

ALASKA STATE LEGISLATURE
SENATE COMMUNITY AND REGIONAL AFFAIRS STANDING COMMITTEE

April 20, 2005

1:32 p.m.

MEMBERS PRESENT

Senator Gary Stevens, Chair
Senator Bert Stedman
Senator Thomas Wagoner
Senator Johnny Ellis
Senator Albert Kookesh

MEMBERS ABSENT

COMMITTEE CALENDAR

SENATE BILL NO. 171

"An Act amending the National Petroleum Reserve - Alaska special revenue fund; and establishing the Special Legislative Oil and Gas NPR-A Development Impact Review Committee and defining its powers and duties."

HEARD AND HELD

HOUSE BILL NO. 229

"An Act relating to the reinstatement of Native corporations; and providing for an effective date."

HEARD AND HELD

PREVIOUS COMMITTEE ACTION

BILL: SB 171

SHORT TITLE: NPR-A COMMUNITY GRANT PROGRAM

SPONSOR(s): SENATOR(s) WILKEN

04/12/05	(S)	READ THE FIRST TIME - REFERRALS
04/12/05	(S)	CRA, FIN
04/20/05	(S)	CRA AT 1:30 PM BELTZ 211

BILL: HB 229

SHORT TITLE: REINSTATEMENT OF NATIVE CORPORATIONS

SPONSOR(s): REPRESENTATIVE(s) FOSTER

03/22/05	(H)	READ THE FIRST TIME - REFERRALS
03/22/05	(H)	CRA, FIN

03/31/05 (H) CRA AT 8:00 AM CAPITOL 124
03/31/05 (H) Moved Out of Committee
03/31/05 (H) MINUTE(CRA)
04/01/05 (H) CRA RPT 4DP
04/01/05 (H) DP: LEDOUX, SALMON, OLSON, THOMAS
04/04/05 (H) FIN AT 1:30 PM HOUSE FINANCE 519
04/04/05 (H) Moved Out of Committee
04/04/05 (H) MINUTE(FIN)
04/05/05 (H) FIN RPT 8DP 1NR
04/05/05 (H) DP: HAWKER, HOLM, WEYHRAUCH, STOLTZE,
MOSES, FOSTER, MEYER, CHENAULT;
04/05/05 (H) NR: KELLY
04/08/05 (H) TRANSMITTED TO (S)
04/08/05 (H) VERSION: HB 229
04/11/05 (S) READ THE FIRST TIME - REFERRALS
04/11/05 (S) CRA, STA
04/20/05 (S) CRA AT 1:30 PM BELTZ 211

WITNESS REGISTER

Senator Gary Wilken
Alaska Capitol Building
Juneau, AK 99801

POSITION STATEMENT: Sponsor of SB 171

Susan Burke, Attorney
Gross & Burke
224 Fourth Street, Suite 3
Juneau, AK 99801

POSITION STATEMENT: Pointed out legal problems associated with
SB 171

Brian Labolle
Staff to Representative Richard Foster
Alaska Capitol Building
Juneau, AK 99801

POSITION STATEMENT: Introduced HB 229 for the sponsor

ACTION NARRATIVE

CHAIR GARY STEVENS called the Senate Community and Regional Affairs Standing Committee meeting to order at [1:31:36 PM](#). Present were Senators Stedman, Wagoner, and Chair Gary Stevens. Senators Kookesh and Ellis arrived during the course of the meeting.

SB 171-NPR-A COMMUNITY GRANT PROGRAM

CHAIR GARY STEVENS announced SB 171 to be up for consideration.

1:32:08 PM

SENATOR WILKEN read the sponsor statement into the record to frame the PowerPoint presentation:

Senate Bill 171 examines the National Petroleum Reserve - Alaska (NPR-A) Mitigation Grant Program administered by the Department of Commerce, Community, and Economic Development (DCCED) and modifies the selection process to provide for active oversight by the legislature.

The bounty of NPR-A is thought by many to match or exceed the oil and gas deposits found at Prudhoe Bay or Kuparuk. As was mentioned in the *Anchorage Daily News*, February 15, 2005, "(The) Bureau of Land Management estimates NPR-A northeast corner could hold more than 2 billion barrels of crude oil and 3.5 trillion cubic feet of natural gas." All Alaskans look forward to the time when they can enjoy the benefits of reasonable and responsible development of these natural resources.

When members of the United State Congress authorized competitive leases in NPR-A in 1980, they recognized that development in the petroleum reserve might severely impact communities in or near the area. The federal legislation directed that the revenue generated through NPR-A development be used first to mitigate direct impacts, if any, to municipalities, and then by the rest of the State of Alaska. This federal directive in 1980 created two troubling issues that today pose significant problems.

First, the federal legislation is in direct conflict with the Alaska State Constitution. The State of Alaska receives from the federal government 50 percent of royalties and lease payments from the oil and gas development in NPR-A. As required by federal law, these funds are available, before consideration of any other public purpose, to communities that demonstrate impact from resource development in NPR-A. This directive is at odds with Article IX, Section 15 of our constitution.

