

**MINUTES**  
**SENATE FINANCE COMMITTEE**  
**May 02, 2001**  
**9:43 AM**

**TAPES**

SFC-01 # 92, Side A  
SFC 01 # 92, Side B

**CALL TO ORDER**

Co-Chair Pete Kelly convened the meeting at approximately 9:43 AM.

**PRESENT**

Senator Dave Donley, Co-Chair  
Senator Pete Kelly, Co-Chair  
Senator Jerry Ward, Vice Chair  
Senator Loren Leman  
Senator Gary Wilken  
Senator Alan Austerman  
Senator Lyman Hoffman  
Senator Donald Olson

**Also Attending:**

BOB LOEFFLER, Director, Division of Mining, Land and Water, Department of Natural Resources; CAREN ROBINSON, Chair, Mental Health Trust Authority; JEFF JESSEE, Executive Director, Mental Health Trust Authority, Department of Revenue; RANDALL BURNS, CEO, Alaska Psychiatric Institute; NELSON PAGE, Trustee, Mental Health Trust Authority

**Attending via Teleconference:**

From Glennallen: SY NEELEY; Off Net location: HARVEY BASKIN; From Barrow: BILL TEGOSEAK

**SUMMARY INFORMATION**

SB 139-STATE WATER USE

The Department of Natural Resources presented testimony to the Committee. A committee substitute was adopted, and the bill was held in Committee.

HB 76-NEW FACILITIES FOR API

The Mental Health Trust Authority presented testimony to the Committee. The bill was held in Committee.

HB 242-TRS & PERS REEMPLOY & MED BENEFITS; COLA

Scheduled but not heard.

HB 204-STUDENT LOANS/COMN. ON POSTSECONDARY ED.

Scheduled but not heard.

#sb139

SENATE BILL NO. 139

"An Act relating to fees for certain uses of state water and the accounting and appropriation of those fees; relating to authorizations for the temporary use of state water; making other amendments to the Alaska Water Use Act; and providing for an effective date."

This was the first hearing for this bill in the Senate Finance Committee.

BOB LOEFFLER, Director, Division of Mining, Land and Water, Department of Natural Resources, informed this bill is part of a two-part solution to solve the problem of providing water to industries and citizens in the state. He stressed the state has been unable to keep up with water right permits that allow for the withdrawal of significant water quantities from a source. He detailed the number of backlog requests for permits and the ramifications of the backlog. He said this bill addresses the permitting problem, which is causing the backlog.

Mr. Loeffler specified that the first of the two components of this bill provides for three things: allows the Department to do business faster and more efficient by way of streamlined regulations; provides more funding for the process; and allows the Department to establish a fee process that charges for the reasonable direct costs of providing the service.

Mr. Loeffler explained that the second component of the bill reestablishes the temporary water use program by establishing explicit statutory authorization.

Mr. Loeffler informed that this program has been "reasonably non-

controversial, except in the North Slope region," has been in existence for twenty years, and has "performed well for Alaskans and in protecting the resources." He said that the language of this bill clarifies portions of the program that have been open to "judicial interpretation" because of the lack of explicit statutory authorization.

Co-Chair Kelly asked for further explanation on the second component of the bill.

Mr. Loeffler reiterated that this bill would provide explicit statutory authorization. He informed that the Department provides temporary water rights permits for such things as the water roads in the North Slope. He said that numerous permits in the North Slope region have been appealed and taken to court by entities such as Green Peace and other plaintiffs. He announced to the Committee the Department lost a portion of one decision last year that provided some additional procedures that the Department did not think were necessary, and in fact, threatened exploration on the North Slope by "almost costing the state a year of exploration." He stressed this bill provides explicit statutory authorization for the temporary use of water; not a property right or irrevocable permit for the use of water. He said that this explicit statutory authorization is consistent with how the Department has been administering the program for twenty years.

Senator Hoffman asked how this bill would apply to an individual in a rural area who wants to drill a well.

Mr. Loeffler replied that the bill provides for the charging of reasonable direct costs of services, and because there is "very little competition for use of water in rural areas," the cost is relatively small. He said this bill encourages the Department to not lump someone in rural areas in with oil companies. The current cost would be \$50 to individuals, and that "cost would probably go up but not very much."

