

MINUTES
SENATE FINANCE COMMITTEE
April 8, 2005
9:01 a.m.

CALL TO ORDER

Co-Chair Green convened the meeting at approximately 9:01 AM.

PRESENT

Senator Lyda Green, Co-Chair
Senator Gary Wilken, Co-Chair
Senator Con Bunde, Vice Chair
Senator Bert Stedman
Senator Lyman Hoffman
Senator Donny Olson

Also Attending: SENATOR BEN STEVENS; REPRESENTATIVE RALPH SAMUELS; MARY JACKSON, staff to Senator Tom Wagoner; JOHN KUTERBACH, Air Permits Program Manager, Division of Air Quality, Department of Environmental Conservation; KURT FREDRIKSSON, Commissioner, Department of Environmental Conservation; DAN EASTON, Director, Division of Water, Department of Environmental Conservation; EDDY JEANS, Director, School Finance Division, Department of Education and Early Development; DEAN GUANELI, Chief Assistant Attorney General, Legal Services Section - Juneau, Criminal Division, and Office of Special Prosecutions and Appeals, Department of Law;

Attending via Teleconference: From an offnet location: DAN SEAMOUNT, Commissioner, Alaska Oil and Gas Conservation Commission; MIKE POLLEN, President, NTL Alaska, Inc.; STEVE BORELL, Alaska Miners Association; EARL HUBBARD, Vice President, Trident Seafoods Corporation; From Fairbanks: CAMERON LEONARD, Department of Law, testified via teleconference from Fairbanks; From Ketchikan: DICK COOSE, Concerned Alaskans for Resources and Environment (CARE); From Anchorage: STAN JONES, Legislative Affairs Coordinator, Prince William Sound Regional Citizens' Advisory Counsel; From Kenai: MIKE MUNGER, Executive Director, Cook Inlet Regional Citizens' Advisory Counsel

SUMMARY INFORMATION

HCR 2-IN-STATE NATURAL GAS NEEDS

The Committee heard from the sponsor and the resolution was

reported from Committee.

SB 144-EMISSION CONTROL PROGRAM PERMITS/REGS

The Committee heard from the sponsor and the Department of Environmental Conservation. The bill was reported from Committee.

SB 103-OIL & GAS: REG. OF UNDERGROUND INJECTION

The Committee heard from the Alaska Oil and Gas Conservation Commission. The bill was reported from Committee.

SB 110-POLLUTION DISCHARGE & WASTE TRMT/DISPOSAL

The Committee heard from the Department of Environmental Conservation, the Department of Law, advisory committees, and other interested parties. The bill was held in Committee.

SB 155-APPROP: SCHOOLS/UNIV/VIROLOGY LAB/MUSEUM

The Committee heard from the sponsor and the Department of Education and Early Development. A committee substitute was adopted, and four amendments were considered with two adopted and one amended and adopted. The bill was reported from Committee.

SB 70-CRIMES INVOLVING CONTROLLED SUBSTANCES

The Committee heard from the Department of Law. A committee substitute was adopted and the bill was held in Committee.

#HCR2

[9:13:45 AM](#)

HOUSE CONCURRENT RESOLUTION NO. 2

Urging Governor Murkowski to take quick action to conduct, approve, or sanction a study of in-state natural gas needs and take-off points for intrastate use of natural gas transported in a North Slope natural gas pipeline.

This was the first hearing for this resolution in the Senate Finance Committee.

REPRESENTATIVE RALPH SAMUELS, sponsor of the bill, testified that on February 9, 2005, the federal Energy Regulatory Commission ruled that before an open season design or construction could begin on an Alaska natural gas pipeline, a study of in-state needs must be

conducted by the State. This resolution provides "encouragement and support" to Governor Murkowski to undertake this effort.

Co-Chair Green understood this resolution received a hearing in the Senator Resources Committee.

Representative Samuels affirmed.

Co-Chair Green asked if any unresolved issues or questions exist.

Representative Samuels answered there were none. He noted that all members of the House of Representatives signed on as co-sponsors of this resolution. Development of the State's natural gas resources would benefit all communities, regardless of their location within the State. Alaskan's would have access to natural gas.

[9:15:13 AM](#)

Co-Chair Green asked if the sponsor had considered whether this resolution should be distributed to other parties or interest groups and whether doing so would provide any influence.

Representative Samuels replied that none were identified. The resolution is directed to the Murkowski Administration. He offered to forward the resolution to private companies or other interest groups if the Co-Chair requested.

Co-Chair Green indicated this would not be necessary. She has heard significant support for this resolution.

[9:16:20 AM](#)

Co-Chair Wilken offered a motion to report the resolution from Committee with individual recommendations and accompanying fiscal note.

There was no objection and HCR 2 MOVED from Committee with a zero fiscal note #1 from the Department of Natural Resources.

#SB144

[9:16:44 AM](#)

CS FOR SENATE BILL NO. 144(RES)

"An Act relating to regulations, definitions, and permits under the emission control permit program; and providing for an effective date."

This was the first hearing for this bill in the Senate Finance Committee.

MARY JACKSON, staff to Senator Tom Wagoner, testified that two years prior, the "current reform package" was passed at the request of Governor Murkowski. One portion of that package was intended to streamline the air permit process. However, some deficiencies were discovered. In order to comply with federal regulations, this legislation provides definitions identical to federal definitions.

[9:17:56 AM](#)

Co-Chair Green understood this legislation would bring State statute into compliance with federal regulations on air primacy and "air permitting".

Ms. Jackson affirmed.

[9:18:20 AM](#)

JOHN KUTERBACH, Air Permits Program Manager, Division of Air Quality, Department of Environmental Conservation, testified he was available to answer questions on this technical bill. He stated this legislation adjusts the definitions adopted two years prior to comply with federal regulations.

[9:18:57 AM](#)

Co-Chair Green asked the consequence if this legislation does not pass into law.

Mr. Kuterbach replied that the Department would be unable to obtain approval of the permitting process from the federal Environmental Protection Agency (EPA). The "critical deficiency" is that the current State definitions identify "who needs an operating permit more narrowly than the federal regulations require." The federal regulations require that multi-stationary sources under single ownership be combined in determining whether a permit is needed. Alaska laws consider each source individually.

