

ALASKA STATE LEGISLATURE  
**SENATE RESOURCES COMMITTEE**

April 12, 2002  
3:40 p.m.

**MEMBERS PRESENT**

Senator John Torgerson, Chair  
Senator Rick Halford  
Senator Ben Stevens  
Senator Kim Elton

**MEMBERS ABSENT**

Senator Gary Wilken, Vice Chair  
Senator Robin Taylor  
Senator Georgianna Lincoln

**COMMITTEE CALENDAR**

SENATE BILL NO. 14

"An Act relating to pesticide use; and providing for an effective date."

HEARD AND HELD

CS FOR HOUSE BILL NO. 241(RES)

"An Act relating to a railroad utility corridor for extension of the Alaska Railroad to Canada and to extension of the Alaska Railroad to Whitehorse, Yukon, Canada."

HEARD AND HELD

HOUSE BILL NO. 420(title am)

"An Act repealing certain sunset provisions relating to the use of water; and providing for an effective date."

MOVED HB 420(title am) OUT OF COMMITTEE

CS FOR HOUSE BILL NO. 421(RES)(title am)

"An Act relating to requiring the Department of Natural Resources to develop and maintain a standardized procedure for processing applications and issuing permits, authorizations, and certifications under the Alaska Water Use Act and to make a record of those items and amendments and orders affecting them available on the Internet."

MOVED SCS CSHB 421(RES) OUT OF COMMITTEE

**PREVIOUS SENATE COMMITTEE ACTION**

SB 14 - No previous action to record.

HB 241 - See Transportation minutes dates 1/31/02

HB 420 - No previous action to record.

HB 421 - No previous action to record.

**WITNESS REGISTER**

Ms. Geran Tarr  
Staff to Senator Ellis  
Alaska State Capitol  
Juneau, AK 99801-1182

**POSITION STATEMENT:** Presented SB 14 for the sponsor.

Mr. Roco Moschetti  
IPM of Alaska  
POB 875006  
Wasilla AK 99687

**POSITION STATEMENT:** Commented on SB 14.

Ms. Janice Adair, Director  
Division of Environmental Health  
Department of Environmental Conservation  
555 Cordova Street  
Anchorage AK 99501

**POSITION STATEMENT:** Commented on SB 14.

Mr. Chip Nordhoff  
No address provided  
Anchorage AK

**POSITION STATEMENT:** Commented on SB 14.

Ms. Kate Bryson  
No Address provided  
Anchorage AK

**POSITION STATEMENT:** Supported SB 14.

Mr. Tom Macchia  
POB 221285  
Anchorage AK 99522

**POSITION STATEMENT:** Supported SB 14.

Mr. Randy Virgin, Director

Alaska Center for the Environment  
801 G St #100  
Anchorage AK 99501  
**POSITION STATEMENT:** Supported SB 14.

Ms. Taya Cummins  
807 G St #100  
Anchorage AK 99501  
**POSITION STATEMENT:** Supported SB 14.

Ms. Pamela Miller, Director  
Alaska Community Action  
505 W. Northern Lights  
Anchorage AK 99503  
**POSITION STATEMENT:** Supported SB 14.

Ms. Carol Carnes  
Ketchikan AK  
**POSITION STATEMENT:** Supported SB 14.

Ms. Jewel Jacobs  
Ketchikan AK  
**POSITION STATEMENT:** Supported SB 14.

Ms. Emily Neiman  
Alaska Advocacy Manager  
American Cancer Society  
No address provided  
**POSITION STATEMENT:** Supported SB 14.

Mr. Peter Fellman  
Delta Junction AK  
**POSITION STATEMENT:** Commented on SB 14.

Representative Jeannette James  
Alaska State Capitol  
Juneau, AK 99801-1182  
**POSITION STATEMENT:** Sponsor of HB 241.

Ms. Jennifer Yuhas  
Staff to Representative Masek  
Alaska State Capitol  
Juneau, AK 99801-1182  
**POSITION STATEMENT:** Presented HB 420 and HB 421 for sponsor.

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:** Commented on HB 420 and HB 421.

Mr. Tadd Owens, Executive Director  
Resource Development Council  
121 W. Fireweed #250  
Anchorage AK 99503

**POSITION STATEMENT:** Supported HB 420.

Ms. Marilyn Crockett, Deputy Director  
Alaska Oil and Gas Association (AOGA)  
121 W. Fireweed, #207  
Anchorage AK 99503

**POSITION STATEMENT:** Supported HB 420.

Mr. Jan Konigsberg  
Trout Unlimited  
On behalf of/Alaska Public Waters Coalition  
1399 W. 34th #205  
Anchorage AK 99517

**POSITION STATEMENT:** Opposed HB 420.

Mr. Keith Bayha, Chairman  
Alaska Public Waters Coalition  
10443 High Bluff  
Eagle River AK 99577

**POSITION STATEMENT:** Supported HB 420 with proposed amendments.

Mr. Chip Dennerlein, Director  
Division of Habitat and Restoration  
Department of Fish and Game  
333 Raspberry Rd.  
Anchorage AK 99518

**POSITION STATEMENT:** Supported HB 420 and HB 421.

#### **ACTION NARRATIVE**

#### **TAPE 02-12, SIDE A**

Number 001

#### **SB 14-TRACKING OF PESTICIDE USE**

**CHAIRMAN JOHN TORGERSON** called the Senate Resources Committee meeting to order at 3:40 p.m. and announced SB 14 to be up for consideration.

