

ALASKA STATE LEGISLATURE  
**SENATE RESOURCES COMMITTEE**

April 11, 2001  
4:07 p.m.

**MEMBERS PRESENT**

Senator John Torgerson, Chair  
Senator Drue Pearce, Vice Chair  
Senator Pete Kelly  
Senator Kim Elton  
Senator Georgianna Lincoln

**MEMBERS ABSENT**

Senator Rick Halford  
Senator Robin Taylor

**COMMITTEE CALENDAR**

SENATE BILL NO. 24

"An Act giving notice of and approving the entry into, and the issuance of certificates of participation for, a lease-purchase agreement for a seafood and food safety laboratory facility; and providing for an effective date."

MOVED SB 24 OUT OF COMMITTEE

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."

MOVED CSSB 139(RES) OUT OF COMMITTEE

**PREVIOUS COMMITTEE ACTION**

SB 24 - See State Affairs minutes dated 2/13/01 and Resources minutes dated 3/21/01.

SB 139 - See Resources minutes dated 4/4/01.

**WITNESS REGISTER**

Mr. Bob Loeffler, Director

Division of Mining, Land and Water  
Department of Natural Resources  
550 W 7th Ave., Ste 1070  
Anchorage AK 99501

**POSITION STATEMENT:** Supported SB 139.

Mr. Harvey Bascomb  
Wasilla AK

**POSITION STATEMENT:** Commented on SB 139.

Mr. John Wenger  
HC 60 Box 280  
Copper Center AK 99573

**POSITION STATEMENT:**

Mr. Bill Ward  
Ward Farms  
P.O. Box 1087  
Delta Junction AK 99737

**POSITION STATEMENT:** Commented on SB 139.

Mr. Rex Wrigley  
HC 62 Box 5790  
Delta Junction AK 99737

**POSITION STATEMENT:** Commented on SB 139.

Mr. Pat Schlichting  
HC 60 Box 3050  
Delta Junction AK 99737

**POSITION STATEMENT:** Commented on SB 139.

Ms. Deb Moore  
Northern Alaska Environmental Center  
218 Driveway St.  
Fairbanks, AK 99701

**POSITION STATEMENT:** Opposed SB 139.

Mr. Tom Thompson  
HC 01 Box 2011  
Glennallen AK 99588

**POSITION STATEMENT:** Opposed SB 139.

Mr. Bob Stiles, President  
DRven Corporation  
711 H St. #600  
Anchorage AK 99501

**POSITION STATEMENT:** Supported SB 139.

Mr. Jan Konigsberg  
Trout Unlimited

7511 Labrador Circle, Ste.100  
Anchorage AK 99502

**POSITION STATEMENT:** Opposed SB 139.

Mr. Tadd Owens, Executive Director  
Resource Development Corporation  
121 W. Fireweed Lane, Ste 250  
Anchorage AK 99503

**POSITION STATEMENT:** Supported SB 139.

Mr. Jim Munster  
Anchorage AK

**POSITION STATEMENT:** Supported SB 139.

#### **ACTION NARRATIVE**

#### **TAPE 01-28, SIDE A**

Number 001

SB24

#### **SB 24-LEGIS APPROVAL OF SEAFOOD/FOOD SAFETY LAB**

**CHAIRMAN JOHN TORGERSON** called the Senate Resources Committee meeting to order at 4:07 p.m. and announced SB 24 to be up for consideration.

SENATOR PEARCE moved to pass SB 24 from committee with individual recommendations. There were no objections and it was so ordered.

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#SB139

#### **SB 139-STATE WATER USE**

**CHAIRMAN TORGERSON** announced SB 139 to be up for consideration. He said a proposed committee substitute (CS) was drafted to address a number of the problems discussed in the last meeting.

SENATOR PEARCE moved to adopt the CS to SB 139, labeled Luckhaupt 4\11\01, Version C. There were no objections and it was so ordered.

MR. BOB LOEFFLER, Director, Division of Mining, Land and Water, Department of Natural Resources (DNR), explained the philosophy behind the CS:

When last we were here, we explored the problem that the water program is broken and that part of the solution is doing things faster with less money but part of the solution is a long-term income source. DNR now has the authority to raise fees, but we heard in the last meeting

on teleconference that people were very concerned about DNR's unlimited ability to raise fees. They were concerned that DNR would increase fees just to increase bureaucracy and that we would charge for a property right that people have had for a long time. The agriculture people in general would be paying for water that they occasionally use in a dry year and would be lumped in for payment like the North Slope. Those are the problems we heard and I think this bill tries to address it.