[9:19:52 AM](#)

Co-Chair Green noted that with the exception of a definition change, this legislation amends few words of the current statute. She asked for an explanation of the repeal provision contained in Section 8.

Mr. Kuterbach explained the "repeal is the definition of modification." Modification is used "very precisely" in "several federal programs that we're required to implement." These differ slightly for each program. The initial intent was to adopt the correct definition in statute, which was possible for one of the federal program, but not the others. This legislation proposes repealing the definition from statute; another section of the bill would require the Department to adopt language in regulations consistent with the federal program implemented.

[9:20:59 AM](#)

Co-Chair Green noted the July 1 2005 effective date and asked if the Department would be prepared to implement the provisions of this legislation by that time.

Mr. Kuterbach assured this date was adequate.

[9:21:18 AM](#)

Ms. Jackson stated that initially the Department had requested authority to adopt definitions. Upon discussion, it was determined that establishing the definitions in statute was more appropriate.

[9:21:40 AM](#)

Senator Olson asked if any party in the private sector has commented on this legislation.

Ms. Jackson informed that the Department sent letters to parties that would be affected by this legislation, particularly those who hold mining permits. No responses were received and no concerns were voiced. She personally contacted the Alaska Oil and Gas Association and the Alaska Mining Association, and was told the organizations had no concerns.

Co-Chair Green stated that the mining association has a history of providing input on legislation affecting its membership.

Senator Olson clarified the Alaska Mining Association has not voiced any objection to this legislation.

Ms. Jackson affirmed.

[9:22:48 AM](#)

Co-Chair Wilken offered a motion to report the bill from Committee with individual recommendations and accompanying fiscal note.

Co-Chair Wilken objected to the motion to pose a question. He asked if Mr. Kuterbach is responsible for all air permits issued by the State.

Mr. Kuterbach answered he is.

Co-Chair Wilken asked if the witness is familiar with the situation involving Husky Lumber in Kenai.

Mr. Kuterbach was involved in resolving the issue.

Co-Chair Wilken asked if he was satisfied with the analysis of that issue and the resolution reached.

Mr. Kuterbach was satisfied the issue has been resolved, although was "sorry that it turned out the way it did in the initial stages and that we didn't catch it earlier."

Co-Chair Wilken appreciated the involvement of the witness and the commissioner in resolving the issue.

Co-Chair Wilken removed his objection.

[9:24:01 AM](#)

Without objection SB 144 MOVED from Committee with zero fiscal note #1 from the Department of Environmental Conservation.

[9:24:30 AM](#)

[Pause on the record.]

#SB103

[9:24:56 AM](#)

SENATE BILL NO. 103

"An Act relating to regulation of underground injection under the federal Safe Drinking Water Act; and providing for an effective date."

This was the first hearing for this bill in the Senate Finance Committee.

DAN SEAMOUNT, Commissioner, Alaska Oil and Gas Conservation Commission, testified via teleconference from an offnet location

and referenced a handout titled, "Alaska UIC Issues, What we do. What are the challenges? What are the options?" [Copy on file.] He stated this outlines the bill.

Co-Chair Green requested the witness overview the information.

9:26:39 AM

Mr. Seamount stated the second page of the handout summarizes the issue. This page reads as follows.

AOGCC - EPA UIC Situation

- Introduction
- UIC and other USDW Responsibilities
- Senate Bill 103
- The problem to solve
 - UIC Well Classes
 - Alaska UIC situation - redundancy, confusion, time, \$\$
- Options/Solutions

Mr. Seamount testified this bill would allow the State, and specifically the Alaska Oil and Gas Conservation Commission (AOGCC), to obtain partial primacy for oversight of Class 1 type of disposal wells. There are only seven in the State. Currently the AOGCC has oversight of the approximately 1,155 Class 2 wells, which are constructed almost identically to Class 1 wells and are located in the same areas. The agency has inspectors on site and this legislation would not cost the State additional funds.

Mr. Seamount remarked that the current "redundant" oversight results in confusion and requires time and money of both industry and government. With the passage of this legislation, one agency would provide oversight and issues decisions as to the types of fluids placed in these wells.

Mr. Seamount informed that a task force has been formed with the federal Environmental Protection Agency (EPA) to address the transfer of this program. The EPA is "generally on board with this idea".

Co-Chair Wilken directed attention to the photograph on the third page of the handout showing caribou grazing alongside the Alyeska Pipeline. This picture counters the argument about "caribou and pipelines not getting along."

Senator Bunde told of 16 hunting trips he has made to Prudhoe Bay

and reported that on each visit he has seen caribou "standing in the shade" of the pipeline.

Senator Olson asked the consequences if this bill fails to pass in to law.

[9:30:43 AM](#)

Mr. Seamount replied that without enabling statute, the agency could not assume operation of the program. The legislation would be reintroduced the following legislative session.

Senator Olson asked how this would impact industry operations.

[9:31:13 AM](#)

Mr. Seamount responded that generally EPA approval is significantly slower than AGOCC approvals. The confusion about allowable fluids for the different well classes would continue. As an example, fluids could not be deposited into a Class 2 well unless "they come from down the haul". Situations exist in which a "cement job is being run on a well" and the deposit of some materials could be made in a Class 2 well but other materials must be deposited into a Class 1 well. Exactly the same fluids have to go down different wells and often these wells are located near each other.

[9:32:25 AM](#)

Senator Olson asked the industry opinion of this bill.

[9:32:34 AM](#)

Mr. Seamount replied that the Alaska Oil and Gas Association has testified in support of this bill at hearings held in other committees.

[9:32:47 AM](#)

Co-Chair Green asked how the original "misclassification" of these wells came about.

[9:33:01 AM](#)

Mr. Seamount recalled that the passage of the federal Safe Water Drinking Act in approximately 1976 established five classes of wells. He noted that details of these classifications are contained in the aforementioned handout. The federal government had determined that class 2 wells used in the oil and gas industry

could be managed by the State; the federal government must manage the remainder of well classifications.

Co-Chair Green asked about any opposition to this bill.

Mr. Seamount had heard of no opposition.

Co-Chair Green noted that no one had signed up to testify.

[9:34:26 AM](#)

Co-Chair Green noted the letter of intent adopted by the Senate Resources Committee.

