MINUTES
SENATE FINANCE COMMITTEE
April 18, 2005
9:05 a.m.

CALL TO ORDER

Co-Chair Green convened the meeting at approximately 9:05:02 AM.

PRESENT

Senator Lyda Green, Co-Chair
Senator Gary Wilken, Co-Chair
Senator Fred Dyson
Senator Bert Stedman
Senator Lyman Hoffman
Senator Donny Olson

Also Attending: SENATOR RALPH SEEKINS; MARY JACKSON, Staff to Senator Tom Wagoner; TOM MAHER, Staff to Senator Gene Therriault; PAT DAVIDSON, Director, Division of Legislative Audit; DAVE STANCLIFF, Staff to Senator Gene Therriault; JUDY BRADY, Executive Director, Alaska Oil and Gas Association; TOM WILLIAM, Chair, Tax Committee, Alaska Oil and Gas Association; DAN DICKINSON, Director, Tax Division, Department of Revenue; DAN EASTON, Director, Division of Water, Department of Environmental Conservation; MERLE THOMPSON; KATHIE WASSERMAN, Alaska Municipal League; STEPHANIE MADSON, Vice President, Pacific Seafood Processors Association; GORDEN GARCIA, Department of Fish and Game;

Attending via Teleconference: From Anchorage: LARRY HOULE, General Manager, The Alaska Support Industry Alliance; From an offnet location: STEVE BORELL, Executive Director, Alaska Miners Association;

SUMMARY INFORMATION

SB 69-APPROP: GRANT TO ARCTIC POWER FOR ANWR

The Committee heard from the sponsor. A committee substitute was adopted and the bill was reported from Committee.

SB 139-OCCUPATIONAL BDS/AGENCIES

The Committee heard from the sponsor and the Division of Legislative Audit. The bill was reported from Committee.

SJR 11-REPEAL TELECOMMUNICATIONS TAX

The Committee heard from the sponsor. The resolution was reported from Committee.

SB 151-DECOUPLING FROM FED TAX DEDUCTION

The Committee heard from the Department of Revenue, the Alaska Oil and Gas Association, and the Alaska Support Industry Alliance. The bill was held in Committee.

SB 110-POLLUTION DISCHARGE & WASTE TRMT/DISPOSAL

The Committee heard from the Department of Environmental Conservation, industry-related organizations and other interested parties.

#SB69
9:05:26 AM

> SENATE BILL NO. 69
> "An Act making special appropriations to promote the opening of the Arctic National Wildlife Refuge for oil and gas exploration and development; 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 this legislation is sponsored by the Senate Resources Committee and would provide an appropriation to Arctic Power for its efforts to open the Arctic National Wildlife Refuge (ANWR) to oil development.

9:06:15 AM

Senator Dyson asked which version of the bill the Committee was considering.

Co-Chair Green clarified the original version of the bill would appropriate $1.2 million, while a proposed committee substitute, Version "G" would appropriate $1.3 million.

9:07:12 AM

Senator Stedman moved to adopt CS SB 69, 24-LS0438\G as a working

document.

Without objection the committee substitute was ADOPTED as a working document.

9:07:35 AM

Co-Chair Green remarked that annual appropriations have been made to Arctic Power from the State general fund for several years. She noted the appropriation in this legislation would actually be made to the Department of Commerce, Community and Economic Development

9:08:16 AM

Senator Dyson offered a motion to report CS SB 69, 24-LS0438\G from Committee with individual recommendations.

There was no objection and CS SB 69 (FIN) MOVED from Committee.

#SB139
9:08:36 AM

> CS FOR SENATE BILL NO. 139(L&C)
> "An Act relating to termination and oversight of boards, commissions, and agency programs; extending the termination date of the Board of Marital and Family Therapy; and providing for an effective date."

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

TOM MAHER, Staff to Senator Gene Therriault, read testimony into the record as follows.

> This legislation stems from recommendations contained in two reports by the Division of Legislative Audit.
>
> (Section 1) of this legislation extends the sunset date of the Board of Marital and Family Therapy from June 30, 2005 to June 30, 2010 per the audit recommendation contained in that report (page 9).
>
> SB 139 also incorporates recommendations contained in the audit of the Alaska Sunset Process and Selected Investigative Issues.
>
> First, (Sections 2 and 4) for boards that are terminated, this

legislation clarifies the transfer of authority for regulatory and disciplinary powers to the Department of Commerce, Community and Economic Development. While the Department has assumed the responsibility for administering the regulated occupation after a board has terminated, the statutes do not clearly give the Department the authority to do so. This change will help address this uncertainty.

Second, SB 139 (Sections 3 and 5) changes the standard sunset period for occupational boards in AS 08.03.020(c) and non-occupational boards in AS 44.66.010(c) from "not to exceed four years" to "not to exceed eight years". Increasing the standard sunset period allows for better use of audit staff, committee time, and makes the sunset process less consuming for boards/regulatory agencies.

Finally, (Section 6) two criteria are added to statute that the auditors must consider in the course of a sunset review:

- The extent to which the board, commission, or agency has effectively attained its objectives and the efficiency with which it has operated.
- The extent to which the board, commission, or agency duplicates the activities of another governmental agency or the private sector.

Expanding the criteria will assure that auditors will measure the efficiency and effectiveness of boards, commissions or agencies under review.

The Senate Labor and Commerce Committee approved one amendment offered by the Administration addressing what occurs when a board is terminated. Section 2 of the bill was amended with language that states "all statutory authority of the board is transferred to the department" and a new Section 4 was added that further defines the transition of board regulation when terminated. While the original version of the bill contained language aimed at addressing board termination, the Labor and Commerce Committee preferred the additional language offered by the Administration.

Finally, there is one fiscal note from Occupation Licensing - passage of this legislation will incur no additional costs - and the outlying fiscal years the fiscal note merely shows the cost of continuing this board at the current level already included in the budget.

9:12:18 AM

Senator Dyson announced for the record that his wife is licensed by the Board of Marital and Family Therapy.

Senator Dyson supported the Audit recommendation that this board be consolidated with the Board of Professional Counselors. He asked if other legislation has been introduced that would accomplish this.

Mr. Maher answered that legislation pertaining to the Board of Professional Counselors is under consideration.

