

**ALASKA STATE LEGISLATURE
HOUSE RESOURCES STANDING COMMITTEE**

March 14, 2005

1:02 p.m.

MEMBERS PRESENT

Representative Jay Ramras, Co-Chair
Representative Ralph Samuels, Co-Chair
Representative Jim Elkins
Representative Carl Gatto
Representative Gabrielle LeDoux
Representative Kurt Olson
Representative Paul Seaton
Representative Harry Crawford

MEMBERS ABSENT

Representative Mary Kapsner

COMMITTEE CALENDAR

HOUSE CONCURRENT RESOLUTION NO. 3
Relating to renewable energy resource development.

- MOVED HCR 3 OUT OF COMMITTEE

HOUSE BILL NO. 75

"An Act relating to promoting and preserving sport hunting in the state."

- MOVED CSHB 75 (RES) OUT OF COMMITTEE

HOUSE BILL NO. 153

"An Act relating to regulation of the discharge of pollutants under the National Pollutant Discharge Elimination System; and providing for an effective date."

- HEARD AND HELD

PREVIOUS COMMITTEE ACTION

BILL: HCR 3

SHORT TITLE: RENEWABLE ENERGY ALASKA PROJECT

SPONSOR(S): REPRESENTATIVE(S) RAMRAS

02/22/05 (H) READ THE FIRST TIME - REFERRALS

02/22/05 (H) L&C, RES
03/02/05 (H) L&C AT 3:15 PM CAPITOL 17
03/02/05 (H) Moved Out of Committee
03/02/05 (H) MINUTE(L&C)
03/03/05 (H) L&C RPT 3DP 1NR
03/03/05 (H) DP: CRAWFORD, LEDOUX, ANDERSON;
03/03/05 (H) NR: ROKEBERG
03/14/05 (H) RES AT 1:00 PM CAPITOL 124

BILL: HB 75

SHORT TITLE: SPORT HUNTING

SPONSOR(S): REPRESENTATIVE(S) KELLY

01/18/05 (H) READ THE FIRST TIME - REFERRALS
01/18/05 (H) RES, FIN
03/14/05 (H) RES AT 1:00 PM CAPITOL 124

BILL: HB 153

SHORT TITLE: POLLUTION DISCHARGE & WASTE TRMT/DISPOSAL

SPONSOR(S): RULES BY REQUEST OF THE GOVERNOR

02/16/05 (H) READ THE FIRST TIME - REFERRALS
02/16/05 (H) RES, FIN
03/14/05 (H) RES AT 1:00 PM CAPITOL 124

WITNESS REGISTER

JIM POUND, Staff

to Representative Jay Ramras

Alaska State Legislature

Juneau, Alaska

POSITION STATEMENT: Presented HCR 3 on behalf of Representative Ramras, Sponsor.

CHRIS ROSE, Director

Renewable Energy Alaska Project (REAP)

Anchorage, Alaska

POSITION STATEMENT: Testified in favor of HCR 3.

HEATH HILYARD, Staff

to Representative Mike Kelly

Alaska State Legislature

Juneau, Alaska

POSITION STATEMENT: Presented HB 75 on behalf of Representative Kelly, Sponsor

REPRESENTATIVE MIKE KELLY

Alaska State Legislature
Juneau, Alaska
POSITION STATEMENT: Testified as sponsor of HB 75.

DAVE BACHRACH
Homer, Alaska
POSITION STATEMENT: Testified against HB 75.

JENNIFER YUHAS, Executive Director
Alaska Outdoor Council
Fairbanks, Alaska
POSITION STATEMENT: Testified in favor of HB 75.

TOM SCARBOROUGH
Fairbanks, Alaska
POSITION STATEMENT: Testified in favor of HB 75.

SARAH GILBERTSON, Legislative Liaison
Alaska Department of Fish and Game (ADF&G)
Juneau, Alaska
POSITION STATEMENT: Testified in support of HB 75.

KURT FREDRIKSSON, Commissioner
Alaska Department of Environmental Conservation (DEC)
Juneau, Alaska
POSITION STATEMENT: Testified in favor of HB 153.

DAN EASTON, Director
Division of Water
Department of Environmental Conservation
Juneau, Alaska
POSITION STATEMENT: Explained the background and consequences of
HB 153.

ROBERT ROBICHAUD, Manager
Wastewater Permit Unit
Northwest Region
Environmental Protection Agency (EPA)
Seattle, Washington
POSITION STATEMENT: Answered questions regarding HB 153.

DICK COOSE
Concerned Alaskans for Resource and Environment
Ketchikan, Alaska
POSITION STATEMENT: Testified in favor of HB 153.

DAVID STONE, Vice President

Alaska Miners Association
Anchorage, Alaska
POSITION STATEMENT: Testified in favor of HB 153.

RICH HEIG, General Manager
Greens Creek Mining Company
Juneau, Alaska
POSITION STATEMENT: Testified in favor of HB 153.

