

ALASKA STATE LEGISLATURE  
**SENATE RESOURCES COMMITTEE**

March 15, 2002  
3:32 p.m.

**MEMBERS PRESENT**

Senator John Torgerson, Chair  
Senator Gary Wilken, Vice Chair  
Senator Ben Stevens  
Senator Georgianna Lincoln

**MEMBERS ABSENT**

Senator Rick Halford  
Senator Robin Taylor  
Senator Kim Elton

**COMMITTEE CALENDAR**

SENATE BILL NO. 205

"An Act relating to control of nuisance wild animals; and providing for an effective date."

HEARD AND HELD

SENATE BILL NO. 326

"An Act relating to evaluating state assumption of the wastewater discharge program under the federal Clean Water Act; and providing for an effective date."

HEARD AND HELD

**PREVIOUS COMMITTEE ACTION**

SB 205 - No previous action to consider.

SB 326 - No previous action to consider.

**WITNESS REGISTER**

Mr. Robert Doran  
HC 31, Box 5213  
Wasilla AK 99654

**POSITION STATEMENT:** Supported SB 205.

Mr. Wayne Regelin, Director

Division of Wildlife Conservation  
Department of Fish and Game  
P.O. Box 25526  
Juneau AK 99802  
**POSITION STATEMENT:** Supported SB 205.

Mr. Frank Richards  
Statewide Maintenance  
Department of Transportation &  
Public Facilities  
3132 Channel Dr.  
Juneau, AK 99801-7898  
**POSITION STATEMENT:** Supported CSSB 205.

Senator Gene Therriault  
Alaska State Capitol  
Juneau AK 99801-1182  
**POSITION STATEMENT:** Sponsor of SB 205 and SB 326.

Mr. Tom Chapple, Director  
Division of Air and Water Quality  
Department of Environmental Conservation  
555 Cordova St.  
Anchorage AK 99501  
**POSITION STATEMENT:** Commented on SB 326.

Ms. Pamela Miller, Director  
Alaska Community Action On Toxics  
135 Christensen Dr.  
Anchorage AK 99501  
**POSITION STATEMENT:** Opposed SB 326.

Mr. Charlie Broddy, Vice President  
Governmental Relations  
Usibelli Coal Mine  
100 Cushman Ste. #210  
Fairbanks AK 99701  
**POSITION STATEMENT:** Supported SB 326.

**ACTION NARRATIVE**

**TAPE 02-10, SIDE A**  
Number 001  
#SB205

**SB 205-CONTROL OF NUISANCE WILD ANIMALS**

**CHAIRMAN JOHN TORGERSON** called the Senate Resources Committee meeting to order at 3:32 p.m. and announced SB 205 to be up for consideration.

MS. JANEY WINEINGER, staff to Senator Green, sponsor, explained that this legislation would provide authority to the Alaska Department of Fish and Game (ADF&G) to issue permits and licenses for the control of nuisance wild birds and other mammals. Senator Green fully supports the proposed committee substitute (CS) and amendment. This legislation would provide for licenses for commercial exterminators and permits for homeowners, corporations, agricultural enterprises and other entities who are plagued by nuisance wildlife. It would also allow ADF&G to collect bivalves for use in connection with aquatic farms and to collect wild fur animals for the improvement of genetic stock. Sometimes senior citizens or others want to control pests but want to hire someone else to do the job. This bill gives the authority to ADF&G to issue permits or licenses for such work.

CHAIRMAN TORGERSON asked for examples of nuisance wild birds and nuisance small mammals.

MR. ROBERT DORAN, Wasilla resident, said that he supports SB 205 because it gives ADF&G the authority he believes it should have had from the time the department was established to effectively manage wildlife in Alaska. It also provides an opportunity for those wishing to pursue a career in animal damage control, a fast growing business in the Lower 48. Based on population growth and development in Alaska, he sees a real need for this service. As an example, Mr. Doran said that beavers construct dams in culverts, which has resulted in flooded rights-of-way. He told members:

In no way whatsoever do I wish to give anybody the impression that I simply desire free reign to capture anything and everything 365 days a year. My own personal business would be conducted based on specific requests of companies, etc. who for whatever reason do not wish to deal with conflicts involving wild animals. Again, these conflicts range from property damage, possible threats to public health and safety or even cases in which a bird or animal becomes inadvertently caught in a structure or within a confined area.

