

**ALASKA STATE LEGISLATURE
SENATE RESOURCES STANDING COMMITTEE**

May 9, 2003

3:37 p.m.

MEMBERS PRESENT

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

MEMBERS ABSENT

All members present

COMMITTEE CALENDAR

CS FOR HOUSE BILL NO. 104(FSH)

"An Act relating to payment of the fisheries business tax and to security for collection of the fisheries business tax."

MOVED CSHB 104(FSH) OUT OF COMMITTEE

CS FOR HOUSE BILL NO. 191(FIN) am

"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; eliminating the Alaska Coastal Policy Council; annulling certain regulations relating to the Alaska coastal management program; and providing for an effective date."

MOVED CSHB 191(FIN) am OUT OF COMMITTEE

PREVIOUS ACTION

HB 104 - No previous action to record.

HB 191 - No previous action to record.

WITNESS REGISTER

Senator Gary Stevens
Alaska State Capitol
Juneau, AK 99801-1182

POSITION STATEMENT: Sponsor of HB 104

Mr. Chuck Harlamert
Tax Division
Department of Revenue
PO Box 110400
Juneau, AK 99811-0400

POSITION STATEMENT: Answered questions about HB 104

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

POSITION STATEMENT: Presented CSHB 191(FIN) am

Mr. Charles Degnan
Bering Straits Coastal Resource Area

POSITION STATEMENT: Strongly urged that more local participation be provided for in CSHB 191(FIN) am

Mr. Dan Bevington
Kenai Peninsula Borough

POSITION STATEMENT: Expressed concerns about CSHB 191(FIN) am

Mr. Andrew De Valpine
Bristol Bay Coastal Resource Service Area

POSITION STATEMENT: Expressed concern that CSHB 191(FIN) am will delay projects

Ms. Judy Brady
Executive Director
Alaska Oil and Gas Association (AOGA)
121 West Fireweed Lane
Anchorage, Alaska 99503

POSITION STATEMENT: AOGA does not oppose CSHB 191(FIN) am

ACTION NARRATIVE
TAPE 03-45, SIDE A

CHAIR SCOTT OGAN called the Senate Resources Standing Committee meeting to order at 3:37 p.m. Senators Wagoner, Stevens, Seekins, Dyson, Elton and Chair Ogan were present. The first order of business to come before the committee was HB 104.

HB 104-PAYMENT OF FISHERY BUSINESS TAX

SENATOR GARY STEVENS, sponsor of HB 104, told members that HB 104 recognizes the enormous problems faced by the salmon

industry over the last few years due to competition from the farmed fish industry. This legislation is a priority of the Salmon Industry Task Force. HB 104 would primarily affect smaller processors, probably fewer than a dozen. Under current law, property value must equal three times the amount of the estimated tax or a bond must be posted equal to twice the estimated tax. All taxes must be paid by April 1. HB 104 allows for a monthly tax payment, \$50,000 bond, or \$100,000 in lienable property. It provides an attractive option to small processors to expand their processing operations. This legislation will probably not create a savings to those processors because it is more costly to pay taxes on a monthly basis. However, it will attract new businesses into the salmon processing industry.

CHAIR OGAN questioned whether a similar version of this bill has been before the committee.

SENATOR WAGONER reminded Chair Ogan that the committee heard a bill that offered a 50 percent investment tax credit.

SENATOR GARY STEVENS clarified that this legislation is geared toward the smaller processors.

CHAIR OGAN asked if DOR is concerned that this bill might result in a loss in revenue because some of the marginally capitalized processors might have a difficult time making payments.

MR. CHUCK HARLAMERT, Tax Division, Department of Revenue (DOR), replied:

... we can reasonably expect that the bill will be attractive to processors who are thinly capitalized because it is, in the end, in terms of your cost of capital, the most expensive security option available or there are many cheaper options available. So you would expect folks who are inherently less able to pay to elect it and so the likelihood of loss is more than your average taxpayer perhaps. A 15-day payment period does help mitigate that as long as we can keep our tabs on those folks so hopefully we can limit our losses.

CHAIR OGAN asked if the bill will require more staff time to process monthly payments.

MR. HARLAMERT said the payments are not that difficult to process. However, monitoring non-payments and dealing with delinquent accounts in short order may be more time consuming.

SENATOR SEEKINS asked how many of the businesses that will be affected by this legislation are resident owned.

MR. HARLAMERT said he does not have that information. He said this will not apply to the large, established taxpayers or the very small catcher-processor businesses. It will apply to the mid-range processor who pays around \$100,000 to \$300,000 per year in fisheries business taxes. Some of those are [owned by] non-residents.

SENATOR SEEKINS asked if a non-resident would be less likely to have lienable real property in the state.

MR. HARLAMERT said many non-residents own their processing facilities outright.