9:13:01 AM

PAT DAVIDSON, Director, Division of Legislative Audit, clarified that the other legislation would retain the Board of Professional Counselors as a separate entity. It was determined to therefore draft this legislation to provide that the Board of Marital and Family Therapy remain separate as well.

9:13:37 AM

Senator Dyson asked if any legislation was pending that would combine the two boards.

Ms. Davidson replied that no legislation has been introduced.

9:13:52 AM

Senator Dyson opined this was "unfortunate". He understood the directive that fees collected by the boards should cover the operating expenses of the board. However, if a board, especially one with limited membership must take adverse action, the legal costs increase the overall operating expenses of the board and the fees must subsequently be increased. In this event, practitioners withdraw from membership in the board and join a separate board with lower fees.

9:14:50 AM

Co-Chair Green spoke to the ongoing dilemma when professionals seek to become licensed. The system is not designed to provide for one board to absorb the membership of other boards. She asked about the distinction between the two boards and whether one profession carries a higher risk or requires a greater degree of oversight.

9:15:36 AM

Ms. Davidson informed that current statute stipulates that the

"occupation" must be financially self-supporting. Therefore, regardless whether the boards were combined, the fees must be established to "level out" the expenses of each occupation. Other pending legislation would change this to provide that the board must be financially self-supporting. The Division of Legislative Audit considered the concept of an overall mental behavioral health board including professional counselors, marital and family counselors, social workers, psychologists and psychological associates. The audit's concluded a combined board of professional counselors and marital and family counselors would be appropriate because of the common educational background and experience. She qualified that the professional counselors "adamantly opposed" such a merger.

9:17:10 AM

Co-Chair Green clarified that the membership of the Board of Professional Counselors is opposed to such a merger.

9:17:19 AM

Ms. Davidson affirmed, noting that the Board of Professional Counselors has a financial surplus, while the Board of Marital and Family Counselors has a deficit. The cost of regulating these occupations includes investigations, hearing officers, and disciplinary actions. A Division of Legislative Audit report of the sunset review process contains recommendations to the Division of Occupational Licensing for streamlining the investigative unit to become more effective. This could provide some financial reduction in fees imposed for occupations.

9:18:06 AM

Co-Chair Green asked if this legislation addresses the issue of extending the termination date of boards and commissions from four years to eight years; specifically an initial four year review for new boards, and reviews every eight years thereafter.

9:18:31 AM

Ms. Davidson replied that current language provides that the term of boards is not to exceed eight years. At any time, the legislature could request an audit of a board or commission. Enabling legislation establishing a new board would also provide a schedule for review of that board.

9:19:01 AM

Co-Chair Green did not disagree that an audit review every four years could be onerous; however, this process is not unreasonable for new boards.

9:19:20 AM

Co-Chair Green asked the reasons for extending sunset review from four to eight years.

9:19:26 AM

Ms. Davidson responded that most boards and commissions subject to termination dates are occupational and have been in existence for several years. The fees necessary to cover operational expenses "already sets a pretty high threshold" for professionals intending to practice in Alaska. An analysis of the sunset processes of other states found six states have repealed their sunset provisions; another six states have suspended the process; four states have a four year sunset review process; three states have a standard six year extension; and eight states have a ten year extension. The report also discusses other alternatives. Rather than relying on the sunset process, one suggestion is the concept of a sunrise process that would establish thresholds before any new boards or commissions are set in statute. Once established, boards are difficult to eliminate.

9:21:30 AM

Co-Chair Green agreed "there's always a constituency that gets created."

9:21:38 AM

Ms. Davidson affirmed. The Division of Legislative Audit primarily considers efficiency and effectiveness rather than whether the board should exist. Boards must issue annual reports of their activities and provide accountability. The legislature "isn't without information with respect to these organizations," although this information is not to the extent that an audit provides

9:22:17 AM

Co-Chair Green asked if problems have been identified in the sunset review audit process that should have been found earlier.

9:22:39 AM

Ms. Davidson replied that the issues tend to be "hot topics" within

the profession rather than regulation of the profession. She gave as an example the Regulatory Commission of Alaska, which is always controversial. She recommended focus on whether boards are effective and efficient and whether other professional organizations exist that could serve the board purpose.

9:23:42 AM

Co-Chair Green noted that two recommendations contained in the audit report would provide the legislature greater ability to assess whether a board or commission should be continued.

Ms. Davidson opined this would provide "greater focus" in the audit process. The two recommendations are already undertaken, although they would now be addressed more specifically. However, the Division of Occupational Licensing is "on notice" that future audits would specifically review this.

9:24:53 AM

Senator Stedman offered a motion to report the bill from Committee with individual recommendations and accompanying fiscal note.

There was no objection and CS SB 139 (L&C) MOVED from Committee with zero fiscal note #1 from the Department of Commerce, Community and Economic Development.

#SJR11
9:25:33 AM

SENATE JOINT RESOLUTION NO. 11
Urging the United States Congress to amend the tax code to repeal the federal excise tax on communications.

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

DAVE STANCLIFF, Staff to Senator Gene Therriault, gave a history of this tax established in 1878, repealed twice then reenacted and amended several times. Senator Therriault deemed this resolution a "valuable message to send on behalf of Alaskans", who pay almost $17 million annually in the form of this tax. This federal excise tax on communications is also known as the "talking tax".

9:26:44 AM

Co-Chair Green asked the impact of the repeal of this tax.

9:26:58 AM

Mr. Stancliff replied that "the little column" on customers' phone bills would "disappear" along with the three-percent tax. He spoke to concerns by members of Congress that this tax would be expanded and imposed on Internet services not currently taxed.

9:27:36 AM

Co-Chair Green clarified this resolution does not address the issue of taxation of Internet services.

9:27:44 AM

Mr. Stancliff affirmed this resolution requests the repeal of the luxury tax.

9:27:53 AM

Senator Olson asked the negative impact of repealing this tax and what programs would be eliminated or reduced if not funded from the revenues generated.

9:28:09 AM

Mr. Stancliff replied this is a general tax of three percent that is imposed on local telephone service, toll service, Teletype, and exchange service. Revenues from this tax are deposited to the general fund. If repealed, Alaskans would be relieved of $17 million in taxes paid. It is difficult to ascertain the allocation of all the revenues.

9:29:03 AM

Senator Olson wanted to ensure that no telecommunication programs would suffer.