At least twenty-five per cent of all mineral lease rentals, royalties, royalty sale proceeds, federal mineral revenue sharing payments and bonuses received by the State shall be placed in a permanent fund.

Senate Bill 171 recognizes this unsettling conflict, but does not overtly address or remedy the conflict between our State Constitution and federal law. This issue, while bothersome, is set aside for another day. Instead, this legislation speaks to the second troublesome issue of how the federal NPR-A payments are distributed to Alaska communities that may be severely impacted by oil and gas development within the National Petroleum Reserve. With the sizeable increase in NPR-A lease payments since 2000 and with the clear expectation of future and profitable growth, now is the time to revisit how the NPR-A payments are distributed and why. It is the charge of the legislature to devise a method to fairly allocate the financial benefits of NPR-A to all citizens of Alaska while, at the same time, recognize and mitigate the direct impact of development on certain communities as required by federal law.

In response to a 1986 Alaska Superior Court decision, Senate Bill 171 sets in place a system to grant impact assistance to municipalities most directly or severely impacted by oil and gas activity within the National Petroleum Reserve - Alaska. First, the Department of Commerce, Community, and Economic Development shall review and conduct a preliminary evaluation of each grant application to determine whether the community can demonstrate "extraordinary municipal and educational operating expenditures attributable to oil and gas development in NPR-A that are beyond the municipality's reasonable capability to meet." (See SB 171, page 3, lines 3-6) The department will submit a list of all qualifying projects to the legislature.

Second, the Special Legislative Oil and Gas NPR-A Development Impact Review Committee, composed of three Senate finance members and three House of Representative finance members, will review the submitted applications and within 45 days forward the

committee's recommendation to the respective finance committees for possible funding.

Third, twenty-five percent of the NPR-A payments will be deposited to the principal of the Alaska Permanent Fund and .5 percent to the Public School Trust Fund, as required in AS 37.14.110. If the amounts awarded to qualified municipalities as grants exceed the available money, each deposit in the previously mentioned funds and each grant will be reduce proportionately.

And last, a successful grantee shall submit to the Department of Commerce, Community, and Economic Development a financial report and a copy of an independent audit or review covering any previous grants before any subsequent grants are awarded.

[1:37:41 PM](#)

SENATOR WILKEN gave a PowerPoint presentation titled, "NPR-A Impact Mitigation Program" [copy in file] as follows:

Page 1

"The duty imposed by the federal government ultimately falls upon the Alaska Legislature..."

Barrow vs. State

Judge Walter Carpeneti, March 18, 1986

Page 2

Alaska Constitution vs. Alaska Statute

- Impact mitigation program as seen today
- The importance of the word "impact"
- Senate Bill 171

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SENATOR WILKEN showed the location of NPR - A.

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National Petroleum Reserve - AK, the Alaska Wildlife Refuge, the Trans-Alaska Pipeline, Native owned lands, oil fields and other reference points.

- 23.5 million-acre petroleum reserve is about the size of Indian
- The area between the Brooks Range and the Arctic Ocean

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History of NPR

1923 - Navel Petroleum Reserve established by President Warren Harding

1976 - The Department of Interior assumed jurisdiction and changed the name to National Petroleum Reserve - AK

1980 - Congress addressed changes

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Changes to NPR-A were made in Congress in 1980

- Competitive leases were authorized in 42 U.S.C. Sec. 6508
- Federal law cleared the way for the private development of NPR-A resources
- State of Alaska and the federal government agree to split the revenues.

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The Legislature responded

To the new federal law: "The State is required to give priority to communities 'most directly or severely impacted' by development."

Establishing a special revenue fund within the Department of Revenue (CS SB 835 am H, 1982)

Half the NPR-A receipts appropriated to communities affected by leasing

Half the receipts are available for state appropriation

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But Governor Hammond vetoed June 24, 1982

"The dedication of such federal monies appears to be inconsistent with the dedication of revenue to the Alaska Permanent Fund."

Alaska State Constitution
Article IX Section 15
Alaska Permanent Fund

"At least twenty-five percent of all mineral lease rentals, royalties, royalty sale proceeds, federal mineral revenue sharing payments and bonuses received by the State shall be placed in a permanent fund."
(Adopted in 1976)

SENATOR WILKEN said that few are aware that four communities and one borough have "jumped ahead: of deposits into the Alaska Permanent Fund in receiving appropriations. Most Alaskans assume the royalties are shared equally. He said that some would argue that the royalties are "received: after the four communities are allotted a portion. He contended that the funds should be considered "received" once the federal government appropriates them.

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And so the legislature...

Without a specific state law on the books...