Co-Chair Kelly asked where in the bill the limitations on costs are addressed.

Mr. Loeffler informed that the limitations on cost are found in Section 1 (b), Section 3, and Section 4. He informed that Section 1 (b) details what costs are allowed when determining a reasonable cost of service. He said that the process clearly defines what the authorization is for determining fees using this methodology.

Senator Hoffman asked how long it would take to bring the backlog of permit applications current under the new system.

Mr. Loeffler responded that the Department has committed to new performance measures that specify a "typical new water rights permit would be issued within sixty days; a typical temporary water use permit within fifty days; and the backlog would be eliminated within four or five years." He clarified that much of the backlog is comprised of amendments and transfers that are not "time critical." He continued that a permit of "critical matter" would be addressed accordingly.

Senator Austerman noted several references to "withdrawals less than significant" in the bill, and asked if the definition of that term is in Regulation, and what the term meant.

Mr. Loeffler explained the current regulation specifies any entity that withdraws 500 gallons of water a day must apply for a permit. He continued that the Department proposes to streamline the program by changing this regulation by allowing for two thresholds for the permits: one would define "significant" as the use of 5,000 gallons a day for anadromous streams and up to 50,000 gallons a day for groundwater or non-anadromous streams; the other would be "less than significant" meaning 500 to 5,000 gallons of water a day.

Mr. Loeffler clarified that in the "withdrawals less than significant" scenario, the permit "would just get agency review," and only if the agency finds there is "the potential for environmental problems would a full adjudication be administered." He stressed this would streamline the operation, and while everyone would have to apply for a permit in order to ensure the protection of anadromous fish streams, the process would help concentrate the staff on those permits that are critical.

Senator Leman moved to adopt the committee substitute 22-GS1087\J, Cook/Luckhaupt as a working draft.

There being no objection, the working draft was ADOPTED.

AT EASE 10:55 AM/11:00 AM

Senator Leman noted the committee substitute contains three changes: in Section 1 (a) language relating to unnecessary findings was deleted to reflect more appropriate language for the purposes of the legislation; a wording change of "policy of the state" to "policy of the legislature;" and page 3, lines 11-13 were rewritten to "clearly state what the Department has done regarding issuance of irrevocable permits."

Co-Chair Donley asked for clarification on whether fiscal note #2

replaces fiscal note #1.

Mr. Loeffler responded yes.

Co-Chair Donley asked Mr. Loeffler to clarify the differences between the two fiscal notes.

Mr. Loeffler informed that fiscal note # 1 contains a permitted water rights royalty fee system based on a sliding scale. He shared that significant objections were raised to that fee structure and the Senate Resources Committee changed the fee structure to "reasonable direct costs." He advised that revenue generated from the sliding scale fee structure would have been greater than that generated from the reasonable direct costs structure, and the Department Expected Water Resources Income account reflects that difference.

Mr. Loeffler continued that fiscal note #2 reflects the deletion of any FY 02 funding request as the House of Representatives and the Senate funded the Department with \$300,000 general funds.

Co-Chair Donley asked why there is a five-person increase for FY 02 included in fiscal note #2 if the money is already in the budget.

Mr. Loeffler noted that is an error in fiscal note #2.

Mr. Loeffler informed that the Department currently receives \$135,800 in general fund program receipts consistent with the intent of this bill. He continued that these program receipts increase, in two years, to \$320,000 reflecting the increase in fees based on the reasonable direct costs fee structure. He said the \$300,000 general funds increment reduces to \$115,000 once the reasonable direct costs fee structure is in place. In FY 07, Mr. Loeffler noted, the backlog of permits would be finished and several positions that were needed to address the backlog would be eliminated. He summarized that the Department is funded in FY 02 by general funds, FY 03 is a transition year, FY 04 through FY 06 would be combinations of general funds and program receipts, and in FY 07, when the backlog of permits is brought current, general funds would not be necessary as the program would be totally funded with program receipts.

Senator Green informed that numerous people in the state, especially those in the agriculture business, have concerns with the often costly process of arranging for water access while not knowing if their permit for water would be granted. She questioned if water and resource conservation district offices around the state that have received federal funds, could assist people in

those districts get their permits in order.