EARL HUBBARD, Vice President
Trident Seafoods
Seattle, Washington
POSITION STATEMENT: Testified in favor of HB 153.

LOIS EPSTEIN, Senior Engineer
Cook Inlet Keeper
Anchorage, Alaska
POSITION STATEMENT: Testified in opposition to HB 153.

OWEN GRAHAM, Executive Director
Alaska Forest Association
Ketchikan, Alaska
POSITION STATEMENT: Testified in favor of HB 153.

ACTION NARRATIVE

CO-CHAIR JAY RAMRAS called the House Resources Standing Committee meeting to order at [1:02:51 PM](#). Representatives Crawford, Samuels, Seaton, Olson, Ramras, Gatto, and Elkins were present at the call to order. Representative LeDoux arrived as the meeting was in progress.

HCR 3-RENEWABLE ENERGY ALASKA PROJECT

CO-CHAIR RAMRAS announced that the first order of business would be HOUSE CONCURRENT RESOLUTION NO. 3, Relating to renewable energy resource development.

JIM POUND, Staff to Representative Jay Ramras, Alaska State Legislature, introduced HCR 3, which recognizes that Alaska needs to move forward with its energy needs. Alternative energy is the wave of the future, he said, and wind, hydrogen, geothermal, biomass, hydroelectric, and tidal energy are being considered around the world, and Alaska has the opportunity to be out front in their production. HCR 3 recognizes this and urges the governor to work on the development of alternative energy. Mr. Pound highlighted that alternate sources of energy

are important for rural areas. He said that Bethel is considering wind generation and Kotzebue has some wind turbines, which can save money on Alaska's subsidized Power Cost Equalization program.

[1:04:26 PM](#)

CHRIS ROSE, Director, Renewable Energy Alaska Project (REAP), said REAP is a statewide coalition of utility companies, environmental groups, consumer groups, businesses, and Native groups who would like to see the increased production of renewable energy in Alaska. He urged the panel to move HCR 3. "We have an opportunity to be a leader in this field," he said. He added that Alaska has resources that other states and nations would give a lot for: wind, geothermal, and biofuel sources.

[1:06:47 PM](#)

CO-CHAIR SAMUELS said he drove a hydrogen-powered car while attending the Energy Council, and the exhaust was water vapor.

REPRESENTATIVE SEATON said he is pleased that tidal power is in HCR 3.

CO-CHAIR RAMRAS said Alaska can be a leader in not only producing fossil fuel energy but also alternative sources.

REPRESENTATIVE SEATON moved to report HCR 3, labeled 24-LS0648\G, out of committee with individual recommendations and the accompanying fiscal notes. Hearing no objection, it was so ordered.

[1:09:01 PM](#)

The committee took an at-ease from 1:09 p.m. to 1:14 p.m.

[1:14:08 PM](#)

HB 75-SPORT HUNTING

CO-CHAIR RAMRAS announced that the next order of business would be HOUSE BILL NO. 75 "An Act relating to promoting and preserving sport hunting in the state."

CO-CHAIR SAMUELS moved to adopt CSHB 75, labeled 24-LS0359\G, Utermohle, 2/24/05, as a work draft. Hearing no objection, it was so ordered.

HEATH HILYARD, Staff to Representative Mike Kelly, Alaska State Legislature, said there are only two substantial changes between the original HB 75 and the committee substitute (CS). The bill now includes trapping as a referenced activity, and the term "sport" was removed.

1:16:50 PM

MR. HILYARD said the bill was drafted from language in a Michigan bill. Montana and Minnesota adopted similar language, he said, and he believes the language in HB 75 is consistent with Article 8, Section 4 of the Alaska State Constitution, which addresses sustained yield principles.

REPRESENTATIVE SEATON asked what impact this legislation will have on the commissioner's job.

MR. HILYARD deferred to the Alaska Department of Fish and Game (ADF&G).

REPRESENTATIVE SEATON said he wanted to know the sponsor's intent.

REPRESENTATIVE KELLY said the language will not cause extra work but will assist ADF&G and "make life easier for them, because it makes it very clear what we are about." He added that organizations such as People for the Ethical Treatment of Animals (PETA) "will continue to hammer away." He said this bill will "make it clear that this is about what we have been as a people, what we are now, and what we're likely to be in the future."

DAVE BACHRACH, Homer, said HB 75 gives preference to one user group for a common resource, and he would like to know what the impact would be on wildlife viewing and tourism. Does hunting take priority? he asked.

JENNIFER YUHAS, Executive Director, Alaska Outdoor Council, said her group supports the CS. She said that the Alaska Department of Fish and Game (ADF&G) "should no longer be legally gagged" from promoting the merits of hunting. "The public as well as our decision-makers have the right to hear from our biologists and managers when making decisions that will affect their ability to manage," she said. She added, regarding hunting having priority over wildlife viewing, "These uses are subject

to preference among users, and that is part of what the legislature's job is."

[1:24:04 PM](#)

TOM SCARBOROUGH, Fairbanks, said he supports HB 75.