- Received \$48.6 million during the early 1980s
- Deposited half of the State's share into the Permanent Fund and .5 percent to the Public School Fund
- Deposited the remainder of the funds in the General Fund

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Calculation by Alaska Constitution

In 1982, the Legislature appropriated the NPR-A receipts according to the Alaska State Constitution

NPR-A Receipts	\$48,600,000
50% of gross receipts to Perm Fund	(24,300,000)
.5 of gross receipts to Public School Trust	(243,000)
Available to General Fund for Impacted Communities	
24,057,000	

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But what about the federal law?

- In 1985, the North Slope Borough and NPR-A communities sued the state
- The plaintiffs wanted:
 1. A "rational process" for communities to apply for the grants
 2. Declaration that all NPR-A funds be automatically deposited into the special revenue fund and available for grants
 3. A system to separately account the receipt of NPR-A funds and to reconstitute the special revenue fund

SENATOR WILKEN emphasized the reference to a revenue fund as opposed to the Alaska Permanent Fund. The special revenue fund is not unlike the Alaska Mental Health Trust fund, he said.

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The Superior Court said...

Barrow v. State, Alaska Superior Court, Judge Walter Carpeneti, March 18, 1986

1. The State is required to establish a system to grant impact assistance to subdivisions most directly or severely impacted by NPR-A activity.
2. Automatic deposits into the Permanent Fund and General Fund violates the federal law.
3. Under the supremacy clause of the federal constitution, federal law controls.

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In 1986 HB 491 established the impact mitigation program and authorized the department to adopt regulations to set up criteria for awarding NPR-A grants.

The Legislature appropriated \$24.5 million to reconstitute the NPR-A special revenue fund.

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The Legislature listened

- Adopted legislation to implement the court findings (CS HB 491 (FIN), 1986)
 - Established the Impact Mitigation Program
 - Authorized DCCED to adopt regulations setting eligibility criteria for NPR-A grants
 - Appropriated \$24.5 million to the NPR-A special revenue fund

Judge Carpeneti ruled that the NPR-A special revenue fund be reconstituted. The \$24.5 million payment was in response to this ruling.

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Where did the money go?

First and foremost, grants to four impacted communities

After that...

1. 50 percent to the principal of the Perm Fund
2. .5 percent to the Public School Trust Fund
3. Remaining amounts to the General

Note: In 1999, HCS CSSB 157 (FIN) am H (1999) passed the Legislature and requires a 25% deposit to the Permanent Fund and allows a deposit to the Power Cost Equalization fund before the General Fund.

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Calculation by Alaska Statute (AS 37.05.530 (g))

Conforms with 1980 federal law which conflicts with our Alaska Constitution

NPR-A Federal Receipts	
\$31,623,800	
Grants to NPR-A Communities (DCCED Rec)	
(24,706,500)	
Net NPR-A Receipts	
6,917,300	
25% of Net Receipts to Permanent Fund	
(1,729,300)	
.5% of Net Receipts to Public School Trust	
(34,600)	
Available Receipts for PCE (May be approp.)	
5,153,400	
Remainder Available for General Fund if any	

(Example uses requested FY 06 numbers)

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Comparison of Two Methods

AK Constitution vs. AK Statutes

	AK Constitution Art. IX, Sec. 15	AK Statutes (per federal law)
NPR-A		
Fed Rcpts	\$31,623,800	\$31,623,800
25% of Gross Rcpts to Perm Fund	(7,906,000)	
.5% of Gross Rcpts to		

School Fund	(158,100)	
Grants to Communities (DCCED Rec)	(23,559,700)	(24,706,500)
25% Net to Perm Fund		1,729,300)
.5% Net to School Fund		(34,600)
Available for PCE (May Approp)	0.0	5,153,400
Available for GENERAL FUND	0.0	Remainder if any

Example uses requested FY 06 amount.

SENATOR WILKEN said this demonstrates the conflict between the Constitution and statute and the affect is "shorting my grandkids by 80 percent" of the amount stipulated by the Constitution. "The future is being shorted by this federal law" that provides the Permanent Fund could receive NPR-A receipts only after the requests of four communities That issue is not addressed in this bill, he said. It is a matter for future consideration.

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NPR-A Impact Mitigation Program

Alaska Constitution vs. Alaska Statute
Current Impact Mitigation Program
Importance of "Impact"
Senate Bill 171

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The Current Mitigation Program
Committee Substitute for House Bill 491 (FIN), 1986
U.S. Dept of Interior notifies Dept. of Commerce,
Community and Economic Development regarding possible
NPR-A Federal Receipts

Flow Chart demonstrating subsequent process as
follows: NPR-A Communities
1. Public Notice & Request for Applications

- DCCED
2. Requests
Review Committee
3. Evaluate & Recommend Proposals
Legislature
4. Commissioner Requests Funding
DCCED
5. OK Funding

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Where are the Communities?