Mr. Loeffler replied that any help of this sort would be appreciated. He also informed that the Department would be establishing on-line permit applications in the future.

Mr. Loeffler said the soil and water conservation district offices could not be the regulator, but could help people with the permitting information needed by the Department, thereby, helping the entire system be more efficient.

Senator Green asked to clarify if the term "regulator" meant the agency that issued the permit.

Mr. Loeffler replied that was correct.

Senator Green asked if there was an advisory role the water and soil conservation agencies could serve in advising the Department that a permit was in order.

Mr. Loeffler responded it would be helpful to have information from the water and soil conservation agencies indicating that a permit was in order.

Senator Green asked if there was anything needed in this legislation to help further the relationship between the Department and the water and soil conservation agencies.

Mr. Loeffler replied that he did not think anything needed to be addressed in the Legislation; that the Committee's encouragement was enough.

Senator Green said the Committee could present an amendment if the Department felt it necessary to further the interaction between the Department and the water and soil agencies.

Co-Chair Kelly asked for clarification as to whether the groups Senator Green referred to are federal or state agencies.

Mr. Loeffler responded that they are actually local district groups.

Co-Chair Kelly mentioned that in the regulatory permitting process there is a comment area through which various groups could participate as part of the process.

Mr. Loeffler responded that yes, in the permitting process for water rights, there is a comment area.

Co-Chair Kelly concluded that this comment area would be the area through which these agencies "would naturally emerge as someone who would be involved in the process."

Senator Green asked if these local district groups had been included in the development of this legislation.

Mr. Loeffler replied that the Department had been in contact with various agricultural groups in some the water conservation districts but not specifically the district groups.

Senator Wilken voiced general support of the bill, but inquired how the word "temporary" is defined as detailed on page 4, lines 3 through 9, "Section 6, 46.15.155 Authorization for temporary use of water (a). Notwithstanding any contrary provision of this chapter, the commissioner may authorize the temporary use of a significant amount of water, as determined by the department by regulation, for a period of time not to exceed five consecutive years, if the water applied for has not been appropriated in accordance with this chapter. The commissioner may extent an authorization under this section for one additional term of five consecutive years."

Senator Wilken stated this language implies a permit could be issued for five years, and unless there has been a disregard for the water use application, there is an automatic renewal, making this temporary permit a ten-year permit. He voiced that some people could decipher this as a permanent permit. He asked Mr. Loeffler to explain the basis of the five-year permit and the five-year extension, and whether it should be longer or shorter. He also inquired about the history behind the verbiage on page 4, subsection (f) lines 25 through 27 "The commissioner may impose reasonable conditions or limitations on an authorization for temporary use of water to protect the water rights of other persons or to protect fish and wildlife habitat, public health, or other public interests."

Mr. Loeffler responded that a five-year temporary permit with a possible five-year extension has been an established authorization of the Department for approximately twenty years. He continued that this does not necessarily mean it is the correct approach, but that it does address the need for the Department to be able to issue "permits for the duration of construction." He informed that of the 200 permits that are currently in effect, only three or four involve a construction timeframe of longer than five years.

He commented that if the Committee wished to delete the five-year extension clause, it would not negatively affect the program. He

reiterated that the intent of the temporary permit is to be temporary.

Mr. Loeffler said that subsection (f) is supported by the Department in the following manner: where habitat resources are a concern, the application is reviewed with the Department of Fish and Game and the issues are addressed; if a road construction job is in a neighborhood, such things as the construction start times would be addressed. He stressed that the Department is very aware of protecting resources.

AT EASE 10:15 AM/10:15 AM

Senator Hoffman asked how this bill addressed water usage by miners.

Mr. Loeffler answered that miners are one of the major consumers of both water rights and temporary water use permits. He stated this bill would allow the Department to provide miners a better level of service.

Co-Chair Kelly informed that public testimony would now be taken.

SY NEELEY, testified via teleconference from Glennallen and noted he was looking at the working draft and some other backup material and wished to clarify that this bill only deals with temporary water use, as some of the earlier backup material referenced private water wells.

Mr. Loeffler responded that this bill only deals with temporary water use, however the fee portion would apply to all water usage. The re-authorizing statute applies to temporary water usage only, he stated.

