

**ALASKA STATE LEGISLATURE
HOUSE RESOURCES STANDING COMMITTEE**

February 21, 2003

1:03 p.m.

MEMBERS PRESENT

Representative Mike Chenault, Co-Chair
Representative Beverly Masek, Vice Chair
Representative Carl Gatto
Representative Cheryll Heinze
Representative Kelly Wolf
Representative David Guttenberg

MEMBERS ABSENT

Representative Hugh Fate, Co-Chair
Representative Bob Lynn
Representative Beth Kerttula

COMMITTEE CALENDAR

SENATE JOINT RESOLUTION NO. 4

Urging the United States Congress to pass legislation to open the coastal plain of the Arctic National Wildlife Refuge, Alaska, to oil and gas exploration, development, and production.

- MOVED SJR 4 OUT OF COMMITTEE

HOUSE BILL NO. 86

"An Act relating to permits issued by the state."

- FAILED TO MOVE CSHB 86 (RES) OUT OF COMMITTEE

HOUSE BILL NO. 16

"An Act amending the standards applicable to determining whether, for purposes of the Alaska Stranded Gas Development Act, a proposed new investment constitutes a qualified project, and repealing the deadline for applications relating to the development of contracts for payments in lieu of taxes and for royalty adjustments that may be submitted for consideration under that Act; and providing for an effective date."

- BILL HEARING CANCELED

PREVIOUS ACTION

BILL: SJR 4
 SHORT TITLE: ENDORSING ANWR LEASING
 SPONSOR(S): SENATOR(S) WAGONER

Jrn-Date	Jrn-Page		Action
01/21/03	0013	(S)	READ THE FIRST TIME - REFERRALS
01/21/03	0013	(S)	RES
01/27/03	0064	(S)	COSPONSOR(S): OLSON, STEVENS B, HOFFMAN
01/27/03	0064	(S)	COWDERY, GREEN
01/29/03	0077	(S)	COSPONSOR(S): FRENCH
02/03/03		(S)	RES AT 3:30 PM BUTROVICH 205
02/03/03		(S)	MINUTE(RES)
02/05/03	0118	(S)	RES RPT 5DP 1DNP 1NR
02/05/03	0118	(S)	DP: OGAN, STEVENS B, SEEKINS, WAGONER,
02/05/03	0118	(S)	DYSON; DNP: LINCOLN; NR: ELTON
02/05/03	0118	(S)	FN1: ZERO(DNR); FN2 ZERO(REV)
02/07/03	0134	(S)	RULES TO CALENDAR 2/7/2003
02/07/03	0134	(S)	READ THE SECOND TIME
02/07/03	0134	(S)	COSPONSOR(S): TAYLOR, OGAN
02/07/03	0134	(S)	ADVANCED TO THIRD READING UNAN CONSENT
02/07/03	0134	(S)	READ THE THIRD TIME SJR 4
02/07/03	0134	(S)	PASSED Y15 N1 E4
02/07/03	0134	(S)	ELTON NOTICE OF RECONSIDERATION
02/10/03	0150	(S)	RECON TAKEN UP - IN THIRD READING
02/10/03	0150	(S)	RETURN TO SECOND FOR AM 1 UNAN CONSENT
02/10/03	0150	(S)	AM NO 1 FAILED Y6 N11 E1 A2
02/10/03	0151	(S)	AUTOMATICALLY IN THIRD READING
02/10/03	0151	(S)	PASSED ON RECONSIDERATION Y16 N1 E1 A2
02/10/03	0153	(S)	TRANSMITTED TO (H)
02/10/03	0153	(S)	VERSION: SJR 4
02/12/03	0180	(H)	READ THE FIRST TIME - REFERRALS
02/12/03	0180	(H)	RES
02/12/03	0203	(H)	CROSS SPONSOR(S): STOLTZE, DAHLSTROM,
02/12/03	0203	(H)	LYNN
02/21/03		(H)	RES AT 1:00 PM CAPITOL 124

BILL: HB 86

SHORT TITLE: INJUNCTIONS AGAINST PERMITTED PROJECTS

SPONSOR(S): REPRESENTATIVE(S) FATE

Jrn-Date	Jrn-Page		Action
02/10/03	0169	(H)	READ THE FIRST TIME - REFERRALS
02/10/03	0169	(H)	RES, JUD
02/10/03	0169	(H)	REFERRED TO RESOURCES
02/21/03		(H)	RES AT 1:00 PM CAPITOL 124

WITNESS REGISTER

SENATOR THOMAS WAGONER

Alaska State Legislature

Juneau, Alaska

POSITION STATEMENT: Presented SJR 4 as sponsor.

