

**ALASKA STATE LEGISLATURE
SENATE RESOURCES STANDING COMMITTEE**

April 16, 2003

3:34 p.m.

MEMBERS PRESENT

Senator Scott Ogan, Chair
Senator Thomas Wagoner, Vice Chair
Senator Fred Dyson
Senator Ralph Seekins
Senator Kim Elton
Senator Georgianna Lincoln

MEMBERS ABSENT

Senator Ben Stevens

COMMITTEE CALENDAR

SENATE BILL NO. 31

"An Act relating to a railroad utility corridor for extension of the Alaska Railroad to Canada and to extension of the Alaska Railroad to connect with the North American railroad system."

SCHEDULED BUT NOT HEARD

SENATE BILL NO. 50

"An Act amending the manner of determining the royalty received by the state on gas production as it relates to the manufacture of certain value-added products."

MOVED CSSB 50(RES) OUT OF COMMITTEE

SENATE BILL NO. 147

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

MOVED SB 147 OUT OF COMMITTEE

SENATE BILL NO. 151

"An Act relating to the regulation of natural gas pipelines under the Pipeline Act."

MOVED CSSB 151(RES) OUT OF COMMITTEE

CS FOR HOUSE BILL NO. 90(FIN)

"An Act relating to a salmon product development tax credit and a salmon utilization tax credit under the Alaska fisheries business tax; and providing for an effective date."

MOVED CSHB 90(FIN) OUT OF COMMITTEE

PREVIOUS ACTION

SB 31 - See Transportation minutes dated 2/11/03 and 3/27/03.

SB 50 - See Resources minutes dated 3/26/03, 4/11/03 and 4/14/03.

SB 147 - No previous action to record.

SB 151 - See Labor and Commerce minutes dated 3/27/03 and 4/1/03 and Resources minutes dated 4/14/03.

HB 90 - No previous action to record.

WITNESS REGISTER

Mr. Mark Myers
Division of Oil and Gas
Department of Natural Resources
550 W 7th Ave.
Anchorage, AK 99501
POSITION STATEMENT: DNR supports SB 50 as amended

Ms. Lisa Parker
Agrium
Kenai, AK
POSITION STATEMENT: Supports CSSB 50(RES)

Senator Gary Stevens
Alaska State Capitol
Juneau, AK 99801-1182
POSITION STATEMENT: Sponsor of HB 90

Ms. Jacqueline Tupou
Staff to Senator Green
Alaska State Capitol
Juneau, AK 99801-1182
POSITION STATEMENT: Testified for the sponsor of SB 147

Mr. Gordy Williams
Department of Fish & Game
PO Box 25526
Juneau, AK 99802-5226
POSITION STATEMENT: Supports SB 147

Mr. Doug Larsen
Assistant Director
Division of Wildlife Conservation
Department of Fish & Game
PO Box 25526
Juneau, AK 99802-5226
POSITION STATEMENT: Answered questions about SB 147

Mr. Robert Duran
Wasilla, AK 99687
POSITION STATEMENT: Supports SB 147

ACTION NARRATIVE

TAPE 03-30, SIDE A

Number 0001

CHAIR SCOTT OGAN called the Senate Resources Standing Committee meeting to order at 3:34 p.m. All members were present except Senator Stevens. Chair Ogan announced the committee would not hear SB 31 today at the sponsor's request. The issue of the location of a gas line in relation to the railroad is still under discussion. He informed members that Mat-Su Borough Mayor Tim Anderson and Assembly member Kelly Ladeer (ph) were present. The committee then took up SB 151 and Senator Stevens arrived.

SB 151-REGULATION OF NATURAL GAS PIPELINES

CHAIR OGAN informed members that he and Senator Wagoner met with Jack Chenoweth, legal adviser on oil and gas issues, who pointed out the trend in the Lower 48 is to use contract pipelines.

SENATOR TOM WAGONER, sponsor of SB 151, informed members that Mr. Chenoweth differentiated between common carriers and contract lines and said that during the last two years, contract lines are becoming more common. He told members, regarding a question that came up at the last hearing, the line is currently at 63 percent capacity with gas that has already been discovered

and gas that is expected to be discovered prior to the start of operation of the pipeline. The pipeline can be expanded to take an equal amount of gas to provide capacity for contract with other exploration companies.