MR. WAYNE REGELIN, Director, Division of Wildlife Conservation, Alaska Department of Fish and Game, said the department supports this legislation. It provides ADF&G with the statutory authority to provide a license to a person for a commercial operation to take care of nuisance wildlife or to issue a permit to an individual or another agency to control nuisance wildlife. He added:

It corrects a deficiency in our permit system, because right now we can't issue a permit for this purpose. We can for science or education or public safety, but we are prohibited from doing it and there [are] not many loopholes for us to do it where wildlife is causing a real problem for some people. We like the idea that a person that might need some help doing this that's old or just doesn't want to do it themselves can hire someone to do it. Maybe someone can make a living or supplement their income at least.

He said he was referring to small animals, birds and porcupines, beaver, squirrels in attics and that type of thing. The effective date would allow the Board of Game time to provide definitions and guidance. He said the proposed amendment will allow ADF&G to give the Department of Transportation and Public Facilities (DOTPF) a blanket permit for a season or area if it has continual problems that ADF&G can't resolve. He remarked, "I think it's probably wise to keep wildlife permits under the purview of ADF&G and work real closely with DOT on where they need [to use them.]"

**3:45 p.m.**

CHAIRMAN TORGERSON said he has heard that DOTPF is tired of the bureaucratic tangle it has to go through now to take care of damage caused by beavers alongside the road "that ADF&G has put on them."

SENATOR ELTON asked how the process works now.

MR. REGELIN replied that many people take care of the problems themselves, but a lot of them call ADF&G and ask for permission to get rid of nuisance animals. ADF&G can't give permission (to kill a squirrel, for instance) and has to send a biologist out to do it.

SENATOR ELTON said this bill didn't seem to take care of that problem. He questioned, "This authorizes somebody to do it, but who authorizes the act in the first place?"

MR. REGELIN replied that ADF&G usually sends a biologist to take care of the problem; this bill would allow ADF&G to call someone with a license to take care of it. He explained, "We don't have to get involved and they probably have to pay a couple of bucks and the squirrel or bat or whatever it is is out of their life."

CHAIRMAN TORGERSON asked, for the purpose of clarification, if he could call the commercial guy directly to shoot a problem squirrel or would he have to apply for a permit at ADF&G and then hire the guy to do it.

MR. REGELIN replied that ADF&G's intent is:

The person that has the license to do this commercially would have broad authority to do it within guidelines that we provide so we won't have to be in the equation. You would just call the person...

He said that this would probably only happen in the more populated areas.

SENATOR ELTON continued to try and clarify and said:

I guess what I'm hearing is you can pop a porcupine any time you want. The only issue that this bill addresses is who pops the porcupine.

MR. REGELIN replied, "Right now there is no season or bag limits on porcupines and you're not supposed to shoot them. You only let people shoot them if they're causing a real problem..."

SENATOR ELTON said, "It allows a private individual to make a decision on whether you take out the porcupine, whether you move the porcupine, so the department wouldn't make that."

MR. REGELIN said that an individual can hire a person or come to ADF&G for a permit. If the individual asks for a permit, ADF&G will provide advice. The department does not want to kill animals unnecessarily. He added:

But an individual has to call us and say I've got this problem; how can I fix it? And then we give them a permit to do it. The people who are in this to earn money, we would give them some broad authorities and work closely with to make sure they could do this and we would urge them - like with porcupines - you can usually move them a ways down the road and be done with it. Beavers - you usually have to kill them. That's part of the reason to keep the department in it. It becomes an issue of what do you do with the animal and the fur.

