

ALASKA STATE LEGISLATURE
SENATE RESOURCES STANDING COMMITTEE

April 23, 2003

3:35 p.m.

MEMBERS PRESENT

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

MEMBERS ABSENT

All members present

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."

MOVED CSSB 31(RES) OUT OF COMMITTEE

SENATE BILL NO. 143

"An Act relating to the Alaska coastal management program and to policies and procedures for consistency reviews and the rendering of consistency determinations under that program; relating to the functions of coastal resource service areas; creating an Alaska Coastal Program Evaluation Council; eliminating the Alaska Coastal Policy Council; annulling certain regulations relating to the Alaska coastal management program; relating to actions based on private nuisance; relating to zoning within a third class borough covered by the Alaska coastal management program; and providing for effective dates."

HEARD AND HELD

PREVIOUS ACTION

SB 31 - See Transportation minutes dated 2/11/03 and 3/27/03 and Resources minutes dated 4/14/03.

SB 143 - No previous action to record.

WITNESS REGISTER

Mr. Richard Schmitz
Staff to Senator Cowdery
Alaska State Capitol
Juneau, AK 99801-1182

POSITION STATEMENT: Testified for the sponsor of SB 31

Mr. Bob Loeffler
Director, Division of Mining, Land and Water
Department of Natural Resources
400 Willoughby Ave.
Juneau, AK 99801-1724

POSITION STATEMENT: Explained the changes made in CSSB 31(RES)

Ms. Phyllis Johnson
Alaska Railroad Corporation (ARRC)
PO Box 107500
Anchorage, AK 99510-7500

POSITION STATEMENT: Answered questions about CSSB 31(RES)

Ms. Jeanette James
Office of the Governor
PO Box 110001
Juneau, AK 99811-0001

POSITION STATEMENT: Answered questions about CSSB 31(RES) and suggested an amendment

Dr. Charles Jurasz
Faro Sustainable Development
Faro, Yukon Territory

POSITION STATEMENT: Supports CSSB 31(RES)

Mr. Jack Phelps
Special Assistant
Office of the Governor
PO Box 110001
Juneau, AK 99811-0001

POSITION STATEMENT: Stated support for CSSB 31(RES)

Ms. Dana Olson
HC 30 Box 5438
Wasilla, AK

POSITION STATEMENT: Stated opposition to SB 31

Ms. Marty Rutherford
Office of the Commissioner

Department of Natural Resources
400 Willoughby Ave.
Juneau, AK 99801-1724

POSITION STATEMENT: Presented the changes made to CSSB 143(RES)

Mr. Ken Donakowski
Conoco Phillips Alaska, Inc.
P.O. Box 100360
Anchorage, Alaska 99510

POSITION STATEMENT: Stated support for CSSB 143(RES)

Mr. Larry Houle
Alaska Support Industry Alliance
4220 B St. #200
Anchorage, AK 99501

POSITION STATEMENT: Supports CSSB 143(RES)

Mr. Bob Stinson
CONAM Construction
1242 St. Gotthard Ave.
Anchorage, AK 99508

POSITION STATEMENT: Supports CSSB 143(RES)

Mr. Chuck Degnan
No address provided

POSITION STATEMENT: Opposed to CSSB 143(RES)

Mr. Dan Bevington
Coastal District Coordinator
Kenai Peninsula Borough
144 N. Binkley
Soldotna, AK 99669-7599

POSITION STATEMENT: Supports CSSB 143(RES)

Mr. Gary Carlson
Forest Oil
310 K St. #70
Anchorage, AK 99501

POSITION STATEMENT: Supports CSSB 143(RES)

Ms. Lisa VonBargen
City of Valdez
PO Box 307
Valdez, AK

POSITION STATEMENT: Supports CSSB 143(RES)

Mr. Bob Shavelson

Cook Inlet Keeper
PO Box 3269
Homer, AK 99603

POSITION STATEMENT: Opposed to SB 143

ACTION NARRATIVE

TAPE 03-31, SIDE A
Number 0001

CHAIR SCOTT OGAN called the Senate Resources Standing Committee meeting to order at 3:35 p.m. Senators Wagoner, Stevens, Dyson, Elton and Chair Ogan were present. Senator Cowdery was also present. Chair Ogan informed members that he did not intend to move SB 143 out of committee today as it will make a substantial policy change that needs more than one hearing.

SB 31-RAILROAD UTILITY CORRIDOR TO & IN CANADA

CHAIR OGAN announced that SB 31 was before the committee and that a proposed committee substitute (CS), labeled Version S, had been prepared for the committee's consideration.

SENATOR WAGONER moved to adopt Version S as the working document before the committee.

CHAIR OGAN objected for the purpose of discussion.