SENATOR ELTON asked if the committee will be taking public testimony on this legislation today.

CHAIR OGAN indicated that no one signed up to testify at this time.

MR. BEN SCHOFFMANN, Marathon Oil Company, informed members that he was available to answer questions.

CHAIR OGAN indicated there were no questions from committee members.

SENATOR WAGONER moved CSSB 151(RES), Version D, from committee with individual recommendations and its attached fiscal notes.

CHAIR OGAN announced that without objection, the motion carried.

SB 50-ROYALTY GAS CONTRACTS

CHAIR OGAN announced that Version Q of SB 50 was before the committee and that an amendment was adopted at the last meeting. A second amendment, labeled Q.1, has been proposed.

SENATOR DYSON moved to adopt Amendment 2 (Q.1, Chenoweth, 4/15/03), which reads as follows:

23-LS0429\Q.1
Chenoweth

A M E N D M E N T 2

OFFERED IN THE SENATE

BY SENATOR WAGONER

TO: CSSB 50(), Draft Version "Q"

Page 2, line 23, following "acceptance of":
Delete "the use of the contract price"

Insert "an amount that is different than the amount due under the lease [THE USE OF THE CONTRACT PRICE]"

Page 2, line 31, following "commissioner":

Delete "shall"

Insert "may"

Page 3, line 4, following "agreement":

Insert "if it is in the best interest of the state"

Page 3, line 17:

Delete "and"

Insert "or"

Page 3, line 19, following "state":

Delete ";"

Insert "."

Page 3, lines 20 - 22:

Delete all material.

CHAIR OGAN objected for the purpose of discussion.

SENATOR WAGONER explained that he, his chief of staff, Mary Jackson, and Mark Myers discussed this amendment with Mr. Chenoweth on Monday. Everyone concurred these amendments clean up the bill and accomplish the intent. He noted Mr. Myers was available via teleconference to answer any questions.

CHAIR OGAN asked Mr. Myers to discuss the overall effect these amendments will have on SB 151.

MR. MARK MYERS, Director of the Division of Oil and Gas, Department of Natural Resources (DNR), told members that the amendments give the commissioner some discretion to decide on the amount of royalty relief to grant. The commissioner can choose one of three values: the higher of value; the market value; or the contract price. The (aa) treatment says the commissioner shall only use the contract price if certain conditions are met so it gives the commissioner discretion to use the contract price or something in between that and the higher price associated with market value or the higher of price. DNR supports that language. However, the amendments will have a dramatic effect on the fiscal note, which is now

indeterminate. Because the commissioner has the discretion, in the public interest, to adjust the royalty, DNR believes the amendments will protect the state's interest.

MR. MYERS said the previous version of the bill gave the commissioner discretion, but the amendments make the language consistent by changing "shall" to "may" throughout. He noted (aa) treatment for utilities originally meant that all of the conditions had to be met. Changing "and" to "or" means that any one of the conditions is sufficient to deny an application and provides more protection for the state.

CHAIR OGAN asked if the Administration took a position on SB 50 previous to the amendments.

MR. MYERS said he was only speaking for DNR but he believes the Administration will support the legislation.

CHAIR OGAN asked what these changes will do to the fiscal note.

MR. MYERS said the changes make the fiscal note indeterminate. Prior to the amendments, DNR felt there was minimal discretion in the amounts. In the particular case of Agrium, the division could calculate the volume of gas it expected would fall under this contract. The fiscal note was reasonable given the uncertainty of the volumes that might potentially be used by the plant. Now, the fiscal note says that number could be the higher number if all of the conditions are met but it could be significantly lower. He said because the commissioner can only enter into a contract if it is in the best interest of the state, there could be increased value in other areas.

SENATOR SEEKINS referred to the change from "shall" to "may" on line 31, page 2, and asked if that will have any effect on the 90-day provision. He asked if the commissioner could, after the written request, decide not to enter into an agreement.

MR. MYERS said if the commissioner determined it was not in the public interest, he could deny it; the amendment just clarifies the "or" conditions if the price is unreasonably low or if the reduction is not balanced by employment or other opportunities.

SENATOR SEEKINS asked if the 90-day provision is useless because nothing compels the commissioner to say yes or no.

MR. MYERS said he believes the commissioner has 90 days to make the decision.