In some ways this is an anti-fee bill. It puts significant limitations on DNR's ability to charge fees. It would eliminate DNR's ability to charge the water use fee that we proposed last time. Instead, the long-term income source would allow DNR to charge only the reasonable direct costs of the application, itself. So, if you imagine you are someone with a one million gallon water right, we would not institute a new charge on that. This bill would not do that. If you apply for a water right, this bill would use the methodology pioneered last year by the legislature in what is commonly called the DEC fees bill or HB 319 to charge the reasonable direct costs. Those costs exclude - that is DNR would not be allowed to include - the cost of salaries, administrative support, that is people like me - we wouldn't on our budgeted overhead write rent and utilities - public notice costs, when those costs are not required by statute, costs related to an appeal to a permit, that is other than the applicant and expenses not necessary to comply with the law or travel expenses for small businesses such as agriculture.

So what we would do under this bill is we would divide up classes of applications and charge what the accounting allows us to - the reasonable and direct costs. So if it's an easy application, like Delta or Kenny Lake, where there are not a lot of folks, the applications are relatively straightforward. We might establish those as a class and they wouldn't be lumped in with oil and gas on the North Slope or hydro where we tend to spend a lot of our time. So, I believe in summary that this is a bill that provides certain limitations on the ability of DNR to charge. It allows us to adopt regulations that establish classes so that we can charge the costs not lumping agriculture in with oil and gas.

I will say the application costs will go up, mostly on oil and gas and hydro and somewhat less on the remaining much easier water right applications.

MR. LOEFFLER followed up with a section-by-section review of the bill. He said section 1 is the policy with respect to water fees. Paragraph 4 was changed to say they would charge the reasonable direct cost of water management. Subsection (b) indicates that it's a policy of the state to assess a reasonable fee for the services it provides facilitating the use of water and sets off those seven limitations on what they can't charge.

Subsection (c) indicates that the department may not charge for something that is not specifically related to a service with the exception of the current \$50 administrative service fee. Subsection (d) says that DNR would minimize the cost on individuals and businesses that withdraw less than a significant amount of water.

He said this means that they need a streamlined system that minimizes the cost on adjudications that either doesn't take much water and that isn't complex. He said Section 2 is the same and Sections 3 - 5 are deleted and are replaced with one amended line inserting the water use program into the existing law with the existing fee methodology pioneered last year for HB 361. Section 4 is new and indicates DNR may not charge fees except consistent with HB 361 and the current \$50 administrative service fee that is set in statute so it can't be inflated. Sections 5 - 10 are the same. Section 11 provides an effective date for the fee provisions of July 1, 2002. He corrected himself saying that all of section 6 was deleted and that modified the export statute to allow people to export less than a significant amount of water.

Number 650

SENATOR LINCOLN asked what "reasonable direct cost" and "minimize the direct cost" mean.

MR. LOEFFLER responded:

'Reasonable direct costs' are defined in AS 37.10 and they really are the salaries and benefits of the people working on that class of applications. They would keep accounts and every four years they would change the regulations to make sure we were only charging the salaries and benefits of those actually working on the applications. With respect to 'minimize reasonable direct costs,' I believe that's in the findings of the bill and so I believe it is philosophical. It is a direction to me to make sure that we run an efficient program.

CHAIRMAN TORGERSON said he thought this was somewhat experimental as they establish some of the DEC fees that RDC want them to do. Anything that's not in the inclusions could be considered as part of the fee.

MR. HARVEY BASCOMB, a Wasilla resident, said that some problems had been taken care of in SB 139, but he was calling from his farm and didn't have time to read the whole thing. He said that there had been a three-year drought and he has 300 head of cows that don't have feed because of it. He has a loan application in for a \$100,000 irrigation system, but there is no way he would do that without a guaranteed water right permit and a reasonable fee.

CHAIRMAN TORGERSON explained that he would be billed at the high peak usage and the fee is \$50 per year once he gets his permit. The charge for the permit would be a "reasonable fee." The department was going to categorize areas. Agriculture in certain areas would be one class and a fee would be set for that class.

MR. BASCOMB complimented Mr. Loeffler on knowing his job well and added that, "After 18 years, I've experienced that we can't water animal herds without irrigation any more and if we can't afford irrigation, we just have to lock our doors."

