

ALASKA STATE LEGISLATURE
SENATE RESOURCES COMMITTEE

February 8, 2002

3:34 p.m.

MEMBERS PRESENT

Senator John Torgerson, Chair
Senator Gary Wilken, Vice Chair
Senator Rick Halford
Senator Ben Stevens
Senator Kim Elton
Senator Georgianna Lincoln

MEMBERS ABSENT

Senator Robin Taylor

COMMITTEE CALENDAR

SENATE BILL NO. 140

"An Act relating to regulation and licensing of certain water-power development projects."

MOVED SB 140 OUT OF COMMITTEE

SENATE BILL NO. 255

"An Act relating to exchanges of state land, interests, or property for other land, interests, or consideration; approving an exchange of land between the state and Gold Cord Development Corporation; and providing for an effective date."

MOVED CSSB 255(RES) OUT OF COMMITTEE

PREVIOUS SENATE COMMITTEE ACTION

SB 140 - See Resources minutes dated 3/21/01.

SB 255 - No previous action to consider.

WITNESS REGISTER

Mr. Darwin Peterson
Staff to Senator Torgerson
Alaska State Capitol
Juneau, AK 99801-1182

POSITION STATEMENT: Presented SB 140 for the sponsor.

Commissioner Will Abbott
Regulatory Commission of Alaska (RCA)
701 W 8th
Anchorage AK 99502
POSITION STATEMENT: Commented on SB 140.

Mr. Keith Bayha
Alaska Public Waters Coalition (APWC)
10443 High Bluff
Eagle River AK 99577
POSITION STATEMENT: Commented on SB 140.

Mr. Eric Yould, Executive Director
Alaska Rural Electric Cooperative Association (ARECA)
703 W. Tudor
Anchorage AK 99503
POSITION STATEMENT: Supported SB 140.

Ms. Sally Saddler, Legislative Liaison
Department of Community and Economic Development
P.O. Box 110800
Juneau AK 99811
POSITION STATEMENT: Commented on SB 140.

Mr. Jerry Burnett
Legislative Aide to Senator Lyda Green
Alaska State Capitol
Juneau, AK 99801-1182
POSITION STATEMENT: Presented SB 255 for the sponsor.

Mr. Jim Stratton, Director
Division of Parks and Outdoor Recreation
Department of Natural Resources
400 Willoughby Ave.
Juneau, AK 99801-1724
POSITION STATEMENT: Present to answer questions.

Mr. Ron Swanson, Director
Community Development
Mat-Su Borough
350 E. Dahlia
Palmer AK 99645
POSITION STATEMENT: Supported SB 255.

Ms. Carol Carroll, Director
Administrative Services

Department of Natural Resources
400 Willoughby Ave.
Juneau, AK 99801-1724
POSITION STATEMENT: Supported SB 255.

ACTION NARRATIVE

TAPE 02-1, SIDE A
#SB 140

SB 140-SMALL WATER-POWER DEVELOPMENT PROJECTS

CHAIRMAN JOHN TORGERSON called the Senate Resources Committee meeting to order at 3:34 p.m. Members present at the call to order were Senators Wilken, Halford, Stevens, Elton, Lincoln and Chairman Torgerson. Chairman Torgerson announced SB 140 to be up for consideration and told members that SB 140 mirrors the federal law that Senator Murkowski worked on for a number of years to allow certain exemptions for hydro projects.

MR. DARWIN PETERSON, staff to Senator Torgerson, sponsor, said Senator Murkowski introduced SB 422 in Congress, to amend the Federal Power Act to provide for Alaska state jurisdiction over small hydro-electric projects. He explained the purpose of SB 140 as follows.

SB 140 transfers to Alaska and only to the State of Alaska, licensing and regulatory authority over hydro-electric projects that are 5,000 kilowatts or less. Bringing this regulatory authority closer to home will reduce the great time and expense associated with federal licensing and regulation of small hydro projects in Alaska. The time and money required for federal licensing is virtually prohibitive for some small utility and personal projects. Before Alaska can acquire the jurisdiction from the Federal Energy and Regulatory Commission (FERC), the legislature must approve this bill and the Governor must submit a program to FERC satisfying its regulatory requirements.