SENATOR SEEKINS disagreed and said the bill says at the end of 90 days the commissioner may enter into an agreement.

MR. MYERS said if the commissioner determines it is not in the best interest of the state and denies the application, he will obviously not enter into the agreement.

SENATOR SEEKINS said he would prefer that provision be clarified.

SENATOR BEN STEVENS said he shares Senator Seekins' concern but pointed out the language on page 3, line 3, says the commissioner may enter into the agreement if it is in the best interest of the state. He agrees with that principle. He said the language on page 2 says the commissioner shall enter into the agreement so the commissioner must determine, within 90 days, whether the agreement is in the best interest of the state.

SENATOR SEEKINS agreed but said his concern is that the previous language called for an action within a specified time period. The new language does not call for any action within that specified time period.

CHAIR OGAN said his interpretation is the same as Senator Stevens'; that being there is a 90-day window during which the commissioner may enter into an agreement if it is in the best interest of the state. He noted the word "shall" cannot be used since the commissioner has the leeway to decide whether it is in the best interest of the state.

SENATOR SEEKINS said he would prefer the bill to say within 90 days, the commissioner will decide whether or not it is in the best interest of the state and, if so, may enter into the contract.

SENATOR STEVENS commented that Senator Seekins wants the bill to say within 90 days the commissioner shall issue a written decision.

CHAIR OGAN said he is not prepared to offer an amendment at this time.

SENATOR SEEKINS said he is not either, but the intent that the commissioner cannot delay the decision forever is on the record.

SENATOR WAGONER commented that no response in 90 days will conclude the negotiation.

SENATOR LINCOLN said she agrees with Senator Seekins. She said she believes the word "shall" should be used because three conditions follow.

MR. MYERS said in order to deny, the commissioner must make a written finding so positive action on the part of the commissioner is required. Therefore, this language leans in favor of approving the agreement.

CHAIR OGAN asked if the parties that drafted this amendment discussed this matter with Mr. Chenoweth.

MR. MYERS said they didn't talk about the timing but the word "shall" on page 2, line 31, was inconsistent with the word "may" on the following page. He said he interpreted the language to mean the commissioner must make a decision within 90 days. If the commissioner denies the contract, he must make a written finding within that time period.

SENATOR ELTON asked if a company that is asked for data to support a decision might stall because after 90 days the agreement would be valid if a written finding to deny could not be done. He pointed out the burden of proof is on the commissioner to deny.

MR. MYERS said without reasonable information, the commissioner would have grounds to deny. He said DNR has had that experience in the past. Although a lack of information can be problematic, when it is essential to the decision, DNR stresses the need to get it from the applicant and acquiring that information has generally not been a problem. He said it is in the company's interest to make a clear showing to DNR.

SENATOR ELTON said he understands the impulse behind this legislation but the indeterminate fiscal note gives him

heartburn. The state treasury will be losing several millions of dollars over time. He feels the legislature should be cognizant of that as this bill moves forward, especially while it is trying to "nickel and dime a whole bunch of people in the state for additional revenues to cover the budget gap." He said it is a bit disingenuous to say the fiscal note is indeterminate when the impact could be millions of dollars per year.

CHAIR OGAN said this is the fourth or fifth hearing on this piece of legislation, and the committee has had several discussions on the fiscal note. He said he shares Senator Elton's concerns. However, he has to trust the Administration to bring forth an appropriate fiscal note. The bill has a referral to the Senate Finance Committee where the fiscal note will again be scrutinized.

SENATOR WAGONER said the Agrium plant is not likely to close down, but the state receives a fair amount of revenue from the sale of royalty gas to Agrium so, if it did close, that would be a negative to the treasury. He said SB 50 has been reworked several times. If a royalty reduction contract is not in the best interest of the state, the commissioner does not have to enter into a contract. He questioned how the fiscal note can be very high if the commissioner has that authority.

SENATOR SEEKINS said he agrees with Senator Wagoner that this legislation provides a way to support Alaskan workers through value-added processing. He said in his business, he long ago learned that half a loaf is better than none.

CHAIR OGAN noted that Senator Wagoner has worked with him on this bill and appreciates the spirit of cooperation.

SENATOR LINCOLN asked Mr. Myers if he said DNR supports the bill but he was not sure of the Administration's position and, if so, why he does not know since this bill has been around awhile.