Ms. Geran Tarr, staff to Senator Johnny Ellis, sponsor of the measure told members:

This legislation had been brought forward as a result of mounting scientific evidence that pesticides have

the potential for adverse health effects such as cancer, developmental disorders, reproductive failure, birth defects, allergies and asthma. This, in fact, has been the case of other pesticides that were once widely used, such as DDT. More recently, [indisc.], once the most widely used pesticide in the United States was banned. This ban was a result of new evidence acquired after the passage of a federal law, the 1996 Food Quality Protection Act, which required the EPA to go back and retest pesticides for their safety. Only this time they were tasked with using children's health as a benchmark for safety. Although this product was used for years it was banned when the health effects to children were fully realized.

The American Medical Association has urged the government to support improved reporting systems for pesticide usage and pesticide related illnesses. This illustrates the need for more information on pesticide use. We in Alaska need to be especially concerned because of our unique environment. In northern latitudes there is a phenomenon where chemicals used here are transported here from other places, called bioaccumulation, meaning they do not break down in the environment like they would elsewhere. In order to protect public health, particularly children's health, we need to track the use of pesticides in our state. SB 14 is an important first step in gathering information to make effective policies and to protect public health.

MS. TARR said a proposed committee substitute (CS) was drafted. She explained the changes in the CS as follows.

Section 1 places the registration and licensing fees collected by the Department of Environmental Conservation (DEC) under program receipts so that the fees collected are accounted for separately and do not become part of appropriations made from the general fund. She noted that AS 37.05.146(b)(4) is in their packet for reference. A lot of other program receipts are set up this way, like the Pioneers' Home.

Section 2 allows the department to charge a registration fee of \$150 to pesticide manufacturers to register their product for commercial sale in Alaska. Of the 4,571 pesticide products registered for sale in Alaska, all are produced by outside companies. They would be charged the registration fee. Currently, Alaska is the only state that does not charge a registration fee.

That fee would provide funding to administer the tracking program established in section 5 of SB 14.

Section 3 allows the department to collect a \$25 per year licensing fee for certified pesticide applicators. There are currently 620 certified applicators in the state. This fee would help fund the tracking system.

Section 4 requires users to notify neighbors of commercial pesticide spraying at least 48 hours and not more than 72 hours before the spraying begins. This is modeled after Municipality of Anchorage (MOA) regulations.

Section 5 establishes the tracking program and reporting requirements. It contains nine reporting requirements listed on page 4. It does not require that new information be reported; it requires information that is already kept track of for accounting records on service reports be sent to DEC. DEC could use this information for policy making. This section also makes someone liable to DEC for failure to comply with the reporting requirement.

Section 6 establishes an advisory board, which is tasked with making suggestions regarding implementation of the tracking system and ways to make reporting as efficient, easy and user friendly as possible. The task force has broad representation to insure that all areas of concern have been addressed. Section 6 also states that DEC will provide technical assistance as necessary to applicators so they can fulfill the new requirements and a burden isn't placed upon them. It also outlines ways in which DEC will make this information available to researchers, policy makers and members of the public while insuring the privacy of individuals and applicators.

MS. TARR informed members that DEC has proposed two amendments.

CHAIRMAN TORGERSON thanked her and said the committee would begin with testimony from the teleconference network.

MR. ROCO MOSCHETTI, IPM of Alaska, said he owns and operates a small pest control business and specializes in biological controls to protect greenhouse plants from pests. Biological controls are beneficial organisms that include ladybugs and green lace wings. To stay open during the winter months, he began providing the same pest control for homeowners in the valley that he brought to the greenhouse industry. He uses heat and cold treatments and vacuums to control pests such as carpenter ants, spiders and flies. He stated, "My point is there are many

alternatives to pesticides available... The bill before the committee will not significantly affect my business even though I feel portions of it affect my business..."

He said the bill seems to exclude the general public who is responsible for the majority of pesticide use in homes and gardens in Alaska. He questioned why sanitizers and disinfectants were excluded (page 2, line 21) as these products make up the majority of registered pesticides in Alaska.