As SB 140 is currently drafted, the Regulatory Commission of Alaska (RCA) would be the regulatory agency responsible. All current environmental protections required under federal law will still apply and cannot be preempted by this legislation. Even with the passage of SB 140, some small hydro projects would not be eligible for state jurisdiction: those located in Metlakatla (an Indian Reservation), conservation units

as defined in ANILCA, and rivers designated under the wild and scenic river system.

SENATOR ELTON asked who will address the environmental concerns for FERC and whether, for instance, the U.S. Fish and Wildlife Service will address habitat issues. He wanted to know what kind of structure is needed to know who will address such issues if it's under the state's jurisdiction and how that will be coordinated. He thought the Division of Governmental Coordination (DGC) would be better able to coordinate than the RCA.

MR. PETERSON replied that FERC has to approve the administration's plan before the state can take over the regulatory responsibility for these small hydro-projects.

COMMISSIONER WILL ABBOTT, Regulatory Commission of Alaska, said he would walk members through the procedure for a 3.5 megawatt by-the-river project in Southeast Alaska that is in the process of going through FERC right now. He said the RCA had been involved in the process since 1996 and hopes to get it out by the end of this year. They are working under the "alternative plan," which is supposed to be the "streamlined plan." They go through a series of scoping meetings, both public and with other state and federal agencies that would be involved in the permit. They figure out who has to do what during the various processes to get them there. They notify FERC that they want to do this, which reserves the site for them for the next three years. After the scoping is done, they apply for their license and start through the process of review by all the committees. These committees will have to do a number of studies that will be reviewed by both state and federal agencies as they go. Toward the later part of the process, a draft environmental impact statement will be produced. In the end, FERC will finalize the impact statement and then issue a license. FERC steps in when there is a dispute between agencies and/or agencies and a licensee. FERC staff makes recommendations and the commissioners will decide the dispute.

SENATOR ELTON asked if the RCA will operate in much the same way that FERC does, sort of like an umpire, if this becomes a state process under the RCA.

COMMISSIONER ABBOTT replied that the RCA does business like that all the time, but it doesn't have as large a staff as FERC does.

SENATOR ELTON asked Mr. Abbott if he thought a lot of the studies would be done solely by state agencies so that the Alaska

Department of Fish and Game (ADF&G) might do the studies that the U.S. Fish and Wildlife Service (USFWS) would do under FERC.

COMMISSIONER ABBOTT replied that he didn't know for sure. That needs to be worked out when the regulations are written that are submitted to FERC. He thought that would be a big catch in the whole plan and noted, "FERC has the final hammer on this as to how we do it."

CHAIRMAN TORGERSON asked if the determination of which agency does the study will be predicated on who owns the land that will be affected.

COMMISSIONER ABBOTT said that's what happened in the scoping meetings.

CHAIRMAN TORGERSON asked if the RCA gave the committee a new fiscal note.

COMMISSIONER ABBOTT replied that they are still working on it. He said their regulation process is not an insignificant task because they have to figure out how they are going to work with all of the state agencies. He remarked, "We're going to have to have some fairly significant commitment from FERC as to what they will or will not let us do. I see a lot of staff time trying to get these regulations written." He stated support for the bill.

MR. KEITH BAYHA, Alaska Public Waters Coalition (APWC), said he is a retired wildlife biologist and has previously participated in FERC licensing procedures. He said that neither FERC, nor Congress, fund fish and wildlife studies pertinent to a project that would be covered by this act. They would review the studies that the applicant arranged to have done through probably a private consultant. It's possible for the applicant to provide funds to ADF&G and the U.S. Fish and Wildlife Service, but that is seldom done. If the matter is highly controversial, they put together a multi-agency task force that's funded by the applicant to pursue studies. Their product reports are submitted, in this case, through the state agency or through FERC, to ADF&G and the USFWS under the terms of the Fish and Wildlife Coordination Act, which is cited in the legislation. They review the adequacy of the consultants' work and their recommendations and may or may not recommend for or against the project and may or may not recommend mitigation and/or enhancement measures. They may find that some projects do not significantly impact fish and wildlife and might not even file a report, but if they find that impacts do exist, they file a report to the FERC.