Mr. Seamount had no comment on the letter of intent.

Co-Chair Green highlight that the letter of intent relates to the oversight of other class wells in the future by appropriate state agencies.

[9:35:38 AM](#)

Co-Chair Wilken offered a motion to report the bill from Committee with individual recommendations, accompanying letter of intent and accompanying fiscal notes.

There was no objection and SB 103 MOVED from Committee with the Senate Resources Committee letter of intent dated March 7, 2005, fiscal note #1 for \$25,000 from the Department of Administration, and zero fiscal note #2 from the Department of Natural Resources.

[9:36:33 AM](#)

[Pause on record.]

#SB110

[9:37:26 AM](#)

SENATE BILL NO. 110

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

This was the first hearing for this bill in the Senate Finance Committee.

KURT FREDRIKSSON, Commissioner, Department of Environmental Conservation, read testimony into the record as follows.

Mr. Chairman, members of the Committee, I am pleased to testify today in support of Senate Bill 110, National Pollutant Discharge Elimination System (NPDES) Assumption. My testimony will focus on why Governor Murkowski and I believe passage of SB 110 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.

The federal Clean Water Act requires that all discharges to surface waters must be permitted under the National Pollutant Discharge Elimination System (NPDES) permit program to ensure water quality protection. Community sewage treatment facilities, construction of storm water drains on more than one acre, seafood processors, log transfer facilities, ballast water discharge facilities, mining operations, oil and gas operations, and fish hatcheries all must have NPDES permits to operate. There are currently over 2300 regulated permit holders in Alaska under the NPDES permit program.

The federal Clean Water Act is founded on the principle that the rights of states to manage water quality within their borders should be protected. The federal law is designed to accomplish uniform environmental quality goals nationwide using pollution controls tailored to each state's unique circumstances. The Clean Water Act includes provisions for a state to assume primacy from the federal Environmental Protection Agency (EPA) for issuing NPDES permits for discharges to surface waters within state's borders. In states that do not assume primacy, EPA runs the NPDES program.

The mission and duties of the Department of Environmental Conservation to adopt and enforce standards for the control of water pollution is clearly spelled out in Alaska law (AS 44.46.020). However, like four other states, Alaska has never pursued the opportunity provided by the federal Clean Water Act to shape the NPDES water pollution control permit program to fit our state's unique circumstances. SB 110 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.

Without primacy, the federal Environmental Protection Agency (EPA) is the water authority in Alaska. 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 has an ambitious agenda for the responsible development of Alaska's natural resources. The Governor has pledged to improve permit efficiency without a rollback of environmental protection. However, as long as EPA runs the NPDES permit program in Alaska, DEC simply cannot fix what we don't control. We can't establish appropriate performance measures with the legislature for timely permit actions, we can't establish the state's annual permit and environmental protection priorities, and we can't offer a timely appeal process that allows conflicts to be judged by Alaskans in Alaska.

A state run NPDES permit program won't be free. When EPA issues permits in Alaska the costs are borne by the US 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.

SB 110 is an important investment in the stewardship of Alaska's environment and development of our natural resources. It provides DEC with the human and fiscal resources to reform the NPDES permit program to better align regulatory requirements with real Alaskan conditions and the real risks to Alaska's water quality. A state permit program will be based on Alaska's priorities - not national "one-size-fits-all" priorities. DEC's permit priorities, level of effort and performance measures would be subject to annual review and approval by Alaskan's through their elected officials in the state Legislature.

Federal programs do not adapt easily to Alaska. National goals do not always address our greatest needs. A state run program will place permit decision makers closer to the Alaskan public and regulated permit holders. Alaska's elected representatives have made clear our commitment to environmental protection and our responsibility to develop our resource development, we must accept responsibility for managing our water resources. That means assuming primacy for the MPDES program.

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's time to invest in the development of Alaska's resources by taking responsibility for protecting Alaska's environment from the federal government. I respectfully ask that you vote to pass SB 110.

[9:44:18 AM](#)

Senator Bunde requested additional information regarding the fiscal notes.

[9:44:32 AM](#)

DAN EASTON, Director, Division of Water, Department of Environmental Conservation, read testimony into the record as follows.

Senate Bill 110 is a result of years of effort starting with Senate Bill 326.

Senate Bill 326 was enacted in 2002 and effective January 1, 2003. It directed DEC to evaluate the potential benefits and consequences of the state assuming primacy for the NPDES program. The Department released its report in January 2004 recommending that the State seek program primacy.

Last year, the Legislature passed House Bill 546 directing the State to apply for partial NPDES primacy just for the timber sector. The fiscal note with the bill provided a full-time position and a combination of state and one-time federal grant funds for the effort. As it turns out, DEC has assumed a more prominent role in permitting timber operations, but we have been notified by EPA that the "partial primacy" rules won't allow us to pursue primacy just for the timber sector.

In November 2004, DEC formed the NPDES Primacy Work Group, an advisory workgroup tasked with examining the concerns, costs and benefits of state primacy specifically from the permittee perspective.

The work group included members from each major NPDES permittee groups:

The Alaska Oil and Gas Association,
The Alaska Forest Association,
The Alaska Miners Association,
The Associated General Contractors of Alaska,
The Pacific Seafood Processors Association,
The Alaska Water and Wastewater Management Association, and
The Alaska Native Tribal Health Consortium.

Public notice was provided and the meetings were open to the public. Workgroup proceedings, findings and recommendations were captured in a report completed in January of this year.

In the end, support for state assumption of the NPDES program varied between permittee sectors. Certain sectors saw substantial benefit and strongly supported moving ahead. Others saw less benefit, but would not object to state primacy. All sectors agreed that certain elements should be incorporated into a state program.

Senate Bill 110 is the product of the hard work of our staff and many other Alaskans all focused on the effort that started with Senate Bill 326 over two years ago. The bill reflects the recommendation of the NPDES work group that the State pursue primacy. It also reflects the recommendations of the work group as to specific characteristics that should be incorporated into the program design.

I'd like to conclude with a few notes on the fiscal note... The fiscal impact of primacy raises the two basic fiscal questions of: "How much?" and "Who pays?"