[SENATOR LINCOLN arrived.]

The committee took a brief at-ease.

SENATOR JOHN COWDERY, sponsor of SB 31, informed members that SB 31 establishes a transportation corridor for the extension of the Alaska Railroad to the Canadian border. He hopes the railroad can eventually connect to the North American railroad system. He pointed out the bill was amended after it came to his attention that the Department of Natural Resources (DNR) would be the agency to grant the rights-of-way to the railroad and for construction of the gas pipeline. If and when a gas pipeline becomes a reality, he wanted to limit the railroad's ability to charge tariff fees on the corridor. The amendments in the CS reflect his intent. He then asked Mr. Schmitz to describe the other changes in the CS to committee members.

MR. RICHARD SCHMITZ, staff to Senator Cowdery, told members the changes made to SB 31 since the last Senate Resources Committee

hearing will make sure this bill retains its vision without impacting any other vision, specifically the gas pipeline. Staff from the Alaska Railroad Corporation (ARRC), DNR, and the Governor's Office met to find language everyone could agree upon, which resulted in Version S. He provided members with a comparison chart of Version Q and Version S [Version Q was previously considered by the committee]. He said the changes in Version S are technical in nature and clarify some of the ambiguous language. Those changes will prevent the builders of a gas line from having to get permits from both DNR and ARRC.

MR. BOB LOEFFLER, Director of the Division of Mining, Land and Water, DNR, gave the following description of the changes made in Version S.

1. A reference was added to AS 38.35.020 to clarify that the corridor can be used for a pipeline.
2. The words, "in consultation with other interested parties" were added to Section 1(b) to reflect the fact that ARRC must coordinate with potential gasline developers to ensure optimal location for a pipeline as well.
3. Language was added to Section 1(c) to address a concern that a railroad transportation corridor might not be consistent with a corridor designed for a gasline. This language requires DNR to approve the corridor in a way that minimizes the impact on the potential right-of-way for the gasline.
4. In Section 1(c)(1), the words "and other provisions of this act", were added, which is a technical change.
5. In Section 1(d), the words "and other provisions of this act" were added to clarify that the identified funding source is the trigger for conveyance of management authority.
6. Paragraph (d)(3) was added which reserves DNR's authority to manage the gas pipeline from the conveyance to the railroad. Therefore, the identification and management of the gas pipeline remains with DNR. That will allow the pipeline developers to deal with one agency only, DNR.

7. The same change to paragraph (d)(3) is mirrored in paragraph (e)(2).

8. Section 1(f) was rewritten to provide protection for the railroad. It requires DNR to consult with ARRC right away if the Joint Pipeline Office approves a pipeline first. It also gives DNR the authority to change the boundaries of the corridor to accommodate the best interests of the state, if necessary.

SENATOR ELTON thanked Mr. Loeffler for his quick response to the Senator's question about Section 1(f). He said the change made to that subsection adequately addressed his concerns.

CHAIR OGAN noted the bill is silent regarding tariffs the railroad might charge the gas pipeline for use of the right-of-way and asked if that needs to be addressed.

MR. LOEFFLER replied:

Because the changes reserve from what is conveyed to the railroad the right to authorize a gas pipeline right-of-way, then the railroad does not play in tariffs or other gas pipeline decisions except, of course, we will have to coordinate with them if a railroad existed there - they would be the experts in railroad safety standards.

SENATOR COWDERY asked if Version S contains a provision to deal with a situation in which the gas pipeline has a need to cross the railroad right-of-way.

MR. LOEFFLER said he believes it does. The decision to cross the railroad right-of-way would be up to DNR but the crossing would have to comply with federal and other applicable safety standards.

SENATOR COWDERY said it is reasonable to expect that any crossing would have to maintain the integrity of the railroad and that any fees would have to be borne by the pipeline developers. He stated, "I just didn't want them to say well, so much a cubic foot of gas or any kind of a tariff bill into that."

MR. LOEFFLER said it is his understanding that the railroad would not be able to add to the tariff or to tariff on the portion of its route through the railroad corridor. Although it

is not explicit in the bill that the railroad would have to establish particular safety standards, he believes that is implicit in the way government works.

SENATOR COWDERY said he asked because he wanted the intent on record. He thanked Mr. Loeffler.

SENATOR LINCOLN referred to language on page 4, line 29, and asked:

If a railroad has started their process before the gasline corridor, and the department finds they need that portion, then they have - then what happens? The department can just automatically adjust the location of the transportation corridor?

