

MINUTES
SENATE FINANCE COMMITTEE
January 26, 2006
9:03 a.m.

CALL TO ORDER

Co-Chair Lyda Green convened the meeting at approximately [9:03:10 AM](#).

PRESENT

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

Also Attending: SUSAN BURKE, Attorney representing the North Slope Borough; MIKE BLACK, Director, Division of Community Advocacy, Department of Community and Economic Development

Attending via Teleconference: There were no teleconference participants.

SUMMARY INFORMATION

SB 171-NPR-A COMMUNITY GRANT PROGRAM

The Committee heard from the sponsor, the Department of Commerce, Community and Economic Development and a representative of the North Slope Borough. A committee substitute was adopted and the bill was held in Committee.

#SB 171

[9:03:23 AM](#)

SENATE BILL NO. 171

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

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

Co-Chair Wilken, sponsor of the bill, moved for adoption of CS SB 171, 24-LS0785\C, as a working document.

[9:04:33 AM](#)

Co-Chair Wilken gave a presentation reminding the Committee of the purpose of this bill and the affect it would have on State finances. He utilized a handout in which the cover page reads, "Senate Bill 171, "The duty imposed by the federal government ultimately falls upon the Alaska Legislature..." Barrow v. State, Judge Walter Carpeneti, March 18, 1986" [copy on file]. This handout includes excerpted pages from a slide show presentation given during the previous hearing on this bill on April 26, 2005 [Copy of the entire presentation also on file.] The pages on the updated handout are not numbered, although most contain the slide number from the original presentation and are referenced in this presentation.

[9:05:26 AM](#)

Co-Chair Wilken explained that SB 171 is about "impact" and "impact on communities". Yet how the communities are impacted must be evaluated.

[9:05:58 AM](#)

Slide 3

National Petroleum Reserve - AK

[Map of the northern portion of Alaska with the National Petroleum Reserve - Alaska (NPR-A), the Alaska National Wildlife Reserve, Native lands, Point Barrow, Alpine, Prudhoe Bay, Point Thomson and other landmarks identified.]

- 23.5 million-acre petroleum reserve (~Indiana)
- NW third of Alaska's arctic between the Brooks Range and the Arctic Ocean

Co-Chair Wilken spoke to the large area encompassed by the NPR-A; bordered by the Brooks Range to the South and the Arctic Ocean on the North. Development of oil resources at Alpine is located next to the far Northeastern portion of the Reserve.

Co-Chair Wilken reminded that this area was opened for leasing in 1980 by the federal government.

[9:06:34 AM](#)

Slide 18

Where are the Communities?

[The locations of four communities are identified within the NPR-A boundaries with accompanying data about the communities as follows

City of Barrow

Population - 4,351

Median Household Income - \$67,097

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

City of Wainwright

Population - 531

Median Household Income - \$54,722

City Responsibilities - None Listed

City of Nuiqsut

Population - 430

Median Household Income - \$48,036

City Responsibilities - Community Hall, Dock and Cable TV

City of Atkasuk

Population - 218

Median Household Income - \$66,607

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

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

Co-Chair Wilken stated that impacts from NPR-A activities would be to those communities closest to the development. He gave perspective of the proximity of the communities within NPR-A. The distance between the City of Wainwright and the City of Nuiqsut is 226 miles. Barrow is approximately 160 miles from the City of Nuiqsut.

[9:07:18 AM](#)

Slide 25

What does the law say?

- Federal Law - 42 U.S.C. 6508
 - In allocation of the NPR-A funds, the State shall

give priority to use by subdivisions of the State most directly or severely impacted by the development of oil and gas leased in NPR-A.

- Alaska State Law - AS 37.05.530
 - A municipality may use the NPR-A funds only for services to alleviate the impact of oil and gas development within NPR-A.
 - Alaska Regulations - 3AAC 150.050
 - Impact means an effect reasonably attributable to NPR-A oil and gas activities under 42 U.S.C. 6508.
- (Emphasis Added)

Co-Chair Wilken read the statutes and regulation into the record.

[9:07:57 AM](#)

Co-Chair Wilken explained that the primary impact of the federal law is that the Alaska Permanent Fund has been "intercepted" by the communities affected by oil and gas development.

[9:08:21 AM](#)

[An unnumbered page in handout is taken from an advertisement included in recent editions of state newspapers and contains the following:

Alaska Permanent Fund Corporation 2006
Fund Works - Investing in your future
25% of state's mineral revenues
Income from Fund's Investments

Alaska State Constitution
Article 9, Section 15

At least 25 percent of all mineral leases, rentals, royalties, royalty sales proceeds, federal mineral revenue sharing payments and bonuses received by the State, *except those from NPR-A*, shall be placed in a permanent fund, the principal of which shall be used only for those income-producing investments specifically designated by law as eligible for permanent fund investments. All income from the permanent fund shall be deposited in the general fund unless otherwise provided by law.

The bill sponsor inserted italicized language "except those from NPR-A".]

Co-Chair Wilken surmised that if 1,000 Alaskans were asked if the

State's share of all revenues generated from oil and gas development were deposited into the Permanent Fund, all 1,000 would answer in the affirmative. However, this is untrue. Because of the 1980 law, only the funds generated from the NPR-A that are not expended for grants to the North Slope Borough and other specific communities are deposited into the permanent fund.

[9:09:27 AM](#)

Co-Chair Wilken reported that if the aforementioned federal law were not in effect, \$7.9 million of the \$31.6 million received from NPR-A last year would have been deposited to the Permanent Fund. Instead, only \$1.7 million was deposited and the Permanent Fund was "shorted" by approximately 80 percent. He remarked, "That should trouble all of us ... because federal law has effectively taken monies out of the Permanent Fund that are there for generations that follow me and those that made that law in 1980."

[9:10:22 AM](#)

Co-Chair Wilken stated that this bill attempts to rectify this situation.