SENATOR ELTON asked if a definition of small mammals would be included in the regulations and whether it would include wolves.

MR. REGELIN replied that ADF&G will make sure it doesn't include wolves and coyotes, because that gets into a different arena. He said he is reluctant to list all the species because one could be inadvertently forgotten. The definition could say, "species like squirrels" or "nothing bigger than a beaver."

SENATOR WILKEN moved to adopt the committee substitute to SB 205, (Utermohle, 3/14/02, Version C). There were no objections and it was so ordered.

SENATOR WILKEN moved to adopt amendment 1, which reads as follows:

MR. FRANK RICHARDS, an engineer at DOTPF, informed members that articles in the Daily News Miner said that road crews spend a considerable amount of time in the summer and fall taking care of culverts that are blocked by mammals. This is a big concern, because when beavers block culverts, water dams up allows infiltration, ice growth and degradation of the embankment and the surface.

DOTPF supports the amendment but is concerned about granting authority to the commissioner for the control and taking of beavers only. In state-owned airports, DOTPF has fairly extensive hazing programs for wildlife, primarily birds. He said, "I hope this bill would not prevent us from continuing with our wildlife hazing programs, because that is a major safety concern to the FAA and the department as an airport operator."

CHAIRMAN TORGERSON noted that Mr. Regelin said DOTPF doesn't need this amendment; it can just get a blanket permit. He asked if that is how it would work or whether the committee should go forward with the amendment.

MR. RICHARDS responded that currently DOTPF gets individual permits, including permits for the airports. DOTPF must first get a federal permit for airport work before it can get a state permit.

CHAIRMAN TORGERSON asked Mr. Regelin if this will affect the airport bird situation.

MR. REGELIN replied that the way the bill is now it wouldn't affect airports. He explained, "As soon as they get a federal permit, we issue one. We have the authority to do that now in Public Safety and we do it in each airport."

CHAIRMAN TORGERSON asked how ADF&G could raise Mr. Richards' comfort level about being able to handle the beaver problem without going through what DOTPF had to before.

MR. REGELIN replied that now ADF&G sort of stretches its authority on beaver. It doesn't have authority but issues permits because of the public safety issue with flooding. He noted:

This gives us the authority we need and now we can issue by region or by however you want it organized and do it one-year at a time. I don't think they're going to abuse it and if he sends me a letter asking for it, we'll issue him a permit.

MR. RICHARDS said DOTPF's working relationship with ADF&G on permits is good. He stated, "As he indicated for the federal permits for the airports it is pretty much a rubber stamp."

He stated if DOTPF can easily get a permit, whether it be on a yearly basis or for individual actions, that would be satisfactory for beaver control.

CHAIRMAN TORGERSON asked if the committee should consider changing the language to authorize the commissioner of ADF&G to issue the commissioner of Transportation and Public Facilities the right to take beavers that interfere with culverts.

MR. REGELIN replied that would be fine and, "That way when I'm gone, it still happens."

SENATOR THERRIAULT said one of his concerns is that often the Fairbanks person who would issue the permit in ADF&G is out on a field trip for a week. He explained:

It's just near impossible. When you're trying to deal with this in the fall before freezing, before the dams are frozen in the culverts, you have a limited window of time.

He also expressed concern about getting a carcass to ADF&G.

MR. REGELIN said they could do it region by region, but he worries about having a permit that will say to bring the carcass to ADF&G if possible. He clarified:

I think we all need to be very cautious about the wanton waste of wildlife and just killing beaver and not using the fur and some people like the meat. You know, sometimes you just can't do it. So, we would ask them to do that if it was possible...

Part of the reason we've done it on a case-by-case basis through the area biologist is because we didn't have the blanket authority. We'll issue these out of the Juneau office just to DOT.

CHAIRMAN TORGERSON asked, "Fish and Game may issue yearly permits

and then go on with authorizing the commissioner of DOT..."