MR. LOEFFLER said if the railroad is already built, [ARRC] is conveyed the land. ARRC will own the land so, like private landowners, anyone wishing to cross that land will have to deal with ARRC. However, DNR will not convey all rights. It will reserve oil and gas mineral rights, the right to get people across, and the right to authorize a gas pipeline. He said because it's a railroad, DNR will have to consult with ARRC and meet applicable safety standards.

SENATOR LINCOLN said that answers her question but does not alleviate her concern.

CHAIR OGAN asked Ms. Johnson if she concurs with Mr. Loeffler's analysis of Version S.

MS. PHYLLIS JOHNSON, general counsel for ARRC, said she does. She stated that after both the railroad and gas pipeline are built, DNR will retain the authority to manage and deal with the pipeline owners entirely. She said she feels that is appropriate because it would not be fair for a company to have to deal with several agencies to build one pipeline. She said in an earlier, more generic version of the bill, after the final transfer of the 200-foot corridor to ARRC, DNR would have charged for the lineal footage on railroad right-of-way and paid that amount to ARRC on any existing contracts, including an existing pipeline contract. The pipeline owner will not have to deal with ARRC but ARRC would have received a small percentage; all revenues will be collected by DNR.

MS. JEANETTE JAMES, former Alaska State Representative and current railroad advisor to the Governor, told members she has a

concern, although it is not a concern of DNR or ARRC. She believes any revenues from the part of the gasline in the railroad's right-of-way should be prorated to ARRC for exposure of the pipeline on ARRC property. The gasline developers agree as long as the fees have already been established by DNR and ARRC does not charge more. DNR was concerned about the mechanics of collection but she does not believe that would be difficult. She has found no objection to allowing the railroad to receive the revenue for those uses within its corridor. She cautions if that is not done, there could be conflict later on.

SENATOR LINCOLN asked if her position as railroad advisor is a paid position.

MS. JAMES said it is.

SENATOR LINCOLN said she shares Ms. James' concern and asked her to elaborate.

MS. JAMES responded:

We have to just kind of guess at what kinds of situations there could be on the ground Senator Lincoln. I'm just using the evaluation of - there was a gasline identified previously when they were talking about it and they came to my office as Majority Leader and there was one place where the gasline crossed the existing railroad corridor that is identified on the map. That railroad corridor is probably in the neighborhood of where a new railroad corridor would be - and maybe not because that has yet to be determined and surveyed and a feasibility study done and lots of things to identify that.

It seems to me that when both the railroad and the gasline are going to be going down the Alaska Highway area to some place in Canada, that certainly there is a possibility that they might be in very close proximity. There is - if you have a piece of land and a gasline is going through your land - there is an exposure there. And so it doesn't seem reasonable - and no matter what the amount of the compensation is, that there is any compensation being paid for that gasline, that the exposure should go to the landowner. That's my issue. There may be none, except maybe a cross here and there. Or there maybe a lot that is lined up simply because the gasline is where the

railroad needs to go because of the topography and geological situations there. But, generally, I would think the gasline would be away from there because they can go over hills and valleys and different things that the railroad can't. We don't know what those things are....

CHAIR OGAN asked Ms. James if she could suggest any language changes.

MS. JAMES said she would provide some.

MS. JOHNSON also offered to work on additional language.

SENATOR ELTON asked Ms. James, when she talked about compensation for any exposure, if she was referring to compensation for risk, and not, for example, for laying fiber optic cable in the transportation corridor.

MS. JAMES said she is not suggesting the railroad should charge the gasline developers for anything other than the charges arranged by DNR.

SENATOR ELTON said the flip side of that argument would be to identify a gas pipeline right-of-way and have the pipeline developers charge the railroad if it crosses that right-of-way.

MS. JAMES said they are two entirely different transportation systems. SB 31 specifically gives the land, fee simple title, to ARRC for its corridor. She assumes that will be a 200-foot wide corridor within a 500-foot transportation corridor. She said historically railroads have owned the land they run on. It is not typical for gasline developers to own the land a gasline is built on.

CHAIR OGAN announced that Senator Seekins joined the committee. He then reminded members that a motion to adopt Version S was before the committee so the discussion should be centered on the proposed committee substitute.

SENATOR LINCOLN pointed out that the corridor in Version S is 500-feet wide. She said the impetus for this legislation was to connect the Alaska Railroad to the Canadian border and she is bothered to hear anyone say the state should pay the railroad for any right-of-way. She remarked, "...I have problems with this being this - still this 500 foot, which is maybe more into

the real estate side of it than it is for the goal of getting the railroad tie extended into Canada."

MS. JOHNSON told members the introductory section of the bill does say 500 feet. However, the portion of the bill that addresses the construction of the railroad [Section 1(e) on page 3] says DNR will convey 100 feet either side of centerline. The intent is to reserve a multi-purpose 500 foot corridor but, once the railroad is built, ARRC will get its usual 200 feet. The other 300 feet will remain in DNR's jurisdiction.