MS. JANICE ADAIR, Director, Department of Environmental Health, DEC, said the pesticide program is in her division. She noted that she had faxed general pesticide information to the committee. In essence, she said, a pesticide is any substance or mixture of substances that is intended to prevent, destroy, repel or mitigate any pests. Under her program, a pest can be an insect, mite, other animals, unwanted plants, fungi or microorganisms like bacteria or viruses. She said further that pesticides have been regulated in the United States in some fashion for about 100 years with an initial focus on trade and public health concerns to environmental concerns. There is now a renewed emphasis on children's health concerns. Federal law requires registration of all pesticides sold in the United States and she understands there is a process where EPA examines the ingredients of the pesticide, the crop it is supposed to be used on, the amount, the frequency and the timing of its use to be most efficient and the storage and disposal means of that particular pesticide. She explained:

According to EPA this evaluation during registration insures the pesticide will not have adverse affects on humans, the environment and non-target species if it's used according to the label. There are extensive requirements at the federal level for the labeling of pesticides and EPA must approve each and every label. EPA will also conduct special reviews of certain pesticides to determine whether their use poses an unreasonable risk to human health or the environment and they also will evaluate potential new pesticides in use and promote reduced risk pesticides and non-chemical management, such as the last speaker just mentioned. EPA also sets exposure standards for workers that sets limits on how much of a pesticide residue may remain in or on food.

EPA can enter into cooperative agreements with states to conduct inspection enforcement activities related to the sale of distribution of pesticides, transfers by pesticide applicators of restricted use pesticides, and

implement a field-based outreach program that focuses on agricultural worker protection, groundwater protection and the state's species protection. That's where the state comes in.

Alaska does have a cooperative agreement with EPA and we do conduct the work that I just described. We have a state registration requirement also, as do all states, which means that in order for a pesticide to be sold in Alaska, it has to be registered with the department. This allows us to know what pesticides might be used in Alaska and it allows us to deny registration for a product that may pose an unreasonable risk to our particular environment. For example, we recently denied registration for a product whose labels stated that it would contaminate groundwater. Because so many areas of the state depend upon groundwater as a source of drinking water and because the product was not needed for any unique purpose, we denied this registration.

We also have a very small state permitting requirement for projects that are conducted by state and local governmental entities or is set on land owned by two or more people. Pesticide application by air or to the water must also be approved by the state. We don't issue a whole lot of permits in Alaska. The ones that get the most publicity are ones that are applied for by the Railroad. We will issue a pesticide permit for control of biting flies and mosquitoes on a fairly regularly basis to certain parts of the state.

We provide technical assistance to many groups, such as the Pribilof Islands for rat eradication, the U.S. Forest Service on non-native species or what they call noxious weed eradication and Air Force and others on statewide spruce bark beetle.

We have regulations that just went into effect at the end of last month that requires schools to provide notice to parents and guardians before pesticides are used at the school and to close the area where they have been used until it's safe for the children to access it again. We recognized that children are particularly vulnerable to pesticides and we want to make sure the place where kids spend most of their time is safe for them.

Pesticide applicators will also be required to keep records of their general use for pesticides. To date, they have only been required to keep records of their use of restricted use pesticides. The restricted use pesticide is a certain classification pesticide that is identified by EPA [indisc.] that even when it's used according to its label has such potential predicative affects, it can only be used by applicators certified by the state under a program approved by EPA.

MS. ADAIR said the bill would establish fees for certain pesticide related activities and requires notice be posted on certain properties before a pesticide is sprayed. It also requires that a tracking system be established for use of certain pesticides to be determined by regulation. DEC would take the records from applicators and aggregate them into the hydrological units established by USGS and present that information to the public so people can get a sense of where in the state certain types of pesticides are being used. DEC would publish a report on an annual basis that would provide more information to the public. It also creates a seven-member advisory board, whose members would not be entitled to reimbursement for any travel or per diem. The advisory board would be a resource to DEC.

One concern she has besides the amendment that Senator Ellis' staff referenced is on page 4, line 15. The reports that DEC receives that would be disseminated to the public would include the location of applications and that would include someone's address in many cases. Concern has been expressed that that information would be subject to the Freedom of Information Act. She recommended moving the bill forward, but leaving the location of application exempted from the Public Records Act.

MS. ADAIR said DEC supports the intent of this bill. It is an alternative to a permitting program that allows DEC to make information about pesticides available to the public. Another benefit would be to the state drinking water act, which requires public water supplies be monitored for certain pesticides. If DEC can demonstrate those sites are not being used, the feds allow them to exempt those water systems from the monitoring requirement. DEC has used registration information for some of that, but this bill would provide better information and allow DEC to issue more monitoring waivers.

SENATOR ELTON said if this is a notification bill, not making public the area where a pesticide is applied eviscerates the purpose of the bill. He asked how that is handled in other jurisdictions.