SARAH GILBERTSON, Legislative Liaison, Alaska Department of Fish and Game (ADF&G), said from ADF&G's stand point, the bill is not necessary, and it is good to eliminate the word "sport." She suggested including fisheries, because the commissioner is required to promote hunting and fishing resources. She said the bill could be an important tool for the commissioner on ballot initiatives. She said by including hunting, trapping and fishing, "that would be good from a department standpoint because it covers everything the Alaska Department of Fish and Game both manages, preserves and promotes."

[1:27:56 PM](#)

REPRESENTATIVE SEATON asked how the language directs the commissioner's decisions. Will this mean the commissioner's job is to take the McNeil River Bear Sanctuary and promote hunting and trapping instead of bear viewing?

SARAH GILBERTSON, Legislative Liaison, "My guess would be, as I mentioned before, the commissioner and the department, we feel that we already do this. We feel that we do this not only for hunting, trapping, but also for fishing. So this is really a policy call for [the legislature] to put it in the functions of the commissioner. We feel that both the commissioner and the division already does this--wildlife conservation, but it's a policy call from your end to actually define it and put it in the commissioner's functions, but relative to McNeil, those decisions are currently made by the Board of Game, and as you know they just considered a proposal on that subject. So I don't know how, even if this were passed, that the commissioner could step in to change what's going on there. That's under the purview of the Board of Game."

REPRESENTATIVE SEATON said this language gives the commissioner a new duty, and "as I read it, in every instance, he shall, in conjunction with the Board of Game, promote hunting and trapping, and I am wondering if this gives the absolute direction that the commissioner must follow this path and eliminates the wildlife viewing option."

SARAH GILBERTSON said she would like to find out from the Department of Law.

KEVIN SAXBY, Assistant Attorney General, Natural Resources Section, Department of Law, said he signed on to testify in support of the CS, but he will answer the question. He said:

The bill would only add to the duties of the commissioner, it doesn't remove any of the existing duties of the commissioner or the department, and it doesn't purport to trump any of the existing duties. The department currently has specific statutory duties as to, for example, the McNeil Sanctuary and refuge to maintain those, to maintain the habitat, to maintain the bear populations, etcetera, and the commissioner also currently has duties in the very statute that you are amending to manage, protect, maintain, improve, and extend the fish, game and aquatic plant resources of the state in the interest of the economy and general well-being of the state. So this just adds a duty to preserve and promote hunting and trapping now. It doesn't trump any of those other things.

REPRESENTATIVE SEATON asked if Mr. Saxby were advising the Board of Game or the commissioner with this new duty in statute, and a request comes to the board to open hunting within the McNeil River Sanctuary, would the commissioner be fully able to say that he disagrees with promoting hunting in this area, and recommend that it remain closed to hunting.

MR. SAXBY said, "As to McNeil, [the commissioner] will still be free to do that."

REPRESENTATIVE LEDOUX noted that Ms. Gilbertson says the commissioner can already do what the bill says.

MS. GILBERTSON said preserving and promoting hunting, fishing, and trapping is what ADF&G does all the time. The bill's language adds it to the functions of the commissioner. In the commissioner's daily actions, he will have to have this on his mind. "But, I think as Kevin Saxby was just saying, with respect to Paul Seaton's question, is that the commissioner-- doesn't mean that...McNeil bear viewing, for instance, will go away." It gives another tool because the commissioner is wary of weighing in on ballot measures.

REPRESENTATIVE LEDOUX asked, "So this is another tool to weigh in on ballot measures?"

MS. GILBERTSON said, "That is my take on it."

MR. SAXBY said he is defending litigation that challenges the state's predator control program:

The opponents of predator control have made a huge issue, and attempted to really exploit the idea that this is being done for, quote, sport-hunting purposes, unquote. And so it has really been helpful to remove the term "sport." That creates complications under the airborne hunting act, for example, it creates a number of complications if the legislature would ever categorize Alaskan hunters as sport hunters. Every statement that we have in the statutes that puts a duty on the commissioner or the department to promote consumptive uses ends up being helpful when we have challenges to those consumptive uses. And likewise it would be helpful in the future to have a statement like that about fishing, anticipating that at some point in the future we're going to be facing a challenge to consumptive use of some or all fish probably.

REPRESENTATIVE LEDOUX asked if the governor can't deliver a statement regarding "one of those outside ballot initiatives," without this legislation.

MR. SAXBY said state funds can't be spent to influence an election. If the state has a mandatory duty to promote hunting activities, "we will at least be able to make, I think the department will be able to make some kinds of statements that effectively do that."

REPRESENTATIVE LEDOUX said if that is what we want to do maybe we should address it directly in the state's election laws.

REPRESENTATIVE KELLY said, "The primary reason for bringing this bill forward is that there is a laundry list of attacks being made, and...PETA is the type of organization lining them up and delivering them." This tool permits one to stand up and say that hunting, fishing and trapping is who we are and is important to us.