Slide 19
Total Distribution to Date
...and FY 07 projections

[Bar graph showing Amount of the Grant Awards (Dollars Expressed in 1000s) for the fiscal years 1980-86 and for each of the fiscal years 1987 through 2007, with notations as follows.

FY 06 is the requested amount.
FY 07 is the projected amount from the proposed NPR-A summer lease sales.]

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

(Total includes the FY 06 requested amount of \$24,706,500)
(FY 87 and FY 91 include 5 communities)

[Note: a typographical error lists FY 05 twice and omits FY 04. The data indicated for the first FY 05 reference is actually for FY 04.]

Co-Chair Wilken stated that this "interception of the revenue fund" is done through the community grant program. The \$30 million designated to the grants for FY 00 was a significant increase over

previous years and brought attention to the issue. Approximately \$25 million was designated in FY 04.

Co-Chair Wilken anticipated that approximately \$50 million would be available for FY 07 because of increased development activity occurring in the NPR-A and expected lease sales scheduled for the fall of 2006.

[9:11:50 AM](#)

Co-Chair Wilken contended, "This isn't chump change."

[9:11:57 AM](#)

Slide 20

A Perspective in Statewide Terms

What if ... the FY 06 requested grant amount was computed on a per person basis, what would that mean for other AK communities on 7/1/05?

Anchorage
Population - 277,498
\$1.2 billion

Fairbanks
Population - 84,979
\$379.7 million

NW Arctic Borough
Population - 7,306
\$32.6 million

Bethel
Population - 5,888
\$26.3 million

Sitka
Population - 8,805
\$39.4 million

The FY 06 requested amount, \$24,706,539, is divided by the total population of NPR-A grant recipients, 5,530, for a per person amount, \$4,468.

Co-Chair Wilken asserted that the community of Fairbanks, in which he resides, would appreciate such an appropriation. The \$380

million would cover the budgetary needs.

Co-Chair Wilken cautioned, "We should know that we just can't look the other way while this diversion takes place unless there are certain rules under which we follow."

[9:13:10 AM](#)

Unnumbered Slide
Now is the Time

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

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

Co-Chair Wilken read this quote into the record, noting the remarks were part of Judge Carpeneti's final decision in the Barrow v. State of Alaska litigation.

[9:13:46 AM](#)

Co-Chair Wilken concluded, "Now is the time and Senate Bill 171 is the bill that attempts to do that."

[9:13:58 AM](#)

Co-Chair Wilken reminded that when this legislation was first heard in this Committee, certain concerns were raised. The proposed committee substitute addresses these issues.

[9:14:10 AM](#)

Co-Chair Wilken outlined the contents of the committee substitute, Version "C".

Section 1 - specifies the legislative intent.

[9:14:25 AM](#)

Section 2 - establishes an Impact Review Committee and proscribes the rules governing the proposed committee. It

stipulates that the members serving on the committee must visit the affected areas and specifies a timeframe and frequency for these visitations.

[9:14:53 AM](#)

Section 3 - contains technical changes.

[9:14:57 AM](#)

Section 4 - provides rules for the Department of Commerce, Community and Economic Development to follow in reviewing applications and reporting its findings to the legislature, similar to current practice, ranking all the proposed projects.

[9:15:46 AM](#)

Section 5 - outlines the duties of the proposed committee including the forwarding of its results to the full finance committees of each body for inclusion in the annual capital budget appropriation.

[9:16:04 AM](#)

Section 6 - stipulates the responsibilities of the municipalities that receive the grants, the review process of monitoring the implementation of the grant funding, and the allowable expenditures for grant funding.

[9:16:27 AM](#)

Section 8 - changes the calculation of the income deposited into the Permanent Fund.

Co-Chair Wilken opined that the provisions in this section are an "attempt to heal up the wound to the Permanent Fund". Currently, he explained, income is first expended to fund the grants, then 25 percent of remaining income is deposited into the Permanent Fund and one-half percent is deposited to the School Trust Fund. Under the new statute, the grants would still be funded first; however, the 25 percent calculation would be made on the gross income amount rather than the net income amount as currently done.

Co-Chair Wilken noted that the ability to deposit the full 25 percent of gross income into the Permanent Fund would not always be possible. He gave the previous year as an example. However, as continued income is generated from NPR-A resource development and

with the awarding of "valid" grants to affected communities, he predicted that full funding would be likely for most years. Remaining funds would be available for appropriation by the legislature to the Power Cost Equalization (PCE) Capitalization Fund or to the general fund.

[9:18:36 AM](#)

Section 9 - specifies lapse dates for the grants and how they are defined and monitored.

Section 10 - contains the effective date.

[9:18:49 AM](#)

Senator Bunde referenced language on page 2, line 27 of the committee substitute that provides that "a member" of the proposed committee must visit impacted communities. He relayed that Senator Ralph Seekins had clarified the correct language should read "each member". All members on the committee would be required to visit the communities.

[9:19:42 AM](#)

Co-Chair Wilken so noted.

[9:19:45 AM](#)

Senator Dyson recalled discussion during the previous hearing on this bill surmising that the real impacts on the communities within the NPR-A are the results of residents working at Prudhoe Bay. Therefore the grants are used not to offset impacts from direct resource development activities, but rather to address social problems resulting from residents' employment at Prudhoe Bay. He asked if utilization of the grants in this manner is legal.

[9:20:54 AM](#)

Co-Chair Wilken clarified the question of whether it is legal to use impact grants to address perceived social impacts and answered it is not.

[9:21:47 AM](#)

Senator Hoffman noted the Superior Court ruling that proposed projects must be evaluated then rated and prioritized. The overview does not reference the court's direction of the process to be undertaken after the rating is completed. He asked the requirement

in the event excess funds remained.