CHAIRMAN TORGERSON assured him that the committee understood that and is working on the committee substitute to that end.

MR. BASCOMB thanked him for his work.

Number 1100

MR. JOHN WENGER said he wanted to see a lot more public input from around the state's water districts.

MR. BILL WARD, Delta Junction, said he had faxed his comments to Senator Torgerson and said authorizing a number of gallons per well doesn't work. He had some questions about the committee substitute. One of them was with the \$50 annual administration fee, but he didn't have a problem with reasonable fees. He appreciated the committee's continuing work on this bill.

MR. REX WRIGLEY, a Delta Junction resident, said he didn't like to see more of a bureaucracy formed when things should be made simpler.

MR. PAT SCHLICHTING, a Delta Junction farmer, said he is getting up to speed on the bill and supports most of it, but he didn't see an exemption for personal use.

Number 1371

MS. DEB MOORE, Northern Alaska Environmental Center, said she understands this bill would allow DNR to give temporary water use permits without public notice or comment and that is what she is most concerned about. She understands that the Alaska Constitution says agencies must give out public notice prior to giving away Alaska's resources. It was important enough for the constitutional framers to mention water resources by name.

MR. TOM THOMPSON said he put in a well for \$30,000, because the public well at Glennallen had been poisoned by a fuel leak that was never repaired. Now he's being told he is going to have to pay taxes for drinking his water and said, "I do own the water right to my property." He thought it also might be unconstitutional.

MR. BOB STILES, President, DRven Corporation, said he has worked on restructuring this bill with Mr. Loeffler. He said this bill imposes the same sort of structure as DEC has imposed on its water program and will use to implement the solid waste program this year. He stated, "This is a very workable fee structure." He said that DEC is happy with the result of its first exercise and applying it to the water program.

MR. JAN KRONIGSBERG, Trout Unlimited, said he understands that the amendment DNR is offering only fixes a couple of problems. It's supposed to provide sufficient funding to take care of their backlog of water rights applications and it's supposed to confirm DNR's authorization for temporary use of the water and the validity of those that have already been issued and called into question by the Superior Court. He wonders if it may not create further problems for the water users of fish and wildlife that depend on adequate in-stream flow. He thought the committee should be able to answer the following questions before sending the bill out:

- Will the fee structure actually clear up the backlog? It may be useful to audit DNR's program to determine exactly what the problems are.
- Does the water use statute conflict with the Alaska Constitution and prior water rights?
- Will this bill more effectively implement the Water Use Act?

He actually recommended that the bill be tabled until all concerned parties have a better understanding of the nature of the problem and can offer a range of solutions.

MR. TADD OWENS, Executive Director, Resource Development Council (RDC), said the RDC helped work on the fee structure and is very supportive of SB 139.

MR. JIM MUNSTER, Anchorage Resident, supported SB 139. He said he was a hydrologist at DNR for 11 years and worked on many water rights cases over the years. DNR has a critical funding problem. He remarked, "I think we need to look at the goals of getting more money into the program to clear up the backlog and have people work on water short areas."

MR. MUNSTER said that regulatory changes were needed to make more efficient use of state resources in clearing the backlog. His concern was that even with the current bill, it would take multiple years before the backlog gets cleared. He knows of projects that have been impacted by not getting their day in court. He also supported the temporary water use permit section. He is not aware of any problems associated with water availability and it has been done for many years already. There are many safeguards built in with other agencies evaluating temporary uses of water and he supported that as well.

CHAIRMAN TORGERSON asked what DNR will do about the exemption for personal water use.

MR. LOEFFLER responded:

Homeowners do not need to apply for a water right. Use under 500 gallons a day currently doesn't require an application. In the regulations we expect to propose, while people would have to apply, we would exempt people from getting water rights. It would be a very streamlined program for a much greater use of water. Once you either apply in the streamlined program or once you get a water right, there is no further tax for residential use less than 1,500 gallons.

CHAIRMAN TORGERSON asked if there would be no fee at all for less than 1,500 gallons.

MR. LOEFFLER said effectively that would be the personal use exemption.

CHAIRMAN TORGERSON asked if one would own the water if the land is patented.

MR. LOEFFLER responded that the Constitution provides that all water in Alaska is held by Alaskans. All water is under the Water Use Act on federal, state, private, and Native lands.

CHAIRMAN TORGERSON said, "Then, he doesn't own the water."