[Map of NPR-A and surrounding area with four communities identified as follows:

Barrow

Population - 4,300

Median Household Income - \$67,000

City Responsibilities - Bingo, Community Center, Roller and Ice Rink, Teen and Recreation Center, Housing, City Hall, Little Dribblers, Taxis, Summer Youth Employment, Gravel Sales

City of Wainwright

Population - 531

Median Household Income - \$54,000

City Responsibilities - None listed

City of Atqasuk

Population - 218

Median Household Income - \$66,607

City Responsibilities - Bingo, Room Rentals, Community Center, Recreation, Cable TV

City of Nuiqsut

Population - 430

Median Household Income - \$48,036

City Responsibilities - Community Hall, Dock, Cable TV

Source: DCCED and Alaska Municipal League - Alaska Municipal Officials Directory

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Total Distribution to Date
...and FY07 projections

Bar graph showing amount of the Grant Awards in amounts between \$0 and \$50,000 for the years 1980 through 1986 and FY 87 through FY 08. A notation states: FY 06 is the requested amount. FY 07 is the projected amount from the proposed NPR-A summer lease sales.

Since 1980, a total of \$117,249,388 has been awarded to 4 communities.

(Total includes the FY 06 requested amount of \$24,706,500)

(FY 87 and FY 91 include 5 communities)

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A Perspective in Statewide Terms

What if ... the FY 06 requested grant amount was computed on a per person basis, what would that mean for other AK communities?

SENATOR WILKEN said that if broken down per capita, the current year distribution would represent \$4,500 per person. This is a grant program with no match. This analysis is the spirit of the law versus the letter of the law. He suggests that the spirit of the law was not to pass out this kind of money to a certain part of the population.

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SENATOR WAGONER asked about the federal side of ledger. He assumed that 50 percent of everything that's been divided on projects is federal and isn't touched by the formula.

SENATOR WILKEN replied, "We never see it. It just stays in the federal budget. We would only see it as it flows through federal appropriations. It stays in Washington and they send us 50 percent."

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The importance of the word "impact." Alaska law says the municipality may use NPR-A funds only for services to alleviate the impact of oil and gas development within NPR-A. According to regulations put in place, "impact" means "reasonably attributable to NPR-A oil and gas activities under the federal law."

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Where is NPR-A oil and gas activity?

Wainwright is 220 miles from NPR-A development, Barrow is 160 miles away, Atqasuk is 160 miles away and Nuiqsut is six miles down the road.

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Where is the NPR-A O&G activity?

[Map of northern Alaska showing NPR-A, the Alaska National Wildlife Refuge, the Trans-Alaska Pipeline, Native lands, certain oil fields and other points of reference.

Proximity to Current NPR-A Oil and Gas Activity

Wainwright - 220 miles

Barrow - 160 miles

Nuiqsut - 6 miles

Atqasuk - 160 miles

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And the main O&G Activity?

[Map showing area of North Slope O&G Activity between the eastern boundary of the National Petroleum Reserve - Alaska and the western boundary of the 1002 Area of ANWAR.

Highlighted are: Units, Drill Pad, Town Location, Dalton Highway, Trans-Alaska Pipeline, Oil Accumulations, and Gas Accumulations.

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Today "IMPACT" is rated as a minimum consideration

FY 01 NPR-A
Impact Mitigation Program

Basis for Recommendation
Description - 15 points
Impact - 50 points
Budget - 15 points
Readiness - 15 points
Capability - 5 points

FY 03 NPR-A
Impact Mitigation Program

Basis for Recommendation
Description - 30 points
Impact - 30 points
Budget - 20 points
Readiness - 15 points
Capability - 5 points

FY 05 NPR-A
Impact Mitigation Program

Basis for Recommendation
Description - 25 points
Impact - 25 points
Budget - 20 points
Readiness - 20 points
Capability - 10 points

As administered by the DCCED

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What does the law say?

- Federal Law - 42 U.S.C. 6508
 - In allocation of the NPR-A funds, the State shall give priority to use by subdivisions of the State most directly or severely impacted by the development of oil and gas leased in NPR-A.
- Alaska State Law - AS 37.05.530

- A municipality may use the NPR-A funds only for services to alleviate the impact of O&G development within NPR-A.
- Alaska Regulations - 3 AAC 150.050
 - Impact means an effect reasonably attributable to NPR-A O&G activity under 42 U.S.C. 6508.

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Regs Define Impact to Mean

Reasonably attributable to NPR-A O&G activities on the following (3 AAC 150.050):

- Population
- Employment
- Finances
- Social/Cultural Values
- Air & Water Quality
- Fish & Wildlife Habitat
- Ability to Provide Services
- Other Demonstrable Things

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Impact is the First Criteria

[Flow chart following a project request as follows.

```

  Impacted?
    Municipality?
    Directly or severely impacted?
    Reasonably attributable to...?
  No - Application Rejected
  Yes - Application Scored
    Description
    Budget
    Sustainability
    Capability
  No - Request not Funded
  Yes - Funded
    Appropriation by the Legislature]
  
```

The State shall give priority to subdivisions of the State most directly or severely impacted (42 U.S.C. 6508)

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An example for review

Wainwright Lagoon Boat Launch - \$525,000 - To replace or renovate the Wainwright Lagoon Boat Ramp

"Impact" on Population

Applicant

"Construction of the oil production infrastructure and pipeline has driven up the growth of population."