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Co-Chair Wilken responded that a "clear pecking order" is applied to claim of the funds. The affected communities receive first priority, the Permanent Fund and the School Trust Fund equally share the second priority and the remaining income is available to appropriation to the PCE Capitalization Fund and the general fund. This would not be changed by this legislation.

[9:23:36 AM](#)

Senator Hoffman clarified that the main intent of the bill is to establish a committee to determine eligibility of grant applications. The secondary intent is the change the calculation of the amount to be deposited to the Permanent Fund after the grants are funded.

[9:24:17 AM](#)

Co-Chair Wilken affirmed the calculation of the amount to be deposited to the Permanent Fund would be made on the gross income rather than the net amount.

[9:24:24 AM](#)

Senator Olson questioned the need to establish a committee to "tighten up" regulations that have already been changed. This bill appears to single out one entity because it has utilized laws and rules enacted by others outside of the entity. These communities have been successful at utilizing these laws; however the appearance is being made that the communities are taking advantage of the situation and would be penalized.

[9:26:21 AM](#)

Senator Olson stressed that the Department of Commerce, Community and Economic Development has done a "great amount of work" to amend the regulations to avoid misuse of the grant funding. Putting these changes into statute is "overkill". The finance committees could instead assign a subcommittee to ensure that the regulations are complied with. Other grant programs do not have a special committee overseeing how others are dispensing funds.

[9:27:16 AM](#)

Senator Olson objected to the cumbersome process.

[9:27:27 AM](#)

Co-Chair Wilken responded that overtime the process would not be cumbersome. Such action is necessary because in 1980 "folks" chose to address this area differently. The resulting grant awards are in direct contradiction to the Alaska Constitution. He hoped that with the implementation of this legislation, the committee process would "build confidence" that the legislature was fulfilling the federal requirement "nothing more nothing less". Ten years from now this should be a "non issue". If other grant programs warrant similar review, they should be addressed separately. He was aware of no such need. This situation affects the Permanent Fund and is therefore important.

[9:29:54 AM](#)

Senator Olson surmised the allegation is that those who established the Permanent Fund did not have adequate foresight to address certain issues occurring 25 years later. He asked if other committees would be required in the future to oversee impacts to communities affected by other resource development activities, such as timber harvesting and fisheries.

[9:30:43 AM](#)

Co-Chair Wilken shared that research indicates very little if any involvement by State agencies in the establishment of this grant program. The decisions were made at the federal level. He could find no evidence of State policy makers' involvement. If the federal government chose to divert income from other resource activities to certain areas of the State, it would be the legislature's responsibility to establish oversight for those programs as well.

[9:31:49 AM](#)

Senator Bunde stated that all legislation is a "living document". As times change and "reality sets in" it is important to be flexible to change.

[9:32:39 AM](#)

Senator Bunde did not view the North Slope residents as doing anything illegal, but rather using tools available to them. However, he questioned whether the practices reflect a fair distribution of the State's resources.

[9:33:34 AM](#)

Senator Stedman recalled that when this bill was first heard in Committee, he was skeptical of the impact to the communities receiving the grants. Over the summer months however, fish and game personnel and residents assured him that the oil development activities did impact the subsistence lifestyle. While the appropriateness of past grants could be debated, he preferred to look forward and achieve "middle ground" in which State officials protect the interests of the entire state.

[9:35:13 AM](#)

Senator Stedman supported the concept of calculating the amount for deposit to the Permanent Fund from the gross income. He suggested consideration of the cumulative impact on the Permanent Fund in these calculations. The previous year, sufficient funds were not available to provide the 25 percent and the shortage should be carried forward to future calculations. Grants in excess of the carried-forward percentage would not be issued. The intention is to make the Permanent Fund "whole". "At end of the day" the legislature would have complied with obligations to the federal government as well as obligations to all Alaskans.

[9:37:46 AM](#)

Senator Hoffman directed attention to Slide 20 of the presentation, which provided a perspective of impact grants if awarded on a statewide basis. He stressed that the amounts listed as allocated to the selected communities were very hypothetical amounts calculated on a population basis. If this legislation were passed, the communities would never receive the amounts shown. To "build up hopes" otherwise should be avoided unless it was Co-Chair Wilken's intent to provide such revenue sharing.

[9:39:53 AM](#)

Co-Chair Wilken agreed and expressed his intent was not to appropriate such amounts to communities.

[9:40:07 AM](#)

Senator Stedman redirected the conversation to the matter of the Permanent Fund. After the impact grants are funded and deposits are made to the Permanent Fund and the School Trust Fund, insignificant funds would remain for appropriation to the PCE account or the general fund. Therefore, this legislation would have virtually no impact to the general fund. Establishing a method to ensure the

Permanent Fund receives a sufficient portion of the earnings while complying with the federal regulations is the primary issue.

[9:41:09 AM](#)

Senator Olson noted that he represents an area with two boroughs and a large area with no organized local government. The calculation of the amount of funds distributed per resident is comparable on a national level to the appropriations made to Alaska. The per-resident dollar amount received in this State would be significantly larger if calculated for the population of the states of New York or California.

[9:42:12 AM](#)

Without objection CS SB 171, 24-LS0785\C, was ADOPTED as a working document.

[9:42:38 AM](#)

SUSAN BURKE, Attorney representing the North Slope Borough, commented on the argument raised by Senator Dyson regarding grants awarded to offset impacts from Prudhoe Bay. It is not illegal to utilize NPR-A revenues for any purpose. The provisions dictating allowable uses of this money are "broad".

[9:44:16 AM](#)

Co-Chair Green explained that Senator Dyson commented to the use of NPR-A funds to address impacts on the community due to residents leaving that community to work in Prudhoe Bay.

[9:44:55 AM](#)

Ms. Burke stressed that such allocations are not illegal.

[9:45:01 AM](#)

Senator Dyson agreed that this practice is not prohibited under criminal law; however use of the funds in a manner different from the intent of the law is still a problem.