Mr. Neeley asked for clarification that the Department would be charging a fee based on the gallons of water used for a private home.

Mr. Loeffler responded that for private home water use, the Department would only charge an application fee plus the established \$50 annual fee.

Co-Chair Kelly reiterated a private home annual fee would be \$50 and there is not a fee based on gallons. He also informed that an application fee was applicable.

Mr. Neeley asked how much the application fee would be.

Mr. Loeffler responded that it is now \$50 and would be going up marginally to between \$50 and \$100.

Mr. Neeley inquired about the fee structure on commercial wells used by public entities such as homeowners' associations and towns.

Co-Chair Kelly replied that the same fees would apply.

Mr. Neeley asked if the gallon usage costs would apply to these types of water uses.

Co-Chair Kelly replied that the costs for towns and homeowners' associations did not include a gallon usage fee.

Mr. Neeley summarized there would be a \$50 annual fee "plus whatever is determined to be the application fee." Mr. Neeley stated this verbal exchange "has cleared up" the questions he had about the bill.

HARVEY BASKIN, dairy farmer, testified via teleconference off-net from Wasilla that the drought conditions of the past three years that have affected Wasilla and Delta are a critical issue. He informed that four farmers in the Wasilla area are each investing \$100,000 to upgrade to pivot irrigation systems, and that he had to purchase \$35,000 of hay to feed his cows this year.

Mr. Baskin stressed there is "no way that a small farmer can invest that kind of money without a guaranteed certificate of water appropriation." He stated that a temporary permit is "absolutely nothing but trouble ahead for a person who is investing in a pivot irrigation system because if the temporary permit expires in five years, the investment made in that system has not had time to pay for itself." He expressed support for the bill and commended Mr. Loeffler and his staff at the Department of Natural Resources for attempting to get the issue of water rights "cleared up."

BILL TEGOSEAK, Interim Executive Director of Inupiat Community of the Arctic Slope (ICAS), testified via teleconference from Barrow and expressed concern regarding the proposed bill. He stated that "subsistence is a way of life in rural Alaska," and "the health of our environment and the prudent use of resources such as water" has "significant bearing on the health and continuing existence of other natural resources" the Rural people depend on for "livelihood and cultural preservation." He informed that the prior week, the Committee received written comment from ICAS, "a federally recognized regional tribal government" in opposition to SB 139 as it relates to temporary water use permits. [Copy on file]

Mr. Tegoseak restated the ICAS concerns about SB 139 and SB 185 particularly as they relate to the issuance of temporary water use permits. He warned this bill represents "the continuation of the Department of Natural Resources' "illegal practice of giving billions of gallons of North Slope water resources away with no public notice, no tribal consultation, no scientific analysis, and no access to traditional knowledge about the water bodies from which the water is being taken." He voiced that the criteria to "protect fish and wildlife habitat, public health, or other values are specifically not applied to temporary water use permits." He stated he is concerned that the issuance of temporary water use permits under provisions of SB 139 will exempt all such permits from public notice, and that the Department of Natural Resources' current permitting practice and this bill are "contrary to the water management policy interests" as established in the North Slope Water Management Policy.

Mr. Tegoseak detailed the need for SB 139 to more thoroughly address a better analysis of the "water withdrawal impacts on subsistence resources in the region."

Mr. Loeffler replied the North Slope Borough has the opportunity to require public notice through the coastal zone program, and stated that the requirement of giving public notice does not apply to temporary water use permits because they have a limited impact on resources. He informed that the Department of Natural Resources issued public notice for eleven permits this year and did not receive any comments from any communities or tribes.

Mr. Loeffler commented that he would investigate the status of the North Slope Water Management Policy but commented that he was sure it had been revoked. He shared that the average water withdrawal on the North Slope is approximately one billion gallons, and while this may seem like a large amount, it is a relatively small percentage of the sources.

Co-Chair Kelly ordered the bill HELD in Committee.

#hb76

CS FOR SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 76(FIN)

"An Act providing for and relating to the issuance of certificates of participation to finance construction of a new facility to be known as the Alaska Psychiatric Institute; giving notice of and approving the entry into and the issuance of certificates of participation in a lease-purchase agreement for construction of a new facility to be known as the Alaska Psychiatric Institute; giving notice of the intent and

approval to retain investment income from pertinent appropriations to be applied to the cost of construction of a new facility to be known as the Alaska Psychiatric Institute; relating to the construction of a facility to be known as the Alaska Psychiatric Institute; and providing for an effective date."

