS AT 10:30 AM FAHRENKAMP 203
05/11/02		(S)	MINUTE(RLS)
05/11/02	3355	(S)	READ THE SECOND TIME
05/11/02	3355	(S)	ADVANCED TO THIRD READING UNAN CONSENT
05/11/02	3355	(S)	READ THE THIRD TIME SB 268
05/11/02	3355	(S)	PASSED Y20 N-
05/11/02	3355	(S)	EFFECTIVE DATE(S) SAME AS PASSAGE
05/11/02	3387	(S)	TRANSMITTED TO (H)
05/11/02	3387	(S)	VERSION: SB 268
05/11/02	3343	(S)	RULES TO CALENDAR 1OR 5/11/02
05/12/02	3566	(H)	READ THE FIRST TIME - REFERRALS
05/12/02	3566	(H)	RLS

05/12/02		(H)	RLS AT 4:00 PM BUTROVICH 205

BILL: SB 371
SHORT TITLE:WASTE PERMIT & COASTAL ZONE EXEMPTIONS
SPONSOR(S): STATE AFFAIRS

Jrn-Date	Jrn-Page		Action
04/29/02	3024	(S)	READ THE FIRST TIME - REFERRALS
04/29/02	3024	(S)	RES
05/03/02		(H)	RES AT 1:00 PM CAPITOL 124
05/03/02		(H)	<Pending Referral>
05/03/02		(S)	RES AT 3:30 PM BUTROVICH 205
05/03/02		(S)	Moved CSSB 371(RES) Out of Committee
05/03/02		(S)	MINUTE(RES)
05/03/02		(S)	MINUTE(RES)
05/06/02	3175	(S)	RES RPT CS 4DP 2DNP SAME TITLE
05/06/02	3175	(S)	DP: TORGERSON, STEVENS, WILKEN, TAYLOR;
05/06/02	3175	(S)	DNP: ELTON, LINCOLN
05/06/02	3175	(S)	FN1: ZERO(DEC)
05/08/02		(S)	RLS AT 9:30 AM FAHRENKAMP 203
05/08/02		(S)	MINUTE(RLS)
05/08/02		(S)	MINUTE(RLS)
05/09/02	3260	(S)	RULES TO CALENDAR 2OR 5/9/02
05/09/02	3269	(S)	READ THE SECOND TIME
05/09/02	3269	(S)	RES CS ADOPTED UNAN CONSENT
05/09/02	3269	(S)	ADVANCED TO 3RD READING FLD Y13 N6 A1
05/09/02	3270	(S)	ADVANCED TO THIRD READING 5/10 CALENDAR
05/10/02	3315	(S)	PASSED Y15 N3 A2
05/10/02	3315	(S)	EFFECTIVE DATE(S) SAME AS PASSAGE
05/10/02	3315	(S)	ELLIS NOTICE OF RECONSIDERATION
05/10/02	3313	(S)	READ THE THIRD TIME CSSB 371(RES)
05/10/02	3313	(S)	RETURN TO SECOND FOR AM 1 UNAN CONSENT
05/10/02	3314	(S)	AM NO 1 ADOPTED Y16 N2 A2
05/10/02	3314	(S)	...CHANGES TITLE OF LEGISLATION
05/10/02	3314	(S)	AUTOMATICALLY IN THIRD READING

05/11/02	3532	(H)	HELD ON CLERK'S DESK
05/11/02	3531	(H)	READ THE FIRST TIME
05/11/02		(H)	RLS AT 9:30 AM BUTROVICH 205
05/11/02		(H)	<Pending Referral> -- Recessed to a call of the Chair --
05/11/02	3349	(S)	RECON TAKEN UP - IN THIRD READING
05/11/02	3350	(S)	PASSED ON RECONSIDERATION Y16 N4
05/11/02	3350	(S)	EFFECTIVE DATE(S) SAME AS PASSAGE
05/11/02	3387	(S)	TRANSMITTED TO (H)
05/11/02	3387	(S)	VERSION: CSSB 371(RES) AM
05/12/02	3566	(H)	REREAD THE FIRST TIME - REFERRALS
05/12/02	3566	(H)	RLS
05/12/02	3583	(H)	RULES TO CALENDAR 5/12/02
05/12/02	3583	(H)	IN RULES COMMITTEE
05/12/02		(H)	RLS AT 4:00 PM BUTROVICH 205

WITNESS REGISTER

JOHN BITNEY, Legislative Liaison
Alaska Housing Finance Corporation
Department of Revenue
PO Box 101020
Anchorage, Alaska 99510-1020
POSITION STATEMENT: Presented SB 268.

SENATOR GENE THERRIAULT
Alaska State Legislature
Capitol Building, Room 121
Juneau, Alaska 99801
POSITION STATEMENT: Testified on behalf of the sponsor of SB 371, the Senate State Affairs Standing Committee.

JOE BALASH, Staff
to Senator Gene Therriault
Alaska State Legislature
Capitol Building, Room 121
Juneau, Alaska 99801
POSITION STATEMENT: Provided additional information on SB 371.

JANET DANIELS, Member
of the Chickaloon Tribe
(No address provided)

POSITION STATEMENT: Testified that the Chickaloon Tribe holds the position that the military should be held accountable for compliance with environmental law in the same manner as any other organization or business.

BOB SHAVELSON, Executive Director
Cook Inlet Keeper
(No address provided)
POSITION STATEMENT: Testified that this legislation isn't necessary.