JIM POUND, Staff

to Representative Hugh Fate

Alaska State Legislature

Juneau, Alaska

POSITION STATEMENT: Presented HB 86 on behalf of Representative Fate, sponsor.

ACTION NARRATIVE

TAPE 03-6, SIDE A

Number 0001

CO-CHAIR MIKE CHENAULT called the House Resources Standing Committee meeting to order at 1:03 p.m. Representatives Chenault, Masek, Gatto, Wolf, and Guttenberg were present at the call to order. Representative Heinze arrived as the meeting was in progress. Co-Chair Chenault announced that Co-Chair Fate was excused.

CO-CHAIR CHENAULT turned the gavel over to Vice Chair Masek.

SJR 4-ENDORSING ANWR LEASING

[Contains discussion pertaining to HJR 6, the companion resolution]

VICE CHAIR MASEK announced that the first order of business would be SENATE JOINT RESOLUTION NO. 4, Urging the United States

Congress to pass legislation to open the coastal plain of the Arctic National Wildlife Refuge, Alaska, to oil and gas exploration, development, and production.

Number 0134

SENATOR THOMAS WAGONER, Alaska State Legislature, testified as the sponsor of SJR 4. Senator Wagoner informed the committee that the intent of SJR 4 is to urge the U.S. Congress to pass legislation to open the coastal plain of the Arctic National Wildlife Refuge (ANWR) to oil and gas exploration, development, and production. He pointed out that this resolution has been before the legislature at least five times. "This year it looks like everything is in line and we have a good chance of passing this item both here and in the United States Congress," he said. He highlighted that this year a majority of the members of all of the houses of government involved support the opening of the coastal plain of ANWR to exploration production. He reminded members of Governor Murkowski's State of the State address during which he reaffirmed his belief that [the state] should do all that it can to open up the coastal plain of ANWR. North Slope production has been in decline since 1988, and therefore the development of the coastal plain of ANWR will help provide stability to national energy demands while increasing Alaska's revenue stream.

SENATOR WAGONER explained that SJR 4 intends for the new technology used at the Alpine and Northstar [Units] to be used on the coastal plain of ANWR in order to enhance environmental protection. The current area [of the coastal plain of ANWR] under consideration represents approximately one-half of one percent of the coastal plain, out of the 19-million-acre refuge. Of the 19-million-acre refuge, 8 million acres has already been designated as wilderness. Senator Wagoner concluded by urging the committee's support of SJR 4.

Number 0348

REPRESENTATIVE GUTTENBERG asked if there is any difference between HJR 6 [which had been heard in both the House Resources Standing Committee and House Special Committee on Oil and Gas] and SJR 4.

SENATOR WAGONER answered that the two resolutions are exactly the same.

REPRESENTATIVE GATTO inquired as to what objections people might have with regard to this resolution.

SENATOR WAGONER replied that the main objections would be environmental objections. There have also been [objections] stating that there isn't enough oil [in ANWR] to make a difference. However, Senator Wagoner "begged to differ" because every bit of oil that can be produced makes a difference. He noted that often there are objections directed at the amount of acreage involved in the development.

Number 0456

REPRESENTATIVE GATTO noted that he supports [SJR 4]. He turned to the objections stating that ANWR is a drop in the bucket and pointed out that [the coastal plain of ANWR] is good for 20 years of continuous production. Therefore, some of the objections are easy to address, although there are still some in the U.S. Senate who object to opening the coastal plain of ANWR. He asked if these objections are held because of objections from constituents, or whether there are reasonable objections.

SENATOR WAGONER referred to the objections to opening the coastal plain of ANWR as the "East Coast mentality." He said that a million barrels of [oil] a day or whatever is produced isn't a drop in the bucket. One of the best ways to address the "drop in the bucket" objection is to ask what would happen to the West Coast if Alaska closed its pipeline. The total production from ANWR is unknown until exploration occurs and the size of the field is determined.

REPRESENTATIVE WOLF recalled Senator Wagoner's mention that the coastal plain of ANWR could produce 1 million barrels a day. He pointed out that the U.S. is purchasing 1 million barrels a day from a man in a country with which the U.S. is prepared to go to war now. "I wonder who's laughing at us," he remarked. Therefore, he questioned who could argue [against] the development of ANWR.

SENATOR WAGONER acknowledged that there is a lot of opposition to the opening of the coastal plain in ANWR, even in Alaska. Senator Wagoner pointed out that Alaska is in a fiscal crisis and if not ANWR, what will the state find to balance the budget, he asked. Although development in ANWR will take a longer time coming on line, he reiterated that the state will need the revenue from the oil coming from ANWR in the near future. "This is the best time to get that," he said. With regard to the oil

imported from the Middle East, if ANWR can produce 1 million barrels a day, it will go a long way to help the balance of payments, he suggested. Anything that is produced is good for Alaska's economy as well as the United States' economy as a whole.