CHAIR OGAN asked if ARRC would mediate any conflicts regarding placement of the railroad and the pipeline.

MS. JOHNSON said that Version S requires that the railroad consult with other parties early on when it is deciding where the track should go. DNR would be the arbiter among all parties.

CHAIR OGAN removed his objection to adopt Version S, therefore the motion carried. He then took public testimony.

DR. CHARLES JURASZ said he was testifying on behalf of the Canada West Foundation and as the Vice President of the [Indisc.] Sustainable Development Corporation, whose major task is to establish a trans-Yukon railway. He said he would discuss the level of interest that exists in the Yukon and the amount of interest and engagement on the national and territorial levels in Canada.

DR. JURASZ said Datapath Systems of Whitehorse recently carried out a survey to determine awareness of a trans-Yukon railway or a rail link. He provided the following results from that survey:

- 68 percent of those people polled in Whitehorse were aware
- 66 percent of rural Yukoners were aware
- 90 percent of those who were aware support a rail link
- the lowest level of support was 84 percent, the highest was 98 percent

DR. JURASZ told members the Yukon Territory went from a position of having a population with barely any interest in "being on the map" to one of people who carefully watch the method by which being put on the map proceeds. Alaska's method is very important to Yukoners, who see the potential success of a rail link being based on coordinating with a pipeline to reduce building costs. As recently as 10 days ago, the Minister of Foreign Affairs,

Bill Graham, who is responsible for deciding on whether to proceed with a bilateral agreement, visited Whitehorse to discuss the commission. At the end of those evenings, Premiere Fenty and Foreign Minister Graham addressed the candidacy for commission members. He believes the level support in Canada is high although it might not be enthusiastically presented.

SENATOR LINCOLN asked for the breakdown of support between Whitehorse and the rural areas.

DR. JURASZ repeated the support in Whitehorse was 68 percent; the support in the rural communities was 66 percent.

SENATOR LINCOLN asked how many households were polled.

DR. JURASZ did not have that number but said the pollster said it was one of the "fuller" polls, meaning more people were interviewed. He offered to send the survey details to committee members.

SENATOR ELTON pointed out that Dr. Jurasz was a teacher in the Juneau School District and was largely responsible for fostering student interest in the biological sciences.

SENATOR WAGONER asked if the rail link on the Yukon side will be built with government or private corporation funds.

DR. JURASZ said those options are being addressed right now. The route for both the rail and the pipeline has been well established on the Alaska side. The map on the Yukon side shows the interest of rail in the Yukon and that route is consistent with the pipeline route Alaska is interested in, but there are additional considerations. The focus on the Alaska side is "rails to resources." To do that on the Yukon side will entail corridors that do not coincide with any route that Alaska is currently addressing for the pipeline. He explained:

When you ask at what level are we looking to or what are the different sources for funding, etcetera, there is no question that private ownership becomes very significant to us, i.e. that much of the rail interest lies within the private sector. We have some advantages on the Canadian side. There are organizations that literally sponsor us, ensuring both public and private partnership. So we have, for example, a Canadian Council for Private and Public

Partnerships, which pursues only 'mega' projects and the railroad across the Yukon would be such a project.

DR. JURASZ told members that Foreign Minister Graham's involvement signifies that the Department of Transport recognizes this as a project with international potential. He thanked members for their time.

MR. JACK PHELPS, special assistant for natural resources and transportation to Governor Murkowski, told members the Governor's commitment to a rail link between Alaska and the rest of the country through Canada is longstanding and well known. When he was a United States Senator, he formulated the legislation that created the bilateral commission. He is very interested in seeing the transportation corridor designed for other purposes: pipelines, fiber optic cable and other appropriate uses. Obviously, this legislation is the first step. He stated Version S is the direct result of discussions between Senator Cowdery and DNR. The Administration supports this legislation, however it believes other issues may need to be addressed.

CHAIR OGAN asked if the Administration wants the bill moved from committee today.

MR. PHELPS said he would support that.

SENATOR LINCOLN asked Mr. Phelps if the potential amendment that Ms. James discussed is one of the other issues that need to be addressed.

MR. PHELPS replied:

That is certainly one that can be discussed. At this point I'm not prepared to discuss the details of it except to say that there are complexities related to it, but I think the short answer to your question is yes.

CHAIR OGAN took public testimony.