9:29:19 AM

Mr. Stancliff had detected no opposition from the telecommunications industry.

9:29:48 AM

Senator Stedman commented about migration to Internet phone service from traditional long distance telecommunications. He asked if this should be addressed in this resolution.

9:30:11 AM

Mr. Stancliff understood concerns that as communication through the Internet increases, the revenue generated by this tax would not continue unless the tax is expanded to Internet services. Congress has been considering this issue for several years. Interested parties from both sides of the issue have been involved and to date no changes have been made. The repeal of this tax would not impact the any issues currently before Congress.

9:31:06 AM

Co-Chair Green clarified the repeal of this tax would not result of any reduction in federal funding appropriated in the state of Alaska.

Mr. Stancliff affirmed.

9:31:31 AM

Senator Stedman offered a motion to report the resolution from Committee with individual recommendations and accompanying fiscal note.

There was no objection and SJR 11 MOVED from Committee with zero fiscal note #1 from the Department of Revenue.

#SB151
9:31:47 AM

> SENATE BILL NO. 151
> "An Act excepting from the Alaska Net Income Tax Act the federal deduction regarding income attributable to certain domestic production activities; and providing for an effective date."

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

JUDY BRADY, Executive Director, Alaska Oil and Gas Association, spoke about the non-profit trade association that represents the majority of the companies that produce, explore, transport and refine oil and gas products in Alaska. She introduced Mr. Williams.

9:34:05 AM

TOM WILLIAMS, Chair, Tax Committee, Alaska Oil and Gas Association (AOGA), read his testimony into the record as follows [editorial notations made by author].

> AOGA is a private trade association whose 18 members companies account for a majority of the oil and gas exploration, development, production, transportation, refining and marketing activities in Alaska. On behalf of AOGA and its members, I thank you for this opportunity to testify on Senate Bill 151.
>
> AOGA opposes this legislation for two reasons. First, the justification for it has been misstated to you and its fiscal impacts have been significantly overstated. Second, the bill represents yet another tax increase on the oil industry from this Administration.
>
> To explain our reasons for opposing this bill, let me first provide you briefly with some background. Last year Congress passed the federal Jobs Act creating, among other things, a tax incentive to improve the competitiveness of manufacturing in the United States, which currently is disadvantaged relative to the rest of the world because national income tax rates on such activity overseas are generally lower. This tax incentive takes the form of a new deduction that is equal to a percentage of a taxpayer's "qualified production activity income" ("QPA Income") from manufacturing activity occurring in the United States. The tax deduction equals 3% of this QPA Income initially; it increases to 6% in 2007 and reaches its full size of 9% beginning in 2010. In order to make this work as an incentive to create and keep jobs in the United States, Congress specifically limited QPA Income to income from domestic, U.S. - only activity.
>
> Alaska's state income tax automatically adopts sections 1 - 1399 and 6001 - 7872 of the Internal Revenue Code, including new sections within these number ranges as they are enacted, amendments as they are made to existing sections, and even repeals of any of these sections in the federal Code. Alaska picks up these federal changes unless the Legislature enacts a law to prevent such a federal change from taking effect, or modify its effect for state purposes. The new deduction for QPA Income in Section 199 of the Internal Revenue Code and hence has been picked up for state purposes. Senate Bill 151 proposes to undo this automatic adoption of Section 199 and keep it from taking effect for state income-tax purposes.

In the fiscal note for this legislation, the Department of Revenue claims that letting Section 199 take effect for Alaska purposes would cost the State between $94.88 million and $104.84 million in total over the FY 05 - FY 10 period. Further, Department of Revenue's fiscal note states it cold cost more than half a million dollars a year for Department of Revenue to administer Section 199 if it takes effect for state purposes.

Both of these estimates are, in AOGA's opinion, severely overstated because of a faulty premise in Department of Revenue's analysis. This premise is stated in the fiscal note as follows:

> In order to avoid impermissible discrimination against economic activity outside of the state, taxpayers will be allowed the QPA [Income] deduction on their Alaskan return for all production profits whether the activity occurred in Alaska, another state, or in a foreign country. Production activity conducted in-state, domestic out of state, or in a foreign country will be awarded an equal deduction.

In other words, in assessing the state revenue impact of letting Section 199 take effect, Department of Revenue looked at potential "production activity income" everywhere in the world. It did not look just at "qualified" production activity income as defined by Congress, which is only that income which comes from production activity inside the United States.

Despite what Department of Revenue asserts to the contrary in its fiscal note, when Alaska passively adopts a limited federal deduction, it does not legally or logically follow from this fact that Department of Revenue must, under the Foreign Commerce Clause of the U.S. Constitution, completely remove the limitation in the course of administering the deduction for state tax purposes. There is ample precedent where a geographically limited federal provision remains limited in precisely the same way when it is applied under the Alaska income tax. For instance, expenditures for enhanced oil recovery ("EOR") give rise to a federal tax credit that Alaska also allows, and the federal credit is limited to expenditures for EOR projects in the United States - in administering the EOR credit for state purposes, Department of Revenue does not impute a hypothetical credit for EOR projects outside the United States "[I]n order to avoid impermissible discrimination against economic activity outside of the state[;]" instead, Department of Revenue uses the same

domestic territorial limitation as the federal credit has. We do not see how the domestic territorial limitation in the new QPA Income deduction would be any different from the one for EOR in terms of its potential for "impermissible discrimination." In other words, since Department of Revenue isn't applying the EOR credit on a worldwide basis, it is inconsistent for Department of Revenue to say it must apply the QPA Income deduction on a worldwide basis.

9:39:36 AM

Mr. Williams deviated from his written testimony to state the following.

There's another reason too. I'm going to depart briefly from the prepared comments here. For foreign income, taxpayers basically have three possible ways of reporting that to the state. One is to look at their overseas activities and restate the income and expenditures under federal income tax principals, as if those companies were going to file a tax return with the IRS. For state purposes they make the state modifications that we have, but basically that's reporting and paying as if they were federal taxpayers. That's called the "as if federal basis" that they use.

But, especially for large international corporations, that restatement to an "as if federal basis" can be very cumbersome and time consuming and often for a relatively small amount of tax. So the Department allows taxpayers to use two other options. For their control foreign operations, they can use what's called an "earnings and profits" that they report on an information return to the IRS. Alternatively, taxpayers may use financial statement income under generally accepted accounting principals in the country where they're headquartered.