REPRESENTATIVE SEATON said he would like the committee to get a legal opinion that this duty does not require the commissioner to recommend hunting in an area such as McNeil River.

MR. SAXBY said he will forward the request and put it in motion.

[1:42:53 PM](#)

REPRESENTATIVE KELLY said he supports adding fishing to the bill.

[1:43:47 PM](#)

CO-CHAIR SAMUELS moved Amendment 1, which read [original punctuation provided]:

Delete line 11-12 and insert:

(3) in conjunction with the Board of Fisheries and Board of Game, promote fishing, hunting, and trapping, and preserve the heritage of fishing, hunting, and trapping in the state.

New Sec 2--AS 16.05.251 is amended by adding a new subsection to read:

(g) In conjunction with the commissioner, the Board of Fisheries shall promote fishing and preserve the heritage of fishing in the state.

New Sec. 3--AS 16.05.255 is amended by adding a new subsection to read:

(k) In conjunction with the commissioner, the Board of Game shall promote hunting and trapping and preserve the heritage of hunting and trapping in the sate.

There being no objection, Amendment 1 was adopted.

CO-CHAIR SAMUELS proposed to move conceptual Amendment 2 to change the title of HB 75 to insert the word fishing wherever appropriate. There being no objection, conceptual Amendment 2 was adopted.

REPRESENTATIVE SEATON expressed concerned about the title being "really broad" and wants to move conceptual Amendment 3 to clarify that the act refers to the duties of the commissioner.

REPRESENTATIVE KELLY said the duties of the Board of Game are included.

MR. SAXBY said he needs to understand the intent. A statutory duty to the commissioner to promote hunting, fishing and trapping is in one section. Another section would need to be addressed for the Board of Game.

REPRESENTATIVE SEATON said that it makes sense to have the commissioner and the boards of fish and game mentioned in the title, but he wants it more specific. He moved conceptual Amendment 3 which would read something like:

An act related to the duties of the commissioner, the Board of Fisheries, and the Board of Game, to promote and preserve hunting, trapping and fishing.

[1:49:11 PM](#)

There being no objection, conceptual Amendment 3 was adopted.

[1:50:14 PM](#)

CO-CHAIR SAMUELS moved to report HB 75 as amended out of committee with individual recommendations and the accompanying fiscal notes.

REPRESENTATIVE SEATON noted that the committee will get the legal opinion on McNeil River, and it will follow the bill.

Hearing no objection, CSHB 75(RES) was passed out of the House Resources Standing Committee.

[1:51:36 PM](#)

The committee took an at-ease from 1:51 p.m. to 1:56 p.m.

[1:56:29 PM](#)

HB 153-POLLUTION DISCHARGE & WASTE TRMT/DISPOSAL

CO-CHAIR RAMRAS announced that the final order of business would be HOUSE BILL NO. 153 "An Act relating to regulation of the discharge of pollutants under the National Pollutant Discharge Elimination System; and providing for an effective date."

KURT FREDRIKSSON, Commissioner, Alaska Department of Environmental Conservation (DEC), provided the committee with the following testimony [original punctuation provided]:

Mr. Chairman, members of the Committee, I am pleased to testify today in support of House Bill 153, National Pollutant Discharge Elimination System (NPDES) Assumption. My testimony will focus on why Governor Murkowski and I believe passage of HB 153 will strengthen the ability of Alaskans to protect the State's water resources and build a strong economy. With me today is Dan Easton, Director of the Department's Division of Water to provide you with the details of how this bill was developed.

Since the creation of the Department of Environmental Conservation (DEC) in 1971, our duties have been clearly and succinctly spelled out by the legislature to adopt and enforce regulations which set standards for the prevention and abatement of all water, land and air pollution. DEC fulfills these State obligations consistent with national pollution control programs authorized under the Clean Air and Clean Water Acts. These federal and state laws establish a two-tiered approach consisting of national uniform environmental quality goals and pollution control strategies tailored to each state's unique circumstances.

DEC currently exercises all the authorities granted by the Alaska legislature as well as the United States Congress to protect Alaska's air quality and drinking water. The same is not true for protecting the quality of Alaska's surface water. The federal Environmental Protection Agency (EPA) is the water authority in Alaska. Alaska, like four other states, has allowed wastewater-permitting authority to remain with the federal government.

EPA makes the wastewater permitting rules in Alaska. EPA decides what's important and what's not. EPA decides the permit review timeframes. EPA decides what goes into the permits and who gets inspected. EPA decides how Alaska's water quality standards will be applied to specific discharges. EPA sets Alaska's water quality priorities.

As you know, Governor Murkowski is committed to permit streamlining that eliminates duplicative, unnecessary procedures which invite litigation and add time and cost... without additional environmental protection. Governor Murkowski is committed to permit streamlining that aligns our regulatory requirements with real Alaska conditions and focuses on the real risks to Alaska's water quality.

[1:59:29 PM](#)

DEC has made significant progress in streamlining its permit programs, but when it comes to wastewater permitting, we cannot fix what we don't control.