Number 0843

VICE CHAIR MASEK determined that there was no one else who wished to testify. She then expressed her hope that some day a resolution will be [approved] by Congress so that there will be the opportunity to open ANWR for development. Vice Chair Masek closed public testimony and asked if there was any committee discussion.

VICE CHAIR MASEK, in response to Representative Gatto, explained that a resolution is sent to the President, members of Congress, and others in order to inform those parties that the Alaska State Legislature supports the opening of ANWR. She related her belief in the importance of sending this resolution every time it's possible because it illustrates the [legislature's near] unity on this issue.

Number 0976

CO-CHAIR CHENAULT moved to report SJR 4 out of committee with individual recommendations and the accompanying fiscal note(s). He asked for unanimous consent. There being no objection, SJR 4 was reported from the House Resources Standing Committee.

HB 86-INJUNCTIONS AGAINST PERMITTED PROJECTS

Number 1022

VICE CHAIR MASEK announced that the next order of business would be HOUSE BILL NO. 86, "An Act relating to permits issued by the state."

Number 1034

JIM POUND, Staff to Representative Hugh Fate, Alaska State Legislature, presented HB 86 on behalf of Representative Fate, sponsor. He apologized for Representative Fate's absence and noted that he was attending a "Korean" gas conference in Anchorage. Mr. Pound said HB 86 is a simple addition to statute that assures some closure to the existing permitting process. He informed the committee that a project must go through an

entire permitting process, which includes: submitting applications; responding to questions about the application from the department; taking public testimony on the project; responding to concerns from public testimony; modifying the permit request to address the concerns from public and the department; and, finally, receiving the necessary permits to begin. In theory, he said, once the [project] has reached that step, the work process should begin: advertising for needed services; completing the necessary internal assessments; determining how many people to employ and what equipment will be needed; actually going to work; and paying the employee's or contractors until the project is complete.

MR. POUND said in reality that if "someone or a group of someones decide that they didn't get their way through the public process, instead of accepting the existing process and the ruling, they cry to the administrative or judiciary process that it's not fair." He said this often results in an injunction against the project until a legal definition of "not fair" can be determined, "with an overloaded judiciary and quasi-judicial system; this sometimes takes years." Mr. Pound stated that passage of HB 86 "does not define 'not fair'; it does specify what is required to stop a project, simply, new scientific information or newly recognized local traditional knowledge." He concluded that this addition to the existing statute will be a major step in getting Alaska moving.

Number 1180

REPRESENTATIVE GUTTENBERG said he received a letter from the Johnsons at Cleary Summit Bed and Breakfast expressing concerns that [HB 86] would take them out of any process because the permitting process with the contractor, through the RSA [reimbursable services agreement], would be complete and in place, and leave them without an avenue to address the issue. Is that the intent, he asked.

MR. POUND said no, the intent is that there is a relatively well-established open permitting process, which normally includes public testimony on any type of project. He suggested that the typical involvement time would be during the public process.

REPRESENTATIVE GUTTENBERG suggested that [HB 86] would eliminate the commissioner's [authority] to overrule "personnel" in the case that the commissioner decides against a permit that has already been issued.

MR. POUND referred to AS. 46.14.280 and suggested that the commissioner would have the ability to revoke a permit if it is given in error, and once the permit is revoked, there's no ability for the individual or the project to continue if it's being built under a permit.

Number 1396

REPRESENTATIVE GUTTENBERG said the section addressed issues that the permittee had. He asked what would happen if the permittee had given all of the correct information and the permit was denied or accepted with some bad or good information, but the wrong decision was made. He remarked, "I'm trying to figure out if that actually did take the commissioner out of the loop, but I'm not sure I heard the answer in your [response]."

MR. POUND offered his belief that the department and the commissioner are essentially one and the same in most definitions of statute. He said the commissioner, ultimately, would have authority over anyone within of his or her [divisions] as to whether a permit would be issued or could be revoked.

Number 1456

REPRESENTATIVE GATTO began discussion of what would become a conceptual amendment. He offered support for the bill, but expressed concerns about the word "new" in line 7 and the determination of the definition of "new". He asked if the word [in this context] means information that is pertinent but not previously considered.

MR. POUND said he would consider that an accurate definition and that the issue was to assure that if a project of a fairly major scale ended up running across an archeological site of whatever capacity, that would be considered new, traditional local knowledge; that was why it was worded that way.

REPRESENTATIVE GATTO said he wants to add the word "pertinent" because there are lots of things one could run into that might be new and therefore subject to a challenge, but not pertinent. He remarked, "A new stream, which is four inches wide or a couple of bones from something, or who knows." He said he wanted to make clearer language because he believes he knows the sponsor's intent and agrees with it, but he hadn't seen it in

time to discuss it with the [sponsor]. He said he would offer an amendment.