[9:45:40 AM](#)

Ms. Burke affirmed that the requirement in federal law that priority must first be given to impacts from NPR-A development is not disputed. Once that priority is fulfilled, the remaining funds could be appropriated in any manner, including addressing impacts

from Prudhoe Bay activity.

[9:47:00 AM](#)

Senator Dyson remarked that the funds have been granted for projects to address issues in which little or no impact is caused by NPR-A. The grants have been awarded with no restrictions for their use.

[9:47:35 AM](#)

Ms. Burke referred to Senator Stedman's comments that past grants could be debated infinitely. The issue is how to make the determination of NPR-A impact.

[9:48:51 AM](#)

Senator Bunde asked how the priorities of grant applications were decided and whether this would be answered in Ms. Burke's testimony.

Ms. Burke indicated she would address this.

[9:49:07 AM](#)

Ms. Burke then provided her testimony on the bill as follows. Questions and comments were addressed as they arose.

First of all Senator Wilken has already told you what the law says and it's in the materials that he's provided for you so I won't repeat that here. But what I would like to provide is just a little bit of a historical background from a legal perspective.

As Senator Wilken indicated, the Congress in 1980, adopted legislation that allowed for development in the NPR-A. And as part of that legislation, adopted a provision that you're all now very familiar with, that provides 50 percent of the revenues that the federal government receives from oil development on its land within the NPR-A and provides for the priority to be given to in the use of the funds to the municipalities that are most directed and severely impacted from development in the NPR-A.

When the first money came to the State from NPR-A in the early 1980s, the State put 50 percent of it into the Permanent Fund. That was the statutory deposit to the Permanent Fund at that time. And just put the rest in the general fund and just spent

it like any other kind of receipt. After the North Slope Borough tried to persuade the State to take a different approach, because in our view this was totally contrary to the requirements of the federal act, we got no response.

So as a result, we were forced to file a lawsuit. In that lawsuit, we asked the court to determine primarily two things. Number one, "Was it proper for the State to automatically take 50 percent off the total and put that into the Permanent Fund - or any percentage of the total right from the get-go - and put that in the Permanent Fund and then look at what's left and decide whether communities should receive some of those funds for mitigating impacts." The second thing we asked the judge to look at and to decide was that there had to be some kind of mechanism whereby municipalities could make their needs known to the State - apply for funding if you will. The State had to make reasoned judgments about the impact issues. ... To the extent that the needs were found, a requirement that they be funded first out of the NPR-A money.

Well the court agreed with us and Senator Wilken's materials from last year provide the primary areas of the judges ruling. So the decision came down and in our favor. And so we sat down with the State, the Department of Law and then [Department of] Community and Regional Affairs and said, "OK, how are we going to do this?" And so we came up with proposed legislation that was ultimately enacted and it has remained on the books with some minor tweaking, to this day.

That's sort of the background.

Last year's bill, the original Senate Bill 171, proposed some major changes in the existing law and in doing so, raised a lot of legal issues. Primarily ones that, in our view at least, were in clear conflict with the federal act. We communicated those both to the Senate State Affairs Committee and to Senator Wilken and possibly others. I didn't personally do [this], but certainly it was done by the Borough.

The proposed CS that you've adopted today cures the problems that we brought up last year, but it includes some new provisions that raise some new legal issues and I'd like to share those with you today.

It also raises some policy issues and I'd like to talk about those after I get done talking about the legal issues.

[9:54:17 AM](#)

Ms. Burke referenced language included in Section 4 of the committee substitute that amends AS 37.05.530(c) that reads, "...a municipality may not apply for and the department may not take any action on an application unless it is accompanied by this submission..." This language pertains to "evidence or a certificate that the municipality is current on submission of reports concerning the expenditure of any grant or appropriation previously received under this section..."

Ms. Burke's testimony continued.

First of all on page 3, starting at line 24, there's a provision that says it precludes a municipality even from applying for impact funds if it's paperwork isn't in order, if you will, and or up to date.

In my view, this is contrary to the federal law. There's no requirement in the federal law that only those municipalities with their paperwork in order have to be given priority for funding. I mean the law was put in place to benefit the residents of these communities and to alleviate impacts on people, not on municipal governments as such.

[9:55:00 AM](#)

Ms. Burke:

It seems to me very hard to believe that Congress would have intended to preclude the residents of a particular community from obtaining funds to alleviate real impacts - and I'm [going to] assume here that we're talking real impacts - because some administrator didn't get a report filed on time.

Now are there sanctions that can be applied for late reporting and that sort of thing? Of course there are and they should be. But I believe that a sanction of precluding a municipality even from applying would be contrary to the federal act.

[9:55:33 AM](#)

Ms. Burke:

At page 3, pretty much the same area, there's also a restriction on the Department's ability to take any action on such an application or make any recommendation to the legislature about it. And there's a provision in our State Constitution that allows the governor, and of course the

departments are simply spokespersons for the governor under our form of the executive branch, that says he can communicate anything he wants to, to the legislature.

[9:56:16 AM](#)

Ms. Burke:

I think it's a separation of powers problem if you try to preclude the governor - the legislature tries to preclude the governor - from making any recommendations he wants to you.

[9:56:42 AM](#)

Co-Chair Green inquired to what language in the committee substitute Ms. Burke referenced.

It was established that the witness' comments were directed to the same language of Section 4, as earlier described.

[9:57:25 AM](#)

Ms. Burke next referenced the language of AS 37.05.530(e)(4) on page 6, lines 1 through 5, as repealed and reenacted in Section 6 of the committee substitute. The subparagraph reads as follows.

(4) expend the funds only for the use or purpose for which the grant or appropriation was made; the Department of Commerce, Community and Economic Development may not otherwise modify the terms of a grant or appropriation to change the purpose or objective of the grant or appropriation or the terms and conditions under which the grant or appropriation may be expended.