SUSAN SHRADER, Lobbyist
Alaska Conservation Voters
P.O. Box 22151
Juneau, Alaska 99802
POSITION STATEMENT: Testified that she would be most comfortable with the original language of SB 181.

BECCA BERNARD, Staff Attorney
Trustees for Alaska
1026 W. 4th Avenue, Suite 201
Anchorage, Alaska 99501
POSITION STATEMENT: Testified that the Alaska Supreme Court decision doesn't change existing law, rather it merely interprets the law passed by the legislature.

JIM EASON, Lobbyist
Forest Oil Corporation
8611 Leeper Circle
Anchorage, Alaska 99504
POSITION STATEMENT: Testified that since the Coastal Zone Management Act there has been no requirement and no administrative practice of doing a consistency review for permits to drill.

PAT GALVIN, Director
Division of Governmental Coordination
Office of the Governor
PO Box 110030
Juneau, Alaska 9981-0030
POSITION STATEMENT: Provided comments with regard to DGC's position on SB 371.

SUSAN WARREN, Environmental Law Attorney
Office of the Staff Judge Advocate
Fort Richardson, U.S. Army
(No address provided)

POSITION STATEMENT: Provided comments with regard to the U.S. Army's involvement with superfund sites.

MARY SIROKY, Manager
Information Education & Coordination
Division of Statewide Public Service
Department of Environmental Conservation
410 Willoughby, Suite 303
Juneau, Alaska 99801
POSITION STATEMENT: Testified that this change in statute [in CSSB 371(RES)am] wouldn't change DEC's ability to deal with contaminants should they be released at any facility.

ACTION NARRATIVE

TAPE 02-14, SIDE A
Number 0001

CHAIR PETE KOTT called the House Rules Standing Committee meeting to order at 4:10 p.m. Representatives Kott, Porter, Kohring, McGuire, Berkowitz, and Joule were present at the call to order. Representative Morgan arrived as the meeting was in progress. Representatives Kerttula, Green, James, and Scalzi were also in attendance.

SB 268-GUARANTEED REVENUE BONDS FOR VETERANS

CHAIR KOTT announced that the first order of business would be SENATE BILL NO. 268, "An Act relating to the issuance of state-guaranteed revenue bonds by the Alaska Housing Finance Corporation to finance mortgages for qualifying veterans; and providing for an effective date."

Number 0067

JOHN BITNEY, Legislative Liaison, Alaska Housing Finance Corporation, Department of Revenue, explained that SB 268 would authorize a vote of the people with regard to whether or not to authorize $500 million in state-guaranteed revenue bonds to fund the Alaska veterans mortgage program within the Alaska Housing Finance Corporation (AHFC). He noted that Alaska is one of five states that has the veterans mortgage program, which was a tax exemption that was provided by Congress in 1979. Those veterans qualifing for this program are those who have served in the military prior to January 1, 1977, or have not been discharged more than 30 years prior to the date of the loan application. Therefore, the number of qualified veterans is beginning to

diminish. Mr. Bitney said this would be last time that AHFC would anticipate having such a ballot measure for these type of bonds. There have been four previous ballot questions when the program was more heavily used and each of those questions passed with good public support. Mr. Bitney noted that [AHFC] supports measures in Congress relating to an expansion of the definition of a qualified veteran. In fact, the legislature unanimously supported SJR 31 to support some of those measures. Mr. Bitney noted that the companion House bill moved through three committees and is currently in the House Rules Standing Committee while the Senate bill had two Senate committee hearings.

Number 0313

CHAIR KOTT requested that Mr. Bitney expand on the reasoning behind the thought that this will be the last time that AHFC will come forward with such a bond measure.

MR. BITNEY reiterated the federal definition of a qualified veteran. Due to those federal qualifications, there are small numbers of qualifying veterans. Therefore, this $500 million should be more than enough to deal with all of the qualifying veterans. In further response to Chair Kott, Mr. Bitney explained that the net benefit to a veteran is the tax exempt bond rate for the qualifying veteran's mortgage rate. This exemption results in about a 1 percent discount. Furthermore, the veterans have the benefit of a higher loan to value ratio. A qualifying veteran can take out as much as a 95:97 loan to value ratio, which means that the veteran has a smaller down payment.

Number 0444

REPRESENTATIVE McGUIRE inquired as to the rationale behind limiting the qualified veteran to those who have served prior to January 1, 1977.

MS. BITNEY answered that when the program was established in 1979 it was intended to be a benefit to Vietnam veterans. Although there have been other national conflicts since that time, there has been difficulty in expanding the definition because only five states have this program. However, with the current mood of the country, there may be more sympathy with an expansion of the program.

Number 0500

REPRESENTATIVE BERKOWITZ inquired as to the number of veterans in Alaska that qualify.

MR. BITNEY informed the committee that currently AHFC does about $70 million worth of business [for this program], which equates to roughly a little less than 100 loans.

REPRESENTATIVE BERKOWITZ inquired as to what would happen with the extra authorization.

MR. BITNEY explained that AHFC only uses the authorization to issue bonds at times and in amounts that are necessary to meet ongoing demands. Therefore, [the authorization] would essentially be unused authority.

REPRESENTATIVE BERKOWITZ surmised then that AHFC would have unused bonding authority.

MR. BITNEY specified that such would be correct for these [veteran] mortgages.

CHAIR KOTT announced a conflict of interest because he benefits from this program now.

REPRESENTATIVE PORTER noted he also qualifies for the program.

Number 0602

REPRESENTATIVE PORTER moved to report SB 268 out of committee with individual recommendations and the accompanying fiscal notes. There being no objection, SB 268 was reported from the House Rules Standing Committee.