MR. POUND said he didn't think there would be a problem with [an amendment].

REPRESENTATIVE GUTTENBERG referred to the definition of "new" and asked, if a water use permit upriver impacts the well of somebody downstream and it goes dry, whether that is considered new.

MR. POUND said he would assume that would be new because it wasn't something that was addressed during the permitting process. He offered his belief that it would fall under the ability to revoke administratively without having to go through the judicial process.

REPRESENTATIVE GUTTENBERG remarked, "Maybe I'll extend that when Representative Gatto puts in his amendment."

Number 1634

REPRESENTATIVE HEINZE noted her support for the bill, but expressed concerns about the clarity [of the language] and it's being open to interpretation. She suggested writing the bill so that it's very clear.

Number 1681

REPRESENTATIVE GATTO moved to adopt a [conceptual] amendment, as follows:

Page 1, line 7, after "challenge is based on"
Delete "new"
Insert "information pertinent to but not previously considered"

[There was discussion about the impact of the amendment on the sentence structure because the word "information" already exists in the sentence.]

MR. POUND suggested amending the language to "challenges based on pertinent new scientific information or new recognized local"

REPRESENTATIVE GATTO indicated he was amending the inserted language to read:

Page 1, line 7, after "challenge is based on"
Insert "pertinent but not previously considered
scientific information or newly recognized local"

Number 1766

VICE CHAIR MASEK asked if there was any objection. There being no objection, the [conceptual] amendment was adopted.

REPRESENTATIVE GUTTENBERG asked if there was anybody from an agency to speak on some of the scientific aspects of the permitting.

VICE CHAIR MASEK indicated that there wasn't anybody from the Alaska Department of Fish and Game or the Department of Natural Resources [waiting to testify].

REPRESENTATIVE GUTTENBERG said there were some issues he wouldn't mind addressing concerning habitat or oil and gas that he would like [the departments to answer].

MR. POUND said he didn't have anything of specific concern with the bill, but explained that the [Department of Environmental Conservation (DEC)] was a little concerned at first and wanted to know why it was attached to its statute. He indicated the answer is that is where [the bill drafters from the Legislative Affairs Agency] had determined was the best place to put it; it is one of the key departments dealing with the permitting process.

REPRESENTATIVE GUTTENBERG said there were questions that he would like to ask agency people who are involved in [the permitting process] about how this actually functions and examples of where it would work. He remarked, "Sometimes, maybe there's a bad decision made to deny a permit, and things need to be done to make sure that gets reversed."

VICE CHAIR MASEK offered her belief that all of the [legal issues] would be addressed in the next committee of referral, the House Judiciary Standing Committee.

REPRESENTATIVE GUTTENBERG pointed out that he was not a member of that committee.

Number 1940

CO-CHAIR CHENAULT moved to report HB 86 [as amended] out of committee with individual recommendations and the accompanying fiscal notes. He asked for unanimous consent.

Number 1951

REPRESENTATIVE GUTTENBERG objected.

Number 1998

A roll call vote was taken. Representatives Masek, Wolf, Gatto, and Chenault voted in favor of reporting HB 86, as amended, from committee. Representative Guttenberg voted against it. Therefore [because a majority of the nine-member committee didn't vote to report the bill from committee], CSHB 86 (RES) failed to be reported from the House Resources Standing Committee by a vote of 4-1.

Number 2000

[Although it was announced that [CSHB 86 (RES)] was reported out of committee, it actually failed to be reported from committee.]

VICE CHAIR MASEK told Representative Guttenberg that the sponsor probably wouldn't mind providing him with information [relating to his concerns].

Number 2021

MR. POUND told Representative Guttenberg that [the sponsor] would be glad to work with him.

REPRESENTATIVE GUTTENBERG said he didn't know what questions he wanted to ask, and offered his belief that having agency people [present] to ask questions to clarify a bill or statute, to be comfortable with all aspects of before it moves on, is something to be done in committee and not to be passed on or debated or asked on the floor. He explained that he doesn't mean to slow the bill down, but he needs to be comfortable with what happens in understanding the flow, to be sure that all the issues are addressed before it moves on.

VICE CHAIR MASEK said the bill had been posted and suggested if the department had trouble with the bill, it would have [contacted] the bill sponsor. She said she understood his concerns and expressed hope that those issues would be resolved before the bill gets to the House floor.

[CSHB 86 (RES) failed to move from committee and thus remains in the possession of the House Resources Standing Committee.]

ADJOURNMENT

There being no further business before the committee, the House Resources Standing Committee meeting was adjourned at 1:33 p.m.