We basically then have the three choices: the "as if" federal income, the earnings and profits income, and the generally accepted accounting principals, or GAP, income. Taxpayers get to choose those.

If a taxpayer voluntarily reports on the basis of earnings and profits there'll be no QPA Income in there because QPA Income is not part of the definition of earnings and profits. There won't be any deduction for it; the income will be there but there won't be this deduction. Similarly, if you have financial accounting income as your basis for reporting your non-US operations income, generally accepted accounting

principals don't have a deduction for QPA Income. So that deduction won't show up there. The taxpayers will voluntarily use either of those two methods, voluntarily abandon the claim for a deduction with respect to the non-US QPA activity income.

Even if there were theoretically a constitutional issue here, there's no foul, there's no harm.

9:42:05 AM

Mr. Williams resumed reading his written testimony as follows.

Because of its faulty premise about how broadly the QPA Income is deduced must be applied for State purposes, Department of Revenue's estimated revenue impacts are overstated by at least a factor of two or three or more, depending on how much QPA-ish income it foresaw from non-US production activities. Similarly, the estimated administrative cost of half a million dollars a year is entirely a result of this same faulty assumption. The IRS will audit taxpayers' QPA Income from activities in the US, and there will be nothing left for Department of Revenue to audit and enforce. The half a million dollars a year should, in other words, disappear.

AOGA also disagrees with Department of Revenue's conclusion in the fiscal note that the anticipated beneficial effects of the QPA Income deduction at the federal level "cannot be replicated at the state level." At least with respect to oil and gas, the two principal regions of qualified production activity in the United States are the deep-water Gulf of Mexico and Alaska. With only two "hot spots" for the action to occur in, it seems likely that Alaska would be ahead of the game when the incentive works in attracting production activity to the US. Given Department of Revenue's contrary conclusion about these benefits for Alaska, it seems improbable that Department of Revenue made any serious attempt to estimate and include the increases in State tax revenues from the production activities in Alaska that this tax incentive would help attract to this state.

Thus, both on policy grounds as well as potential fiscal impacts, the justification that Department of Revenue has given for this legislation has been both overstated and misstated.

This brings me to AOGA's second reason for opposing this legislation: it represents yet another tax increase on the oil

industry from this Administration. It is a tax increase because Section 199 of the Internal Revenue Code was automatically adopted for state purposes as of January first of this year, when it took effect for federal purposes. Section 199 is, in other words, already the status quo. SB 151 proposes to change this status quo by undoing the adoption of Section 199, and in doing so it will raise corporate income taxes for our industry and every other industry in the state having "qualified production activity."

Department of Revenue's just-released Spring 2005 Revenue Sources Book predicts future state oil and gas revenues through FY 15 based on assumptions that tens of billions of dollars of new investments will be made during that time which will hold oil production at the projected levels and keep it from declining at it otherwise will. Fortunately for Alaska, the opportunities for making these investments, and the possibility that they will indeed result in the production being hoped for, are not some wild pipe dream, but a plausible expectation. The key to fulfilling this bright expectation lies in winning the competition for funding so that the potential Alaskan investments will become actual investments.

Raising taxes does not make Alaska's investment opportunities more competitive. It makes them less competitive.

Some have said that, with today's high oil prices, Alaska can and should raise its oil taxes - the producers can afford to pay a larger share of this "windfall" they say. This reasoning misses the real issues here. From the industry's perspective, the question is not about how much it can afford to pay to Alaska, but how much it can afford to invest in Alaska relative to opportunities elsewhere. Fifty-dollar oil is not $50 just for Alaskan oil, but for all oil wherever produced. High oil prices to not change the fact that Alaska is among the most expensive places in the world to operate and produce oil.

From the State's perspective as well, the question is not so simplistic as to be only about what the industry might be able to pay. There is a trade-off between, on the one hand, taking a larger share now and having less available to be shared in the future because some investments cease to be competitive enough to win funding, and on the other hand, taking the same or perhaps even a more modest share and having more available to be shared in the future because more investments become competitive enough to win funding. Or to put it another way, which gives the State more - taking a wider slice out of a

smaller pie, or a narrower slice out of a larger pie? And what is the optimum width for that slice so that it has the most fiscal "weight"?

Some simplistically believe that $50 oil will justify any and all of the investment opportunities that industry has in Alaska, despite raising taxes as proposed in this bill or raising them by lumping satellite fields with their parent field for ELF purposes. Such reasoning apparently led Department of Revenue and Department of Natural Resources to advise the Governor to introduce this bill, and to make the Prudhoe Bay ELF decision. The Governor was, no doubt assured in both situations that neither action would actually change investment decisions.

The advice that the Governor received about the ELF decision has already been proven wrong. The Orion field in the western region of the Prudhoe Bay Unit, for example, is a development that industry has been diligently pursuing to help stem the decline of North Slope production. The producers have already stated that, because of the tax increase under that decision, they will not be able to proceed with the planned expansion of the Orion field as it is currently proposed. This expansion would have been a $650 million project to develop viscous oil in the Prudhoe Bay Unit. An associated casualty is the I-100 Well for viscous oil development that was on this year's drilling schedule for Prudhoe Bay, but now has been removed and indefinitely deferred.

The advice that the Governor has been given about this bill is also wrong, for the same reasons. Because it has not become law, there is no hard, empirical evidence to offer you to show that this bill is ill-advised for the State. Fortunately, however, this same circumstance means it is not too late for you, the Legislature, to avoid repeating the mistake of the Governor's advisors. You are in the position of being able to refrain from acting, and you should.

AOGA has long said, and we need to say again now, any change to Alaska's existing fiscal regime for our industry needs to be carefully evaluated for its impacts on each of the different kinds of investments there are for getting more oil produced. Otherwise, there is a substantial risk that the anticipated negative effects of that change on other kinds of oil investments.

We believe that raising oil taxes now, as SB 151 would do, will send precisely the wrong message to the industry about

making the investments that Alaska is so desperately needs and is counting on for its own fiscal future. Accordingly, AOGA opposes this bill and respectfully urges that you oppose it too.

9:50:17 AM

LARRY HOULE, General Manager, The Alaska Support Industry Alliance, testified via teleconference from Anchorage in opposition to this bill. He read a statement into the record as follows.