MS. DANA OLSON, testifying from the Mat-Su via teleconference, told members one of her major concerns with SB 31 is notice. She has a property interest in which she has a reservation for a federal railroad on a federal patent. She contacted ARRC and was assured that she would receive a response at the end of March, but she has not received anything. She was surprised to find out

SB 31 was introduced as it required coordination among various agencies. She stated the Alaska Railroad Transfer Act of 1982 said railroad ownership would revert back to the federal government after 18 years of non-continuous use. The effective date of the 18-year deadline was January 5, 2003. The transfer act required that multiple efforts be made to provide notice to those who would be affected.

TAPE 03-31, SIDE B

MS. OLSON continued. She said this bill does not address that issue so she does not know whether she has been affected. She told members that SB 31 violates the federally aided highway act. She said she met with DNR staff about a proposed pipeline across the Inlet. It would cross within her right-of-way.

CHAIR OGAN noted that the pipeline corridor would connect Fairbanks and Canada and not cross her land in the Mat-Su.

MS. OLSON said the pipeline spurs might affect her indirectly. She said the Alaska Railroad Transfer Act requires notice to be published. She said she was denied a meeting with the Governor's aides to discuss that matter. She said that the legislature cannot legislate until it knows who will be affected. She said she would be asking ARRC to immediately respond to her request and she asked that SB 31 be stayed until appropriate notice has been given to people who will be affected.

CHAIR OGAN said that appropriate notice has been given on SB 31. This legislation deals with a railroad extension to Canada to connect to the North American railroad system so it does not affect the Mat-Su area. With no further participants, he closed public testimony.

SENATOR WAGONER moved CSSB 31(RES), labeled Version S, with individual recommendations and its attached fiscal notes from committee.

SENATOR ELTON objected and expressed concern that a substantive amendment is being prepared that addresses compensation to the railroad. He said this is the appropriate committee to review a change of that magnitude. He said his concern is that if this bill leaves this committee, members will not have the opportunity to review the issue of whether the railroad or gasline has primacy.

CHAIR OGAN pointed out this legislation has a referral to the Senate Finance Committee. He stated, "you can get another bite of the apple up there and a bite of the apple on the floor."

SENATOR ELTON said he believes it asks a lot of Senate Finance Committee members to get involved in an issue that goes beyond the fiscal impact. The primacy question is a substantive policy issue.

CHAIR OGAN said he understands the Senator's concerns but he does not believe there is consensus in the Governor's Office. He said he would commit to tracking that question and, if there is a serious problem, he will make sure it gets addressed.

SENATOR LINCOLN also expressed concern about SB 31 leaving the committee. She appreciates the Chair's thoroughness but she shares Senator Elton's concerns. She does not believe it is the Finance Committee's obligation to deal with resource issues and amending a bill on the floor is not that easy. Since Ms. James is the railroad advisor to the Governor, one can assume she is working with the Governor on a proposed amendment that is resource related. She believes this committee has not done everything it can to finalize this legislation.

CHAIR OGAN said he understands those concerns, but Ms. Johnson told members that the railroad's right-of-way will be 100 feet on each side of the centerline and that DNR will arbitrate any conflicts. That arrangement set his concerns aside.

SENATOR DYSON said he wants to take action on this legislation because it presents a marvelous opportunity. Stimulating the economy and providing jobs is a very high priority for both governments. He believes Dr. Jurasz is correct in that there has been a change in the Canadian federal government's attitude and an opportunity is available for both governments to come together. He said there is an immense amount of mineral wealth north of the Alaska Highway that both sides of the border are very eager to have commercialized. Lack of market access has prevented commercialization. He believes the issue of what the railroad will charge for use of its right-of-way can be resolved as this process moves forward. He encouraged members to keep SB 31 moving.

SENATOR ELTON maintained his objection but stated he has no problem with this bill as written. He agrees with Senator Dyson about the importance of economic development. However, the question that remains in his mind is that if a proposal to allow

ARRC to do a charge off against the gas pipeline comes forth, he will choose primacy for the pipeline. He said the committee is assuming that nothing will get in the way of the gas pipeline. He hopes that's the case.

CHAIR OGAN said there is some ambiguity from the Governor's Office that needs to be worked out. He said he shares Senator Elton's concerns and he believes it is the committee's intent to give primacy to the pipeline. He said if this issue was raised two weeks ago, he would be willing to hold the bill in committee but the clock is ticking. He will discuss the matter with the Administration but he does not object to moving it out. He called for a roll call vote.

SENATORS STEVENS, DYSON, SEEKINS, WAGONER, and OGAN voted in favor, and SENATORS LINCOLN AND ELTON voted against moving CSSB 31(RES) from committee, therefore the motion carried.

The committee took a brief at-ease.

SB 143-COASTAL MANAGEMENT PROGRAMS

CHAIR OGAN announced that he did not intend to move SB 143 out of committee today and he apologized in advance in case the committee is unable to hear from everyone who has signed up to testify. He said the committee would first hear a brief overview of what the legislation does and then put the proposed committee substitute (CS) on the table.