MR. MYERS said he asked the Administration for clarification of its position. He noted the bill has changed over time, with the most recent amendments being proposed as late as this week. He said he has talked with his commissioner who supports the bill with these changes. He said it is his belief that the Administration is leaning toward supporting the legislation but he has not heard a direct statement to support that belief.

CHAIR OGAN noted this bill has morphed considerably since the last hearing. He then asked if anyone else wished to testify.

MS. LISA PARKER, representing Agrium, stated support for the committee substitute before the committee.

CHAIR OGAN removed his objection to adopting Amendment 2 and announced the motion carried.

SENATOR BEN STEVENS moved CSSB 50(RES) from committee with its forthcoming indeterminate fiscal note.

CHAIR OGAN announced without objection, the motion carried. The committee then took a brief at-ease.

HB 90-TAX CREDIT: SALMON DEVELOPMENT/UTILIZATION

SENATOR GARY STEVENS, sponsor of HB 90, gave the following explanation of the measure. HB 90 is the result of a recommendation by the Salmon Industry Task Force to expand the economy in the area of fisheries by encouraging new investment to retool processing plants and raise the value of salmon products. The Administration supports this measure.

HB 90 provides two investment tax credits: the first credit is for salmon product development; the second is for utilization of salmon. The purpose is to improve the marketability of new value added products, to diversify salmon products, and to encourage full utilization of salmon parts. Alaska salmon is a premiere product in the food market but an enormous increase in the supply of salmon over the last few years has caused a tremendous decrease in its value, threatening the livelihood of thousands of people who depend on the industry. HB 90 will help to improve Alaska's position in the salmon market and to develop value-added salmon.

SENATOR BEN STEVENS clarified that fiscal note number 1 applied to CSHB 90(FSH), which was amended by the House Finance Committee. Fiscal note number 2 applies to the House Finance Committee version, which is before members.

CHAIR OGAN commented that the federal government's investment tax credit was a factor in his decision to invest and expand his

business. He said, like a lot of fishermen, he was a sole proprietor. He asked if this bill provides a \$49,000 tax credit.

SENATOR BEN STEVENS explained the \$49,000 in the fiscal note relates to the increased cost of personnel anticipated by the Department of Revenue. He pointed out the House debated the fiscal note and the fact that it is indeterminate. No one knows how many industry participants will use this investment tax credit. The House concluded that the potential cost to the state could be anywhere from zero to \$2.8 million because in FY 03 the fisheries business tax collected by the state will be \$5.6 million. If the tax credit is fully utilized, it could cost \$2.8 million. He added that the fisheries business tax is levied against persons or businesses that buy fish for reprocessing or resale but the tax credit will be limited to salmon fisheries businesses. In the year 2000, that tax revenue amounted to \$14.7 million; in 2001, it was \$11.2 million; in 2002, it was \$8.5 million; and the anticipated revenue for 2003 is \$5.6 million. He said the other question to ask is, under that rate of decline, what will happen if the state does not provide an incentive to invest in the salmon industry.

SENATOR GARY STEVENS told members half of the projected \$5.6 million fisheries business tax will go to the communities; half will go to the state.

4:20 p.m.

CHAIR OGAN informed members that he planned to hold CSHB 90(FIN) in committee today and that Landa Baily from the Department of Revenue was available to answer questions.

SENATOR ELTON commended the members of the Salmon Industry Task Force who were behind this idea. He sees this as a keystone issue because success in the marketplace depends on varied product form. He pointed out that 25 years ago, whole turkeys were the only turkey products on the market. Turkey is now on the market year round because it is available in many different product forms. The salmon industry needs to catch up and CSHB 90(FIN) will provide a way to get the technology to help the salmon industry do that. He said he does not object to holding the bill in committee, but he hopes this legislation can move through the process quickly because businesses are making decisions predicated on the next season right now.

CHAIR OGAN said he believes there is precious little investment capital in the salmon industry right now. He said if the committee is ready to move the legislation, he would be willing to do so.

SENATOR WAGONER told members that about 14 years ago, a similar program was available to shore based processors, which worked very well. CSHB 90(FIN) goes a bit further. He said he would support the legislation.