Starting with the question of "How much?"... The Department's budget currently includes about \$3.3 million and 30 staff devoted to activities that would contribute to, and would be considered a part of, a state NPDES permitting program. (Those figures include the resources provided last year for the timber primacy effort.)

The Senate Bill 326 report took a hard look at what additional resources the state would need to operate an NPDES program. Resource requirements were estimated using EPA "workload

models" as well as information from other state programs. This analysis arrived at a final figure for total program resources, including the \$3.3 million and 30 positions already devoted to NPDES work, of \$4.8 million and 43 positions.

EPA includes whether a State has devoted sufficient resources to the program as one consideration in whether to approve an application for state primacy. Preliminary indications from EPA are that the proposed budget is sufficient.

Bridging the gap between current resources (\$3.3 billion and 30 positions) and what is required to operate a state program (\$4.8 million and 43 positions) will require an additional \$1.5 million and 13 new positions. Those are the new resources included in the fiscal note.

As for the question of "Who pays?"... The fiscal note reflects the current resource agency fee policy of charging permittees for "direct costs." This policy was established in statute by House Bill 361 in the year 2000. Permittees already pay substantial fees for the state portion of the shared EPA/DEC program. With primacy, our direct costs increase and the fees paid by permittees will increase on average by a factor of 1.8.

The distribution of funding sources reflected in the fiscal note also reflects the fact that the State will not receive any additional federal grant dollars with primacy. We get as much federal funding now, as we would get with primacy.

The result of adding the new resources provided by the fiscal note to the current state program will be a primacy program that is funded roughly half (44%) through a combination of permitting fees and federal grant funds, and half (56%) through general funds.

We have come a long ways over the last two years. The promise of State primacy is great. We would welcome the opportunity to create a truly all-Alaskan water permitting program as envisioned by Senate Bill 110.

[9:51:20 AM](#)

Senator Bunde thanked the Department for its efforts in support of achieving State primacy.

Senator Bunde noted that revenue is anticipated to begin in FY 08

and continue to increase through FY 11. He asked if the revenue would continue to increase beyond that date and that the permit fees would provide adequate funding for the 13 new positions.

[9:52:07 AM](#)

Mr. Easton predicted that unless a statutory change is made to the resource agency fee policy, the \$300,000 shown as program receipts would be the "steady" revenue amount generated from this program.

Senator Bunde remarked that the policy of the legislature is that license and permit programs be self-supported. The companies receiving these permits should make a "healthy profit" and therefore general funds should not subsidize these efforts.

[9:53:21 AM](#)

Senator Hoffman pointed out that the \$874,200 cost of FY 06 reflected in the Department of Environmental Conservation fiscal note, dated 4/21/05, would fund the program for six months. The annual cost would increase to \$1.5 million.

[9:53:38 AM](#)

Senator Bunde agreed and noted personnel services cost of \$441,100 for FY 06.

[9:54:06 AM](#)

Senator Stedman commented that large dollar amounts receive attention. He requested a breakdown of the total revenue and the "draw" on general funds for this proposal to demonstrate the division of expenses between industry and the State.

[9:54:48 AM](#)

Mr. Easton stated that two issues are involved, one being the fiscal note, which shows an incremental increase over the current program. He did not have the information Senator Stedman requested. He informed that once the transition of primacy is completed and the maximum program receipts were collected, the annual operation of the program would be \$4.8 million. Of that amount, 16 percent would be funded from fees, 28 percent from federal fund sources and 56 percent would be general funds. He noted these figures differ from those reflected in the fiscal note.

Co-Chair Green asked if this is "just the increment".

Mr. Easton replied this is the total program.

[9:56:14 AM](#)

Senator Hoffman questioned the report finding that the operating cost of the program would be \$4.8 million and require 43 positions and the fiscal note listing of the program cost at \$1.5 million and 13 positions. He asked how the proposed reductions were accomplished.

[9:57:06 AM](#)

Mr. Easton responded that the Department currently has 30 positions and \$3.3 million appropriated to the State's existing water permitting activities and that would subsequently be devoted to the new primacy program. The fiscal note reflects the additional 13 positions and \$1.5 million necessary to total the 43 positions and \$4.8 million required to operate the program.

[9:57:45 AM](#)

Co-Chair Green suggested that comparison would be easier if the fiscal note contained a column showing the current increments for FY 05.

[9:58:12 AM](#)

Co-Chair Wilken noted strong support for this bill and asked if any opposition has been raised.

[9:58:36 AM](#)

Mr. Fredriksson replied that questions have been posed, although disapproval has not necessarily been voiced. The questions have related to the fiscal note and how the figures reflect the total program.

[9:59:03 AM](#)

Mr. Easton was hesitant to represent other positions. He had heard recommendations to amend the bill offered, but had not heard opposition.

[9:59:29 AM](#)

Co-Chair Green noted that several people were signed up to testify.

[9:59:36 AM](#)

Co-Chair Wilken understood that the EPA imposes fines for violations that total an average of approximately \$500,000 per year. While he hoped that once the State assumes primacy, compliance would improve and fines for violations would decrease; however the fines are not reflected in the Department of Environmental Conservation fiscal note. He understood the revenues would be deposited to the general fund but the amounts should be shown as an offset to the program costs.

[10:00:21 AM](#)

Mr. Easton responded that as program compliance improves, the amount of fines for violations collected is reduced. Fines generated are difficult to identify as a revenue source in a fiscal note, although those revenues are worth consideration.

[10:00:50 AM](#)

Co-Chair Wilken interpreted the fiscal note to indicate the Department did not anticipate any fines. Enforcement activity should be reflected in the fiscal note and would assist in passage of this bill. The concern over the high cost of the proposed program and the fiscal note should reflect that the State and not the federal government would receive the fines.

[10:01:31 AM](#)

Mr. Easton replied that the revenue collected from the fines would be deposited into the general fund. The fines are not accounted as program receipts and are therefore not included in the fiscal note.

[10:01:54 AM](#)

Co-Chair Wilken countered that the fiscal note predicts that program receipts would increase to \$300,000 per year. It is appropriate to include revenues generated from fines in the fiscal note unless the Department anticipates that no fines would be collected.