SENATOR ELTON moved to adopt the proposed CS (labeled 03-0069 bil3.doc), and said that two committee members have a schedule conflict and will need to leave at 5:00 p.m. He said he is assuming that Department of Natural Resources (DNR) and Division of Governmental Coordination (DGC) staff will be available to answer questions at the next meeting.

CHAIR OGAN said that paid staff can come back and that he planned to give priority today to citizens who are taking time off of work to testify.

SENATOR DYSON said he believes it is unfortunate to schedule meetings while standing committees are scheduled to meet, especially when substantive bills are being discussed. He encouraged members to not schedule another meeting during standing committee hearings out of respect for those who have made an effort to testify.

CHAIR OGAN announced he would give first priority to people who have flown to Juneau to testify.

MS. MARTY RUTHERFORD told members she represents DNR and the Administration and would speak to the proposed CS. She said she recently left DNR after working for that department for 11 years and is now under contract with the department. She introduced Mr. Breck Tostevin with the Department of Law, Mr. Pat Galvin, the past director of DGC, and Mr. Randy Bates who is employed as the newly appointed Coastal Zone Management program coordinator in DNR. These people comprise the team that reworked SB 143 and made very substantive changes to the bill in response to comments received by the Administration while its companion bill, HB 191, was under review in the House. She informed members that a brief, one-page synopsis of the committee substitute, a transition timeline, a comparison chart and a sectional analysis were distributed to them. She then said she would provide an overview of the primary elements of the CS.

CHAIR OGAN announced that no objection was heard to the adoption of the work draft, therefore the motion carried. He then noted that Senate President Therriault had joined the committee.

MS. RUTHERFORD made the following comments.

The Coastal Zone Management Program is an older program that has not appropriately responded to Alaska's maturing statutory and regulatory regime. Therefore, the program is often redundant, using local enforceable policies that are often a reiteration of existing regulatory agencies' permit standards. The program is also unpredictable. It is overly broad in scope, takes a long time, and delays the issuance of permits and start up of projects. The statewide standards and local enforceable policies are vague and are extremely subject to multiple interpretations.

CHAIR OGAN announced that Representative Kerttula joined the committee.

MS. RUTHERFORD continued.

While the program has problems, the sweeping changes embedded in the original SB 143 eliminated many of the primary reasons that Alaska first embraced the Coastal Zone Management program, including state and local control over projects requiring federal authorization

and state and local influence on direct federal activities.

During discussions of the original bill on the House side, the Administration took some of the comments made by citizens and districts to heart. As a result, the committee substitute returns to the basic structure of the existing Coastal Zone Management program. It retains the existing four coastal resource service areas, all of which are located in the unorganized borough in Western Alaska. In addition, all existing coastal districts continue and retain the same authorities and responsibilities as under the current program. This committee substitute also retains local enforceable policies and all of the statewide standards of the program, including the habitat standard and the subsistence standard. Furthermore, it ensures that all federal activities, activities requiring a federal permit, or an activity requiring a state permit will have a consistency review. District enforceable policies will remain applicable to all projects that are subject to a consistency review, not just the Outer Continental Shelf (OCS) projects and federal activities that were envisioned in the original SB 143. The committee substitute assures the districts will retain their seat at the table as project decisions are made.

The committee substitute, however, makes significant changes to the program in an attempt to retain the important elements while addressing the problems. It will:

- eliminate the Coastal Policy Council and transfer its duties to the DNR commissioner
- place a sunset provision on the current statewide standards and coastal district plans and mandate their replacement standards be clear, concise, and not susceptible to subjective interpretations and not duplicative of otherwise existing requirements
- clarify that local enforceable policies may not address a matter that is regulated or authorized by state or federal law unless the policy specifically relates to a matter of local concern - a test will be embedded in the statute to assist in making that determination

- provide important clarification to the consistency review process in order to ensure more predictable timelines and standards, including the scope of a project that is subject to review and when a project can proceed in phases, and it encourages the use of general permits
- clarify that the Department of Environmental Conservation's (DEC) permits and authorizations will constitute the consistency determination for activities regulated by DEC air, land and water quality standards
- insulate the Coastal Management Plan consistency review from delays associated with those complex permits and authorizations

MS. RUTHERFORD told members the program is very complex. She offered to have Mr. Tostevin describe the sectional elements of the bill but noted in the interest of time, that information has been provided in written form.

CHAIR OGAN said he would plan to hear from Mr. Tostevin on Friday.

SENATOR LINCOLN requested a copy of Ms. Rutherford's testimony.