CHAIRMAN TORGERSON thanked him for the clarification and announced the next speaker would be Mr. Eric Yould.

MR. ERIC YOULD, Executive Director, Alaska Rural Electric Cooperative Association (ARECA), said as a general rule ARECA thinks it is an excellent idea to accelerate the process, especially for projects of 5 megawatts or less. He said there are probably some reasons that one project is taking six years. He has been involved in several hydro-power licensures throughout the state all the way back to 1977. He thought this bill could work if the RCA would get some good technical expertise to augment its adjudicatory capability. They are the proper group to administer this program if they have the engineers, scientists and biologists that could go head to head with the state and federal agencies that are not always in favor of or objective in developing these projects. The ARECA Board of Directors adopted a resolution basically endorsing the concept of having the Department of Natural Resources act as the lead agency as opposed to the RCA, but he believes the RCA is the proper authority to do it. Again, his concern is that they don't have the technical, scientific, professional and engineering expertise to do the job.

CHAIRMAN TORGERSON said it was not his intent to move this to DNR. The RCA already does this type of work and asked Mr. Yould to talk a bit more about that issue.

MR. YOULD replied that it would take more staff and he's not sure how much more.

CHAIRMAN TORGERSON said they have to do this type of work now and he didn't see that as a barrier. He said they talked about the opt in and opt out option last year, a major stumbling point, and that is not going to be in the bill. He suggested instead of including a sunset date, they repeal the law if it becomes unwieldy.

SENATOR ELTON said he is assuming Mr. Yould's testimony is designed to make them think this could be a faster and cheaper way for applicants who want to start a project.

MR. YOULD said he thought the potential is there, but his members have take a certain amount of solace in having a third independent body, FERC, that has the authority to stand up to both the federal and state agencies and make them be realistic in their expectations of studies and processes. Once they received licenses for projects and found themselves at the mercy of state agencies who sometimes are not friendly to the concept of hydropower and

make the lives of the people who develop them quite miserable. If those same people have inordinate authority under this program, that would actually slow down or stop a project and he'd have to say ARECA doesn't want it. He said:

FERC is a system that we know; it's an independent arbiter. We found we trust them; they are fair on both sides. They make us do all the environmental and socio-economic studies and at the same time they make sure the resource agencies don't request such an inordinate amount of assessments that it kills the project.

MS. SALLY SADDLER, legislative liaison, Department of Community and Economic Development (DCED), told members that DCED had an interagency meeting recently with DNR, ADF&G, DGC, the RCA and DEC. She stated:

We do believe that RCA is the appropriate agency to assume a lot of these roles. When the federal legislation was pending, the Governor did support giving Alaska this jurisdiction over this state-operated FERC program and at the same the Governor recognized that this is, in fact, a very complex undertaking and we want to be sure that the state program does result in the proper design and construction along with protecting the fish and wildlife, at least as well or as rigorously as FERC does. The agencies are in the process right now of getting a handle, trying to understand what the FERC process is about, because right now we understand our roles and duties under the existing federal program. What we need to be doing is looking at what additional duties, statutes, and regulatory authority may be needed to go ahead and operate a state version of this FERC program. For instance, FERC has jurisdiction over entire watersheds, whereas Fish and Game right now - their jurisdiction applies only to streambeds. So, these are the kinds of things we need to examine with respect to the FERC program to understand the cost implications and program details if we were to take over this kind of a state program.

MS. SADDLER said they have to be able to balance the user fees with the possibility of a need for a direct appropriation at a time when revenues might not be equal to expenditures. She understands that the State of Oregon has a small state run hydro program and it hopes to get a copy of that and get ideas and insights as to what it takes to operate this kind of program.

SENATOR ELTON said the fiscal note contemplates a half-time position to analyze waterpower applications and he anticipates that putting things together for state regulation will take a considerable amount of work upfront. He wanted to know if there would be a fiscal note to reflect the amount of work that needs to be done by all of the agencies.

MS. SADDLER replied that is one of the issues they talked about last year when they spoke with Chair Thompson. She stated:

We looked at this as more of a straight-forward regulatory adopting process and since we have a chance to work with our member agencies and get a better understanding of what FERC is about, we believe we will be redoing our fiscal note and it may be a little more substantial than what we have.