SENATOR SEEKINS said he does not mind giving a break to someone who lives here, but he does not like giving a break to a business that lives off of our resources and is owned by an out-of-state resident.

CHAIR OGAN reminded members the Interstate Commerce Clause prevents discrimination based on residency.

SENATOR SEEKINS said he was thinking that he would trust a person with lienable property in Alaska more than he would trust a person without lienable property in Alaska.

CHAIR OGAN noted the bill requires \$50,000 in cash for those without lienable property.

There being no further testimony or questions, SENATOR DYSON moved CSHB 104(FSH) from committee with individual recommendations and its attached fiscal notes.

CHAIR OGAN noted that without objection, the motion carried.

The committee took up HB 191.

CSHB 191(FIN) am-COASTAL MANAGEMENT PROGRAMS

CHAIR OGAN announced that the committee has held three hearings on very similar legislation so he would like to limit today's

testimony to the changes in the bill. He asked Ms. Rutherford to explain the changes to the latest version.

MS. MARTY RUTHERFORD told members that Breck Tostevin with the Department of Law was also available to answer questions. She then informed members she is under contract to the Department of Natural Resources (DNR) and the Administration. She gave the following testimony.

Last we spoke was Monday, April 28th, and this committee had, under consideration, a committee substitute to SB 143 that was very similar to CSHB 191 - the finance version as amended and adopted by the House. However, the House has made five amendments since your last hearing and I will speak to those if I might. I'd also like to note that the Administration supports these five amendments.

The first amendment is to Section 20 at AS 46.40.096(d) on page 12, line 28. The House adopted this amendment, which restores the language that is in the existing statute, which states that the reviewing entity request comments from 'interested,' as opposed to 'affected,' persons. So, restoration of the 'interested' language was made to avoid arguments that the section would not provide for the public notice required by federal law....

The second change is to Section 22 on pages 13 and 14 - AS 46.40.096(j). This is a clarifying amendment made by the House concerning the process used when only DEC permits are required for a project in the coastal zone. The change, again in subsection (j), clarifies that under an .096(g) consistency review - perhaps I might note again the review where activities are subject only to air and water quality [indisc.] - the change in subsection (j) clarifies that when it is an .096(g) consistency review, which is a review where activities subject only to DEC's air, land, and water quality [indisc.] required, that DEC will exclude from this consistency review those activities that are subject to DEC permits but DEC will evaluate the project to determine if there are any other activities that are the subject of a district local enforceable policy. If there are, then those activities will be evaluated for consistency against the local policies. So, for example, if the project was a bulk fuel

storage facility, the DEC permits required for that facility would be excluded from a consistency review. However, if a district had a local enforceable policy that dictated bulk fuel storage could not be sited next to a [indisc.] water body, then DEC must determine that the activity of siting the tank farm was consistent with the local policy....

The third amendment, made in House Finance, is in Section 22, page 15, lines 7 through 15. This addresses the exception to the 90-day consistency review deadline. I think it's the last item we were discussing at the hearing on the 28th. This amendment is to .096(o) and provides that the 90-day deadline is not applicable to the consistency review involving the disposal of an interest in state land or resources and that's because DNR's disposal process is statutorily identified and [indisc.] interest finding. The amendment goes on to clarify that the deadline is suspended in three circumstances. The first is when an applicant has not adequately responded within 14 days of receipt of a request for additional information. The second situation is when the applicant requests that the review time be suspended. The third is when a draft consistency determination undergoes an administrative appeal within the department, which is known as an elevation.

The fourth change was made on the House floor concerning the transition provisions set out on pages 22 and 23, Section 46 (b) and (c). The changes provide that the current coastal management plan regulations - this would be 6 AAC 80 and 6 AAC 85, and these regulations and the district programs remain in effect until they are amended through the DNR public process or they sunset under the bill's transition provision. We believe this is also a clarifying amendment.

The last change is to Section 47, page 23, lines 26 through 28. This is new language added in House Finance to the transition provision.... The new subsection (b) provides that upon request, DNR shall consult with the coastal districts to identify the plan amendment that will meet the standards and guidelines established under the act. So, basically, this [indisc.] one of the concerns by the districts that they would have to be determining on their own

without assistance what portions of the plans meet guidelines under the amendment. So this just dictates that DNR will be responsive if the districts ask for assistance.

Those are the five changes, Mr. Chairman, and I would like to restate that the Administration does support the five amendments and Mr. Tostevin and I are available to answer questions should you wish it.

CHAIR OGAN asked Ms. Rutherford to characterize how these amendments were negotiated and who was involved.