> The Alliance this year is celebrating its 25th. We are a 501 C6 non-profit statewide trade association representing over 380 businesses, organizations and individuals. The collective workforce represented by Alliance membership exceeds 30,000 Alaskans that live in your districts.
>
> The Alliance is very much opposed to this legislation because we see it as yet another industry tax that will further erode Alaska's competitive position as [an] oil and gas province in an ever increasing competitive global market. In short, it represents another tax increase on the oil industry from the Murkowski Administration.
>
> Raising taxes does not make Alaska's investment opportunities more competitive. It simply and plainly makes Alaska's investment climate less competitive. A lot of people are saying these days that in a world where oil companies are getting $50 a barrel that they can all afford to pay more taxes. But we forget that $50 oil in Alaska is the same as $50 oil in the Middle East, South America or Indonesia.
>
> In the oil and gas industry, it is not the price of oil that matters, but the cost to produce that particular barrel of oil that really matters. Less expensive oil will always get produced before more expensive oil. The reality is relative to other oil and gas providences in the world, Alaska's oil is extremely expensive to produce. I believe this fact was recently validated the Wood Max [spelling not verified] study.
>
> We think that SB 151 simply adds to the production costs of Alaska's oil.
>
> When we first read through this bill, let me give you a simple sort of metaphoric [indiscernible] of how we talked about this particular bill. I live in the Anchorage neighborhood of College Village. We just received the good news that there was a $5,000 property tax exemption or tax credit that everyone

who owns a home in Anchorage in College Village gets to benefit from. However, all of a sudden, the mayor or maybe the local assembly passed an ordinance that says "no this tax exemption is only for those houses - you can only have this tax exemption if your house is painted white." And I happen to live in a white house in College Village. How welcome should I feel? How welcome should an industry feel when they are continually the subject of increased taxes. And also I want to point out this is an increase tax at a time of a $500 million surplus.

We agree with Tom in the fact that the advice that the Governor received on the recent field aggregation to raise taxes on the Prudhoe Bay satellites was wrong. The Alliance has been very aggressive in its statements against the Governor's actions. We clearly see that the aggregation of the fields in Alaska up on Prudhoe Bay will probably eliminate 20 to 40,000 barrels of oil that will never get the tax pipeline because of the faction unless it's overturned. Already, Alliance contractors, specifically in the area of engineering, are experiencing a slowdown in work.

Senate Bill 151 is, like Tom said, a piling on of another tax for this industry. I've said it before and I will probably say again, that no project has ever been taxed into existence. State officials, the legislature and the public need to remember what some of them seem to have forgotten, that companies wisely invest shareholder money. Corporate officers look to invest in areas where there is an opportunity for reasonable profits and those investments can be made without undue risk.

The problem is that most recently, if you take this particular SB 151 you take the arbitrary Administrative action by the Governor to aggregate Prudhoe Bay satellites. It's becoming a high-risk province.

Senate Bill 151, we believe is ill-advised legislation. It sends a wrong message to Alaska's largest investors and if passed it would most certainly cost Alaskans that work in oil [indiscernible - patch?] jobs. We respectfully urge you to oppose this particular legislation.

9:55:30 AM

DAN DICKINSON, Director, Tax Division, Department of Revenue, testified that the AOGA gave two reasons against this legislation. The first claimed that the Department misstated or overstated the

impact with "faulty premises". Mr. Dickenson pointed out that "fundamentally", the Department asserted this legislation would have "a hundred million dollar affect over the next decade." AOGA calculated the amount to be half that, or even $30 million. The dispute is over the size of the affect and AOGA does not question that there would be an affect. He noted this information could not be verified, as the courts would decide the issues.

Mr. Dickinson cited an article in the Alaska Budget Report [copy not provided], which asked members of AOGA their intentions if this legislation did not pass. The members responded that they would take advantage of any tax allowances permitable by law.

Mr. Dickenson predicted resolution of the matter would take several years, although the Department is confident that the State would prevail. He told of a court decision issued in 1992 [specifics not provided] establishing rules, which the Department has followed since. The "commerce clause issue" that pertains to the "ability to draw extra-territorial lines" has not been permitted.

Mr. Dickenson directed attention to the example given by AOGA relating to credits. Credits are "very different from determining income." He surmised that company would not sue the State because of the manner in which credits are treated. He noted a circuit court decision on the treatment of credits that, although does not directly apply to Alaska, is an indicator.

9:58:51 AM

Mr. Dickinson spoke to the assertion that prices of $50 per barrel of oil has the same value in Alaska as in the rest of the world. This is untrue. This price has more value in a regressive regime than in a progressive regime. He explained that Alaska has a regressive regime, in that when prices are low, a high percentage of "economic rent" is taken, and as prices rise an "ever lower" percentage is taken. At the price of $50 per barrel, Alaska "is one of the best places in the world to do business." As the price increases in a progressive regime, the host government takes an ever-larger percentage.

9:59:45 AM

Mr. Dickinson next addressed the second statement made by AOGA in opposition to this bill, that "this is just another tax increase that's been passed on by the Murkowski Administration." He read a portion of Mr. Williams' testimony to indicate this. Mr. Dickenson reminded the Committee members that at the conclusion of the previous legislative session, the federal government "changed the

rules and those rules will flow through to the state laws." This is the first opportunity for the legislature to address the matter and determine whether Alaska should "go along" with those opportunities provided by the federal government to attempt to return certain industrial development to America from abroad. He surmised that Alaska would likely not receive a significant share of investment. He explained that the federal legislation pertains to manufacturing and refining activities rather than resource extraction. The legislature must determine whether this is an unfunded federal mandate and if it is appropriate for the State to lower its taxes.

10:01:48 AM

Senator Stedman characterized the title of the American Job Creation Act as a stimulus effort to increase manufacturing jogs in the country. He asked if the State opting to participate or not participate would generate additional jobs.

10:02:45 AM

Co-Chair Green asked if this has that been analyzed.

10:02:54 AM

Mr. Dickinson qualified the federal Act affects many provisions, including the creation of special depreciation rules for a natural gas pipeline. Many of the provisions would "encourage" job creation in Alaska. The Department is not recommending decoupling those sections. This legislation addresses one provision only and would not reduce any of the federal tax benefit.