SB 371-WASTE PERMIT & COASTAL ZONE EXEMPTIONS

CHAIR KOTT announced that the next order of business would be CS FOR SENATE BILL NO. 371(RES) am, "An Act exempting the use of munitions in certain areas from a waste disposal permit requirement of the Department of Environmental Conservation; relating to general or nationwide permits under the Alaska coastal management program and to authorizations and permits issued by the Alaska Oil and Gas Conservation Commission; and providing for an effective date."

Number 0644

SENATOR GENE THERRIAULT, Alaska State Legislature, testified on behalf of the sponsor, the Senate State Affairs Standing Committee. He explained that the first section of CSSB 371(RES)am addresses the issue of whether a solid waste disposal permit is necessary for other active ranges [beyond the military bombing ranges. The Department of Environmental Conservation (DEC) testified that it has never interpreted the statute to require a solid waste disposal permit for the operation of "those" bombing ranges. Senator Therriault informed the committee that the litigation over this matter deals with the Eagle River Flats area. Section 1 attempts to enshrine the long-standing interpretation of the administration and the military that a solid waste disposal permit isn't necessary for the operation of those ranges.

SENATOR THERRIAULT said that the second portion of the bill deals with the recent Alaska Supreme Court case, which could potentially jeopardize the state's current [decisions] on the use of general permits. He explained that a general permit is run through a consistency determination. After obtaining a general permit, if someone wants to perform a particular activity that falls under the general permit, then the general permit is issued. For oil and gas operations, all general permits are gathered and packaged into a project. Then there is a consistency determination on the entire project. With the recent court ruling, there is a question with regard to one obtaining the general permits or whether each general permit would have to have an independent consistency determination. Additionally, the recent court ruling could jeopardize the Alaska Oil and Gas Conservation Commission's (AOGCC) issuance of its permits. The AOGCC permits are for the development of oil and gas properties in which the pipe is placed in the ground. The AOGCC is interested in how the underground strata and reservoir is developed in order to ensure that things are done in a safe manner that doesn't waste the state's resources. He pointed out that these AOGCC permits have never gone through a consistency determination.

SENATOR THERRIAULT characterized the consistency determination process as complex and protracted. If this recent court ruling is allowed to stand, then this [consistency determination] process would potentially be duplicated for the general permit. He turned to the impact of this court ruling on the AOGCC permits. If there was a development project to sink four wells and then there was a fifth well to sink, the entire [consistency determination] process would have to happen again because of the addition of the fifth well. Senator Therriault felt that such

is unnecessary and is a departure from how the program has operated since its inception. In closing, Senator Therriault reiterated that this bill merely enshrines a long-standing interpretation of the statutes.

Number 0966

REPRESENTATIVE McGUIRE inquired as to how long DEC has been using the process in question.

SENATOR THERRIAULT related his belief that DEC has used this process since the program's inception in 1977. Senator Therriault clarified that this legislation addresses the specific fallout from the court case. If it's determined that there are other areas that may be impacted, he said he believes the legislature will have time to address those.

Number 1045

REPRESENTATIVE BERKOWITZ inquired as to how the state has any authority at all in a U.S. Department of Defense (DOD) facility. It seems that the supremacy clause would require the state to give deference to the federal government.

SENATOR THERRIAULT related his belief that the state still has the right to regulate some activities and discharges on lands within the state. However, he couldn't answer whether the supremacy clause would allow the [military] to "thumb its nose at the state."

REPRESENTATIVE BERKOWITZ asked whether this [legislation] would result in the relinquishment of state primacy.

SENATOR THERRIAULT replied no. In further response to Representative Berkowitz, he specified that the munitions would span the full range of munitions from rifles to bombs and helicopter guns. He said he didn't believe [the munitions] would include chemical or biological [weapons].

REPRESENTATIVE BERKOWITZ asked whether anyone could definitively tell him that chemical and biological [weapons] aren't included.

Number 1138

JOE BALASH, Staff to Senator Gene Therriault, Alaska State Legislature, noted that he did confer with DEC because the question of the types of munitions was raised by the Legislative

Legal and Research Division. The department specified that [this legislation] wouldn't apply to chemical or biological weapons; other areas in the statute allow the department to regulate hazardous materials. There would be no exemption.

SENATOR THERRIAULT interjected that this is very specific in that it refers to a solid waste permit.

REPRESENTATIVE BERKOWITZ pointed out that lead is a toxin and "if other sections apply, what are we doing?"

SENATOR THERRIAULT clarified that the litigation specifically challenged that the state wasn't enforcing its solid waste permit. It has never been this administration's or prior administration's interpretation that a solid waste disposal permit was required for the operation of these [munitions] facilities.

REPRESENTATIVE McGUIRE recalled the same answer being provided in the House Resources Standing Committee hearing on SB 371. Furthermore, DEC supports this as it has always believed it to be the law anyway.

SENATOR THERRIAULT, in response to Representative Berkowitz, pointed out that he has a written statement from Tom Chapple, Director, Division of Air & Water Quality, DEC. He quoted Mr. Chapple as writing the following, "It needs to be clear that this legislation is not intended to affect the department's ability to deal with contamination at active range firing ranges should contamination pose a risk to the environment." In response to Chair Kott, Senator Therriault related his belief that this testimony was submitted to a prior committee.

Number 1258

REPRESENTATIVE KERTTULA related that she has heard that Alaska would be the first state to take this action concerning DOD sites.