Ms. Burke:

There [is] what appears to me to be a restriction on the authority of the Department to modify existing grants. In other words, ones that have already been approved by the grant agreements have already been signed. If that's the intent, I think that it's contrary to the provision of the Alaska Constitution that prohibits legislation that impairs the obligation of contracts. And these grants - the grants that are already there in place - are contracts.

If you have a law that attempts to modify those contracts and impair the rights and obligations of those contracts that already exist, you run afoul of it's Article I, Section 15 of

the State Constitution.

[9:58:19 AM](#)

Co-Chair Green clarified the language Ms. Burke was addressing.

[9:58:25 AM](#)

Ms. Burke summarized the subparagraph as providing that the Department may not modify a grant to change the purpose or objective or the terms or conditions under which the grant may be expended. She continued as follows.

Well these contracts have provisions in them that allow for certain modifications. If you say that they can't do that you are changing the rights and obligations of the parties to the contract, mainly the State of Alaska and municipalities, under and existing contract.

[9:59:12 AM](#)

Co-Chair Green asked the provisions that allow the grants to be used for "xyz and/or a, b or c".

[9:59:32 AM](#)

Ms. Burke replied that the current practice does not allow for the total modification or a total change of use. Her comments pertained to a complete prohibition on the numerous terms and conditions of these grants. Some of these conditions do not relate to the overarching purpose of the grant itself, rather they address other issues such as timing and insurance.

[10:00:17 AM](#)

Co-Chair Green understood that the language in the committee substitute would apply to existing grants and would therefore be improper.

[10:00:26 AM](#)

Ms. Burke affirmed.

[10:00:30 AM](#)

Co-Chair Green asked if amending the provision to only apply to future grants would be allowable.

[10:00:33 AM](#)

Ms. Burke responded that this would be fine.

Ms. Burke noted that committee substitute replaces all reference to "grant" in existing statute with "appropriation". She assumed that a distinction would therefore be made in the administration of the entire program, which she would address later.

[10:01:28 AM](#)

Ms. Burke continued her testimony, speaking to the "appropriation versus grant model".

If you're talking about a grant program, like both the existing NPR-A grant program or any other grant program, the legislature appropriates money to a department - a State department - for the purpose of funding certain grants, and the department enters into grant agreements and the agreements take their course. It usually takes several months to get the actual grant paperwork together. So as a result, they're not done usually, they're not restricted to expenditure - having all the money spent by June 30th because by the time you've got the grant done it's already September, October or November. You don't have very much time left to spend the money if you are to spend it by the 30th of June.

And if I understand it correctly, under this appropriation model, what you'd have is the commissioner of [the Department of] Administration writing a check to the municipality on the basis of the appropriation to the municipality. I don't know when - first of July, second of July, fifth of July, I don't know.

If I'm correct in my assumption about how - that's how an appropriation model would work, I'm convinced that you're [going to] end up with a whole lot less oversight of the expenditure of this money than you have under a traditional grant model.

For example, under the current NPR-A grants, no State money - no municipality gets its hands on a nickel of this grant money until they've already expended it for a particular line item if you will, in the grant budget. It's on a cost reimbursement basis for the most part. There are exceptions in the grant for certain kinds of direct payments to vendors. But by and large, the bulk of this money doesn't go out to the municipalities until they file a report with the Department. The default

reports are monthly, but you can - the Department can provide for quarterly reports. But you don't get any money until you file one of these reports and tell them that you've spent the money and here's what the money's been spent for and now we want to be reimbursed for it.

That to me provides quite essential pre-grant or pre-expenditure oversight of these programs. If you have a strict appropriation model where the commissioner of Administration writes a check for the whole bunch, you know at the get go, the legislature isn't in a position to provide that kind of program oversight that the Department provides.

[10:04:59 AM](#)

Ms. Burke

And then there are other provisions that are contained in the grant agreements that are important. There are a whole host of things in the NPR-A grants and in other State grants, I assume as well, that are designed to protect the State's interests as well as the municipality's interests.

There are escalating levels of sanctions for instance, for non-compliance with the provisions of the grant ranging from suspension of grant payments - "you don't get anymore cost reimbursements until you clean up your act and get your reports in", to terminating the grant entirely. And if funds have been misspent, to demand payment and if necessary sue the municipality to get the money back. Those are provisions that are contained in these grant agreements. They're contract provisions that the municipalities have to agree to in order to get the grant.

There are provisions indemnifying the State from liability for things that are done in the expenditure and pursuit of the particular project that the grant is funding.

There are restrictions and oversight on the kind of subcontracting that can be done with the grant money.

The appropriation model just doesn't lend itself to providing for these kinds of provisions that really protect the State primarily, but also protect the municipalities.

I was looking at the grant agreement for one of the most recent grants from last year's round. There are 15 - 20 pages of terms and conditions and your appropriation bills are long

already, but I'll tell you they'll be a lot longer if you try to incorporate these kinds of things in an appropriation bill. And beyond that - and it depends on the particular language that's used in what you're trying to accomplish, you're [going to] end up running afoul of the confinement clause of the Alaska Constitution, which confines appropriation bill to appropriations and doesn't allow any substantive law to creep into them. That's the Knowles versus the Legislative Counsel.

[10:07:51 AM](#)

Senator Dyson understood the law does allow for the inclusion of qualifying language in an appropriation bill.

[10:08:09 AM](#)

Ms. Burke affirmed. However, the court decision on the aforementioned case, states that every appropriation is reviewed on a "case-by-case" basis. Sweeping judgments are difficult to make.

Ms. Burke next referenced Section 6 on page 5 line 23 through page 6, line five, which repeals and reenacts AS 37.05.530(e) to read as follows.