SENATOR THERRIAULT said that would be a step in the right direction, but he is still concerned. He related how he has tried to find people to give beaver meat and pelts to, but the problem is if you get the beavers before the dams freeze up, the pelt is not in a usable condition. You have to find a trapper that's willing to take the animal, freeze it and use the carcass for other trapping purposes, but that's limited too, because a trapper needs the freezer capacity to do that. He said:

What you end up with is DOT personnel standing in a five-foot culvert pulling the brush out knowing full well that the beaver will be back that night and it will be even fuller the next day.

MR. RICHARDS commented, in regard to wanton waste, when DOTPF has received permits from ADF&G, it would do the trapping or have someone do it for them. DOTPF has been able to provide for the disposal of the pelts. Senator Therriault's concern would be a problem in rural areas. It would then be a burden on the department to have to bring a carcass back to a central location for disposal.

SENATOR ELTON said he was still struggling with the issue of having a permit, but getting the authority from the department to do it. He explained:

We're focusing now on giving the Department of Transportation the ability to do this when it seems to me if we create a system like this, why should we expect the department to do it. Why shouldn't we expect them to act like any other private landowner - pick up the phone and call somebody that's licensed to do it and have them do it.

MR. RICHARDS responded that in certain locations DOTPF can hire others to come in and take the animal under their permit.

CHAIRMAN TORGERSON said he wanted to hold this bill with the amendment pending to provide more time to work on the language.

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#SB326

**SB 326-WASTEWATER DISCHARGE PROGRAM**

CHAIRMAN TORGERSON announced SB 326 to be up for consideration.

SENATOR THERRIAULT, sponsor of SB 326, said he introduced this bill to spur the state into looking at the possibility of

assuming the authority for issuing National Pollution Discharge Elimination System) NPDES permits. The evaluation of whether it makes sense for the state to do so fiscally and from the standpoint of its ability to promote development in the state of Alaska is complicated. There are a lot of expenses to be considered and it's not something the state should undertake lightly. He noted that the proposed committee substitute would need one modification with regard to when the report should be completed. The bill now says, "The first regular session of the 24th legislature." It should say, "The second regular session of the 23rd legislature."

CHAIRMAN TORGERSON asked why a fiscal note was needed.

SENATOR THERRIAULT explained that it reflects the cost of doing an evaluation on which to base the decision.

SENATOR ELTON said this bill only authorizes a study and it seems that there should be other ways of doing it. He asked what the thought process was in using this approach.

SENATOR THERRIAULT replied that state agency personnel need to be involved, plus individuals from industry, whatever it takes to enable the next legislature to decide if this is a good move for the state to make. Currently, 44 other states and the U.S. Virgin Islands administer this program themselves. The State of Idaho is in the process of evaluating it and he thought it is moving toward the adoption. He said he was open to discussing other ways of getting to that decision-making point.

CHAIRMAN TORGERSON said he has mixed emotions about whether or not the state should run it. He cautioned, "I think it becomes too political... I'm not sure this wouldn't be detrimental to getting permits, because it becomes way too political."

MR. TOM CHAPPLE, Director, Division of Air and Water Quality, DEC, said he didn't have much more to add and would answer questions. He told members this effort is the outgrowth of a workgroup that was started a couple of years ago. DEC is looking at redesigning its wastewater discharge permitting process. He explained, "Right now we certify federal permits and issue some state permits to smaller entities..."

CHAIRMAN TORGERSON asked if he supports the study.

MR. CHAPPLE replied that it's an issue that has been raised a number of times in the past and if this work went forward, it would be done around January of 2004.

**4:07 p.m.**

SENATOR ELTON asked what impact state primacy would have on municipalities in the context of what municipalities pay to EPA for wastewater discharge permits now and what the cost would be in the future if the state has primacy.