But...

The population of Wainwright has increased from 492 to 546 in 1990 - 2000.

"Impact" on Employment and Finances

Applicant

"Due to decline in property tax revenues from aging O&G infrastructure. The borough cannot financially help the community."

But...

The reduction in revenue is not due to NPR-A development.

In fact, NPR-A development will increase the borough revenues.

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...and to continue

Wainwright Lagoon Boat Launch - \$525,000

"Impact" on Social and Cultural Values

Applicant

"The social disruption prompted by oil and gas development affects many traditional activities."

But...

Wainwright is 220 miles from NPR-A development.

"Impact" on Fish and Wildlife Habitat

Applicant

"Access to hunting areas would change in oil development reduces the availability of subsistence resources."

But...

Past experience at Prudhoe Bay has shown that O&G activities and wildlife can co-exist.

Question: Were the listed impacts reasonably attributable to O&G development within NPR-A?

A review committee of three rated "Impact" only 20 points out of 100, the project was recommended.

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And another example...

City of Barrow Impound and Disposal Site Project - \$174,389

"Impact" on Visual Resources

Applicant

"Many of the abandoned vehicles that the City of Barrow has allowed people to dump on city land were brought to Barrow during the oil boom in the last quarter of the 20th century."

But...

The "oil boom" discussed was outside NPR-A. The impact must be "reasonably attributable" to oil and gas development within NPR_A.

No other impact was stated by the applicant.

Question: Was the listed impact reasonably attributable to O&G development within NPR-A?

The review committee rated "Impact" between 20 - 24 points out of 100; the project was recommended.

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And another one...

Roller Rink Renovation Feasibility Study - \$63,556 -
to identify the costs to renovate the Barrow Roller
Rink

"Impact" on Employment
Applicant

"Although an estimated 4,000 jobs exist on
the North Slope in the O&G industry only a
fraction are held by Inupiat."

But...

The vast majority of the jobs in the O&G
industry are not reasonably attributable to
NPR-A development.

"Impact" on Unemployment
Applicant

"As the economic benefits of O&G development
begin to decline, it leaves members less
able to survive..."

But...

The decline in O&G development is not in
NPR-A; this petroleum reserve is just
beginning to be explored.

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...and to continue

City of Barrow Roller Rink Renovation Feasibility
Study - \$63,556

"Impact: on Social and Cultural Values
Applicant

"The decline in subsistence resources due to
NPR-A O&G development negatively impacts the
Inupiat culture."

[2:04:53 PM](#)

But...

Studies are currently undertaken to
determine the impact to wildlife, if any, to
Barrow residents 160 miles from Alpine.

"Impact" on Public Services
Applicant

Although the population has had a small, net loss in the previous five years, the burden on the City of Barrow has not been reduced.

But...

Most of the workers connected with NPR-A development reside on the oil company's production sites and not in local towns.

Question: Were the listed impacts reasonably attributable to O&G development within NPR-A:

A review committee of three rated "Impact" between 15 - 25 points out of 100; the project was recommended.

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Additional Concerns

- Grants are all funded as capital projects and the dollars do not lapse (AS 37.25.020)
 - But less than 40% of the grants are for capital projects (the majority of grants are for operating expenses)
- Funds are approved before old grants for the same purpose are expended...
 - As an example of many grants, only 15% of an FY 04 group-operating grant of \$1,759,484 to survey wildlife is disbursed, but an FY 06 grant for \$2,461,368 is recommended for the same purpose.

[2:07:12 PM](#)

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To continue

- Few grants follow timelines
 - Only 40% of grant funds scheduled for completion on 6/30/05 has been spent
- Awards are not based on successful completion of previous grants
 - FY 00 - Nuiqsut Cultural Center Construction
 - \$939,800 - Not Started as of 4/26/05

But
FY 02 - Nuiqsut Cultural Center Operating -
\$288,000

These grant funds will be used for new projects
without notice to or approval from the Legislature.

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NPR-A
Impact Mitigation Program

Alaska Constitution vs. Alaska Statute
Current Impact Mitigation Program
Importance of "Impact"
Senate Bill 171

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Now is the time
To listen to the Alaska Superior Court (Barrow v.
State, March 18, 1986):

"The duty imposed by the federal government ultimately
falls upon the Alaska Legislature and it includes the
duties to examine the claimed needs of the
subdivisions arising from oil and gas development
impacts, to evaluate them and, if the claimed needs
are found to exist, to rate them in order of priority,
and to meet the out of NPR-A revenues."

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Legislature has authority...