SENATOR THERRIAULT related his belief that Alaska would be the first state that would require a solid waste disposal permit on an active range.

REPRESENTATIVE KERTTULA turned to the process for the coastal management permit and related that if one has a general permit that covers the activity, then the coastal management permit process doesn't occur for the particular project.

SENATOR THERRIAULT specified that the court case threatens the underlying statutory authority to issue the general permits.

REPRESENTATIVE KERTTULA reiterated that under the current process, pre-court decision, when there is a general permit, the activity is reviewed and if it fits under the general permit, no further review occurs.

MR. BALASH clarified that [in the scenario posed by Representative Kerttula] the general permit must be one that has already been through a prior consistency determination of its own. Therefore, it would be an activity that has already been found to be consistent in the coastal zone. Mr. Balash said this is a way for the Division of Governmental Coordination (DGC) and various other resource agencies to save time and focus their resources on other areas that aren't the routine aspects of a project. Therefore, it allows the DGC and various other resource agencies to work within the time and budgetary constraints that they have.

REPRESENTATIVE KERTTULA surmised that before the court questioned this issue, the general permit would be reviewed and if [an activity was added] and it fit under the general permit, no other review occurred.

SENATOR THERRIAULT said that was correct. He reiterated that the general permit had already gone through the consistency determination. The court decision has jeopardized whether the general permit can be used or whether this process has to occur for each permit.

REPRESENTATIVE BERKOWITZ directed attention to AS 46.03.100, which discusses wastewater. He said, "If there is any waste carried along in a stream that discharges from a single source point that that would be swept up under these permits, is that right?"

SENATOR THERRIAULT related his belief that it's a separate section that DEC would still have the ability to [regulate] wastewater.

REPRESENTATIVE BERKOWITZ pointed out that AS 46.03.100(a) says, "A person who conducts an operation that results in the disposal of solid or liquid waste material or heated process or cooling water into the waters or onto the land of the state shall procure a permit from the department before disposing of the

waste material or water. The permit shall be obtained for direct disposal and for disposal into publicly operated sewerage systems."

MR. BALASH said that he wasn't aware of any munitions activity that would result in wastewater or any kind of a liquid discharge. The exemption applies directly to the firing or other use of munitions.

SENATOR THERRIAULT quoted Tom Chapple as writing the following, "More recently, the Army as worked cooperatively with DEC and the bill sponsor to have the language include: 'meet the Army's needs while not jeopardizing other important work done by the same (indisc.).'"

Number 1532

JANET DANIELS, Member of the Chickaloon Tribe, provided the following testimony:

> It is the position of the Chickaloon Tribe that the military should be held accountable for compliance with environmental law in the same manner as any other organization or business. It is not our intent to interfere with issues of national security, but wish to protect the health of the same citizens the military has sworn to defend. For thousands of years the Native peoples of Alaska have fished and hunted this land. Scientists are now finding elevated levels of contaminants in subsistence foods all over Alaska. Cancer rates are rising all over the state. Those numbers cannot all be related to lifestyle. The entire population of the State of Alaska is at increased risk for disease and death due to contamination that migrates north from all over the world. Any reduction in laws protecting the health of the people of Alaska would only add to that risk.
>
> This bill was promulgated, in part, because of a lawsuit asking for cleanup of Eagle River Flats on Fort Richardson. That lawsuit came about after years of citizens requesting a remedial investigation of the over 10,000 items of unexploded ordnances that littered the bombing range and leached into the waters of the Cook Inlet. We worked through the Restoration Advisory Board, and only filed suit when it was concluded that it was the only option left. We did

not ask for cessation of training when we filed our intent to sue on June 15th of last year. We entered into negotiations to settle the suit shortly after, and continued to negotiate in good faith until the U.S. Army severed negotiations on April 10th this year. We only ask that the military comply with existing laws. Environmental laws were designed to protect (indisc.) citizens while allowing businesses and organizations to carry on their operations. In no way do environmental laws threaten military readiness. The federal government, through the President and Secretary of Defense, have the power to exempt installations on a case-by-case basis. What greater protection could the military ask for? In a recent "Zadby America" poll, ... even Republicans and those who voted for President Bush, more than 75 percent opposed exempting the Department of Defense from the nation's environmental laws. Even after hearing arguments for and against the proposal to exempt the Defense Department, voters remained overwhelmingly opposed. Please recognize that passage of this bill could have lasting adverse health effects on the people of Alaska. Thank you.

Number 1710

BOB SHAVELSON, Executive Director, Cook Inlet Keeper, provided the following testimony:

Cook Inlet Keeper was the plaintiff in the lawsuit involving Forest Oil's Osprey platform in Cook Inlet, where a unanimous Supreme Court held the state failed to review toxic drilling waste discharges prior to project start-up. Keeper is also a co-plaintiff in the lawsuit trying to bring some accountability to military bombing activities in the rich wetlands of the Eagle River Flats estuary.

Let me start by saying that I'm a proud Alaskan and a proud American. I believe in the values of justice, democracy, accountability, and the rule of law. These are the values which have made our nation the greatest and most powerful country on earth. While the fall of the Berlin wall and the defeat of communism, the American model of democratic capitalism is without parallel across the globe. But with technology and international trade accelerating the process of

globalization, we Alaskans, and we Americans, have an obligation, a duty, to promote the ideals of openness, fairness, competition, equality and a level playing field.