MS. ADAIR said in her mind it is not a notification bill; it is a

tracking bill that gives them broad information about general areas where pesticides are used. The only state in the union that has something even close is the State of Oregon. Oregon's program is quite a bit more extensive than this one.

MR. CHIP NORDHOFF, an Anchorage teacher, said he has followed this issue for years and has noticed applicators spraying pesticides at all hours of the day and night. He has talked to the applicators about spraying around people and they are nice, but they are not paying too much attention to the people in the area.

MS. KATIE BRYSON, an Anchorage high school senior, said she had been working on pesticide issues since 1998 when she became involved in the community effort to limit the use of potentially harmful chemicals. She said that SB 14 is not designed to restrict the use of specific pesticides or unreasonably regulate Alaskan businesses. She said Alaska needs a comprehensive tracking system or there will be no way of recognizing chemical effects. Ignorance can only prevent us from identifying potential causes of problems and these matters impact the public and they have a right to know.

MR. TOM MACCHIA, physician's assistant, said he was speaking for himself. He has practiced medicine for about 23 years and a good deal of his practice has been in industrial medicine where he has been exposed to issues like the workers' right to know. He said:

I want you to know I worked on the Slope and it makes a tremendous difference in terms of being able to prevent problems with chemicals that are not necessarily designed to be toxic. So, I urge you to pass this bill forward favorably. I think especially when we are dealing with chemicals that are toxic, the more people we have understanding and knowing that they're in the atmosphere, the better chance that we'll see problems come up and we'll know how to deal with them.

MR. RANDY VIRGIN, Director, Alaska Center for the Environment, said this bill is about empowering individuals by providing basic health information so people can make informed decisions about exposure to toxins. Fees assessed on manufacturers fund this program and this is done in every other state. This is a cost of doing business for companies like Monsanto. Mr. Virgin is also the parent of two children and believes the ability to make informed choices is important for his family's health.

MS. TAYA CUMMINS, Anchorage resident, supported SB 14. She has seen chemicals used that have caused people harm. This

information would help protect people and establish knowledge about what pesticides are harmful.

MS. PAMELA MILLER, Director, Alaska Community Action, strongly supported SB 14 saying she had submitted written comments. As a biologist, she emphasized that this bill is critical for scientific understanding and as a basis to protect public health. She explained:

The bill is fiscally positive and provides a direct and measurable benefit to the public. The information provided by a pesticide use tracking system is vital to any credible contaminants research program. Accurate information about pesticide use will be helpful for pesticide applicators and companies because it will dispel any speculation and misrepresentation of fact.

Many industrial chemicals, including pesticides, are transported from distant sources via ocean and air currents and now are accumulating in our northern environment. A pesticide-use tracking bill will provide researchers with information necessary to assess the relative contribution of these long-range sources of pesticide contaminants pored with those generated within the state. Such a system is necessary for good research and to protect water quality, our fisheries, [indisc.] food and our health and I would just add that we would like to see the additional requirement of reporting from all applicators including government, agriculture and household. Thank you very much for your time this afternoon.

MS. CAROL CARNES, Ketchikan resident, supported SB 14 because it will increase the public's awareness of less toxic alternatives to pesticides.

MS. JEWEL JACOBS, Ketchikan, said she is the mother of four sons. She has worked in five different school districts in the past 21 years. She has been told that the cost of health insurance is rising astronomically and has seen the direct effects of pesticides on the neurosystems of children and adults. Her children never get sick, she thinks, because they stay away from a lot of commercially produced foods. She thought manufacturers should bear the financial burden of the toxic products they manufacture. Pesticide use is harmful in her opinion and the least we should do is have it regulated and make sure people know where it is and have the manufacturers pay some kind of regulatory fees.

MS. EMILY NEIMAN, Alaska Advocacy Manager, American Cancer Society (ACS), supported SB 14 and said ACS recognizes that the

estimation of safe pesticide exposure levels involves difficult risk assessment calculations so more research is needed. Accurate recording of sales and use will facilitate more reliable research regarding the cancer causing potential of many pesticides.

MR. PETER FELLMAN, Delta Junction dairy farmer, said he had some concerns with the title of the bill and the contents. On line 9, he thinks the broadcast chemicals can include wetting agents, hay treatment, lime and other benign agents that registration will be required for. Another concern is if you don't follow the labeling instructions as stated on the back of the bottles of the pesticides, which is federal law, it is a federal offense. He knows the definition used for "pesticide" includes everything from killing plants to rats, but the reality is there's a big difference between herbicides and pesticides. He said there is also a half-life of chemicals or how much time it takes them to break down to organic matter. He said a posting time is already required in state law. Last, he didn't know how they could really control use of some of the chemicals because they are sold in stores everywhere.

SENATOR ELTON informed him that broadcast chemicals are already covered in state law, but this bill would make them subject to the same reporting requirements as other chemicals.