1. To examine the claims for financial assistance
2. To evaluate and rank the grant requests
3. To determine the appropriate amount of NPR-A
revenue for use by impacted municipalities
4. To determine the specific projects that are
funded

Legal Services memorandum, March 18, 2005

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Senate Bill 171

"It is the intent of the legislature to provide temporary emergency financial assistance to municipalities for the purpose of meeting certain extraordinary operating and capital improvement expenditures necessitated by NPR-A oil and gas development." (Section 1. LEGISLATIVE INTENT in the proposed legislation.)

- Establishes a Legislative Impact Review Committee (composed of 3 finance members of each body)
 - Consults with DCCED and then approves and forwards grant recommendations to respective finance committees.

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And to continue

- Deposits to unique funds are based on the total federal NPR-A receipts
 - Perm Fund and Public School Trust
- Grants are awarded for one year, unless otherwise noted
- Lapse money is appropriated to the Permanent Fund, School Trust, or General Fund

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Now is the time...
To consider SB 171

...and establish a method to fairly allocate the financial benefits of NPR-A to all Alaskans while, at the same time, mitigate the direct impact of development on certain communities as required by federal law.

SENATOR WILKEN concluded the presentation.

[2:12:36 PM](#)

CHAIR GARY STEVENS recapped that under this proposal it would take two legislators from each body to agree so nothing could happen without the four votes out of the six members.

SENATOR WILKEN explained the proposed review committee is modeled after the legislative conference committee process. Two members of the majority and one member of the minority party from each body would serve and two affirmative votes from each body would be required to fund an award. This standing committee would review all requests and submit recommendations to the full finance committees for inclusion in the annual capital appropriation.

SENATOR WAGONER asked why there would be no federal participation since it's a federal program.

SENATOR WILKEN told him to write his Congressman. He continued to say, "I don't think there's any question that these communities are like any other community in our state. They get lots of federal help."

SENATOR ALBERT KOOKESH questioned whether there is a federal definition of "impact" or whether it had been entirely up to the Senate and House to determine the definition of "impact."

SENATOR WILKEN said that's how he viewed it and originally it appears that the Legislature asked the department to define "impact."

CHAIR GARY STEVENS asked how the proposal would handle grants differently than they are handled currently.

SENATOR WILKEN replied the department would send out notices as it does today asking whether the community has impact according to certain criteria. The department would handle the applications administratively. Following a filtering process, the applications would be submitted to the new committee. That committee would score the applications and report to the respective Finance Committees. "The final say on funding would be the Finance Committees in the Capital Budget."

[2:16:26 PM](#)

SENATOR KOOKESH asked if there was ever any leftover money.

SENATOR WILKEN acknowledged that was a good question and he would get the numbers, but he didn't think any money had ever dropped to the General Fund.

[2:17:51 PM](#)

CHAIR GARY STEVENS called a brief at ease from [2:18:45 PM](#) to [2:19:15 PM](#)

CHAIR GARY STEVENS called Susan Burke forward.

[2:19:27 PM](#)

SUSAN BURKE, Attorney representing the North Slope Borough, said she would like to speak to some of the legal issues associated with the NPR-A grant program - particularly as it relates to SB 171.

MS. BURKE continued:

There is one primary source and one secondary source of the legal issues. The primary one of course is the federal statute that Senator Wilken pointed out in his presentation. As he suggested to you, you have all sworn an oath to uphold the Alaska Constitution. ...You've also sworn to uphold the U.S. Constitution. The reason I bring that to your attention is because of the provision in the U.S. Constitution called the Supremacy Clause. It says if any federal law is supreme, any state law or state constitution notwithstanding. So to the extent that there are conflicts between the federal law that has been described to you and provisions of our state constitution such as the Permanent Fund minimum 25% deposit, the federal law takes precedence. Judge Carpeneti ruled that, the Attorney General's Office has opined to that effect and Legislative Legal has opined to that effect as well.

I want to talk a little bit about the Permanent Fund issue and I want to talk about some of the other issues that relate to the grant process and the scope of the grants as it relates to the federal act.

...Judge Carpeneti clearly ruled that whatever percentage amount you apply ... that percentage has to be applied after all the municipal grants have been

taken care of. That's what he ruled. I believe he was correct. The State didn't appeal his ruling and as far as I'm concerned, is bound by that ruling. ... I don't think there's very much more that can be said about that except as Senator Wilken told you. If you're not happy with it you must write your Congressman about it because that's what the federal law requires and that's how our local court has interpreted the federal law's requirement. I view that as a closed issue.

Once the municipal grants have been dealt with, can you appropriate extra money to the Permanent Fund? Sure you can but whatever percentage you choose, it has to be after all the municipal grants have been considered and the appropriations dealt with.

MS. BURKE passed out a sectional analysis pointing out the legal problems with SB 171 - particularly as it relates to the scope of the grants. [Copy in file.]