CHAIRMAN TORGERSON said they wouldn't be building hydro-projects all over the place. There might be one every other year.

SENATOR WILKEN moved to pass SB 140 and attached fiscal note, dated 3/20/01, from committee with individual recommendations.

CHAIRMAN TORGERSON said there would be a new fiscal note. There were no objections and it was so ordered.

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#SB255

SB 255-LAND EXCHANGES: GOLD CORD DEVELOPMENT

CHAIRMAN TORGERSON announced SB 255 to be up for consideration.

MR. JERRY BURNETT, staff to Senator Lyda Green, sponsor of SB 255, said the measure provides for legislative approval of an unequal land exchange between the State of Alaska and Gold Cord Development, Inc., and incorporates a proposed change to land trade statutes to remove legislative approval for unequal land exchanges with a value of less than \$5 million. He explained:

Alaska State Parks has been working since 1978 to develop an opportunity for private reuse and management of historic buildings at Independence Mine State Park. To facilitate road access to the underground mine tour, the State of Alaska sought an exchange with Gold Cord Inc., an owner of a critical section of the road. The state held an easement across the property that was not

of sufficient size to accommodate anticipated reconstruction to provide for bus access. In addition, Gold Cord held a federal mining claim that extended into the existing park boundaries. The exchange has been agreed to by all parties. The state trades away no land, but provides the process by which Gold Cord can receive fee title to 19 acres of land valued at \$63,000 currently held by Gold Cord as federal mining claims.

The state receives about six acres of land valued at \$68,500 from Gold Cord. Because the state brought no land to trade and because final values are not equal, the transaction requires legislative approval. The difference here is \$5,500. The Alaska Legislature has approved another unequal value exchange at the Independence Mine State Park between the State of Alaska and Alaska Hard Rock Inc. for access in the year 2000.

In addition to the Gold Cord trade approval, SB 255 allows for administrative approval of land trades with a value of under \$5 million. Currently by statute, unequal exchanges that do not benefit the State of Alaska are not allowed. Any land exchange, whether equal or unequal in value, involves only willing participants.

Under existing statute, even though all parties agree and the state comes out ahead, unequal exchanges must still receive legislature approval. Any exchange, equal or unequal, over \$5 million in state value, would still come before the legislature for approval. Since the exchange must benefit the state in any case, unequal value exchanges under the \$5 million level could be accomplished administratively to enhance efficiency under the terms of this legislation.

CHAIRMAN TORGERSON asked why "the environs" was deleted on page 2, lines 17 and 18.

MR. BURNETT answered that any land exchange must be a benefit to the State of Alaska, whether it's equal or unequal in value. In order to enhance the efficiency of the Department of Natural Resources, they requested a section to allow administrative approval of unequal land exchanges. This is the policy decision for the legislature.

CHAIRMAN TORGERSON asked what would happen if they delete that section and whether that would accomplish what Senator Green wants to do.

MR. RON SWANSON, Director, Community Development, Mat-Su Borough, supported SB 255. He stated, "We feel it fully compliments our plan for ski resort development that's located close by. It will make the area a very good tourist destination facility." He said the Borough Assembly in a resolution it passed on January 15 endorsed the exchange.

MS. CAROL CARROLL, Director, Administrative Services, DNR, said DNR put the section on administrative approval for land values under \$5 million before the legislature because it has done a couple of small value exchanges and found administrative efficiencies in doing so.

CHAIRMAN TORGERSON asked her if she supported the bill without that section. She said she did.

SENATOR HALFORD moved to delete Section 2 [Amendment 1].

SENATOR ELTON asked if the net effect, in future cases in which the value is greater to the state than to the other land owner if Section 2 is not deleted, would be to give DNR the administrative latitude to make a decision on its own without coming to the legislature.

SENATOR HALFORD said that is correct, but added that the other values to the state may be subjective.

There was no further discussion and Amendment 1 was adopted.

SENATOR WILKEN moved to pass CSSB 255 (RES) from committee with individual recommendations and its zero fiscal note. There were no objections and it was so ordered.

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There being no further business to come before the committee, CHAIRMAN TORGERSON adjourned the meeting at 3:15 p.m.