CHAIR OGAN took public testimony.

MR. KEN DONAKOWSKI, the Alaska permitting manager for Conoco Phillips, told members that Conoco Phillips is the state's largest producer of oil, leaseholder, and most aggressive explorer. As such, permit streamlining is imperative to maintain Conoco Phillips' enviable position in Alaska and to encourage other oil and gas firms to elevate their respective standing in these three areas. Conoco Phillips unequivocally supports AOGA's position on the committee substitute. He offered two observations. This committee substitute preserves a role for the coastal districts and formally introduces the concept of enforceable policies into the statutory language. Second, the regulatory framework for environmental protection in Alaska is preserved by this committee substitute and, in essence, that framework remains whole and intact.

SENATOR ELTON noted Mr. Donakowski said this legislation will empower coastal districts by introducing the concept of enforceable policies and asked him to elaborate because many people from the coastal district side are confused about that.

MR. DONAKOWSKI said enforceable policies are policies that, according to the criteria laid out in the statute, are issues of importance to local concerns that do not duplicate the regulatory framework.

CHAIR OGAN thanked Mr. Donakowski for Conoco Phillips' aggressive posture in exploration and development and for introducing cutting edge technology.

MR. LARRY HOULE, general manager of the Alaska Support Industry Alliance, told members the Coastal Zone Management Program includes the consistency review process, which requires all projects located in the coastal zone to obtain a consistency determination before state or federal permits can be issued. Nearly all oil and gas activities undergo the consistency review process. Its purpose is to ensure that projects are consistent with state and local enforceable policies. Funding for exploration and development in Alaska faces increasing competition on a worldwide scale. Many competing projects are closer to markets and are less capital intensive. Operators need reliable predictions, permitting schedules, and requirements. Delays in the permit timelines are significant factors that can adversely affect the economic feasibility of a project. The contracting community in Alaska is concerned about the lack of schedule and scope certainty and the unpredictability and subjective nature of the overall review process that currently exists. He said the Alliance endorses the committee substitute; it believes it will streamline the review process and improve predictability.

MR. BOB STINSON, President of Con-Am Construction of Anchorage, stated support for the committee substitute or any other form of the bill that will change the current process. The current Coastal Zone Management Program's rules and process are unclear and need to be fixed so that an applicant with a beneficial project knows what to expect when submitting an application. He sat on the Governor's DNR transition team and listened to large corporations and local companies express frustration over the current review process. The transition team recommended streamlining that process.

He then described an experience his company encountered as follows. Anchorage Fueling and Service Company, a consortium of 22 major airlines, hired his company to replace a small, aging pipeline routed through residential streets in Anchorage. That pipeline delivered most of the jet fuel to the Ted Stevens International Airport. His company was hired to design and build

a larger pipeline to reliably meet increasing demand. His company submitted its permit application to the state, the U.S. Corps of Engineers and the Municipality of Anchorage (MOA), after preliminary discussion with each entity revealed the soundness of the project and, in particular, the routing of the pipeline. The project quickly became a target for environmental concerns since the routing took the new pipeline through portions of the Anchorage coastal mud flats. Throughout the next 1 1/2 years, his company spent an additional \$1.5 million securing the permit, due to delays in the Coastal Zone Management process. The project was originally estimated to cost \$6 million.

MR. STINSON said in fact, there was no process. DGC did not know how to handle the application and how to coordinate with other agencies and the public. He ended up hiring many consultants to invent a process for permit review and coordination. DGC had no clear timetable or time limitations for permit review. Phasing of the project was not allowed. All agency permits had to be completed before a consistency determination could be issued. There was no scope of review to which anyone could work with. He said this project was not a resource extraction project; it was an infrastructure improvement project for the airport. He said had the State of Alaska owned the old pipeline, a permit would have been issued in an expeditious way, allowing the airport to meet its growing demand for fuel. The airlines that experienced this permitting nightmare could not understand why the state was not supportive of this beneficial project and talked about taking their business elsewhere. He encouraged members to move the bill from committee.

MR. CHUCK DEGNAN, testifying from Unalakleet, told members the Bering Straits Coastal Resource Service Area was very concerned about the original bill that eliminated coastal resource service areas. Its other concern is the sunset provision for making new plans. The rural areas have clean air, water and land because of very little development. However, the development that does occur takes a long time because it is planned so that projects flow. Very few have been delayed.

MR. DAN BEVINGTON, Coastal District Coordinator for the Kenai Peninsula Borough, said he recognizes that writing legislation to streamline permitting is a challenging task, and thanked members and the Governor for attempting it. He said the Kenai Peninsula Borough has supported its own, similar program for more than two decades. During that time, the Borough has passed

over 34 ordinances and 7 resolutions that directly support the coastal resource management program.