(e) A municipality that receives an appropriation under this section shall

(1) account separately for each grant or appropriation received;

(2) provide for an independent audit of the separate accounts maintained for each grant or appropriation, except that, for a grant or appropriation that is not more than \$300,000, the municipality shall provide for an independent unaudited review of the accounts maintained for the grant or appropriation;

(3) submit a copy of the independent audit report or independent review to the Department of Commerce, Community and Economic Development; and

(4) expend the funds only for the use or purpose for which the grant or appropriation was made; the Department of Commerce, Community and Economic Development may not otherwise modify the terms of a grant or appropriation to change the purpose or objective of the grant or appropriation or the terms and conditions under which the grant or appropriation may be expended.

Ms. Burke continued:

Another policy issue it seems to me is raised by the

requirement for the audit reports. The bill ... provides for an independent audit of the accounts maintained for the appropriation for a grant that is \$300,000 or more and requires the municipality to provide for an independent unaudited review of the accounts if it's less than that amount.

Existing regulation already requires audited reviews of State expenditures - grant money - in excess of \$300,000 if that much is expended within any fiscal year. So to that extent, I don't know that this legislation is required.

My main concern is with smaller grants to the smaller communities. If you're going to audit a grant, the auditor comes in and they look at the books and they look at the financial records - or the reviewer, it doesn't matter if it's an auditor or reviewer - and they look at the program and "has the money been spent in accordance with the terms of the grant."

[10:10:08 AM](#)

Ms. Burke:

That kind of review of a small grant is going to be almost as extensive as the kind of audits that are required on big grants. I mean you're talking about an independent reviewer, which is probably [going to] be someone from outside the community, having to travel to the community, spend I don't know how many days there [indiscernible]. That's money that's [going to] come out of the NPR-A off the top, and it's money that's not [going to] go into the Permanent Fund.

So I guess I would ask you to give serious consideration to deleting any - maybe just deleting the section. It's not necessary when you're talking about the larger amounts of money and I think it's going to be an onerous burden and a very, very expensive one. And I'm not sure that what you're going to be getting is worth the money that's going to be expended.

[10:11:00 AM](#)

Ms. Burke:

I think the Department can provide you with all the information you need about how this money was spent and whether it was spent on the objects of the grant. They've been

- assuming that you maintain a grant model, you've got the tools right there in the Department to provide you with that kind of information.

For larger amounts of money, it makes sense to have a higher level of scrutiny if you will. And as I say, existing regulation provides for that.

[10:11:55 AM](#)

Co-Chair Wilken clarified Ms. Burke's concern was the review of grants in amounts less than \$300,000.

[10:12:09 AM](#)

Ms. Burke affirmed, noting that audits are already required of grants over \$300,000 so additional statutory language is not necessary.

[10:12:23 AM](#)

Ms. Burke:

I want to talk a little bit about the lapse of the funds provisions. This gives me concern because, as I understand it, the default, if you will, under the appropriation model, is a one-year appropriation. In other words, if the money isn't spent by the 30th of June, it's lapsed. It's a "spend it or lose it" kind of program. I'm concerned for two reasons about this.

First of all there are a lot of potential operational kinds of programs, ones that wouldn't be a traditional capital project under your general approaches to lapsing, you know would have a much longer lapse period if they were appropriated in the capital budget.

But there are a lot of projects that really can't be done. Legitimate projects that are related to NPR-A impacts that really can't be completed within one year. A couple of examples - there's a grant that was awarded this last year to the North Slope Borough to train and establish local oil response teams in the communities. That couldn't be done in a single year. The subsistence studies - the baseline subsistence studies. You can argue about boat ramps and impact all you want but I don't think there's too much argument that baseline subsistence studies measuring what's out there now in terms of subsistence resources in order to measure both

present and future impact from oil development is a project directly related to NPR-A impacts. [This] doesn't make any sense. There also are the projects that are the most expensive to implement. To me it doesn't really make sense to fund these kinds of projects on a year-to-year basis. You might start year one of the project with a one year appropriation and when it comes time to ask for money for year two, it's one of those years when we don't get very much NPR-A money and there's really not enough to go around. There may be other communities with other impacts that are worthy projects and you end up not being able to fund the second year and wasting in essence the money that you spent on the first year. So that's a concern I have with what seems to be the intent to make these projects July 1 to June 30th and then the axe falls.

The second problem I see with it, even if you have a grant or a project that can be finished reasonably within a one-year period. A "spend it or lose it" kind of construct to me runs into the danger of getting close to the end of the fiscal year and the municipality saying "Oh my gosh, it's already the first of April and we've only got two months left to spend this money or it lapses and we lose it entirely. We'd better hurry up and spend it."

[10:15:34 AM](#)

It might not be spent in the wisest sort of way. [It] might be spent within the terms of the grant, but, particularly when you're dealing with relatively unsophisticated communities - I don't include the North Slope Borough in that category because the North Slope Borough is pretty sophisticated - but the smaller communities by and large are not. The Borough tries to provide as much assistance as it can in implementing [indiscernible]. But I worry about that sort of spend it or lose it is not necessarily going to provide the best kinds of fiscal decision making as you approach the dooms day date of June 30th.

[10:16:37 AM](#)

Co-Chair Wilken informed that grant has an individual completion date. The "default" lapse date provision contained in this bill would allow for the legislature, during the appropriation process, to assign a lapse date subject to the project under discussion. If the applicant were incorrect in estimating the completion date of the project, the Department would continue to have the ability to extend the lapse date. This provision ensures that money is spent as intended.

[10:18:43 AM](#)

Ms. Burke appreciated the clarification. However, the Department's ability to extend the lapse date would be limited to "unusual circumstances beyond the control of the municipality". In the "spirit" of providing maximum flexibility, the Department could determine that extensions could not be granted unless in the event of a "horrible disaster". She requested broader authority be granted to the Department.

[10:19:56 AM](#)

Senator Olson asked the witness' suggestion of alternative language.