Alaska has never pursued the opportunity provided by the federal Clean Water Act to shape the NPDES water pollution control permit program to fit Alaska's unique circumstances. HB 153 would allow DEC to develop a comprehensive water quality protection program where all program components, from legislative budgeting and oversight to fieldwork and enforcement, are conducted here in the state, where Alaskans can shape solutions to fit Alaska's challenges. Alaskans are capable of protecting our water resources.

A state permit program will be based on Alaska's priorities--not national priorities that are "one-size-fits-all". DEC's permit priorities, level of effort and performance measures would be subject to annual review and approval by Alaskans through their elected officials in the state Legislature.

A state run program will place permit decision makers closer to the Alaskan public and regulated permit holders. No longer will permits be written and enforced by federal staff unfamiliar with Alaska's unique environment.

The State run permit program won't be free. When EPA issues permits in Alaska the costs are borne by the U.S. taxpayer. A state permit program will shift authority and responsibility to the state, but it will also shift some of the costs to permit holders and the State.

Federal programs do not adapt easily to Alaska. National goals do not always address our greatest

needs. Alaska's elected representatives have made clear our commitment to environmental protection and our responsibility to develop our resources for the wellbeing of all Alaskans. If we are to realize the promise of resource development, we must accept responsibility for managing our water resources. That means assuming primacy for the NPDES program.

With primacy there will be no rollback of environmental protection; anyone who supports primacy on that basis will be disappointed.

NPDES primacy means:

- A faster, more effective program for protecting our water resources.
- Alaskan industries and communities working with Alaskan permittees on permits that reflect our priorities and unique conditions - permits that make sense for Alaska.
- Less emphasis on cumbersome process and more emphasis on results.
- Less emphasis on one-size-fits-all permits and more emphasis on specific risks to Alaska's environment.
- Permitting accountability - accountability to Alaska's elected officials and the public.

It is time for Alaskans to take responsibility for protecting Alaska's environment. To do otherwise means continuing the status quo. The status quo is unacceptable.

DAN EASTON, Director, Division of Water, Department of Environmental Conservation, said HB 153 is the result of years of effort. He said DEC released a report in 2004 which recommended that the state seek primacy and would need \$4.8 million and 43 employees to run the program. Last year HB 546 was passed, which directed the state to apply for partial NPDES primacy for the timber sector and created a full-time position. EPA told the state that partial primacy would be problematic. So DEC executed a work-share agreement that makes DEC the lead in developing the next general permit for log transfer facilities, but the permit is controlled by EPA. Mr. Easton said an advisory work group was formed in 2004 with the Alaska Oil and Gas Association, Alaska Forest Association, Alaska Miners Association, Associated General Contractors of Alaska, Pacific Seafood Processors Association, Alaska Water and Wastewater Management Association, and Alaska Native Tribal

Health Consortium. The meetings were open to the public, he added. The work group proceedings and findings were reported in January 2005. Support for state primacy varied between groups, he said, and certain sectors saw a benefit in state primacy, and others saw less benefit but would not object to the state pursuing primacy.

2:06:15 PM

MR. EASTON said there is a \$1.5 million fiscal note with HB 153. The department's budget includes \$3.3 million and 30 staff that are already devoted to NPDES activities. He said a total of 43 positions are required for the work, so DEC would need 13 new positions. Costs would be divided between state general funds, federal grant money, and permit fee receipts.

2:07:41 PM

REPRESENTATIVE SEATON asked if those 30 employees only work on NPDES permits, and if the state will actually need more employees.

MR. EASTON answered that DEC staff deal with water quality standards, issue state permits, and inspect some NPDES facilities. They won't change what they are doing, he said.

2:09:52 PM

CO-CHAIR RAMRAS said he had problems contacting DEC last week, and he asked how much public input there has been on HB 153.

MR. FREDRIKSSON said, "We are here today after a series of events and at least two legislative sessions. There's been quite a bit of input in development of the original NPDES assumption study that was requested by the legislature, there's quite a bit of public input through the legislative process during those last two years, and then there was quite a bit of involvement, as Dan mentioned, in the six meetings that were held here last fall." But for this current proposal, "the public testimony here will be the first testimony on this actual HB 153."

CO-CHAIR RAMRAS said he hasn't been here in the last two sessions, "so when you say that SB 326 is the culmination of a great deal of public input, can you outline that for me?"

MR. EASTON said the process started with SB 326 asking DEC to estimate the cost and benefits of the state assuming primacy.

CO-CHAIR RAMRAS asked if DEC solicited opinions in the communities where people may be affected.

MR. EASTON said DEC had the work group but no public hearings. The meetings were open to the public, however.

MR. FREDRIKSSON added that most communities are required to have NPDES permits as part of their wastewater discharge, and the work groups included large and small municipality representatives. There has been a wide distribution of the information on the SB 326 report, he said, and information has been available on DEC's web page.

CO-CHAIR RAMRAS asked if EPA will sign off on this.