The federal law is pretty clear that in allocating the state's share of these NPR-A revenues it's 50%. There's a mandatory duty to give priority to the impacted municipalities. ... This mandatory duty includes the duty to examine the claimed needs of the subdivisions, to evaluate them, and if they are found to exist - to rank them in order of priority.

If the needs are found to exist, then there is a duty to satisfy them out of NPR-A funds regardless of other perceived needs there are in other areas of the state. Regardless of one's desire to put more money into the Permanent Fund. Again because this is what a federal law requires.

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Section 1 is intent language and we all know intent language isn't binding as such but it would at least be used as a court interpreting other substantive provisions of the bill. The intent language says it's the intent to provide temporary emergency financial assistance for the purposes of meeting extraordinary operating and capital improvement expenditures necessitated by NPR-A development.

I'd like to say two things about that. First, from what Senator Wilken has told you, this is language that was drawn almost word for word from impact legislation in the mid 1970s. No federal law within that, that is something that was entirely within the Legislature's discretion to formulate what the money would be used for.

In this instance we have a federal act that provides for very broad uses of NPR-A money - planning, construction maintenance and operation of essential public facilities and other necessary provisions of public service.

To the extent that SB 171 is intended in its substantive provisions to narrow the permissible uses under the federal act, I would contend it's in conflict with the federal act. The permissible uses that can be put to NPR-A funds can't be any narrower under state law than they are under the federal act.

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Section 2 establishes the legislative committee. That's perfectly fine. I would suggest a couple of things to you though. I don't think future Legislatures wouldn't necessarily be bound by what's in essence an organizational provision. There's nothing in the provision that sets up the legislative committee that tells it the rules it's supposed to follow. We know there are rules that must be followed from Judge Carpeneti's decision. The duties of examining the claimed needs, evaluating them, ranking them in order of priority and if the committee finds that they have been met, to recommend to the Finance Committees that they be funded. The Legislature is just as much bound by the requirements of the federal act as the department is in its review of these grants.

I would suggest to you - if you're going to switch the initial review process from the Executive Branch to the Legislative Branch - [that] you need to have the standards by which the Legislative Branch is going to evaluate those grants in the statutes somewhere.

Section 3 makes several changes in the existing statute that governs the allocation of NPR-A revenues. I didn't understand what was contemplated. On page 3, lines 3-7 - reading it with the new language and the existing language - it talks about the department adopting regulations under which municipalities that are most directly and severely impacted by NPR-A development.

That does not track the federal statute. The federal statute says, "directly or severely." To me those are two very different things. At a minimum, if that new language were to stay in there, I think to be consistent with the federal act those two words would have to be in the alternative rather than the cumulative as they are here.

There's an additional one that says "or that demonstrate extraordinary municipal and educational operating expenditures attributable to oil and gas development in NPR-A that are beyond the municipalities reasonable capability to meet from growth in receipts from current municipal revenue sources."

I'm not sure what the intent here is. If the intent was to limit municipal grants from all sources to address extraordinary municipal and educational operating expenditures, I would suggest that is in conflict with the federal act. If you look at the kinds of things the federal act says that municipalities and the state for that matter, can use NPR-A revenues for it's very, very broad - planning, construction and maintaining essential public facilities and the provision of necessary services.

To the extent that's it's intended to be an alternative to that, I don't think you need it because the federal act is broad enough to cover not only extraordinary municipal and educational operating expenditures, but regular ones if they can be shown to have reasonable connection with impacts from NPR-A development. While we're looking at the word "development" and in looking at the slides Senator Wilken prepared, it seemed to be looking at actual wells and actual drilling.

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One of the arguments the state made in the 1985 litigation - which I was involved in representing the North Slope Borough - the state said, 'These municipalities aren't entitled to any money until there's actually development and commercial production from the NPR-A. Judge Carpeneti said, 'No, development can mean many things.' Furthermore, if you only look at current development you are also misconstruing what the federal statute says. Remember, one of the things you can use it for is planning. To me planning suggests that you're looking forward to future development. Development isn't just sucking oil out of the ground from oil well. It's seismic, it's exploration - there are all kinds of things that go on throughout the whole region that can have impact far in advance of actual development and commercial production.

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On page 3, lines 21 - 27 the bill would delete the language that in my view is what provides compliance with the federal act under the current law. If you take that out, I'm not sure what you're left with in terms of compliance. It deletes the language that there be a requirement to give priority in the allocation of grants to municipalities that are experiencing or will experience the most direct or severe impact from NPR-A development. That's straight out of the federal act. That's a mandatory trust responsibility. These are trust funds. It's like the Mental Health Trust in that sense.

Secondly, it would delete the requirement that the department shall fund all meritorious grant applications out of the money appropriated to it. Judge Carpeneti said that among the mandatory trust duties that the State of Alaska including the Legislature has is that once you go through the evaluation process and you determine that a need is there and has merit, there's a duty to fund it. ... If you think it's unfair, again, it's a write your Congressman issue. That's what the federal act requires. You get this money in from NPR-A, but it's subject to this trust condition.