[10:20:07 AM](#)

Ms. Burke did not have a recommendation. She could not provide such advice unless directed to do so by the North Slope Borough, as she served as their legal counsel.

[10:20:26 AM](#)

Ms. Burke continued her testimony.

The bottom line I guess in terms of the Borough's position on this legislation is that it's largely unnecessary. It seems to be that there are two aspects, or two concerns, that prompted the introduction of this legislation. One is the treatment of - how much money goes into the Permanent Fund after the municipal grants have been awarded and the needs are met. The second has to do with how stringent a look you're going to take at - or how much justification do the municipalities have to provide to demonstrate impact from NPR-A development.

[10:21:56 AM](#)

Ms. Burke:

There's nothing in current law that prevents the finance committees from forming subcommittees to look at these grants. Nothing whatsoever. I don't think it's necessary to institutionalize subcommittee review by statute. I think that's something you can do right now. As with any other appropriation, you can spend as much time looking at a particular program as you think is necessary and you have the time to spend on it.

I think it's wildly desirable to have people visit - members of the finance committee or anybody in the legislature - visit the villages in the North Slope Borough. The more knowledge you all have, and the more familiarity you have with particular programs and problems throughout the state, the better decision you're going to make. There's nothing that prevents you from doing that now.

On behalf of the North Slope Borough, I would extend an invitation to each one of you to do that tomorrow, or if you don't have time tomorrow, when the legislature adjourns and the weather's nicer in the villages.

So I don't think that's really necessary.

[10:23:26 AM](#)

Ms. Burke:

In the area of impacts, I guess I would suggest to you that the mere introduction last year of Senate Bill 171 seems certainly to have gotten the Department's attention on the area of impact and the need to do a better job of tying perceived impacts to NPR-A development.

[10:23:59 AM](#)

Ms. Burke next referenced the "new improved" application packet for NPR-A impact grants [copy on file].

Take a look if you would at the bottom of page four, where in bold letters the Department is telling the municipalities in no uncertain terms that they must clearly identify the NPR-A development activities or anticipated activities. They've got to identify the impacts and they've got to tie the impacts to the existing or anticipated development and then demonstrate how the proposed project will alleviate those impacts.

[10:24:37 AM](#)

Ms. Burke:

If you move along to page eight, toward the bottom of the page there's a note in boldface type. The boldface type itself says, "applications must not only identify NPR-A oil and gas development activities and resulting impacts, but also show how those are attributable to development within the NPR-A and

how the project will alleviate.

[10:25:09 AM](#)

Senator Bunde interjected that he understood the requirement is stated in the application packet, but that he also knows that "correlation doesn't relate to cause many times." After this requirement is met, another party determines whether the argument is accurate or not accurate. He asked who makes the determination whether the impact was cause and not simply correlation.

[10:25:53 AM](#)

Ms. Burke replied that existing statute provides that the Department undertakes the review of the applications and issues a determination.

[10:26:06 AM](#)

Senator Bunde assumed the Department would testify to the process it employs.

[10:26:28 AM](#)

Senator Bunde understood the "general philosophy" of awarding grants is through the appropriation process. The legislature has chosen at times to not allocate funding to certain other grants it deemed inappropriate. He asked if under the provisions of this bill, the legislature would have the ability to deny funding to certain projects subject to court challenge.

[10:27:16 AM](#)

Co-Chair Wilken clarified the question as whether the legislature could find that no application submitted in a fiscal year met the impact criterion and subsequently not fund any grants. He answered this could be possible, provided the legislature followed the federal and State laws governing impact.

[10:27:57 AM](#)

Senator Bunde surmised that such determinations would be subjective to the make-up of each finance committee.

[10:28:16 AM](#)

Ms. Burke commented that a project could be considered relevant to an impact by one person but could be considered by another as a

"boondoggle". The decisions would always be subjective. Legislative judgment could not be legislated.

[10:29:03 AM](#)

Ms. Burke continued her discussion on the application packet directing attention to boldface type on page 8.

The note deals with continuation of existing projects and has a requirement to make sure that the ongoing grants, or grants that are to continue a project that has already gone on, is really necessary and the expected outcomes ... and they recommend that the previous reports for the previous grant get attached to this grant application so they can see the project as a whole. I view that as another means of providing oversight in making sure that the Department thoroughly understands the nature of these projects as they're going through their evaluation process.

[10:30:23 AM](#)

Ms. Burke:

Finally, I'd like to direct your attention to page 11, which is the scoring section. To be honest with you I don't know what the point system is today for impacts, but I think that it's awfully good that at least for purposes of this new round of grants, and I assume in the future, that current and potential impacts are worth 45 points among the total of 100. That's pretty significant. That's almost half of the entire scoring is going to the issue of impact.

I guess what I would say is in terms of the impact issue, I don't really think you need legislation at all. I would urge you to - the Department - you obviously got their attention here and I guess introduction and discussion was perhaps enough on this issue. I would urge you to give the Department a chance to see if this new more stringent, if you will, attitude toward these grant applications is going to take care of the problems on the impacts that some of you have perceived.

[10:31:44 AM](#)

Co-Chair Wilken was conflicted in that he did not want to "look backwards", but recognized the necessity to do so to understand the issue. The existing scoring system is the "crux of the problem" and language contained in boldface type in the application packet is

inadequate in addressing funding that is appropriated for purposes other than the Permanent Fund.

[10:32:37 AM](#)

Co-Chair Wilken informed that the current score of 45 points is given on the impact of a proposed project out of a total of 100 points rating the application. This amount had been lowered in the past to represent a lesser ratio of the total score, although it has been returned to the ratio assigned when the program was established. He contended that the relationship to a NPR-A impact must account for 100 percent of the basis determining whether a project qualifies for grant funding. The legislature, to date, has not provided direction to the Department to do this. The current system would be difficult to amend and therefore requires rewriting.