SENATOR ELTON moved to adopt the proposed CS to SB 14 (version C) as the working document of the committee. There were no objections and it was so ordered.

SENATOR ELTON moved to adopt amendment 1, which reads:

**A M E N D M E N T 1**

OFFERED IN THE SENATE

TO: CSSB 14( ), Draft Version "C"

Page 2, lines 17 - 18:

Delete "commercial building"  
Insert "business premises"

Page 2, line 19:

Delete "commercial building"  
Insert "business premises"

There were no objections and it was adopted.

SENATOR ELTON moved to adopt Amendment 2, which reads:

**A M E N D M E N T 2**

OFFERED IN THE SENATE

TO: CSSB 14( ), Draft Version "C"

Page 4, lines 27 - 28:

Delete "licensed custom, commercial, or contract pesticide applicator"

Insert "person who is 18 years of age or older"

There were no objections and it was adopted.

CHAIRMAN TORGERSON said they would set the bill aside and bring it up at a later date.

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#HB241

**CSHB 241(RES)(Title am)-RAIL AND UTILITY CORRIDOR TO CANADA**

CHAIRMAN TORGERSON announced CSHB 241(RES)(Title am) to be up for consideration and noted that a proposed committee substitute (CS) was prepared to address concerns expressed at a previous hearing.

SENATOR STEVENS moved to adopt the CS, version P, to CSHB 241(RES)(Title am) as the working document of the committee. There were no objections and it was so ordered.

CHAIRMAN TORGERSON said the committee was concerned about the Alaska Railroad Corporation (ARRC) getting the land without legislative approval so the CS requires ARRC to delineate the land and the legislature will make the offer. The CS also contains language that leaves the subsurface rights to the mineral estate, except gravel, with the state and gives ARRC the right to extract sand and gravel to build a roadbed. He noted that Representative James talked about ARRC doing a feasibility study. He believes ARRC received \$2.5 million from the federal government to do one. The study would determine what land and width of land would be needed, either fee simple or a lesser interest. That eliminated Senator Taylor's concern about turning all the land over to ARRC. He noted that Representative James had one more amendment she would like the committee to consider.

REPRESENTATIVE JAMES commented that she wasn't aware of any money that is available at this time from the federal government for this work.

CHAIRMAN TORGERSON asked what Senator Murkowski got the \$2.5 million for.

REPRESENTATIVE JAMES stated:

It is for a feasibility study. However, until we get cooperation with the Canadian folks to have the bilateral part of the commission established, it's just

sitting there with no authorization to be using it. It's only an authorization for the bilateral commission to do a feasibility study.

CHAIRMAN TORGERSON said that we need the cooperation of the Canadians anyway to do the Railroad.

REPRESENTATIVE JAMES said that is true. She clarified the fiscal note for the bilateral commission was \$6 million and \$4 million had been authorized so far, but it's sitting there until the bilateral commission is appointed.

CHAIRMAN TORGERSON said the first amendment for the committee's consideration is labeled Utermohle P.3. It will removed the language regarding the feasibility study, which he believes is important because he doesn't know how anything will get done if the project is not studied first. That amendment reads:

**A M E N D M E N T 1**

OFFERED IN THE SENATE

TO: SCS CSHB 241(RES), Draft Version "P"

Page 2, lines 25 - 26:

Delete ", after completion of a feasibility study on linking the rail system in Alaska to the North American continental rail system,"

REPRESENTATIVE JAMES said she agrees but does not want to restrict this opportunity to the feasibility study being completed. She noted in the state may get some funds from the federal government in the near future just to get the railroad as far as Delta.

**TAPE 02-12, SIDE B**

**4:30 p.m.**

REPRESENTATIVE JAMES said going that far would be authorized under this legislation. She pointed out the money has to come from somewhere because a corridor has been on the ground for over 20 years. She said she assumes this will go in the same area, but there may be some existing rights that have occurred in that area. In addition, the gas line is also preparing a right of way into the area, which is another reason to have the legislation in place so that the ARRC can address any concerns. She said no one intends to override the gasline. The purpose is to protect ARRC's interests over the long term, as well as assist in any way

possible.

SENATOR HALFORD moved to adopt Amendment 1 (P.3).

CHAIRMAN TORGERSON objected.

SENATOR ELTON said he finds the Chairman's concern that there ought to be a feasibility study prior to selection and/or transferring of land for a railroad utility corridor to be compelling. He thought the sponsor was concerned that the feasibility study is about linking the rail system from Alaska to Canada. He wondered if both concerns would be covered by saying, "The corporation shall after completion of a feasibility study determine..." and strike the linking of the feasibility study to the Canadian corridor.

CHAIRMAN TORGERSON said he would be more inclined to support that. He repeated that he didn't want to just turn the land over and said there should be a study somewhere along the line even if the railroad only goes as far as Delta. He asked Representative James to comment on striking the words, "on linking the rail system in Alaska to the North American continental rail system," from the amendment.