I'm here today because an oil company incorporated in New York, doing business in Denver, and dumping toxic wastes in the Cook Inlet fisheries, wants to circumvent our democratic process. Forest Oil had three years to address its dumping issues in Cook Inlet, yet it chose to fight in court instead. And it lost. So now, in the rush of the end of session, Forest Oil has crafted a special interest amendment - the Forest Oil Amendment to SB 371. The Senate took up the issue without any public review or comment the other day, and now, we are forced to deal with an issue with sweeping implications for our salmon fisheries and coastal resources with limited time and debate. This is not the Alaskan way, and it's not the American way. We are not a banana republic.

First off, and most importantly, there is no need for legislation on this issue. The Alaska Coastal Management Act already contains a process for exempting from permitting review activities which pose minor coastal impacts. It's called the ABC List and it's a 3-inch think document which includes dozens and dozens of permits and activities which do not require individual project reviews. But industry lawyers have created an illusion of confusion, arguing that the Supreme Court decision will create a permitting quagmire. We're hearing arguments that a family could not build a basement to a home in the coastal zone without a huge pile of red tape and permitting. But this is false. The Supreme Court simply said that large polluting projects such as offshore oil platforms should undergo review to protect salmon fisheries and our rich coastal resources.

Number 1826

At this point I'd like to divert from my written testimony for a second and address some of the things that [Senator] Therriault commented on. First, I'd like to point out that when the consistency review was done for Cook Inlet, the Osprey platform was never envisioned. I believe the consistency review was done

in approximately 1996 and that was not even (indisc.). We didn't know where the Osprey platform would be, we never knew how many wells were going to be drilled, what type of waste was going to be discharged. There was never any of this factual information on the table. It was not until we began to see plans of operations and discrete ideas that we had an idea what the specifics of this project were going to be.

It's important to note that industry has time and time again insisted that a phased approach to oil and gas development will ensure that each step of development will receive meaningful environmental review. But now the phasing shell game has been exposed, because if the "Forest Oil Amendment" passes, oil platforms and other large scale polluting projects will not be reviewed against coastal laws designed to protect our fisheries and coastal resources. Industry can't have it both ways - it can't evade comprehensive review at early, general stages of permitting, and then evade review again at the project specific stage.

Forest Oil is already getting a big lift on the back of Alaskans. At a time when we are staring down the barrel of a widening fiscal gap, when income taxes and PFD cuts are common options for reducing the looming deficit, the Redoubt Shoals Unit will enjoy a royalty reduction - from 12.5 percent to 5 percent - on the first 25 million barrels of oil and 35 trillion cubic feet of natural gas.

In Cook Inlet, we're embarking on an exciting new effort to brand and market our salmon to combat the glut of farmed fish on the world market. These fisheries not only support important commercial enterprises, and the families and communities they support, but also the critical recreational and subsistence lifestyles which make Alaska unique. Yet a recent EPA [Environmental Protection Agency] study shows we are starting to see problems in our fish. That's why it makes no sense to carve out a special interest waiver to corporations dumping toxic wastes into our fisheries.

We do not believe the Forest Oil Amendment should be linked to the military bombing range permit exception bill, and we oppose removing a basic permitting

requirement from toxic bombing activities in a rich wetlands complex - Eagle River Flats - which supports Cook Inlet fisheries. Alaska should not be the first state in the nation to exempt the military from environmental laws. Congress has already considered this proposal for federal environmental laws and rejected it, and the President retains the authority to intervene in the case of national security.

But in closing, we are realists, and if this legislation does in fact have to move forward, we could look beyond the Osprey platform exploratory drilling litigation, and entertain an amendment to this bill which will give future exploratory drilling activities in the coastal zone a choice: if a company wants to dump its drilling wastes into the fisheries of this State, it must undergo a coastal consistency review. In the alternative, if it opts to reinject its exploratory drilling wastes - which has long been technologically achievable and which is quickly becoming the industry standard - the State could exempt those wastes from coastal review. This is a big concession for us but in the interest of protecting the fisheries of Cook Inlet and beyond, we are willing to compromise. I hope this committee can see the logic in this proposal, and the fact that it is a win, win, win - for Alaskans, for the oil companies and for the fisheries and families and communities they support. Thank you.

[Punctuation provided.]

Number 1986

SUSAN SHRADER, Lobbyist, Alaska Conservation Voters, informed the committee that the Alaska Conservation Voters is a nonprofit organization of 32 member groups that are all Alaska-based environmental groups. The Alaska Conservation Voters is dedicated to protecting Alaska's environment through public education and advocacy. Ms. Shrader pointed out that when SB 181 went through the Senate, the committee substitute (CS) exempted all munitions ranges, not just military ranges. Therefore, private as well as municipal rifle ranges will be exempt from the work DEC does to ensure that there isn't a contaminated site when the range closes. Ms. Shrader noted that on this issue she is a bit of a NIMBY [not in my back yard] because she lives near Montana Creek which is near the Hank

Harman Rifle Range. As part of a proposal a few years ago for improvements to the range, the city requested some surface water testing. This range is in a muskeg and the water flows down the range into some tributaries that feed Montana Creek and ultimately Mendenhall River. The surface water samples were done by both the Alaska Department of Fish & Game (ADF&G) and DEC and they contained markedly elevated lead levels. Although this is a somewhat unique situation in that this range sits in a muskeg and the soil is very acidic, the [soil] tends to leach the lead into the water in a form that is a bit more toxic. Ms. Shrader stressed that DEC should have the ability to work with folks in the community in order to ensure that steps are taken to protect those folks living down stream from the range. When this range closes, it will be considered a contaminated site and the city will have to pay to deal with this contaminated site.