MR. BEVINGTON said the legislation asserts that local governments should exert their own coastal management control through planning and zoning powers. That seems to add a level of complexity when the Borough does not need to assert any more permitting powers through its participation in the program. The Borough appreciates the fact that the current working draft addresses that and allows the Borough that opportunity. However, the Kenai Peninsula Borough remains concerned about the loss of similar policies under the provision that DEC will have the exclusive determination of consistency of the program under its authorities. It is also concerned about the summary discharge of the Alaska Coastal Policy Council without developing a similar representative body within DNR. The issue of promoting and balancing economic development with long-term community interests demands the meaningful involvement of communities across the state.

MR. GARY CARLSON, Senior Vice President of Forest Oil and a member of AOGA, stated support for AOGA's position but added the following comments. The ACMP process has become a regulatory maze that is costly to the state and to industry. The program's ambiguities and uncertainties have provided a breeding ground for obstructionists and special interest litigants to delay responsible development. The bill will make substantial improvements to the process by establishing deadlines, eliminating duplication of state and federal law, establishing a bright line as to when the ACMP applies, and eliminating delays in consistency determinations. It also requires the ACMP standards to be clear, precise and not subject to multiple, subjective interpretations. This should improve the efficiency of the permitting process and reduce litigation exposure of the state and the industry. He stated support for the legislation.

MS. LISA LOMBARGEN informed members the City of Valdez and the coastal district is very pleased with the Administration's efforts to listen to the concerns of the coastal district about participation and to provide a level playing field as the permits are being reviewed for consistency.

MR. BOB SHAVELSON, Executive Director of Cook Inlet Keepers, told members he was speaking on behalf of over 500 members throughout Southcentral Alaska. He made the following points. Regarding Ms. Rutherford's comment that districts would retain their same authorities, Section 14 will clearly eliminate a vast

extent of local district authorities. It will be virtually impossible for local districts to have policies that will meet the convoluted and legalistic language in Section 14. He suggested to the House Resources Committee that it request examples of what acceptable local enforceable policies will look like. He also suggested the ability to review a mark-up of the Kenai Peninsula Borough coastal management enforceable policies and which ones would be retained under this legislation. He does not believe many of those policies, if any, will remain intact. Although SB 143 has a zero fiscal note, it has taken the State of Alaska over 15 years to approve all of the coastal management programs. SB 143 will create a considerable financial burden on local districts. It is an unfunded mandate that will require these districts to rewrite the plans they spent many years and dollars to develop.

Regarding the timeline, MR. SHAVELSON said it does not include time for the environmental impact statement process under the National Environmental Policy Act. This is an extensive policy change, along with the elimination of the Coastal Policy Council. This will require an extensive, time consuming environmental impact statement for the entire state coastal program. He said SB 143 will add complexity and confusion because as local district authorities are removed, it will encourage the adoption of local ordinances. Therefore, one-stop permitting will no longer be available so industry will have to get state permits and local approvals.

TAPE 03-32, SIDE A

SENATOR BEN STEVENS asked Mr. Shavelson to repeat the terminology he used to describe the Kenai Borough's policy requirements that the state would not adopt under this program.

MR. SHAVELSON said he was referring to Section 14 of the pending legislation, which includes some very restrictive and legalistic jargon that will make it difficult for local districts to adopt local enforceable policies.

VICE-CHAIR WAGONER asked Mr. Shavelson if Cook Inlet Keeper has 500 members or whether they are members of other organizations that Cook Inlet Keeper represents.

MR. SHAVELSON said they are members of Cook Inlet Keeper.

MS. DANA OLSON, testifying from the Mat-Su Valley, told members that HB 257 relies on issues of right-of-way.

VICE-CHAIR WAGONER interrupted to ask Ms. Olson to restrict her testimony to the bill before the committee.

MS. OLSON clarified that she is speaking about the rights-of-way in the coastal area. She told members she is concerned when the land use plans do not have the rights-of-way included, and the legislature is passing other bills that affect the coastal zone, because she does not have the means to have adequate notice. She noted that an enforceable policy is defined by the federal act and it does not include zoning and planning. It says that judicial decisions are enforceable policies, as well as constitutional provisions. Therefore, zoning not based on the constitutional or judicial standards would not be enforceable policies of the local district. She said the Clean Water Act does not limit the scope of which local concern is on non-source point pollution. She noted the 1990 amendment to the Coastal Zone Management Act said the act had to consider the zone as a whole. Considering only local enforceable policies would violate that.

VICE-CHAIR WAGONER announced that he would hold the bill in committee and it would be heard again on Friday, at which time the committee would take public testimony. He then adjourned the meeting.