[10:02:24 AM](#)

Mr. Fredriksson asserted that the Department "takes enforcement seriously" as one of six key elements of a good regulatory program. Enforcement processes are in place for other Department programs and would be utilized for this program as well. He offered to provide data on fines collected by the EPA for this program for consideration.

[10:03:23 AM](#)

Co-Chair Green agreed that regardless of whether revenues from fines are deposited to the general fund, identification of the amounts for the record would provide valuable information.

[10:03:41 AM](#)

Senator Bunde congratulated the commissioner on his appointment to that position.

[10:03:54 AM](#)

Senator Bunde cautioned against propagating public assumptions that State Troopers write speeding tickets because the State needs money. He did not want a similar perception for this program.

[10:04:33 AM](#)

Co-Chair Green suggested the information be reflected as an historical perspective.

[10:04:43 AM](#)

Senator Bunde noted Section 2 of the bill on page 2, line 10 provides that the Department "may adopt regulations that prescribe reasonable fees". He asked if the intent were to impose fees sufficient to cover the cost of operating this program, whether this could be done through the regulatory process.

[10:05:17 AM](#)

Mr. Easton replied that fees could be utilized to cover only the "direct" costs as outlined in Section 2. The issue is how much the Department could reasonably charge for the direct services.

[10:05:48 AM](#)

Senator Bunde asked if personnel services to operate the program would be considered a direct cost.

[10:05:57 AM](#)

Mr. Easton answered it is not. Direct costs include the time an employee spends in writing out a permit, inspecting the facility, etc. Management, data management, computer systems and response to consumer complaints are examples of activities that are not

considered direct costs.

[10:06:35 AM](#)

Senator Bunde suggested that a new definition of "direct costs" should be considered. This legislation proposes to add 13 new positions to provide this service. He considered this a direct cost.

[10:06:59 AM](#)

Co-Chair Green recalled other discussions of direct costs and asked if statute prohibits charging an amount other than proposed in this legislation.

[10:07:43 AM](#)

Mr. Easton deferred to the Department of Law.

[10:08:03 AM](#)

Senator Stedman cited the percentages of the funding sources for this program: 16 percent from the fees collected from the private sector and 84 percent from government sources. He asked the staff would only be spending 16 percent of their time directly interfacing with applicants and working on the permits.

[10:08:45 AM](#)

Mr. Easton affirmed. The fiscal note denotes that approximately 19 percent of the activities of the program are direct and "billable", the remaining 81 percent is indirect and not billable. Added to the existing resources of the Department available for this program, the ratio changes to 16 percent direct activities.

[10:09:20 AM](#)

Senator Stedman wanted to clarify Senator Bunde's comments.

[10:09:33 AM](#)

Co-Chair Green asked if the Department would prefer the fees be limited to direct costs or instead have the ability to impose higher fees. She asked if the Department had calculated higher fee amounts.

[10:09:57 AM](#)

Mr. Easton replied the Department had calculated higher fee structures and does not proposed revising the current fee policy.

[10:10:11 AM](#)

Co-Chair Green asked the amount of the fees if they were to cover the entire cost of the program.

[10:10:25 AM](#)

Mr. Easton answered the fees would increase a factor of four.

[10:10:29 AM](#)

Co-Chair Green asked the amount of the current fees.

[10:10:34 AM](#)

Mr. Easton replied the fees range from \$100 to \$150 per year up to \$4,500 per year.

[10:11:09 AM](#)

CAMERON LEONARD, Department of Law, testified via teleconference from Fairbanks that the only other law that pertains to this issue is AS 37.10.058(3) defining "direct costs". That statute must be changed to allow the direct costs to include other activities. That statute pertains to other agencies as well and the consequences of any changes should be considered.

[10:12:05 AM](#)

Co-Chair Green asked if it would be legally possible to stipulate that the fees cover the applicable direct cost plus an additional amount.

[10:12:27 AM](#)

Mr. Leonard replied this could legally be done.

[10:12:41 AM](#)

Co-Chair Green indicated the matter would be further reviewed.

[10:12:52 AM](#)

Senator Hoffman asked the impact of this legislation on waste disposal managed by small municipalities.

[10:13:12 AM](#)

Mr. Easton replied that the current fees would increase by a factor of 1.8 for all permittees. In addition, the sewage discharge of many small villages is permitted by the State, but not by the EPA. EPA, "as a matter of workload and priority, hasn't got them". A "very positive" affect of primacy is that the State's authorization to discharge is the Clean Water Act therefore all water discharges would be "perfectly legal" under the Clean Water Act.

[10:14:09 AM](#)

Senator Hoffman asked the estimated collective total cost to rural communities.

[10:14:21 AM](#)

Mr. Easton stated he would provide this information.

[10:14:30 AM](#)

Senator Olson requested this information as well.

[10:14:43 AM](#)

Senator Olson spoke to issues of the federal EPA and asked how the Department would avoid the "same trials and tribulations" as the federal government experiences.

[10:15:16 AM](#)

Mr. Fredriksson answered that the legislature is the "key factor" in the enabling statutes passed. The program would be accountable to the State legislature rather than the US Congress, which is the current authority.

[10:15:46 AM](#)

MIKE POLLEN, President, NTL Alaska, Inc., testified via teleconference from an offnet location about the environmental testing company located in Fairbanks and his 33 years experience in the field. He referenced a letter dated March 15, 2005 that he sent to Co-Chair Wilken [copy on file], noting it contains specific examples of issues he has observed with the existing NPDES program. He supported passage of the bill. This program must be assumed by the State and the State must "take that level of responsibility" to be "penny wise and not pound foolish". Any of the circumstances highlighted in his letter could easily have cost private industry

or the State much more than the amount requested by the Department to assume primacy.

Mr. Pollen remarked that significant economic development is pending and each major economic development enterprise, particularly the mining activities, potential for a natural gas pipeline, would require an NPDES permit. Each case has created a situation in which delays, errors and "serious economic disincentives" have occurred. It is time the State assumes the program. This is both an economic and an environment issue and the State could do better.

[10:18:37 AM](#)

Senator Olson asked if the witness supports the bill as currently drafted.

[10:18:49 AM](#)

Mr. Pollen responded that although some minor "fine tuning" could be done, he would defer to the Department to make those determinations. Otherwise, he supported this legislation.