MS. SHRADER turned to her experience working with the legislature on issues related to the Alaska Coastal Management Plan (ACMP). Issues surrounding the ACMP typically receive a lot of attention from the coastal districts around the state. The ACMP is a way in which the locals can have input with regard to how their coastal resources are developed. Ms. Shrader expressed concern with the rate in which this bill is moving; the coastal districts haven't even had much time to find out about the bill. This didn't seem fair, she said.

Number 2189

REPRESENTATIVE McGUIRE asked, "Is it your opinion that anything that's in this bill, on both ... munitions and the consistency review, deviates from the current activities of DEC?"

MS. SHRADER related that her understanding is limited to Mr. Chapple's testimony on the bill. On both aspects, the bill seems not to alter how DEC currently does business. However, the courts in Alaska have suggested that [current DEC practices] aren't the way the law should be interpreted.

REPRESENTATIVE McGUIRE asked if Ms. Shrader holds the opinion that the court has a better role in regulating the environmental conservation laws of this state than DEC.

MS. SHRADER answered, "I would defer to the court for the legal interpretation of the laws of this state; I think that is their job is to interpret the laws. And the department's job is to execute the laws." In further response to Representative

McGuire, Ms. Shrader said the legislature's job is to write the laws.

Number 2257

REPRESENTATIVE BERKOWITZ directed attention to the language related to training activities in Section 1. He related his interpretation that this language wouldn't apply to someone who is practicing on an active range while the section would apply to someone engaged in a competition.

MS. SHRADER, from personal experience, she considered her husband to be training when he goes out with his pistol on Sunday mornings.

REPRESENTATIVE BERKOWITZ asked if Ms. Shrader would feel more comfortable with Section 1 if the language "including active ranges" was deleted.

MS. SHRADER specified that she felt more comfortable with the language in the original bill, which merely exempted the military. Very broad language is being used to address a specific issue with the Eagle River Flats.

Number 2343

REPRESENTATIVE KERTTULA asked if one of the problems with the local ranges is that they [become contaminated] with lead and copper.

MS. SHRADER replied yes. She reiterated that the Montana Creek area is troublesome because of the hydrology of the area, the slope of the range, and because it drains directly into Montana Creek.

REPRESENTATIVE McGUIRE inquired as to why the language referring to "active ranges" was added.

TAPE 02-14, SIDE B

MR. BALASH said that language was added in order to include other ranges in the state. From conversations with DEC, Mr. Balash said his understanding is that this language refers to private ranges, municipal ranges, and ranges that the Alaska State Troopers and ADF&G use for training as well as those used by the Division of Motor Vehicles, and the National Guard. Mr. Balash explained that using the language in the original

legislation would specify that DOD ranges are exempt, which implies that all the other ranges aren't and would require these permits in order to operate. Because DEC has never interpreted this particular section of statute to apply to gun ranges, it was deemed necessary to clarify the language as such.

REPRESENTATIVE McGUIRE surmised then that DEC doesn't currently require a solid waste permit for any training activities on any range.

MR. BALASH answered that he believes that to be the case, but deferred to DEC on that matter as well as the interpretation of the language "training activities".

Number 2263

BECCA BERNARD, Trustees for Alaska, explained that Trustees for Alaska is representing Cook Inlet Keeper in the Osprey litigation that is the subject of the Forest Oil Amendment. Ms. Bernard pointed out that the Alaska Supreme Court decision doesn't change existing law, rather it merely interprets the law passed by the legislature. The Alaska Supreme Court stated that every project in the coastal zone that has been reviewed for consistency has to be site specific, project specific, and has to review the entire project. The [Forest Oil Amendment] would ignore the current process and change existing law. The amendment encompassed in CSSB 371(RES)am would ignore ACMP's current practice that exempts activities that don't have a significant impact on coastal resources from project specific review. There is already a process by which minor activities could be exempt, and therefore there is no reason for this additional exemption.

MS. BERNARD turned to the "illusion of confusion" and the flow chart showing a complicated process that would have to be duplicated. That isn't correct, she charged. The Alaska Supreme Court decision doesn't create multiple reviews. Currently, when a general permit is issued it's reviewed for consistency and when a project that needs that general permit is reviewed that project is reviewed for consistency with the coastal protection standards. The aforementioned process won't be changed by the Alaska Supreme Court decision or this legislation.

Number 2156

JIM EASON, Lobbyist, Forest Oil Corporation, began by saying that he couldn't disagree more with the comments made by Ms. Bernard. Beginning with the Hammond Administration, the law has been consistently interpreted such that a general permit goes through a consistency review and when it has been found to be consistent under the provisions dictated by the general permit and the project meets those conditions, then the general permit is sufficient for the project. He pointed out that there are many permits that this project and other projects have that include things that aren't covered by general permits, and those undergo site specific review. The combination of the two has been interpreted as such since the adoption of the Coastal Zone Management Act. Mr. Eason highlighted that the Alaska Supreme Court didn't differentiate between large and small projects; it only referred to general permits. General permits involve projects that deal with oil and gas, mining, timber, construction, et cetera.

MR. EASON addressed the concerns of the pollution of Cook Inlet, and said that those concerns don't quite comport with the facts of the case. When the injunction requested by the Trustees for Alaska was issued, the fifth well was being drilled at the Osprey platform without (indisc.) and the cuttings and muds were being reinjected. The development plan, which will also be the subject of litigation, doesn't allow for the disposal of drilling cuttings and muds. Under the terms of the development permit, Forest Oil has agreed to reinject those drilling cuttings and muds, which is a significant departure from what [the committee has been told].