Mr. Dickinson explained that the State has historically followed the federal income tax guidelines rather than developing separate guidelines. This legislation is necessary to address the reduced federal taxation rates.

10:04:28 AM

Co-Chair Green indicated the fiscal note would receive additional review.

The bill was HELD in Committee.

#SB110
10:04:39 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 second hearing for this bill in the Senate Finance Committee.

10:05:39 AM

Senator Olson asked if the assessments on affected communities would be public information.

10:06:19 AM

DAN EASTON, Director, Division of Water, Department of Environmental Conservation, testified that it would be public.

10:06:25 AM

Senator Olson asked if the affected communities have been notified of the rate increase.

10:06:38 AM

Mr. Easton responded that those communities have not been notified.

10:06:51 AM

STEVE BORELL, Executive Director, Alaska Miners Association, testified via teleconference from an offnet location, that this issue has been discussed within the mining industry for some time. He noted that until participating in a series of meetings that the industry became convinced that State's primacy would be in the best interest of the State. He detailed a letter and attachments to the Committee from the Association dated April 4 [copy on file.]

Mr. Borrell spoke to "non-Alaska" factors that could impact Alaska permits, explaining that decisions made by the federal Environmental Protection Agency (EPA) could affect other areas of the national region number ten, of which Alaska is included. In addition, the EPA could consider permit applications based the impact such permit could have on the outcome of pending court cases in other jurisdictions.

10:09:54 AM

MERLE THOMPSON, testified in Juneau this bill is example of "piling

off" rather than "piling on". He identified concerns with the legislation, notably that tribal governments and the general public would be excluded from the permit process. He questioned the State expenditure of $1.5 million annually to provide a service that the federal government currently conducts at no cost to the State.

Mr. Thompson indicated his experience with coal bed methane and expressed concerns about the surface discharge from these activities that would have likely be required to undergo a thorough environmental impact statement process under federal management, but would not be considered under State management. Baseline studies of surface discharge were undertaken in the state of Colorado and were review of those studies by the organization, Trout Unlimited, which resulted in a significant decline in trout populations. It was determined that the eggs could not hatch in the water conditions.

Mr. Thompson surmised that this legislation would reduce the number of compliance officers and permitting officers. He characterized this legislation as a "wish list from the industry". He spoke to the benefits of the public process.

10:13:13 AM

KATHIE WASSERMAN, Alaska Municipal League, testified in support of the bill. She read a statement into the record as follows.

> AML supports SB 110. We believe Department of Environmental Conservation should have authority from EPA to implement the NPDES permitting program. Department of Environmental Conservation has successfully taken actions to assume primacy for the timber industry and, we feel, now should be able to pursue program development for full primacy.
>
> Our reasons for support are simple: Department of Environmental Conservation is better able to respond in a more timely manner to Alaska discharge and waste water issues. They are more familiar with Alaska's communities and businesses and thus know first hand the on-the-ground impacts, limitations, geography and economics related to the decisions they might make.
>
> We are (as is Senator Olson) concerned about fees. Permitting is worthless if communities cannot afford to pay permitting fees. We would suggest a sliding scale for municipalities based on population, and would be happy to work with Department of Environmental Conservation to arrive at a fair and equitable fee structure.

10:14:30 AM

Senator Stedman clarified that the AML is in support of increasing the fees that the Department would charge above the normal rate. He spoke to the allowable fee percentages based on the actual amount of time spent on permit issuance activities. He asked if the intent is to transfer the costs incurred by the State to industry.

10:15:22 AM

Ms. Wasserman corrected this was not the League's intent. In discussions with Mr. Eastman, she understood that the fees would increase under State primacy. She expressed this would be "one more added expense" to communities.

10:15:50 AM

Co-Chair Green asked if the witness' concerns pertained to communities of all sizes.

10:15:56 AM

Ms. Wasserman affirmed.

10:15:59 AM

Senator Stedman expected that 80 percent of the costs would be paid by the State and 20 percent by local governments. He asked if Ms. Wasserman requested that the 20 percent assessed to communities be reduced.

10:16:44 AM

Ms. Wasserman had not seen proposed fee amounts and hoped that municipalities would be involved in the establishment of the fees. If the increase were small, the matter would be insignificant. If the increase were substantial, communities would be required to consider whether "it would be beneficial."

10:17:14 AM

Senator Hoffman cited a memorandum dated April 8, 2005, from the Department of Environmental Conservation [copy on file], indicating that the rates would increase 80 percent.

10:18:03 AM

Senator Stedman identified two components to the fee situation, the first being "the absolute increase cost at the local level", i.e. municipalities and businesses, which would cost more for local governments and industry. However total cost of implementation, the other component of the fee situation, would be paid 80 percent by the State and 20 percent by local entities.

10:18:41 AM

Co-Chair Green referenced the aforementioned letter as stating the increase would be a factor of 1.8 for every community. She surmised this would be "fairly nominal for smaller cities".

10:18:56 AM

Senator Stedman cited pie charts titled, "Department of Environmental Conservation, NPDES Primacy, Distribution of Program Costs" [copy on file], and the pie titled, "Incremental Alaska investment in wastewater discharge permitting to achieve NPDES primacy (legislation fiscal note) $1,547,900" showing: fees 19 percent, general funds 81 percent and federal funds zero percent, which demonstrated his argument.

10:19:11 AM

Mr. Easton directed attention to the pie titled "Full Alaska investment in wastewater discharge permitting at full NPDES primacy implementation $4,826,100" showing: fees 19 percent, general funds 56 percent, and federal funds 28 percent.

Mr. Easton furthered that the 80 percent increase is an average; generally fees would increase by that factor. The actual increase would be a function of the direct costs and the fees for some types of permits could increase more than others. The permits issued for municipalities are "generally easier for us to write" and would therefore likely increase by a factor or 1.2 or 20 percent, rather than the average of 80 percent.

10:21:09 AM

Senator Stedman noted the differences of the two pie charts, with the incremental implementation of the program entailing a higher portion of the costs be paid by the State.

10:21:44 AM

Co-Chair Green requested a review of the reasons for assuming State primacy to provide understanding for the proposed fee increases.