REPRESENTATIVE JAMES said she would not be happy with that because so many feasibility studies aren't descriptive. She said it is problematic for her also because ARRC could come back to the legislature next year and ask for land that is already identified in the corridor. The legislature will have to approve a land transfer but it will base its decision on the information brought forward. She said removing that language would mean ARRC could not come forward until the feasibility study is done. She commented, "I think this is a real breaker."

SENATOR ELTON called for the question.

SENATOR HALFORD said he would withdraw his motion to adopt the amendment and save the trouble.

SENATOR ELTON withdrew his call for the question.

REPRESENTATIVE JAMES said that it is not imperative that this bill pass this year and she would wait until next year.

CHAIRMAN TORGERSON asked if there was any further testimony. There was none. He put HB 241 aside.

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#HB420

#HB421

**HB 420(title am)-REPEAL SUNSET FOR TEMP WATER USE PERMITS**

CSHB 421(RES)(title am)-WATER USE ACT PROCEDURES & RECORDS

CHAIRMAN TORGERSON announced that HB 421 and HB 420 are closely related and that the committee would hear the sponsor statement for HB 420 first but hear both simultaneously.

MS. JENNIFER YUHAS, staff to Representative Masek, said HB 420 deals with temporary water use permits and HB 421 deals with the permanent water rights adjudication process. HB 420 was sponsored by the House Resources Committee to repeal a sunset clause that was added last year into HB 185. HB 420 will help the state with some pending lawsuits on the issue.

She explained that last year Representative Masek learned that a lot of members from the general public were not satisfied with the process for water rights adjudication, from testimony at hearings about temporary water permits. People were unable to access records they thought they should have access to and the procedure was ambiguous and not standardized. HB 421 will standardize the procedures for the adjudication of water rights and provide better access to records. She said the sponsor would be amenable to anything that would clarify which records the public could access, what areas have water rights pending and the status of one's application.

MR. BOB LOEFFLER, Director, Division of Mining, Land and Water, described the division's temporary water use program as follows.

Water rights is for permanent water uses, for permanent water needs. It is a property right to the water. Once you get it, you get to use it until you no longer need it. That program is not light on its feet. Because of public notice and other things, it takes 60 days to do a non-controversial application, a lot longer before HB 185 solved some of our problems.

The temporary water use program is a program which is much lighter on its feet, if you will. It is for short-term water needs, that being less than five years and it's typically used during Alaska's short construction season by a variety of construction users. It's not a property right. It is revocable if we have a problem.

The procedures to issue it are: agency notice is required, a Title 16 permit is required if it's an anadromous water body, plus there's effective concurrence by the Department of Fish and Game on our most important water bodies. Public notice is discretionary and, in fact, not usually done, because for a short construction season, public notice is not usually done. Of the 39 temporary water use permits we

issued on the North Slope, we did do public notice on 25 of those so far this year. Staff, before issuing it, staff analyzes those permits for effect on fish and wildlife and other water uses. We don't issue them for significant effect.

What I'd like to do is give you a sense of who gets them, how much they're for and how long. There's a perception that temporary water use permits are for the North Slope. North Slope is a big part of our clientele, but it's certainly not the only one. We went back over the FY01 permits and roughly a third of those were in the North Slope. The rest of them were spread throughout the rest of the northern region, Southcentral and Southeast, with a majority being in Southcentral. So, two-thirds of them are not on the North Slope.

With respect to who gets them, in FY01, we issued 90 permits, of which 41 were oil and gas, 17 were for roads, 3 for mining and 29 for miscellaneous uses - be they lodges, cross-country travel, exploration, needing to test a pipeline or whatever. So, roughly 60% or so are not for oil and gas.

With respect to how long they are, we have 25% - roughly a third of them are for 4 - 5 years. Those are mostly on the North Slope. A third of them are for less than three months and the median, which is to say the average permit, is for less than a year. So, throughout Alaska, we have permits that are on average for less than a year. Except for the North Slope, the average is 50,000 gallons a day. They're spread throughout the state and they're for a variety of uses.

I would like to give you just two examples of how they're typically used. One is Icicle Seafoods out on the Aleutians; their water source dried up. They needed water to get through the season. We gave them 200,000 gallons per day after comment by Fish and Game so they could get through the season and then they now applied for permanent water rights. Our hydro-seeding company - one applied a few years ago for 10 sources. We approved five, because of fishery concerns after comments from Fish and Game. And then we revoked one, actually because the public felt it was too noisy pulling out of one particular lake.

So, what I'm trying to leave is the impression that they are widely used by construction industry - not just on the North Slope and they're important for people in our short seasons. We've been criticized for giving these without public notice and I believe, of course, that government should tell the people what it's doing. Because of the devastating effects of putting a 30 to 60 day delay during our construction season, I don't believe we can do this for temporary water use permits.