SENATOR SEEKINS said he is sure this legislation has been [scrutinized] by Senator Gary Stevens and Senator Ben Stevens. He trusts their lead and feels comfortable with the bill.

TAPE 03-30, SIDE B

SENATOR DYSON moved CSHB 90(FIN) from committee with its indeterminate fiscal note.

CHAIR OGAN announced that without objection, the motion carried.

SB 147-CONTROL OF NUISANCE WILD ANIMALS

MS. JACQUELINE TUPOU, staff to Senator Lyda Green, sponsor of SB 147, gave the following testimony.

This legislation before you provides authority to the Alaska Board of Game to adopt regulations that will allow the issuance of permits and licenses to sanctioned designees to control nuisance wild birds and nuisance wild small mammals. Currently, there is no statutory authority for nuisance wildlife control and the means by which ADF&G can sell a license or issue a permit... The first thing this bill does is it creates a new professional license that can be issued by the Department of Fish and Game, and that doesn't go into effect, if you'll notice, until July '04. It gives the department sufficient time to write the [regulations].

MS. TUPOU said the bill also gives the department the authority to work with persons and families who need assistance in getting

rid of nuisance wild animals. The department can provide the names of people who are licensed to deal with these problems.

CHAIR OGAN asked who this bill attempts to help and what kind of animals fall into this category.

MS. TUPOU said she is not completely familiar with the history of this legislation but Senator Green has heard from constituents who have had wild animals in their yards that cause problems with their children and livestock. She pointed out the department has knowledge of the behavior of these animals and can advise a proper course of action.

CHAIR OGAN noted that beavers can be very destructive. He asked if SB 147 gives ADF&G the discretion to decide whether to issue a permit for a specific animal.

MS. TUPOU deferred to a representative from ADF&G for information on specific animals but said the department will have ample time to write regulations.

CHAIR OGAN asked if this legislation will allow someone to set up a business to control nuisance animals.

MS. TUPOU said that could well be a financial by-product of this legislation. The department will issue licenses to businesses to perform these services.

SENATOR SEEKINS asked if this bill would create two classes of permittees - one for the homeowner for non-commercial control, the other for a professional who is compensated and that person would be regulated by ADF&G.

MS. TUPOU said that is correct but it is up to the department as to whether it wants to issue permits. She said if she called ADF&G about a wild animal in her yard, ADF&G could confer with her about her plan of action and grant her authority to carry it out. Otherwise, ADF&G could choose to refer her to a list of licensed professionals.

SENATOR SEEKINS commented that anyone making money must have a license.

SENATOR WAGONER asked whether this legislation has been reviewed to ensure compliance with federal law.

MS. TUPOU said that ADF&G will have to address compliance with federal laws.

MR. GORDY WILLIAMS, legislative liaison to ADF&G, informed committee members that SB 147 is identical, with the exception of the effective date, to SB 205, which passed the Senate last year but did not make it through the House prior to adjournment. ADF&G worked with Senator Green last year; its concerns were addressed in that bill and are contained in SB 147. The effective date of July 1, 2004 in SB 147 will provide ample time to allow the Board of Game to adopt regulations. ADF&G also requested the language on page 2, paragraph B, [Sec. 4] that pertains to permitting be included. He stated the bill provides two routes to address problems: the licensing of commercial entities and permits to individuals issued by ADF&G. He stated support for SB 147.

MR. DOUG LARSEN, Assistant Director of the Division of Wildlife Conservation, ADF&G, said when this legislation was discussed last year, ADF&G and the Department of Transportation and Public Facilities had differing opinions on how beaver would be addressed. He asked if that issue was resolved.

MR. WILLIAMS said it was resolved. Currently, DOTPF deals with beaver problems on a case-by-case basis. It wanted blanket authority to get an annual permit for a specific area. ADF&G and DOTPF have addressed that concern.

CHAIR OGAN asked what animals will come under the purview of this bill.

MR. DOUG LARSEN, Assistant Director of the Division of Wildlife Conservation, ADF&G, said that hunting seasons are open for several species of small animals, however people cannot discharge a firearm within city limits. In addition, some people are unable to, or might not want to, deal with an animal themselves.

CHAIR OGAN asked if the Board of Game could write regulations to encourage humane capture rather than killing.