10:21:58 AM

Mr. Easton explained that most of the permit applications in question are from small businesses, including placer miners and small seafood processors. Unlike in other states, two permits are required for operations in Alaska: one from the federal EPA and another from the State Department of Environmental Conservation. Most other states require one permit issued by the state agency, which acts as an agent for the EPA and must comply with the provisions mandated be the federal Clean Water Act. This process is less expensive and time consuming.

10:23:11 AM

Co-Chair Green spoke to concerns that the quality of permit application review would be reduced. The State would be less careful and less discriminate because the State would not be required to comply with federal regulations.

Mr. Easton assured that the Department must comply with the Federal Clean Water Act. Receiving permits would not be any easier.

10:23:46 AM

Co-Chair Green asked the location of the nearest EPA headquarter office.

Mr. Easton replied the regional headquarters is located in Seattle, Washington. It is possible that a permit reviewer has never traveled to Alaska.

10:24:06 AM

Ms. Wasserman shared that she once had a discharge permit for NPDES through her community, and that in the process of obtaining this permit, the EPA required ten months to locate a necessary waiver. The agency was unresponsive. Comparatively, the State Department of Environmental Conservation has been very responsive.

10:24:44 AM

Co-Chair Green asked if the witness surmised that the Department of Environmental Conservation without any standards approved the State permit.

Ms. Wasserman replied that the process never progressed to the point of Department of Environmental Conservation involvement.

10:25:05 AM

Co-Chair Green opined that some functions are better undertaken by the State.

10:25:16 AM

Senator Olson clarified that the AML is in favor of this legislation despite the fee increases of more than twice the current amounts.

10:25:35 AM

Ms. Wasserman reported that Mr. Easton hoped the increases would not be as high. Most communities favor a quicker, speedier and more complete process than the current EPA system.

10:25:55 AM

Senator Olson understood the fee increases would average 1.8 for the communities he was concerned about and therefore some permits would increase over this amount.

Mr. Easton affirmed.

Senator Olson asked if these permits would be issued primarily to municipalities or businesses.

Mr. Easton responded that the larger increases would apply mostly to large businesses, such as a water treatment facility located in Valdez.

10:26:50 AM

Co-Chair Wilken noted the aforementioned letter addressed the issue of including revenues generated from the imposition of fines in the fiscal note. He asked for an estimate to offset the $1.5 million cost to operate the program.

10:27:15 AM

Mr. Easton replied that this was considered, although he was unsure how to demonstrate collection of fines in a fiscal note. He surmised it would be appropriate to assume that a certain amount of revenue would be collected from fines; however, these revenues are deposited directly into the general fund.

Co-Chair Wilken interpreted the fiscal note to state that no violations would occur and therefore no fines would be levied. He deferred to Co-Chair Green to pass judgment on the correctness of the fiscal note.

10:28:09 AM

STEPHANIE MADSON, Vice President, Pacific Seafood Processors Association, testified about the Association and its members. She spoke as a member of a workgroup reviewing the pros and cons of State primacy. Currently the State has two types of permits: a general permit applied across the state, and a site-specific permit issued to larger processors or in areas of increased water quality concern. She understood that the cost of permits would increase under State primacy; however the benefits would be worth the extra expense. She assured that the public process would not change. Rather the State would not be required to concur with tribal groups other federal agencies, such as the National Oceanic and Atmospheric Administration (NOAA) and other groups. She qualified that the EPA would retain authority to override the issuance of a permit.

10:32:36 AM

Co-Chair Green took Co-Chair Wilken's advice to further review the fiscal note. She commented that fines should not be viewed as revenues sources; however their collection impacts the fiscal cost of a program.

Co-Chair Green ordered the bill HELD in Committee. [The bill was heard again after the recess.

AT EASE 10:33:30 AM/10:33:37 AM

AT EASE 10:33:51 AM/10:42:53 AM

SB 110-POLLUTION DISCHARGE & WASTE TRMT/DISPOSAL

This bill was heard earlier in the meeting.

Co-Chair Green noted a proposed committee substitute was distributed to members.

10:43:12 AM

Co-Chair Wilken moved for adoption of CS SB 110, 24-GS1009\G as a

working document.

Co-Chair Green objected for an explanation.

10:43:31 AM

Mr. Easton explained that the committee substitute "recognizes that the fiscal note reflects a substantial investment of State funds" and establishes an annual reporting system to appraise the legislature and the governor of the status of achieving primacy.

10:43:53 AM

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

10:44:12 AM

Co-Chair Green relayed a suggested made by Co-Chair Wilken to report this bill from Committee with the intent that the Department would prepare a new fiscal note that would be adopted by the Senate Rules Committee. The fiscal impact of revenue generated from fines would not be significant to the total cost of the program.

AT EASE 10:45:01 AM / 10:45:28 AM

10:45:43 AM

Co-Chair Wilken offered a motion to report CS SB 110, 24-GS1009\G from Committee with individual recommendations and accompanying fiscal notes.

Senator Hoffman objected because, although the State would receive some benefit from primacy, the federal government currently provides the services. This program would add two new positions and cost the State approximately $1.5 annually.

10:46:30 AM

Co-Chair Wilken amended his motion to clarify that a new fiscal note would be forthcoming from the Department of Environmental Conservation.

10:46:52 AM

Senator Olson shared concerns expressed to him from affected municipalities. Beside the increase costs, smaller communities that are federally recognized as tribal governments have a developed

relationship with the EPA that he characterized as "government-to-government" The Department has not demonstrated that this relationship would continue.

10:47:45 AM

A roll call was taken on the motion.

IN FAVOR: Senator Dyson, Senator Stedman, Co-Chair Wilken and Co-Chair Green

OPPOSED: Senator Hoffman and Senator Olson

ABSENT: Senator Bunde

The motion PASSED (4-2-1)

CS SB 110(FIN) MOVED from Committee with zero fiscal notes #1 from the Department of Fish and Game, #2 from the Department of Natural Resources, #4 from the Department of Transportation and Public Facilities, and a new fiscal note for $874,200 from the Department of Environmental Conservation.

#SB147
10:48:26 AM

SENATE BILL NO. 147
"An Act providing for a sport fishing facility surcharge on sport fishing licenses; providing for the construction and renovation of state sport fishing facilities and for other projects beneficial to the sport fish resources of the state as a public enterprise; and authorizing the issuance of revenue bonds to finance those projects."