MR. EASON stressed that it's important that the committee understand that the issues don't only fall on the general permit. The question as to whether oil and gas conservation permits are required to undergo consistency review is also pending. Again, since the Coastal Zone Management Act there has been no requirement and no administrative practice of doing a consistency review for permits to drill. However, the Trustees for Alaska believe that permits to drill should undergo a consistency review. In a letter to Forest Oil, the Trustees for Alaska indicated that it's one of the two basis upon which the development operation is illegal and thus [Forest Oil] has been asked to cease and desist and put approximately 350 employees on stand-by.

Number 1994

CHAIR KOTT inquired as to Mr. Eason's opinion of the expansion of SB 371 such that it now includes all the ranges versus merely the military ranges.

MR. EASON answered that he couldn't speak to that.

REPRESENTATIVE BERKOWITZ pointed out that the Alaska Supreme Court vacated the DGC's consistency determination and remanded for new consistency determination. He inquired as to how long that process would take.

MR. EASON deferred to Mr. Galvin. From his experience, one timeframe would be how long it would take to complete the process. The review and appeal process that will follow and the likely litigation have to be considered in order to adequately determine the risk in time.

REPRESENTATIVE BERKOWITZ related his understanding that the court has said that [Forest Oil] has to return to a specific point in the process and begin again. He inquired as to how far back the court is asking [Forest Oil] to go and how much is left to complete [the process].

MR. EASON deferred to Mr. Galvin. He emphasized the need for the committee to understand that this has implications for more than just this project.

Number 1898

PAT GALVIN, Director, Division of Governmental Coordination, Office of the Governor, noted that DGC is responsible for implementing ACMP. Mr. Galvin stated that [the division] is very interested in trying to find a solution to this issue. The DGC believes that the court's decision won't require an extensive change in the way the division currently does business. The decision won't require longer time periods or additional reviews. For example, when a consistency determination is done similar to the one for the Osprey Project, rather than excluding the activities that are covered by the general permit, the division would look at those activities [keeping in mind] that these activities have previously been found consistent. The court is asking for these activities to be reviewed in the context of the particular project and determine if there is anything unique that hasn't be considered previously. Mr. Galvin said the division doesn't consider that to be onerous. However, the division is concerned with regard to the decision's impact on other permitting activities of the

state such as those projects that require permits from only one state agency and there is no federal permit involved. In such a situation the state agency would perform a consistency review itself and therein lies the concern because those state agencies aren't equipped to deal with issues outside their general purview. As of yet, there hasn't been a determination as to how to deal with that, although the DGC is working with the Department of Law and these agencies on that.

MR. GALVIN related that the best scenario would be one in which DGC continues to perform the consistency determinations in the way that the court would like. He expressed the need to ensure that through this process that remains in DGC's discretion and the language allows that. He recalled Mr. Shavelson's testimony, which indicated the possibility of finding some middle ground. Although he wasn't sure whether there was time to explore that, he said that perhaps it could be reviewed.

MR. GALVIN remarked that this a bit more complicated than the Alaska Supreme Court decision would indicate. While the court's decision dealt with the consistency determination for the exploration phase of the project, that phase is over. The project is moving toward the development phase. As fate would have it, the consistency determination for the development phase was issued two days before the court decision came out. Therefore, the division is in a situation in which it has to review how to respond to the court's decision in light of the exploration phase, which was vacated, and how that decision impacts the production determination. This is another issue that the division is working on with the Department of Law. The current version of the legislation, CSSB 371(RES)am, appears to resolve this matter in favor of the consistency determination being valid based on the retroactivity of the language.

Number 1640

CHAIR KOTT asked whether [CSSB 371(RES)am] is the solution or is there a better solution.

MR. GALVIN answered that [CSSB 371(RES)am] provides discretion within the agencies in terms of whether these activities are included or not. He related his belief that there are proponents of providing less discretion, which he said he was willing to review.

REPRESENTATIVE BERKOWITZ inquired as to whether there would be any possibility that the proposed language would be subject to a legal challenge and thus further hold this matter in court.

MR. GALVIN responded that the general permit language seems to be clear that discretion is provided with the agencies that are doing the consistency determination. Furthermore, making it retroactive as far back as it does wouldn't seem to raise any legal questions with the [current] projects.

REPRESENTATIVE BERKOWITZ asked whether there is any conflict with federal statutes or constitutional provisions.

MR. GALVIN related his understanding that the retroactivity has been said to be Okay. However, he expressed concern with regard to the language referring to the AOGCC exemption. "I believe that the issue that has been raised is one that, frankly, the courts have never addressed," he pointed out. This is a speculative argument. He noted that language in HB 439 further clarifies whether AOGCC is subject to coastal management. Therefore, the addition of "this" language may be cause for pause with regard to how it can be applied.

REPRESENTATIVE BERKOWITZ remarked that if there is urgency to resolve this question for the Osprey Project, then it might behoove everyone to slow the project and avoid any legal challenges.

MR. GALVIN noted his agreement.

REPRESENTATIVE BERKOWITZ inquired as to what other projects are impacted by the August 1, 1998, retroactivity of this bill.

MR. GALVIN answered that the language would seem to cover any project that is currently under review or is currently in a possible appeal. In further response to Representative Berkowitz, Mr. Galvin said that there are hundreds to thousands of projects that would be impacted by this legislation. However, most of those projects have passed the point [at which this would apply]. He cited the McCovey Exploration Project on the North Slope as the primary project that would be impacted, and is of particular concern with regard to this court decision.