MR. FREDRIKSSON said this is an application process. HB 153 will give DEC the legislative approval to go forward. There are only four other states that have not received primacy, and he assumes that DEC can design a program that EPA will approve.

MR. EASTON said the bill calls for an application to be submitted to the EPA by June 2006, and he expects it will take the EPA one year to approve the application.

CO-CHAIR RAMRAS asked if the state will get any federal money.

MR. EASTON said no.

CO-CHAIR RAMRAS asked what the financial advantages are for businesses and other Alaskans.

MR. EASTON said it varies. The larger and more complex the permits, the more the savings. The working group took a theoretical mine the size of the Pogo mine, and it clearly demonstrated that by shaving six months off of a permit process, the advantage can be millions of dollars.

[2:17:23 PM](#)

REPRESENTATIVE CRAWFORD asked why timber-related activities are deleted.

MR. EASTON said HB 546 already gave DEC primacy for the timber industry.

REPRESENTATIVE LEDOUX noted that approval happens in 2007, but the fiscal note includes \$900,000 in 2006.

[2:19:26 PM](#)

MR. EASTON said the money is to prepare the application, write regulations, and prepare the data systems for primacy.

REPRESENTATIVE LEDOUX asked if any boroughs or municipalities have an opinion on HB 153.

MR. EASTON said he will encourage them to let the committee know how they feel.

[2:20:41 PM](#)

REPRESENTATIVE SEATON asked what difference there has been for the timber industry since HB 546.

MR. EASTON said that process has barely started and it will be a year before the draft permit is in place. It will make a significant difference, he believed. A log transfer facility today has to get three separate permits for depositing bark, storm water, and sewage. DEC will bundle the permits in one application, which will save time and duplication.

REPRESENTATIVE LEDOUX asked how many EPA staff are working on Alaska permits.

ROBERT ROBICHAUD, Manager, Wastewater Permit Unit, Northwest Region, Environmental Protection Agency, said 20 staff are assigned to some facet of the NPDES program. It is not just writing permits, he said, but also EPA has inspectors, enforcement and compliance staff, attorneys, and laboratory technicians. Permit writing for Alaska costs about \$1.4 million in direct costs without overhead.

[2:24:09 PM](#)

REPRESENTATIVE LEDOUX noted that EPA has 20 staff and Alaska wants 13, which may create permitting delays.

MR. EASTON said currently there are a total of 51 DEC and EPA NPDES staff, and because of the efficiency of state primacy, DEC envisions it will need a total 43 staff.

CO-CHAIR RAMRAS asked about hurting the permitting process if positions are cut in tight budget years.

MR. FREDRIKSSON said DEC has reduced its budget in the past few years, but it has built up staff and resources for DEC's core permit programs. This is the forum, he said, for the state to determine its spending priorities.

CO-CHAIR RAMRAS said Alaska has an administration that is friendly with resource development. "If in the future we have an administration that's less friendly to mineral resource development, don't we run the risk of actually necking down the process by having the State of Alaska the only gate keeper?"

MR. EASTON said there is no question about that, and the risk is that the program gets reduced to where EPA takes it back.

MR. FREDRIKSSON said the public is another element. If the public becomes complacent, the dynamics change, he said. But he is fairly confident the public will keep a watchful eye.

MR. EASTON said no state has ever relinquished primacy.

REPRESENTATIVE SEATON said the public has not been complacent on water quality regulations. DEC proposed to allow pollution mixing zones in spawning streams, and the public has been universally opposed to that and yet DEC has not withdrawn those proposals. The finance subcommittee finally said 'We disagree with the way you are going whether you call this streamlining or whatever in ignoring the public comment and all the comments from the legislature.' Representative Seaton said, "So we have a situation...when the public is aware and commenting, it seems to be ignored by the agency. So I am concerned about giving primacy in this particular area because this is exactly the area where numerous legislators have weighed in on this and seems to have been ignored."

MR. FREDRIKSSON said both the executive branch and the legislative branch operate through a very public process. "We take public input, we consider that public input, and then we take actions."

DICK COOSE, Ketchikan, said he represents Concerned Alaskans for Resource and Environment, a non-profit group to promote access to resources by business. He urges support of HB 153, "this is only one of the several programs under which the federal

government continues to treat the State of Alaska like a territory, and the state needs to control its own future."

[2:32:35 PM](#)

MR. COOSE said DEC uses better science and works better with people than EPA--"EPA appears to be here to say no or simply delay, and the business or the activity goes away." He said the laws won't be overlooked by the state. He added that Ketchikan fish processors have EPA permits to handle fish wastes, and those wastes simply pile up and do not decompose. No science supported the grinding of fish that EPA requires, and it does not work, he said. Resources are Alaska's wealth. Funding for DEC is a pittance of the total state budget, and DEC is key to managing resources and needs sufficient funding, he concluded.