[10:19:08 AM](#)

DICK COOSE, Concerned Alaskans for Resources and Environment (CARE), testified via teleconference from Ketchikan into the record as follows.

CARE is a non-profit that was established by local businesses to promote access to our resources. I'm also a retired federal forester and served two terms on the Ketchikan [Gateway] Borough Assembly.

Madam Chair, I urge the Committee to support SB 110. We support the stable act of taking over the NPDES program from the federal EPA. This is only one of several programs under which the federal government continues to treat the state of Alaska like a territory. The state of Alaska needs to control its own future and not the feds.

Also, I assume that you will review the NPDES primacy workshop group report that was dated February 24 of '05. So I'm not going to repeat any of that information, which supports basically State primacy. But I do want to make a couple points.

The first one being that local, that being State, knowledge

and experience of and with resource management development and protection is better than that of the feds or EPA. Second, DEC, in my opinion, uses better science and works better with the people in the permitting process than EPA. EPA appears to be here to say no and delay and DEC tends to ask, "How can we do it and still meet the intent of the law."

I'd like to give you a Ketchikan example of EPA science and local knowledge. Currently, several Ketchikan fish processors have EPA permits to discharge fish waste. The problem is that under the EPA requirements, the fish waste simply piles up on the bottom and does not decompose in a timely manner and in the warm summer weather, burps a nice healthy smell. These EPA requirements were established in the mid '80s and they require grinding of the fish waste up like flour and then limits the deposit on the bottom to a one-acre spot. Before grinding was required, this was less of a problem, mainly because the fish waste was only chopped up and the critters on the bottom ate most of it. At a meeting within the last three or four years with EPA, they admitted here in Ketchikan, that they had no science or anything to support the fine grinding or the one acre limitation.

The one-acre limitation also affects our log transfer down here so I guess I have to ask, "Where is the science based upon."

[The] third point and last point is on funding. The natural resource [indiscernible] wealth of this State and our resources must be wisely managed, developed and protected to provide for Alaska's long-term financial health. DEC, DNR, and ADF&G are the State agencies who are directly involved in this management development and protection. The State funding of these three key departments is a pittance compared to the total State budget, yet they are key to Alaska's future financial health and economy. You will need to fund DEC to manage the NPDES program, but it will benefit the State many-fold. Consider the importance of these three departments to our future. All should have adequate funding to accomplish their specified required missions, but they should also be held accountable for the mission accomplished.

Madam Chair, I encourage you to pass SB 110.

[10:23:04 AM](#)

STAN JONES, Legislative Affairs Coordinator, Prince William Sound Regional Citizens' Advisory Counsel, testified via teleconference

from Anchorage about the non-profit organization charged with ensuring the safe operation of industrial vessels in the Prince William Sound area. The Valdez Marine Terminal is a large facility that undertakes water treatment and would be affected by this legislation. He referenced a letter dated March 30, 2005 from the Counsel addressed to Senator Green, [copy on file] and noted that although he did not oppose this legislation, he had concerns. Under the existing program, the EPA is required to consult with the Counsel on all permitting activities, site-specific regulations and other matters in the area. This is important in enabling the Counsel to fulfill its mission and this legislation should be amended to provide a similar requirement for the Department of Environmental Conservation. If this does not occur, the Counsel would request the EPA attach such a provision as a condition of the NPDES transfer.

Mr. Jones then spoke to the fiscal impact. He pointed out that the federal government is considering funding reductions to the EPA budget. This would provide less funding to offer as grants to state-operated programs. His concern was that this program would be under funded or that funds would be diverted from other programs, such as spill prevention and response.

[10:28:25 AM](#)

MIKE MUNGER, Executive Director, Cook Inlet Regional Citizens' Advisory Counsel, testified via teleconference from Kenai, that the Counsel is similar to the Prince William Sound organization, although this represents affected parties in the Cook Inlet area. After reviewing this bill, the Counsel offered the following recommendations, which are similar to those submitted by Mr. Jones. The cooperative relationship the advisory counsel has developed with the Department of Environmental Conservation should continue. The Department agreed to do so, but the Counsel requests a formal agreement included in this legislation. This would ensure citizen oversight in the permitting process.

Mr. Munger spoke to the importance that the best available technology must be used in the monitoring of the effluence of the oil industry discharges and that environmental monitoring should be required. He also recommended careful analysis of all financial implications to ensure that the program is adequately funded and staffed, and not done so to the detriment of other Department programs. He noted the Counsel submitted a position statement on this legislation [copy on file.]

[10:31:16 AM](#)

STEVE BORELL, Alaska Miners Association, testified via teleconference from an offnet location that he was part of the aforementioned working group and that the Association supports this legislation. He referenced a letter submitted to the Committee dated April 4, 2005 [copy on file] and accompanying article titled "Should the State of Alaska Assume the NPDES Permit Program?" [copy on file], written by Larry Hartig, Attorney. The article describes various reasons why the Association has determined that primacy is appropriate.

Mr. Borell noted statute requires that the industry pay the direct costs of the permitting activities and details how those direct costs would be determined. Three years were spend developing those statutes and he would be "extremely disappointed" if those statutes were amended. The provisions of those statutes were utilized as a basis for the Association "coming to the table" to consider the primacy issue.

[10:33:22 AM](#)

EARL HUBBARD, Vice President, Trident Seafoods Corporation, testified via teleconference from offnet location that he oversees regulatory affairs for the company. He listed his experience as a former state, federal and United Nations regulator. Trident is the largest and most diversified seafood company operating in Alaska. He offered to present his comments at a later hearing.

[10:34:26 AM](#)

Co-Chair Green indicated the bill would be addressed again and the witness would be heard at that time.

[10:34:44 AM](#)

Co-Chair Green noted a committee substitute would be distributed. The bill was HELD in Committee.

#SB155

[10:35:31 AM](#)

SENATE BILL NO. 155

"An Act making appropriations from the earnings reserve account for construction of an integrated science complex at the University of Alaska in Anchorage, for replacement of the virology laboratory in Fairbanks, for expansion of the Anchorage Museum of History and Art, for the major maintenance

grant fund, and for other capital projects related to education; and providing for an effective date."

This was the first hearing for this bill in the Senate Finance Committee.