MR. LARSEN said he envisions the board setting up guidelines for these permits so that every effort would be made to rid the animal with non-lethal actions; lethal actions would be used as a last resort.

SENATOR LINCOLN said when she lived in Fairbanks, her neighbor loved pigeons and encouraged their presence by feeding them. At first, a few pigeons perched on the neighbor's house but, within a short period of time, the number multiplied and many perched on her home. She asked how ADF&G would address that situation.

MR. LARSEN said that is a good question. He felt any time a person attracts an animal, there will have to be [special] provisions. He said as an example, ADF&G does all it can to discourage people from doing certain things that attract bears, such as putting out birdseed. He said he believes ADF&G would want to approach the nuisance wildlife animal issue similarly. He pointed out that pigeons are classified as deleterious exotic wildlife so there is no limit and no season.

SENATOR SEEKINS asked for a definition of "small mammal" and whether it includes coyotes.

MR. LARSEN said ADF&G does not have a definition in its regulations. The Board of Game will have to figure out what species fall in that category. ADF&G would consider coyotes to be a small mammal but it is up to the board to decide whether to include them.

MS. TUPOU noted that members' packets contain a list of small mammals suggested by constituents that should be included.

SENATOR ELTON asked if there is a reason that invasive species, such as Northern Pike, were not included.

MR. LARSEN replied, "...I believe that they are. When we talk about deleterious exotic wildlife, we're talking strictly on the wildlife side and not the fish side but there are exotic examples on the fish side, as well as plant communities that are classified so I think that those are covered but they're just not covered in the wildlife side."

SENATOR ELTON asked if those species could be included under the business permit from ADF&G.

MR. LARSEN said he hadn't thought about fish related resources and does not know how that would be handled. He said the bill is specific to nuisance wild birds and nuisance wild animals so he assumes fish and plant species would not be included for the purposes of this bill.

MR. WILLIAMS added that ADF&G is developing an invasive species policy and that he would get back to members with more information.

CHAIR OGAN took public testimony.

MR. ROBERT DURAN, a resident of Wasilla, told members he has a vested interest in this legislation as he started a business last year named Nuisance Wildlife Management. He has been in constant contact with ADF&G, the U.S. Fish and Wildlife Protection Agency, the Alaska State Troopers, the U.S. Fish and Wildlife Service and local animal control shelters about this issue. He supports this legislation.

MR. DURAN said with more and more development in the Southcentral area, there is more impact from wildlife. He is not always able to respond to the phone calls he gets about nuisance wildlife because a particular species might be outside of the regular hunting or trapping season. Alaska law contains a provision for defense of life and property, but the individual homeowner would have to deal with the animal him or herself. Oftentimes, that is not possible because the person may not have the equipment to do so or is physically incapable of doing so. He believes his business will be able to assist government agencies with nuisance wildlife complaints, as they do not have the time to deal with them. He has received a positive response from those agencies. He told members that nuisance wildlife businesses are operating in the Lower 48; they relieve a great deal of pressure from wildlife management agencies. He said, regarding endangered or other species that come under federal jurisdiction, his business would be accountable to the U.S. Fish and Wildlife Service. He pointed out that nuisance mammals can be taken live.

SENATOR LINCOLN asked Mr. Duran to respond to the pigeon scenario she described earlier.

MR. DURAN said he would set a live trap for those birds, remove them from the premises and try to relocate them. He said that pigeon droppings near ventilation systems can cause illness. He would not want to cause strife between neighbors so he would have to address both parties and then act in the best interest of all of the people involved.

CHAIR OGAN said that geese are very messy and considered to be a nuisance by many people. He asked how one would relocate a goose and whether Mr. Duran anticipates having to deal with wild geese.

MR. DURAN said he does and has already received one call from a local golf course owner. He said it is not feasible to relocate a bird that is capable of flying hundreds of miles at a time. However, effigies could be put up on properties to discourage them from stopping on that property. He said by effigies, he is referring to predator decoys or loud noisemakers.

5:00 p.m.

CHAIR OGAN noted that this legislation already made it through the Senate last year and is not terribly controversial so he is willing to move it from committee.

SENATOR WAGONER moved SB 147 from committee with individual recommendations and its attached fiscal notes.

CHAIR OGAN announced that without objection, the motion carried. There being no further business to come before the committee, he adjourned the meeting at 5:02 p.m.