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

10:48:42 AM

SENATOR RALPH SEEKINS reminded the Committee of questions raised at the previous hearing regarding the proposed method of bonding is legal. In discussion with the Department of Law, he learned it would be legal as it is similar to the Alaska international airport fund. This legislation would not establish a dedicated fund and the Department of Fish and Game would continue to have an obligation to repay the debt regardless of revenue generated to the fund.

10:49:48 AM

Senator Seekins reported that four tenths of one percent of people who purchase Alaska sport fishing licenses resides in Western Alaska. Therefore, while residents of this area may receive the benefits of this legislation, most would not pay for it.

10:50:21 AM

Senator Seekins furthered that Senator Stedman had asked the percentage of licenses purchased in Southeastern Alaska. The amount is approximately 25 percent, but primarily is comprised of nonresident licenses. Residents of Southcentral Alaska purchase the majority of resident sport fishing licenses, and Interior Alaska residents purchase about ten percent of the licenses issued.

10:51:19 AM

Senator Seekins told of discussions he had with Senator Stedman and he agreed that funding a source other than increased license fees would be preferred for the construction of hatchery facilities. However, "we are behind the curve" in development of such hatchery fisheries and the biomass reduction must be addressed soon as demand continues to increase.

10:52:05 AM

Co-Chair Green relayed her discussions with Senator Stedman about other potential needs identified during the term of this license surcharge and the potential difficulty in increasing the fee amount to fund those non-bonded, yet essential activities. She asked the sponsor's opinion.

10:53:00 AM

Senator Seekins was unable to ascertain what needs would be more important that the hatchery project.

10:53:08 AM

Co-Chair Green spoke to the "natural evolution" of fee increases. Although this surcharge is nominal, she expressed concern about the ability to impose future increases to meet certain needs.

10:53:29 AM

Senator Seekins reiterated that he was unable to predict what

future needs could arise. The proposed license fees would be less than those levied for resident sport fishing licenses in the states of Idaho, Utah and others. Currently Alaska fees are average compared nationally, and with the passage of this legislation, would be in the higher one-third. The Department of Fish and Game anticipates increased income from other sources, which would offset the operational charges of the hatchery operations. He predicted that if an emergency arose and was justified, anglers would be willing to pay increased license fees. His objective is that those who purchase licenses would be able to "take fish home".

10:55:31 AM

Senator Hoffman asked the operating costs of the hatchery program.

10:55:42 AM

Senator Seekins deferred to the Department of Fish and Game.

10:56:03 AM

GORDEN GARCIA, Department of Fish and Game, estimated that the current annual operating costs of $2 million would increase by $700,000 to $1 million. Production would increase 60 percent.

10:56:50 AM

Senator Seekins indicated he had a proposed amendment to require that the commissioner of the Department of Fish and Game to transfer any unexpended and unobligated bond proceed to the redemption fund to pay the outstanding principal owing on the bonds. In addition, the commissioner shall terminate the surcharge "at the first day of the year" following payment of the debt. The intent is to ensure that the surcharge is not levied for any purpose other than for this project.

10:57:53 AM

Co-Chair Green asked the number of years in which the bond debt would be paid.

10:58:00 AM

Senator Seekins answered 20 years.

10:58:24 AM

Co-Chair Green pointed out this provision would assure that the

surcharge would terminate and not become an ongoing funding source for future projects.

10:58:35 AM

Senator Seekins agreed assured this was his intent.

10:58:56 AM

Senator Stedman commented that he had not been aware of the demand on sport fish stocks in the Interior.

11:00:45 AM

Senator Olson suggested that additional vendors should be established in rural areas of the state to sell licenses. He spoke to the difficulty in purchasing licenses in rural communities.

11:01:00 AM

Amendment #1: This amendment inserts language to AS 16.05.130(f) added by Section 2 of the bill on page 2, line 22, to read as follows

> Upon completion of the purposes for which the bonds are issued, the commission shall transfer any unexpended and unobligated bond proceeds to the redemption fund to pay outstanding principal, interest, or redemption premium, if any, owing on the bonds.

This amendment also deletes language and inserts language to AS 16.05.340(j) added by Section 4 of the bill on page 3, lines 11 - 14. The inserted language reads as follows.

> The authority of the department to collect the surcharge under this subsection terminates on December 31 of the calendar year in which the principal amount of the bonds issued under AS 37.15.765 through 34.15.799, together with the interest on them and any interest owing on unpaid installments of interest, and all other obligations with respect to the bonds, are fully met and discharged.

This amendment also adds a new bill section on page 9, following line 21 to read as follows.

> Sec. 6. The uncodified law of the State of Alaska is amended by adding a new section to read:

DUTY OF COMMISSIONER TO NOTIFY AND REVISOR'S INSTRUCTIONS. (a) The commissioner of revenue shall notify the lieutenant governor and the reviser of statutes of the date that the principal amount of the bonds issued under AS 37.15.765 through 34.15.799, enacted by sec. 5 of this Act, together with the interest on them and any interest owing on unpaid installments of interest, and all other obligations with respect to the bonds, are fully met and discharged.

(b) The reviser of statutes shall replace the pertinent text of AS 16.05.340(j), enacted by sec. 4 of this Act, with the calendar year of the date provided by (a) off this section.

Co-Chair Wilken moved for adoption.

Co-Chair Green noted Senator Seekins gave an explanation of this amendment.

There was no objection and the amendment was ADOPTED.

Co-Chair Green pointed out this legislation does not indicate any increased expenses for the Department of Fish and Game.

11:02:10 AM

Senator Seekins replied that any increased operating expenses would be in future years.

11:02:15 AM

Co-Chair Green asked the number of years before the increased expenses would be incurred.

11:02:18 AM

Senator Seekins stated the project would be scheduled for completion in 2007 or 2008.

AT EASE 11:02:38 AM / 11:03:02 AM

11:03:05 AM

Co-Chair Green concluded that if the project were not completed until the year 2008, a fiscal note is not necessary at this time to reflect the increased operating costs.

11:03:21 AM

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

Without objection CS SB 147 (FIN) MOVED from Committee with fiscal note #1 for $1,398,600 from the Department of Revenue and fiscal note #2 for $1,553,400 from the Department of Fish and Game.

#
ADJOURNMENT

Co-Chair Green adjourned the meeting at 11:04 AM