SENATOR BEN STEVENS, Sponsor of the bill, indicated a proposed committee substitute was distributed.

Co-Chair Wilken moved for adoption of CS SB 155, 24-LS0687\S, as a working document.

Co-Chair Green objected for discussion purposes.

[10:36:53 AM](#)

Senator B. Stevens explained the committee substitute inserted a \$1.1 million appropriation for the completion of the Delta Elementary School to address population growth resulting from the expansion of Fort Greely. The majority of the funding for this project has been received as federal "impact money".

Senator B. Stevens also noted language inserted on page3, line 21 to provide "design and construction" for the University of Alaska for additions to the Matanuska-Susitna campus.

[10:37:44 AM](#)

Senator Bunde asked if the Department of Education and Early Development provided the list of all the projects contained in this legislation as recommended projects.

[10:38:15 AM](#)

Senator B. Stevens replied that the list of projects included in Section 2 of the bill was assembled "mainly at the indulgence of the members" and were "pulled off the current capital improvement projects list."

[10:38:36 AM](#)

Senator Bunde asked if the Delta Elementary School project was included in the list.

[10:38:43 AM](#)

Senator B. Stevens was unsure, noting the local borough government

submitted a request for these funds. He offered to distribute the written request.

[10:39:11 AM](#)

Senator Bunde understood the project was included in the capital improvement projects list.

[10:39:17 AM](#)

Co-Chair Green removed her objection and the committee substitute was ADOPTED without further objection.

[10:39:45 AM](#)

Amendment #1: This amendment inserts a new bill section on page 1 following line 6 of the committee substitute to read as follows.

Section 1. LEGISLATIVE INTENT FOR SECTIONS 2 AND 3. It is the intent of the legislature that schools funded under secs. 2 and 3 of this Act be adequately maintained and that the Department of Education and Early Development enforce the preventative maintenance plan requirements of AS 14.11.011(b)(1) and (4).

Co-Chair Wilken moved for adoption and objected for clarification.

Co-Chair Wilken offered a motion to amend the amendment to delete "and (4)" indicating the amended language was technically correct.

[10:41:47 AM](#)

Co-Chair Green recalled the Committee discussed this matter in a previous session in response to the findings of a deferred maintenance task force.

There was no objection and the amendment was AMENDED.

[10:42:04 AM](#)

Without objection the amended amendment was ADOPTED.

[10:42:44 AM](#)

Amendment #3: This conceptual amendment deletes the \$10,858,662 appropriation for Glennallen Elementary School improvement in REAA 17, Copper River School District on page 2, lines 27 and 28 and the \$1,100,000 appropriation for Delta Elementary School Completion in

REAA 15, Delta/Greely School District.

Co-Chair Wilken moved for adoption and objected to the motion for clarification.

Co-Chair Wilken remarked that the two projects identified in this amendment are unique in that they are located in Regional Education Attendance Areas (REAA). He "took great exception" to this grant process that is offered to "folks who don't pay their fair share." Residents of the community of Fairbanks contribute \$20 million "to have the privilege of getting State money", Anchorage residents pay \$70 million this year for their schools, and Wasilla residents contribute almost \$14 million. Residents of the Copper River, Delta and Greely areas are "paying nothing", although both communities have that capacity. State funding for these projects furthers the argument that local governance is not in the best interest of these residents. The State should not continue to "throw money at folks that will not realize their personal responsibilities."

Co-Chair Green and Senator Hoffman objected to the adoption of the amendment.

[10:44:25 AM](#)

Senator B. Stevens remarked that as sponsor of the bill, he hoped that the amendment would not be accepted. The amendment sponsor had made valid points, which he expected would be addressed in other pending legislation.

[10:44:52 AM](#)

Senator Bunde agreed that SB 112 might address Co-Chair Wilken's concerns.

A roll call was taken on the motion.

IN FAVOR: Senator Bunde, Co-Chair Wilken

OPPOSED: Senator Stedman, Senator Hoffman, Senator Olson, Co-Chair Green

ABSENT: Senator Dyson

The motion FAILED (2-4-1)

The amendment FAILED to be adopted.

[10:45:52 AM](#)

Amendment #2: This amendment inserts a \$6,200,000 appropriation for Noatak School Relocation for the Northwest Arctic Borough on page 2, line 7.

Senator Olson moved for adoption.

Senator Bunde objected.

Senator Olson explained that the Noatak School is currently 200 percent over its capacity and is projected to have 320 percent over capacity in five years. In addition, SB 142, sponsored by the Senate Labor and Commerce Committee relates to lands surrounding the school. He distributed a map, which shows that the current location of the school is infringing on the aviation clearance area according to Federal Aviation Administration (FAA) safety regulations. The intent is to relocate the school.

[10:47:09 AM](#)

Co-Chair Green asked if the future location of the school is indicated on the map.

[10:47:15 AM](#)

Senator Olson answered it is not.

[10:47:17 AM](#)

Senator Bunde commented that the school would be located in the Northwest Arctic Borough, and asked if the residents of that jurisdiction contribute to their education funding.

[10:47:33 AM](#)

Senator Olson replied they do contribute.

[10:47:37 AM](#)

Co-Chair Wilken affirmed.

AT EASE [10:48:17 AM](#) / [10:49:07 AM](#)

Amendment #4: This amendment deletes the \$10 million appropriation for the Kodiak College in Section 2 on page 2, lines 16 - 18 and inserts similar language in Section 4. UNIVERSITY OF ALASKA., on page 3, following line 25 to read as follows.

(g) The sum of \$10,000,000 is appropriated from the earnings reserve account (AS 37.13.145) to the University of Alaska for Kodiak College vocational technology addition phase I.

Accompanying explanatory language reads as follows.

This corrects an error in placement of the project. It should have been included under the University section.

Co-Chair Green moved for adoption.

[10:49:55 AM](#)

Senator B. Stevens outlined the amendment. He stated that the funds should be appropriated to the University rather than the Kodiak Island Borough.

Co-Chair Green asked if the local school district is involved with this project.

Senator B. Stevens responded that only the University is involved.

Co-Chair Green noted that at times, local school districts are involved in projects in conjunction with the University.

The amendment was ADOPTED without objection.