But the concern that people can't view what the Department of Natural Resources is doing is a concern that I would like to address and I believe HB 421 addresses that concern. That is, it says that we need to put everything we do on the Web such that normal humans who have access to the Web can understand what we do, see where we're getting it. If they need to appeal one or ask for one to be revoked, they can do that. If they want to see the cumulative impacts, they can see that, but it is public information in a way that doesn't get in the way of our short seasons for revocable temporary permits. So, I'm hoping that that solves the concern over public notice and that lets people assess what I think of as the good work that the Department of Natural Resources does.

One last point, as I'm not going to go over the North Slope water use. I believe you've discussed this in committee before and I'm confident that we do an excellent job there of protecting the resources. I'm happy to answer any questions you might have.

SENATOR ELTON asked what process an applicant goes through to get a temporary water use permit.

MR. LOEFFLER replied that an applicant works with DNR until DNR is satisfied with the permit application. DNR then sends it to the Department of Fish and Game for comment; they almost always comment if there's any fish involved; they send it to DEC who rarely comments. If there's a hydrologic question, the hydrologist looks at it. If DNR believes there is enough water, there will be no impacts on fish and wildlife or on other water uses, then it issues the permit for up to five years.

SENATOR ELTON asked if applicants fill out a form or whether they just walk into the office.

MR. LOEFFLER replied that DNR has a temporary water use

application form.

SENATOR ELTON asked how long the process takes.

MR. LOEFFLER replied that it can take many months to process a controversial large project, but an easy one where there is no other water use can be issued in one day. If there is an emergency, DNR can call Fish and Game and be confident that issuing a permit won't be hurting a resource.

SENATOR ELTON asked what type of an application would take five years and whether the time period would be considerably foreshortened if an applicant needed to reapply.

MR. LOEFFLER replied that DNR doesn't like to issue serial temporary water use permits. The law changed and says they are non-renewable. If someone needs multiple permits, DNR tries to issue the permit for the length of time the applicant needs it for. If it's over five years, the applicant should be applying for a water right.

CHAIRMAN TORGERSON asked him to review the public notice procedure.

MR. LOEFFLER replied for water rights, a permanent property right to the water, DNR does public notice. For temporary water use permits are typically used during a construction season, which is short so DNR typically does not do public notice, although they have on 25 of the 39 North Slope permits issued this year. He pointed out:

But people have concerns that DNR is not doing a good job and for them to assess those concerns, I think HB 421 is a solution, because while it doesn't put a 30 day delay during the construction season, it puts information on the Web so people can see it, appeal the permit, ask for it to be revoked or see them in concert with all the others so they can assess whether their government is doing the work it should.

SENATOR HALFORD asked how far behind DNR is in issuing permanent water rights permits.

MR. LOEFFLER replied that DNR is very far behind. He expects to get the backlog cleaned up within five years.

SENATOR HALFORD asked if DNR is more than five years behind.

MR. LOEFFLER said he thought 5 to 6 years is a good number for some types.

SENATOR HALFORD said for the permanent process, DNR is more than five years behind; for the temporary process DNR issues permits for as long as five years. He has heard complaints that DNR can't seem to get to the long-term process because it is overwhelmed with the short-term process. He asked:

The temporary process can be on top of the long-term process, can it not? I mean it isn't traditional, the uses you're talking about, particularly North Slope, but it can be.

MR. LOEFFLER said that is correct.

SENATOR HALFORD continued:

Somebody who has five years ago applied for water rights can lose the effective use of water because a temporary permit took it away.

MR. LOEFFLER replied, "A water right always takes precedence over a temporary water use permit."

SENATOR HALFORD interrupted, "You don't have the water right if you haven't acted on their water right application, do you?"

MR. LOEFFLER responded, "Their water right is good to the priority date that they applied. The priority date is the date it comes in."

SENATOR HALFORD asked how DNR knows that when it is assessing a temporary permit and is five years behind in the permitting.

MR. LOEFFLER explained, "Once that water right comes in, we do put those on the Web. So, when we're looking at a temporary water -- that is we put it on our status plats. So when we're looking at a temporary water use permit application, we'll know that there are applications for water rights in the vicinity."

CHAIRMAN TORGERSON asked how many temporary water use permits DNR issues per year.

MR. LOEFFLER replied that DNR did 39 this year. This year will be an unusually active year and he expects there to be about 150 applications. Most of those are on the North Slope for construction, mining, testing a pipeline. They try to prioritize the water right adjudication to those who have immediate need.

CHAIRMAN TORGERSON asked whether DNR or the applicant selects the source.

MR. LOEFFLER replied that the applicants select the source and then there's some give and take if DNR thinks that source is inappropriate.