Number 1421

SUSAN WARREN, Environmental Law Attorney, Office of the Staff Judge Advocate, Fort Richardson, U.S. Army, testified via

teleconference. Ms. Warren turned to the issue of the U.S. Army's involvement in superfund sites. She informed the committee that Fort Richardson and Fort Wainwright are superfund sites, and therefore are listed on the national priorities list. When those forts were listed, the U.S. Army undertook negotiations and entered into agreements with the state and the EPA to formalize a cleanup process that would include state and federal regulators. That was done as quickly as possible. Ms. Warren highlighted the importance of the federal facility agreement that would be in place in order to ensure funding priority for cleanup activities at the aforementioned locations. When the federal facility agreements were initiated, the superfund site was defined as the post, which made sense because it allowed studies to be done with regard to the entirety of the installation. At each post, several areas have been identified as areas of concern and cleanup is beginning. She mentioned the U.S. Army's aggressive and effective environmental installation record.

Number 1219

CHAIR KOTT inquired as to whether DEC was involved with the expansion of the language to include all ranges.

MARY SIROKY, Manager, Information Education & Coordination, Division of Statewide Public Service, Department of Environmental Conservation, confirmed that the department was part of that discussion. The department hasn't required solid waste [disposal] permits for military training ranges or any other rifle range in the state, and therefore DEC wasn't opposed to the expansion in the language. Ms. Siroky specified that this change in statutes doesn't change DEC's ability to deal with contaminants should they be released at any facility.

MS. SIROKY, in further response to Chair Kott, informed the committee that DEC has maintained its belief that the Department of Defense portion of this bill isn't necessary. The bill isn't necessary because DEC doesn't permit these facilities to begin with. Furthermore, this issue is being addressed at the national level.

Number 1161

REPRESENTATIVE McGUIRE inquired as to DEC's position with regard to the second portion of the bill regarding the consistency review.

MS. SIROKY deferred to the governor's office.

CHAIR KOTT closed public testimony.

REPRESENTATIVE BERKOWITZ informed the committee that Representative Kerttula has prepared some amendments for the committee's perusal.

Number 995

REPRESENTATIVE BERKOWITZ moved that the committee adopt Amendment 1, which reads as follows:

Page 2, line 2, following "previously been"
Insert "fully considered and"

CHAIR KOTT objected for the purposes of discussion.

REPRESENTATIVE KERTTULA said that Amendment 1 is offered to cover the recent court case. Representative Kerttula related her belief that what the Alaska Supreme Court said is in line with Mr. Galvin's comments on the general permit. That is, when there is a general permit there may be a lot of activities occurring in the state in many different ways. That general permit is reviewed and goes through its own consistency determination. Representative Kerttula stressed that there is no way to tell when reviewing something in the abstract, which is the case with the general permit, versus when its in application. That is what the Alaska Supreme Court recognized. The Alaska Supreme Court said that the fact that there is a general permit doesn't have to be ignored nor should something that was fully considered have to be determined again. For those things that haven't been fully considered, those should be considered. Therefore, adoption of Amendment 1 would mean that if a project has been fully considered, it doesn't have to be put back through a review. If a project hasn't been fully considered under the general permit, the [project] would have to be reviewed again. Although Amendment 1 would [create] some concerns for the companies that are effected, this is the way to do it.

Number 0788

MR. BALASH said that the court ruling suggested that an activity that was previously found to be consistent through a general permit in the coastal zone [remains consistent] when that identical activity is a part of the project. The court ruling

suggested that it's reasonable for the departments to rely on the previous determination. Although Mr. Balash said he didn't think there is disagreement on that, he pointed out that this is before the committee today due to litigation and every additional word to the statutes provides another opportunity for litigation.

REPRESENTATIVE McGUIRE asked if Amendment 1 deviates from what DEC is already doing in its consistency determination process.

MR. BALASH replied no. The crucial language is the word "determined". He expressed concern with the "fully considered" aspect, which provides for every minute detail within the area covered by the general permit. For example, in the Cook Inlet the depth of the water might vary in various parts of the inlet. Therefore, if the department hadn't "fully considered" the effect of the water flow and the tides at the varying depths, there could be grounds for a decision that not every detail was fully considered.

REPRESENTATIVE KERTTULA pointed out that the ability of the reviewing entity to "exclude" or not is important. However, by inserting the language of Amendment 1, the issue that the court looked at would be resolved while still allowing the agency the authority to exclude or not. She recognized that the companies probably won't feel comfortable with this.

Number 0481

REPRESENTATIVE BERKOWITZ asked if there is some concern that the permit for the Osprey Project wasn't fully considered.

MR. GALVIN said that was what the court implied in its opinion.

REPRESENTATIVE BERKOWITZ interjected that it wasn't expressly stated that way by the court. "Is there any indication that it wasn't fully considered," he asked.

MS. BERNARD agreed that the implication is that the wastewater discharges of the [Osprey Project's] general permit weren't considered during the project specific consistency review. The court decision specified that the discharges of the entire project had to be reviewed.

The committee took an at-ease from 5:45 p.m. to 6:05 p.m.

Number 0370

CHAIR KOTT announced that the committee would stand in recess until 9:00 a.m. tomorrow. He requested that both sides get together and review the amendments in order to find middle ground on these issues.

ADJOURNMENT

There being no further business before the committee, the House Rules Standing Committee meeting recessed at 6:07 p.m. [This meeting reconvened at 9:10 a.m. on May 13, 2002.]