[10:51:11 AM](#)

Co-Chair Wilken asked if at any time every project included in the major maintenance list has been completed.

[10:51:48 AM](#)

EDDY JEANS, Director, School Finance Division, Department of Education and Early Development, testified he was not aware of the list ever "going to zero".

Co-Chair Wilken asked the length of time some projects have been included in the list awaiting action.

Mr. Jeans replied that a number of the projects have been on the list for over five years.

[10:52:32 AM](#)

Co-Chair Wilken offered a motion to report CS SB 155, 24-LS0687\S, as amended from Committee with individual recommendations.

There was no objection and CS SB 155 (FIN) MOVED from Committee.

#SB70

[10:53:00 AM](#)

CS FOR SENATE BILL NO. 70(JUD)

"An Act relating to controlled substances regarding the crimes of manslaughter and misconduct involving a controlled substance; relating to listing certain anabolic steroids as controlled substances; amending Rule 41, Alaska Rules of Criminal Procedure; and providing for an effective date."

This was the first hearing for this bill in the Senate Finance Committee.

DEAN GUANELI, Chief Assistant Attorney General, Legal Services Section - Juneau, Criminal Division, and Office of Special Prosecutions and Appeals, Department of Law, noted the proposed committee substitute.

Co-Chair Wilken moved for adoption of CS SB 70, 24-GS1049\Y, as a working document.

Co-Chair Green objected for an explanation.

[10:53:54 AM](#)

Mr. Guaneli noted the difference between the language in Section 2 of this committee substitute and the committee substitute passed by the Senate Judiciary Committee. This provides that a person who knowingly manufactures or sells an illegal drug commits the crime of manslaughter if another person dies as a direct result of ingesting that drug. This is consistent with the definition of manslaughter, which involves a reckless act that results in death.

Mr. Guaneli informed that the Senate Health, Education and Social Services Committee and the Senate Judiciary Committee adopted committee substitutes that included an "affirmative defense" provision at the request of Senator Dyson. This defense provided that a person who manufactured an illegal drug, but kept that drug in a safe, locked place in their home would have no responsibility if the drug was stolen, and a death occurred as a result. This is an uncommon scenario and typically drug dealers and manufacturers do not keep their drugs locked.

[10:55:58 AM](#)

Co-Chair Green contended that the manufacture of methamphetamine is illegal and there is no reason to defend a person in possession of the drug.

[10:56:18 AM](#)

Senator Olson agreed with Co-Chair Green's position, but understood that certain manufacturing of methamphetamine is legal.

[10:56:37 AM](#)

Mr. Guaneli replied that one company legally manufactures the drug, with Federal Department of Agriculture (FDA) approval, for use in extreme weight loss cases. However, this legislation pertains to the knowing manufacture or delivery of a controlled substance in violation of AS 11.71. Possession of prescription drugs would not be a violation of that statute.

[10:57:01 AM](#)

Senator Stedman asked if a seller of heroin could be charged with manslaughter in the event a user of that drug dies.

[10:57:51 AM](#)

Mr. Guaneli responded this is the purpose of this legislation. Heroin and methamphetamine are the two drugs most likely to cause "overdose situations".

[10:57:55 AM](#)

Senator Stedman surmised this legislation might "be a little light" in the severity of punishment. He expressed no sympathy for these offenders.

[10:58:02 AM](#)

Co-Chair Green asked if Mr. Guaneli had any comment on the changes made in the proposed committee substitute.

Mr. Guaneli had none.

The committee substitute was ADOPTED as a working document without further objection.

[10:58:21 AM](#)

Mr. Guaneli spoke to the committee substitute. Section 1 includes findings of the legislature that methamphetamine manufacturing is a "particularly dangerous activity" therefore justifying restrictions on bail for defendants charged with this offense. This finding is necessary to enact the provision of Section 5 requiring a posting of a minimum of \$250,000 cash bond. This provision was included in Section 6 of the previous version and is reflected as such in the current committee substitute. The language must be amended to correctly reference Section 5 rather than Section 6.

Mr. Guaneli relayed that the Senate Judiciary Committee adopted the language of Section 5 as a conceptual amendment. The discussion was unclear as to whether the higher bond requirement should apply only to offenders with previous convictions, who it could be argued, would be more likely to continue these activities. In further discussion with the staff of that committee, it was determined that the provision should only apply to second offenders to correctly reflect the intent of the Senate Judiciary Committee. However, the current language could also apply to first offenders in possession of a firearm in the course of manufacturing the drug.

Co-Chair Green indicated this issue would be resolved.

[11:00:43 AM](#)

Co-Chair Green relayed that representatives of the real estate industry have expressed interest in the provision of this bill relating to the designation of properties in which manufacturing activities have occurred. Currently, the only way to learn of past activities has been after a sale is completed and a neighbor tells the new owner about the previous owner. If realtors or prospective buyers suspect methamphetamine manufacturing was done at a property, authorities would not provide confirmation. She asked if this could be addressed in this legislation.

[11:02:14 AM](#)

Mr. Guaneli concluded that providing such information on a property would not create a liability for the State. Whether the site was property cleaned is a different issue. A registry maintained by the Alaska State Troopers or the Department of Environmental Conservation is an option.

[11:02:56 AM](#)

Co-Chair Green commented that some realtors "feel vulnerable" because they are required to disclose any information about a

property that could affect its value. She asked if a provision creating the suggested registry would be appropriate in this legislation.

[11:03:48 AM](#)

Mr. Guaneli was unsure such a provision would comply with the single subject title requirements governing all legislation. He suggested a registry could be created through the regulatory process, provided an agency is willing to undertake the duty. The Committee might prefer statutory language.

[11:04:35 AM](#)

Co-Chair Green stated that Alaska State Troopers have been unwilling to share this information and she was unsure if it was due to confidentiality or privacy issues.

[11:04:52 AM](#)

Co-Chair Wilken cited a memorandum from the Legislative Division of Legal and Research Services dated April 4 and asked the witness to speak to the matter.

[11:05:07 AM](#)

Mr. Guaneli was aware of the issue and indicated he would address it at the next hearing on this bill.

[11:05:19 AM](#)

The bill was HELD in Committee.

#

ADJOURNMENT

Co-Chair Green adjourned the meeting at 11:05 AM