MS. RUTHERFORD said the first and fourth amendments that replaced "affected parties" with "interested parties" and changed the transition provision were suggested by the Office of Coastal Resource Management (OCRM) within NOAA to make sure that the Administration's intent was reflected in the act and meets federal requirements. The second amendment, regarding the process used when only DEC permits are required, was a combination of OCRM asking questions and the Administration's recognition that further clarification was necessary. The third amendment came about in discussion with the Senate Resources Committee members at the April 28th meeting when Senator Elton asked about suspension versus termination. The Administration felt that needed to be clarified. The fifth amendment was included to address concern by communities.

SENATOR ELTON noted that he discussed with Ms. Rutherford a previous agreement between the City and Borough of Juneau (CBJ) and the U.S. Army Corps of Engineers that has made development easier but might be threatened by this legislation. He asked if she was able to find out if that agreement is at risk or whether any of the amendments address that situation.

MS. RUTHERFORD responded that she told Mr. Freer [of the CBJ] that she was available to discuss the matter with the city's department of law. She never received a request. The issue was discussed among members of the Administration and they feel quite comfortable that this legislation will not affect a municipality's Title 29 ability to promulgate ordinances and to create its own agreements with the Corps of Engineers.

SENATOR LINCOLN asked Ms. Rutherford who will decide whether a matter of concern is adequately addressed by state or federal law under Section 14(2)(C)(ii).

MS. RUTHERFORD said the DNR commissioner will make that decision. She noted that an earlier change to the bill on page 10 requires that the department shall approve a district coastal management plan submitted for review and approval if specific standards are met. She said the commissioner has the decision-making role and some inherent discretion. She added, "...but by creating local enforceable policies, we hoped we brought some comfort to the districts and the various legislative committees that, in fact, there is tremendous room for still creating enforceable policies that are not addressed by state or federal law."

SENATOR LINCOLN commented that answers her question but does not give her comfort.

CHAIR OGAN took public testimony.

MR. CHARLES DEGNAN, Bering Straits Coastal Resource Service Area, said the coastal resource service area is concerned that local input into projects is being eliminated in two ways. It narrows authority to DNR to approve coastal management plans and it eliminates the Alaska Coastal Policy Council. He recommended that the coastal resource service areas be included. He pointed out that Alaska is a very large and diverse state with a varied climate and topography. It makes good sense that local citizens have input into their local coastal districts. He would like to see due deference to local districts. That would help local, state and federal officials have continuous access to local knowledge and expertise. He said it would also help to hold public hearings in locations without the benefit of DNR's presence.

MR. DAN BEVINGTON, Kenai Peninsula Borough, expressed the following concerns. The section on page 4, line 17, AS 46.39.040, outlines how the plans will be developed. It appears to leave DNR as the sole authority. [A portion of Mr. Bevington's testimony was indiscernible due to teleconference transmission problems.] He asked if subsection (3) on page 5, line 1, will assure that the data will be provided in a timely manner to assure a district function under the statutes.

CHAIR OGAN asked Ms. Rutherford to address that question.

MS. RUTHERFORD said subsection (3) is existing language and DNR will implement that subsection in exactly the same way it has in the past.

MR. BEVINGTON said the language on page 5, line 24, appears to give DNR sole discretionary authority over the appropriateness of local district plans with no provisions for a dialog or appeal. He said although he understands the need for a more efficient system, a provision for that discussion should be provided.

MR. BEVINGTON referred to the language on lines 14 through 23 on page 9, and said it appears to give sole discretion to DNR in regard to the acceptance of a plan. He said he understands DNR's mandate to provide good management of our resources, but he still sees some oversight and participation in developing the plan to be beneficial. In the past, the coastal policy council has provided that to some degree.

CHAIR OGAN asked if Mr. Bevington's last point addressed the most recent changes to the bill.

MR. BEVINGTON said it did not. He then told members the Kenai Peninsula Borough completed 585 reviews last year. He wanted to assure committee members that the Borough has been committed to this program. He said his last concern is with Section 46.40.096(g)(1)(A) on page 16; he believes that line should read, "is authorized only or solely under a general or nationwide permit...".

With no questions of Mr. Bevington, CHAIR OGAN called the next testifier.

MR. ANDREW DEVALPINE, Bristol Bay Coastal Resource Service Area, said Ms. Rutherford said she has heard from industry that this bill has gaps large enough to drive a truck through and people like himself have told her it is too restrictive and limited in regard to input. In his mind, that raises a red flag as to how this will all pan out. The notion behind the bill is to simplify permitting. If it passes, it appears there will be fewer people to process the permits and more than 30 plan renewals and new laws and regulations to learn. He agrees the state has strong environmental protections in place. He cautioned if it is true that developers are lining up at the door, waiting for this bill to pass because it will make the process easier, DNR will not only have the added job of revising the ACMP, it will also have "more paper going through this restricted pipeline."