MR. LOEFFLER responded that person could have a water right and

that is a property right to the water issued by the State of Alaska or perhaps the Territory. There was a grandfather clause when the Water Use Act was passed.

SENATOR ELTON asked Mr. Loeffler to address the constitutional issue that might apply with what he's trying to do.

MR. LOEFFLER said, "I don't believe there's any chance of a constitutional problem." He explained:

The Constitution requires public notice before we dispose of an interest in land including water that is before we give away a property right. For that reason, we public notice all water rights and will continue to do so.

A temporary water use permit is just that. And we don't public notice that. It is entirely revocable and we make it very clear in the application that it is revocable and conveys no property right. For that reason the constitution does not, in fact, require public notice. So I don't believe there is a constitutional issue; I also do not believe there is a significant environmental issue that would warrant public notice.

SENATOR ELTON expressed concern that even with a special injection of money, DNR might fall even further behind. He stated, "This may not address the backlog problem the way we want it to."

MR. LOEFFLER said he appreciated the question as it gave him a chance to inform the committee of the performance measures in this bill and fiscal note. He thought DNR could get the new median water rights applications out in 60 days, a median temporary water use permit out within 15 days and clear up the backlog within five years. He commented, "The fiscal note shows that after five years, our need for money, in fact, drops, because the people who would be working on the backlog would no longer have anything to do. So the performance measures I am promising are performance measures with respect to current applications and a five-year performance record with respect to the backlog."

CHAIRMAN TORGERSON asked if he got some help in the budget cycle this year.

MR. LOEFFLER answered that he did and that it took the pressure off for this year.

Number 2100

SENATOR LINCOLN asked him to expand on the backlog and what happens to the people who are waiting for a response on their applications.

She asked, "Can they proceed with their business activity for whatever they have applied for until they get something from the department."

MR. LOEFFLER said, "They can't legally. We have a backlog of about 700 applications and 3,000 actions total including amendments and amendment transfers. We would certainly act on that portion of the backlog if someone has stopped. Quite frankly, I suspect a lot of people who have applications have drilled their well and are withdrawing water, but people who came to us saying they had a problem we would prioritize first. I suspect with the resources we're getting in this year's operating budget and in this bill, we would be able to take care of that problem."

SENATOR LINCOLN said she bought property in 1961 and was asked if she wanted the water rights grandfathered in. She asked if the people who did that have free use of that water and if it ties into the state's fee or assessment system.

MR. LOEFFLER said he wasn't sure about 1961. He answered, "The way it worked is to be grandfathered in to a water right, you would have to apply in the '60s and you are part of the state system and we do bill you the \$50 per year annual fee. Many single family dwellings don't have a water right and don't require it."

SENATOR ELTON moved to adopt amendment 1. He said, "I don't think there is a single recipe they could apply that would meet the needs of temporary water users on the North Slope and the needs of people who may want to tap into a stream falling off a cliff for a short term construction proposal." He explained that the amendment inserts "However, the commissioner must request comment on an application for temporary use of water for the Department of Fish and Game and the Department of Environmental Conservation," into in Section 6(d).

He said that was a little more restrictive than language in the bill, but much less restrictive than present statutory language and gets to the issue of alerting agencies, if not the public, that this use is occurring. The second part of the amendment articulates two things that may need to jump out from the other public interest language and that is "protect fish and wildlife habitat and public health," into Section 6 also.

MR. LOEFFLER said, "Certainly, I believe that the review by DEC and Fish and Game provide another safeguard that temporary use permits would not, in fact, affect fish habitat and the environment. It is something we do now and it is helpful to have that in statute. In addition, it is our responsibility to protect [those things]."

CHAIRMAN TORGERSON asked if the term "requesting comment" gives the departments veto power over a permit.

MR. LOEFFLER answered, "No, it doesn't."

CHAIRMAN TORGERSON asked if DNR takes their comments into consideration before issuing the permit.

MR. LOEFFLER answered, "Yes, Mr. Chairman. We work very closely especially with Fish and Game on the North Slope and I'm proud of the working relationship. I believe that we have not had a permit on the North Slope that they have disagreed with in a long time."

CHAIRMAN TORGERSON asked if there were any objections to amendment 1. There were none and it was adopted.

SENATOR LINCOLN moved to pass CSSB 139(RES) from committee with individual recommendations. There were no objections and it was so ordered.

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CHAIRMAN TORGERSON adjourned the meeting at 4:55 p.m.