MR. CHAPPLE replied:

Right now when EPA reviews and issues a permit, the municipalities are almost all renewals of the federal permit. They don't charge a fee. EPA does not charge a fee. They have about 10 staff people that are dedicated to Alaska permits. Under a bill that was passed by the legislature a couple of years ago, HB 361, the state's role in discharge permitting is partially offset through user fees right now. So, municipalities pay for the state's role in issuing that permit now, which is defining mixing zones, establishing where the discharge is, how big the mixing zone should be, what other site specific issues come up, setting limits for where they meet the water quality standards, etc. That cost is in the range of \$500 up to maybe \$3 - \$4,000 for some of the larger municipalities. What the cost would be in the future is really unknown. It depends on whether we can bring federal dollars to make this program work...This project would lay out those costs, look hard at what funding sources, talk about what mix of user fees and state or federal funds would be a way to make the program work.

SENATOR ELTON asked Mr. Chapple if he thinks the state could do the work faster or slower than the EPA.

MR. CHAPPLE replied that he hoped the state would be faster.

SENATOR ELTON asked, "To get to be faster, would you need a budget increase?"

MR. CHAPPLE answered:

I think to be faster you would certainly have to have more resources doing this work in Alaska than we currently do now. Whether it's more than what the state is now, plus a federal...

CHAIRMAN TORGERSON said that isn't a fair question because DEC doesn't have a budget for this program now.

SENATOR ELTON asked to rephrase his concern because he believes it is important:

If, in fact, speed is contingent upon having the resources available to do the work, I could see there would be a disadvantage in moving it from EPA to DEC, given the budget history the department has had.

CHAIRMAN TORGERSON said members do not have DEC's budget before them.

SENATOR ELTON responded that members know DEC has fewer resources now than it did 10 years ago. If it needs additional resources the question is, "Are we going to accompany the transfer of primacy with additional budget resources?"

CHAIRMAN TORGERSON retorted, "That will be something they will have to include in their study..."

SENATOR ELTON asked if there had been an instance in which EPA denied state primacy.

MR. CHAPPLE replied, to his knowledge, no, but he hadn't looked at that thoroughly.

MS. PAMELA MILLER, Director, Alaska Community Action on Toxics, said the stakeholders group for wastewater permitting that she served on discussed policies, resources and staffing needs for an effective permitting program for the ADEC. The group included oil and gas, mining, local government, seafood processing and conservation representatives. She commented:

Throughout the more than one year of meetings the group did not consider the possibility that the state would assume primacy. This bill I believe is premature and unnecessary...

She said the stakeholders group did not reach consensus that ADEC should assume primacy of the wastewater discharge program for several reasons. The assumption was that it would take years before consideration of primacy would even be on the table. There is no reasonable assurance of the agency's competency, established track record, adequate enforcement of monitoring, and certainly there is a perpetual problem of a lack of adequate funding for staff and a lack of expertise among the department's staff.

MR. CHARLIE BRODDY, Vice President, Usibelli Coal Mine, supported SB 326. He told the committee:

Currently, the major permit we have to get especially in the water arena has to be done through EPA Region 10

in Seattle, Washington. If you read the [indisc] reports for Region 10, they consistently have probably one of the most massive backlogs of any region in the United States, which means that to put a new mine or section of a mine on line, you were probably looking at a 3 to 5 year time period to secure an NPDES permit.

The bill allows the state to take the look that we've all talked about for probably well over a decade and a half - that is four federal programs that allow partial or in their entirety the state to take primary responsibility for should a state exercise that right. Currently, the state does on a majority of the air programs that are federally mandated and on a certain coal mining reclamation program [indisc.].

I think that in deference to the prior speaker, I would say the state DEC, and I'm speaking from a regional basis in Fairbanks, has very confident well-heeled individuals within their organization who can do an adequate job, a more than adequate job of issuing permits... We have somewhat of an unknown. It's hard to give the committee hard facts and numbers because we're all just guessing without this report.

He said they like to work with state people whenever possible within their organization and outside.

CHAIRMAN TORGERSON thanked everyone for their testimony and said they would hold the bill for further work and adjourned the meeting at 4:20 p.m.

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