[2:35:35 PM](#)

DAVID STONE, Vice President, Alaska Miners Association, said he supports HB 153. The mining industry has discussed primacy and now is convinced it is in Alaska's best interest. Mr. Stone referenced an article written in the Alaska Miners Association monthly newsletter. He said federal control has the problem of non-Alaska factors influencing permit decisions, like court cases in other parts of the country. Local Alaska conditions, needs, and the merits of a particular permit are not EPA's primary consideration, but rather how the decision on an Alaska permit may affect some other part of the country, he said. This approach by EPA adds delays and may add costs and problems for the permittee. He said he understands that permit fees will go up.

[2:38:13 PM](#)

RICH HEIG, General Manager, Greens Creek Mining Company, said he is the past president of the Council of Alaska Producers, and the council was part of DEC's task force. He supports the comments of Commissioner Fredriksson. "We believe Alaska can manage Alaska's waters more efficiently, more timely," he said, and DEC is more familiar with the regulated community and the public, and primacy can be done in an environmentally responsible manner.

[2:40:03 PM](#)

REPRESENTATIVE SEATON asked if there were public members on the work group.

MR. HEIG said he did not think so.

MR. EASTON said the work group members were all permittees, but the meetings were open to the public.

[2:40:56 PM](#)

CO-CHAIR RAMRAS asked what other states did not have primacy.

MR. EASTON said Idaho, New Mexico, Massachusetts, and New Hampshire.

REPRESENTATIVE ELKINS asked if Ernesta Ballard was the director of Region 10.

MR. FREDRIKSSON said that Ms. Ballard was EPA's region 10 administrator, and she was the commissioner of DEC when the report was submitted to the legislature.

[2:42:05 PM](#)

EARL HUBBARD, Vice President, Trident Seafoods, said Trident is involved in all aspects of the Alaska fishing industry; "We catch, we process, we market all commercial seafood products." He said he is happy to offer support for HB 153. He noted that all fisheries depend on water quality, including the image of water quality, and any environmental threat is a concern to Trident. Water quality is Alaskan's most valuable asset so the state should take the lead role in protective programs, "in balance with EPA, which is an agency that is not going anywhere," which is good, he said. Primacy gives greater control and state assets will be best protected. It is an integral opportunity which lends due deference to the state, he said, and timeliness, efficiency, oversight, and economy will improve. EPA is spread thin with limited staff.

[2:48:43 PM](#)

MR. HUBBARD said DEC is more able than ever to administer the program in an effective way. Mr. Easton and Mr. Fredriksson make a good leadership team. He concluded that primacy is good for water quality and good for business.

[2:49:51 PM](#)

LOIS EPSTEIN, Senior Engineer, Cook Inlet Keeper, Anchorage, provided the following testimony to the committee [original punctuation provided]:

Good afternoon. My name is Lois Epstein and I am an Alaska-licensed engineer with Cook Inlet Keeper in Anchorage. Cook Inlet Keeper is a nonprofit, membership organization dedicated to protecting the Cook Inlet watershed and the life it sustains. I have worked on safety and environmental issues for over 20 years for two private consultants, the U.S. EPA, Environmental Defense in Washington, DC, and Cook Inlet Keeper. Additionally, I have served on several multi-stakeholder federal advisory committees, and currently serve on an advisory committee appointed by U.S. DOT Secretary Mineta that includes former Alaska House and Senate member Drue Pearce. HB 153 accurately reflects the wish-list from the industry members of the Department of Environmental Conservation (DEC) workgroup studying "National Pollutant Discharge Elimination System (NPDES) Primacy," commonly understood as EPA giving the state of Alaska the authority to issue wastewater discharge permits under the federal Clean Water Act. Because Tribes and public interest organizations were excluded from the workgroup, our concerns were never seriously addressed and their solutions were not included in HB 153. Additionally, though DEC may not emphasize this fact to the legislature, the workgroup member representing municipal wastewater treatment plants opposes the state's bid for NPDES primacy. And, just to be clear, there has been no public input into HB 153 to date. With this background - and bearing in mind that EPA might have similar concerns and may not approve the state's application for primacy unless the legislature amends the bill and the state amends the Fiscal Note - Cook Inlet Keeper offers the following substantive issues requiring amendments and further information-gathering. Our primary concerns are: 1. The high governmental cost of the permitting program, which only will grow as the state's industrial growth increases. 2. Ensuring a high-quality permitting program to protect Alaska's salmon and other fish. 3. Ensuring governmental accountability to Tribes and the public.