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Section 4, page 4, lines 23 -2 4 would add a provision to existing law to prohibit municipalities from using any NPR-A money for basic government operations. That's not defined in the bill and I'm not sure what was intended to be covered. To the extent that's it's just basic government operations, I would suggest that a prohibition against use of NPR-A funds for those purposes would again be in conflict with the federal act, which permits NPR-A funds to be used for planning, construction of essential public facilities or any necessary provisions of public service. To me that sounds a lot like basic government operations. Again, there's going to have to be some reasonable demonstration of cause and effect between NPR-A activities.

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Section 5 ... says grants may not be used directly or indirectly to reduce current municipal tax rates. I think that is very likely in conflict with the federal act as well. There's nothing in the federal act that says, 'We're only going to allocate NPR-A funds to poor communities. We're only going to allocate NPR-A funds for things that they absolutely cannot afford otherwise. It's an impact program and if the grant request is reasonably related to impacts from NPR-A activity there's a duty to fund them and I honestly don't know how you're going to tell whether something is indirectly reducing the mil rate. I think what you're going to end up with is municipalities that are otherwise eligible to apply for NPR-A funds never to be able to reduce their mil rate under any circumstances for fear they'll lose their eligibility for NPR-A grants. So I'm not sure in practice how that's going to work.

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[Section 6] The last thing I want to mention, and this is the only way I read SB 171 that the Permanent Fund issue is directly implicated and that has to do with if you've got more meritorious requests than you've got NPR-A money to cover them then you ratchet

everything down on a pro-rata basis. That, to me, is clearly in conflict with the federal law because you're putting the impact grants for municipalities on an absolutely equal footing - that's what pro-rata means - with the Permanent Fund deposits in the Public School Trust Fund deposits and the federal law clearly tells us that the municipal grants have to be given priority over any other state uses.

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MS. BURKE concluded her remarks saying she is not conversant with particular grant programs on a day-to-day basis. Although she couldn't speak to particular grants, she could address legal questions.

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SENATOR WAGONER questioned whether she said municipalities could use the funds to do seismic and exploration.

MS. BURKE clarified her point was that the area of potential impact is broader than the area in which an oil well is located or drilling occurs.

SENATOR STEDMAN remarked that under the strict interpretation, not much could be excluded.

MS. BURKE disagreed saying reasonable minds could conclude that any number of things could be excluded because they have nothing to do with NPR-A impact. However, without looking at individual grant applications she couldn't make specific comments.

SENATOR STEDMAN opined that in reviewing lists from previous years, it appears as though the system has been abused.

MS. BURKE said she couldn't comment because it isn't a legal issue. He was referring to judgments the department made.

SENATOR STEDMAN stated that it's apparent that something needs to be done. He would expect to see applications equivalent to available funds and that's not the case.

MS. BURKE disagreed saying there is no obligation for applications to meet a particular percentage of the total but because the state is acting as a trustee, it must make a good faith evaluation of the projects. The uses of the funds under

the federal law are very broad and if that's unacceptable then it's a matter of going to Congress to carry on the discussion. "Having Congress enact this law and impose upon you - this trust obligation - you're stuck with having to fulfill it."

SENATOR KOOKESH asked if the state or an affected municipality would have to go to court to get a clarifying interpretation since these are federal lands and it's a federal program.

MS. BURKE agreed they are federal lands and that's why the federal government keeps the revenue. She explained that under the old federal mineral-leasing act the state received 90 percent of the revenue, but for NPR-A the state receives just 50 percent of the revenue. She suggested that if the Legislature were to enacted new NPR-A allocation legislation that the communities believed to be in violation of the trust obligation it's likely that there would be a lawsuit.

CHAIR GARY STEVENS asked for a brief description of the trust agreement.

MS. BURKE replied this is a trust obligation that was imposed by it is receiving the federal money. Certainly it's not absolutely clear and that's the reason behind the 1985 court case. Judge Carpeneti did put some sideboards on it but every question was not answered and it's still not absolutely clear. However, from the community perspective, the program has been working the way they believe Congress intended.

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CHAIR GARY STEVENS noted there were no further questions or testimony. He held SB 171 in committee.

HB 229-REINSTATEMENT OF NATIVE CORPORATIONS

[2:47:39 PM](#)

CHAIR GARY STEVENS announced HB 229 to be up for consideration.

PAUL LABOLLE, Staff to Representative Richard Foster, Sponsor, described the bill as a one-time window for village Native corporations to reincorporate after involuntary dissolution. If a corporation doesn't reincorporate, it wouldn't own the same assets granted in the Native Alaska Lands Claims Settlement.

CHAIR GARY STEVENS noted there were no questions and held HB 229 in committee.

There being no further business to come before the committee, Chair Gary Stevens adjourned the meeting at [2:49:10 PM](#)