This was the first hearing for this bill in the Senate Finance Committee.

CAREN ROBINSON, Chair, Mental Health Trust Authority, informed the Committee that the Trust has been working on this project for many years.

JEFF JESSEE, Executive Director, Mental Health Trust Authority, Department of Revenue, addressed the concern that the proposed size of the Alaska Psychiatric Institute (API) is "too small." He stated that in 1983, API housed 200 people, and now it averages less than 70 people because of statewide efforts to develop community-based services. He stressed that this approach can and should continue and that "privatizing health care at the local level of service and providing available short-term, inpatient services throughout the state is good public policy." He informed that the Trust does not want to build a bigger hospital, and that twenty of the beds in the new facility are designated because other options are not currently available in Anchorage as they are in other communities. He informed that Anchorage does not have these alternative services because API has been in operation in Anchorage.

SFC 01 # 92, Side B 10:35 AM

Mr. Jessee shared that the Trust has a joint agreement with Providence Hospital, the University of Alaska, and the Department of Health and Social Services whereby the Trust would be making land available in Anchorage with the understanding that services such as "designated evaluation and treatment will be provided in the private sector." He continued that other areas of the state, such as Mat-Su, Kenai, and Kodiak, could also consider privatizing some health care services and serve people closer to home through use of the private sector.

Mr. Jessee addressed concerns regarding a proposed road through this parcel that was "put in abeyance" until the Municipality of Anchorage and the Trust determined the location of the new API facility. Mr. Jessee commented that the Trust has no position on whether a road is constructed on the parcel or not. He continued

that the plans to construct the new API facility between the current building and the hill should go forward regardless of the outcome of a more involved public process regarding whether the area's transportation needs require a road. He stressed that the Trust is only concerned that there is road access to the site. He said the road issue requires a lot more public process and a lot "more deliberation by the Municipality."

Ms. Robinson voiced support for the establishment of new community services and the size of the new API building, contrary to recent testimony of a consumer group before the Committee that did not support construction of a new building.

NELSON PAGE, Trustee, Mental Health Trust Authority, noted that the bill before the Committee is the keystone of an agreement that was reached between the Municipality of Anchorage, the Department of Health and Social Services, University of Alaska, Providence Hospital, API and the Mental Health Trust Authority. He stressed that it appears that all parties are in agreement on this "core issue about the importance of their existence and their future." He urged support of the bill.

RANDALL BURNS, CEO, Alaska Psychiatric Institute, stated that the replacement of the current API building is important because the "facility is forty years old; fire and life safety systems are worn out; it is permeated with asbestos; it doesn't meet seismic codes; and was never designed as a psychiatric hospital." He noted that as recently as March of this year, a survey was done that determined it would cost \$75 to \$81 million to replace the current building on its present site, and the request in this bill for a new API facility is a total cost of construction of \$41.7 million. He commented that it is much more economical to build a new facility than to demolish and renovate the existing one.

Mr. Burns stressed that the agreement between these groups has had the following results: enabled the size of the facility to be reduced resulting in significant cost savings; to be constructed using a design-build approach; has eliminated the cost of demolition at this time; and the new API building will be a multi-story building on eight acres instead of single story building on 16 acres thereby providing additional land availability for exchanges with Providence Hospital or the University of Alaska.

Mr. Burns explained that the demolition was isolated from the costs of the new building project because the Department would be seeking federal funds for that purpose before the Department requested any expenditure of general funds.

Mr. Burns detailed the requested expenditure components in the bill and asked for the Committee's support.

Co-Chair Kelly stated the bill would be HELD in Committee.

Senator Wilken asked the Department to supply the Committee with a five to ten year occupancy projection for the new API facility.

Senator Ward requested the Department to provide the Committee an engineering study on the remaining lifespan of the existing building and what the remodeling costs would be on extending that lifespan.

RECESSED TO THE CALL OF THE CHAIR 11:45 AM/3:43 PM

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**ADJOURNMENT**

Co-Chair Pete Kelly adjourned the meeting at 03:43 PM