MS. JUDY BRADY, Executive Director of the Alaska Oil and Gas Association (AOGA), said AOGA can live with the amendments in the latest version. AOGA is aware that some of the amendments

are necessary for the purpose of clarification, but it has some concerns with others, one being with the phrase, "not adequately responded to within 14 days." She noted the word "adequately" always creates tension between 2 or 3 parties but AOGA believes that will be straightened out in the regulations. Regarding the fifth amendment, AOGA assumed that the department would offer assistance anyway. AOGA also assumed that would be part of a public process and that the details would be worked out in the regulations.

CHAIR OGAN asked Ms. Brady if AOGA shares the previous testifier's concern about the constricted pipeline scenario regarding the paperwork.

MS. BRADY said AOGA would not have worked with the Administration and the Legislature to clarify the coastal management program if the program had not been so bad. Any inconvenience that businesses will have to go through for the next few years to make this a workable program will be worthwhile. AOGA believes that whatever is required by the bill will be an improvement over what it has to deal with right now.

CHAIR OGAN said he would prefer to see the whole program repealed.

SENATOR LINCOLN noted that Ms. Brady said AOGA could live with the legislation but does not embrace it. She asked Ms. Brady if AOGA tried to work out its concerns in the legislation with the Administration.

MS. BRADY said that AOGA provided some responses to the changes in the legislation after the first hearing when the coastal districts wanted to maintain enforceable policies and consistency reviews. AOGA preferred a totally self-implementing program. The Administration made it clear that it had made a commitment to the coastal districts. AOGA accepted that because this legislation does make some very important changes to remove roadblocks in the process. Some of the amendments before the committee now are the result of that original change so while she cannot say that AOGA supports them, it supports the bill in general and does not oppose any of the amendments.

SENATOR WAGONER commented that he has heard the Kenai Peninsula Borough and people from his district express concern about the speed with which this bill is progressing through the legislature. He said there is not a lot of support for this bill at this time in his district.

SENATOR ELTON said he sees this bill, as amended by the House, as a fundamental shift in how coastal areas are developed. He has not heard from any of the districts or coastal communities that the current program is perfect.

TAPE 03-45, SIDE B

SENATOR ELTON said as Ms. Brady testified, he is aware of concerns about the process and the structure that coastal communities have. However, the communities are quick to say that this legislation represents a fundamental change that shifts a lot of the decision making power from the coastal policy council, bifurcates the process by excluding DEC from some of the process, and sets a very high threshold for ill-defined enforceable policies. He said his concern about moving forward with the bill is that other issues have been resolved using a negotiated process involving stakeholders. He noted the air emissions legislation involved a process with everyone who had concerns. That process made the committee's work much easier because those involved worked out the best approaches. Because this legislation creates such a fundamental shift, he would have preferred that the legislation underwent a process like that. He said with the exception of one coastal community, he has heard of no one who supports this legislation. Many of the coastal communities want to develop their resources in the quickest, most beneficial way possible because they are hurting economically. He said he cannot support this legislation as written as he believes the communities' concerns are legitimate and could be worked out using a stakeholder process.

SENATOR WAGONER responded that he is not asking for a stakeholder process. His concern is that the Kenai Peninsula Borough handled over 500 applications last year; it is not delaying the process. He asked to hold the bill in committee for another two or three days to give the Borough time to discuss the changes with communities and provide additional input.

SENATOR LINCOLN referred to a letter dated May 6 to committee members signed by 17 individuals from boroughs and communities. Those individuals talked about the legislation's potentially devastating impact to public involvement and that the communities have not had ample time to study all of the impacts. They also said it is not feasible to rewrite all coastal management plans in a one-year period. They provided good reasons to hold the bill for work during the interim. She said

she will not vote to move this bill from committee because of that letter.

CHAIR OGAN noted this bill has been discussed at four or five committee hearings and many of the concerns have been addressed. He said his concern is that the clock is ticking and the state's fiscal situation is urgent. He has made this legislation a priority because he views it as part of the Governor's plan to jumpstart the economy. He supports moving it from committee today.

SENATOR BEN STEVENS moved CSHB 191(FIN) am with its attached fiscal notes and individual recommendations.

SENATOR ELTON objected and said the committee needs to recognize the existing coastal zone management process is a dispute resolution process. It speeds up development because it keeps decisions out of the court system. He said he is not sure that consolidating power in the state government will speed up development.

SENATOR BEN STEVENS clarified [for the purpose of the motion] that the bill has several fiscal notes.

A roll call vote was taken. CHAIR OGAN announced the motion carried with Senators Stevens, Dyson, Seekins, Wagoner and Chair Ogan in favor, and Senators Elton and Lincoln opposed.

There being no further business to come before the committee, CHAIR OGAN adjourned the meeting at 4:37 p.m.