CHAIRMAN TORGERSON asked about DNR's procedure for streams that are catalogued as having fish in them versus a glacial lake.

MR. LOEFFLER replied that DNR will work with Fish and Game but the applicant will need a Title 16 permit on all anadromous water bodies.

CHAIRMAN TORGERSON asked if he tells that to everyone who comes in.

MR. LOEFFLER replied yes, and that he couldn't always guarantee that his staff does, but they should be.

SENATOR HALFORD asked Mr. Loeffler is he would object to requiring that the applicant have a Title 16 permit before the DNR permit can be valid.

MR. LOEFFLER said he wouldn't.

CHAIRMAN TORGERSON announced that will be amendment 1 and asked Mr. Loeffler if he was okay with that amendment.

MR. LOEFFLER replied that he was okay with amendment 1.

CHAIRMAN TORGERSON asked him about the second amendment.

MR. LOEFFLER responded that the second amendment requires that temporary water use applications once they're completed be put on the Web so people can see them. He felt that is consistent with his previous statement that the public would be able to view what DNR is doing but it will not create a time delay during the short construction season.

CHAIRMAN TORGERSON took public testimony.

MR. TADD OWENS, Executive Director, Resource Development Council (RDC), strongly supported HB 420. The RDC believes that a permanent repeal of the sunset clause that applies to temporary water use authorizations and retention of DNR's authority to assess fees for administration of the water program is very important. DNR's ability to issue temporary water use authorizations is important for a host of commercial and private activities throughout Alaska that don't require a permanent water right. DNR has issued temporary water use authorizations for almost 20 years for a variety of projects across the state. DNR has always consulted with DEC and ADF&G before issuing water use

authorizations and there has been no evidence of harm to Alaska's fish and wildlife resources or any significant environmental impact due to temporary water use authorization. The RDC believes this is a regulatory program that works to support economic development without compromising environmental protection.

MS. MARILYN CROCKETT, Deputy Director, Alaska Oil and Gas Association (AOGA), fully supported Tadd Owens' comments and supported HB 420.

MR. JAN KONIGSBERG, Trout Unlimited, said he was speaking on behalf of the Alaska Public Waters Coalition, which includes sport fishing groups, conservation organizations, former members of the Alaska Water Board and other individuals. All are concerned about the executive branch actions affecting the disposition of Alaska's water resources. They do not support HB 420 and believe the temporary water use program should sunset on July 2002 as provided in the original enabling legislation. They don't object to a temporary water use program to provide for truly temporary and truly unanticipated water use for a period less than one year. Otherwise the public deserves notice and determination of public interest. He stated:

The beneficial use of Alaska's public waters has always been free. Even though water is every bit as valuable as other public resources such as gravel, industrial users aren't charged for the water, but now the temporary water use program offers an extra bonus - freedom from the public interest determination under the statute. Since there is no public notice, and since no public interest determination is required, there is really no way other than agency discretion that users will know how they might be affected until after the temporary water use permit is authorized and similarly there is no way to know the impacts to fish and wildlife and their habitats until after the fact..

MR. KONIGSBERG noted that they submitted proposed amendments to the committee that insure public notice, require that [indisc.] restrict the water source, restore the definition of hydrologic [indisc.] that is used by the other 49 states and the federal government and require due diligence in resource monitoring.

MR. KEITH BAYHA, Chairman, Alaska Public Waters Coalition, said everyone he represents is, "concerned about executive actions and legislative and regulatory initiatives affecting Alaska's water resources that would further special interests at the expense of public interest."

He said they are generally pleased with the changes in HB 421,

but believe there is room for further improvement. Their principal concern is that the term 'standardized procedure' lacks definition. He said there is no procedure for evaluating and determining public interest criteria. By establishing these procedures in regulation they will be formalized, standardized and clear to the public as well as to agency staff. He supported HB 421, especially if their proposed amendments are adopted. He offered to read them to the committee, but they already had them in writing.

MR. CHIP DENNERLEIN, Director, Division of Habitat and Restoration, ADF&G, said he was available to address questions. He concurred with Mr. Loeffler's description of the process, particularly with the North Slope. He also supported the amendments.

SENATOR HALFORD moved to adopt amendments 1 and 2 as one amendment to HB 421.

CHAIRMAN TORGERSON asked Mr. Loeffler if the amendment would add an extra burden for him.

MR. LOEFFLER replied that they are already doing part 1 and part 2. They are minor burdens, but give transparency to the program and he didn't object.

CHAIRMAN TORGERSON noted that there were no objections and amendment 1 was adopted.

SENATOR HALFORD moved to pass SCS CSHB 421(RES) from committee. There were no objections and it was so ordered.

SENATOR HALFORD moved to pass HB 420(Title am) from committee with individual recommendations. There were no objections and it was so ordered.

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CHAIRMAN TORGERSON adjourned the meeting at 5:10 pm.