High Cost of the Permitting Program

According to HB 153's Fiscal Note, the legislature will need to appropriate, at a minimum, \$1.5 million each year to DEC to support the bigger state government required to manage this complex program. Because workgroup members insisted on a limit to permit fees of slightly more than 15% of program costs (compared to the 57% of program costs paid by permittees in Oregon and the 75-80% paid in Washington), the increased costs will come from other state initiatives such as education or road maintenance. Should industrial growth occur in Alaska, the legislature will need to increase the annual appropriation beyond \$1.5 million to cover the approximately 85% of the program not funded by permit fees. If the growth occurs among businesses with less than 20 employees, annual appropriation needs will be even higher given cost recovery constraints for the program, i.e., governmental travel will not be recovered from small businesses. In the future, DEC will not get any more federal funding for the program than currently since the state receives the maximum amount allowed for administering its Clean Water Act programs. While federal funding is projected to continue at the current level, the federal budget process in future years may decrease this amount, resulting in additional costs to the state. If the legislature fails to fund the program adequately in the future, it is likely that permit issuance would be slowed and permit errors may occur. Since there is virtually no chance that EPA will take back the permitting program once it has been given to the state, permittees will suffer due to insufficient general fund resources. The workgroup's report states that permit fees "are expected to increase by a factor of 1.8...a substantial increase," including increases to municipal permit fees. Thus, both state and local costs will increase significantly should the state obtain NPDES primacy.

Keeping Fish Healthy

Fiscal Note cost estimates arguably are low because proposed DEC staffing levels are insufficient to implement the program adequately. If the program is not carried out with sufficient technical and enforcement staff, water quality and fish habitat will decline. Currently, a total of 51 full-time equivalent (FTE) employees from EPA and DEC carry out the permitting program. DEC estimates reduce this number

to 43 FTE, an overall reduction of 16% that includes a 38% reduction in program development staff (e.g., water quality standards staff), a 28% reduction in permitting staff, and a 16% reduction in compliance and enforcement staff. Though DEC may state that its proposed staff numbers are in-line with that of other states, its own information shows that to be untrue. For example, the state of Alaska expects to spend only 52% of the resources that Washington state spends per permit. Since DEC has produced essentially no evidence to date on how it can maintain an adequate permitting program with severe staff reductions, we request that the legislature obtain additional, detailed information from DEC on the adequacy of its staffing estimates - especially for technical and enforcement staff - and the likelihood of EPA approving the permitting program with serious staff reductions in a state with numerous, large industrial operations.

[2:55:14 PM](#)

Additionally, Cook Inlet Keeper and industry members of the workgroup share a concern about the limited technical expertise at DEC and the likely use of consultants to develop permits. Problems with the use of consultants include potential conflicts of interest and the lack of longterm DEC staff experience with particular industries, which can result in technical deficiencies and costly staff inefficiencies. Though conflicts of interest were discussed in the workgroup, Section 4(h)(4) needs to be amended to specifically prevent conflicts of interest for DEC consultants. Cook Inlet Keeper also is concerned that required federal reviews, such as with expert federal biologists on essential fish habitat, will be eliminated by the state assuming NPDES primacy.

Governmental Accountability

NPDES primacy will eliminate federal government-to-government consultations with Tribes and various analyses that the public currently participates in which are required by federal statutes to ensure a healthy environment. Tribal government-to-government consultations have numerous benefits which can be better described by tribal members than by me, and I urge the legislature to include Tribes in its primacy deliberations (unlike the DEC workgroup). Sections 4(h)(2) and 4(h)(3) of HB 153 enable industry

permittees to review draft and final permits before public issuance, giving industry permittees excessive and unfair influence over permits. EPA may disallow such unbalanced treatment. The legislature needs to remove these sections from the bill. Finally, legislators need to amend Section 1(b)(2) so DEC's NPDES workgroup is representative of all stakeholders. This section currently extends the mandate of the undemocratic and unrepresentative workgroup which crafted this bill's contents. Thank you very much for your attention to these concerns. NPDES primacy is a major undertaking for DEC, with serious fiscal, fish, and governmental accountability implications. Cook Inlet Keeper urges the legislature not to make costly programmatic changes that are of questionable value to permittees and troubling for Tribes and the public. This is a case where an important engineering saying applies - if it works, don't fix it.

[2:57:20 PM](#)

REPRESENTATIVE SEATON asked Ms. Epstein if she requested to become a member of the workgroup.

MS. EPSTEIN said yes.

[2:58:39 PM](#)

OWEN GRAHAM, Executive Director, Alaska Forest Association, said he was on the working group and he supports HB 153. He said there shouldn't be a concern about the makeup of the working group because there were people from the communities in attendance who could speak up whenever they wanted. The purpose of the group was to find out what the permittees needed to streamline the process.

REPRESENTATIVE SEATON asked about Mr. Graham's written testimony, which says state primacy will allow a faster, less formal process. What do you see as faster?

MR. GRAHAM said he is not the expert, and it would be better to ask Mr. Easton.

[3:00:48 PM](#)

MR. EASTON said EPA permitting has formal consultation processes that apply to it as a federal agency consulting with other

agencies. With state primacy, those formal consultation processes with the National Marine Fisheries Service and the United States Fish and Wildlife Service don't apply to the state. What applies instead, he said, "is a condition of EPA approval, typically, that the state will consult with, but the process is less formal, it's shorter, it's less prescribed."

[3:01:53 PM](#)

[HB 153 was held over]

ADJOURNMENT

There being no further business before the committee, the House Resources Standing Committee meeting was adjourned at 3:02 p.m.