[10:34:40 AM](#)

Ms. Burke pointed out that existing State and federal law stipulates that if a project does not address an impact, it is not entitled to a priority.

[10:35:11 AM](#)

Senator Olson spoke to the membership of the proposed committee, noting that most members would be legislators and that most legislators do not represent the election district encompassing the NPR-A region. He questioned how the committee would be any more effective or accountable than the Department.

[10:35:58 AM](#)

Co-Chair Wilken gave examples of grants awarded in the past for projects that he determined to have no relation to NPR-A development impacts. These included \$500,000 for the renovation of the City of Barrow assembly chambers, funding for the disposal of junked vehicles, and \$500,000 to construct a retractable boat ramp at Wainwright. If he served on the proposed committee, his vote would be one of six. Other members of the committee could argue differently. He admitted this would involve a cumbersome and expensive process but would be necessary. He was unaware of any other options, but stressed that the current system in which three bureaucrats make determinations without accountability is unacceptable.

[10:37:28 AM](#)

Senator Olson thanked Co-Chair Wilken for his response.

[10:37:40 AM](#)

Senator Olson asked Ms. Burke the extent of her concern regarding the constitutionality of a legislative body having oversight of an executive branch entity.

[10:38:27 AM](#)

Ms. Burke had not fully reviewed the matter and was unclear how the process would be implemented. She was concerned about the loss of grant oversight by the Department as a result of the change to an appropriation model.

[10:39:15 AM](#)

Co-Chair Wilken relayed that the Division of Legal and Research Services in drafting this bill informed him that the term "appropriation" better reflected the federal intent. He would review the matter further.

Co-Chair Wilken indicated he would also further investigate Senator Stedman's suggestion to incorporate shortages to the Permanent Fund of previous years in the calculation for percentage to be deposited to the Fund in the following year.

AT EASE [10:39:50 AM](#) / [10:43:37 AM](#)

MIKE BLACK, Director, Division of Community Advocacy, Department of Commerce, Community and Economic Development, testified that the Division, which is responsible for administering the NPR-A grants, "welcomes" the Committee's involvement and interest in this program. This legislation would provide the Department greater guidance. This bill identifies the key issue of determining NPR-A impact and whether a proposed project would address that impact. The University of Alaska and industries are involved in studying this.

Mr. Black informed of the current system in which a review committee comprised of local government specialists, grant administrators and similar professionals, utilizes the guidance provided to it to evaluate the grant applications.

[10:46:32 AM](#)

Mr. Black stated that the criteria governing the program have been modified over past years. The point system was changed as result of

the introduction of this legislation.

[10:47:12 AM](#)

Mr. Black continued that once the grants are awarded, the Department attempts to assist the municipalities in ensuring that the projects are undertaken appropriately. Efforts are also made to ensure that the grants provide a positive response to the identified impact.

[10:47:51 AM](#)

Mr. Black admitted that problems could arise and sometimes do. It has been necessary for the Department to occasionally intervene to make sure the projects are completed appropriately and that the funding is expended according to the intention expressed in the grant application. The Department has had to suspend some grants.

[10:48:41 AM](#)

Mr. Black pointed out that the establishment of a legislative committee could result in duplication or conflict with the Department's evaluation process. He suggested limiting or eliminating the Department's evaluation duties and stipulating that the Department simply presents the completed applications.

[10:49:48 AM](#)

Mr. Black cautioned that a lapse date 12 months after the appropriation would be unreasonable due to time required to receive construction materials, limited construction season and weather complications.

Mr. Black furthered that the audit provisions should also be reviewed. Currently, the Department maintains detailed files for each grant that include financial records. Auditing these records would be more cost effective than contracting a Certified Public Accountant (CPA) to travel to the communities and investigate the municipal records. Audits are expensive.

[10:51:02 AM](#)

Mr. Black noted that currently, if a grant exceeds \$300,000, the audit is not limited to the grant expenditures. Rather the financial operations of the entire municipality are audited.

[10:51:34 AM](#)

Mr. Black commented to the increased costs if an additional audit of each grant were required. He suggested that the Department's records on the grants could be sufficient.

[10:52:03 AM](#)

Mr. Black summarized that managing the grants would become difficult under the provisions of the committee substitute.

[10:52:25 AM](#)

Senator Bunde reiterated his earlier observation that "correlation does not mean causation." He again asked how the determination is made as to whether a proposed project would be legitimate in addressing NPR-A impacts.

[10:53:22 AM](#)

Mr. Black replied that an initial threshold review is conducted, focused more on form than on impact. The three-member grant committee then evaluates the impact utilizing the application as well as independent information. Approximately two weeks is available from receipt of the applications for this process. The process is subjective and many textbooks have been written on the issue of determining impacts.

[10:54:47 AM](#)

Senator Bunde asked if committee decisions require a majority or unanimous consensus.

[10:54:59 AM](#)

Mr. Black responded that each member rates the applications and final decisions are based on the combination of those ratings. If one member assigns a low impact rating for a proposed project, that determination could be countered by another member's higher rating. The intent is to rely on the wisdom of the group. No one member has the ability to deny an application, although if a member assigns a zero rating, the overall score of the project would be jeopardized.

[10:56:00 AM](#)

Mr. Black expected the proposed legislative committee would find that the dynamics of the committee in discussing the applications would cause reflection on points possibly not considered during the individual review.

[10:56:41 AM](#)

Senator Bunde asked the likelihood that the members of the grant committee as currently operating would have visited the affected communities.

[10:57:05 AM](#)

Mr. Black answered that the membership in the previous two years has included a local government specialist who is assigned to the North Slope region and therefore would have visited the communities.

[10:57:27 AM](#)

Senator Bunde asked the cutoff score out of the total 100 points, in which an application would be approved or declined.

[10:57:47 AM](#)

Mr. Black replied that a specified score is not applied. The cutoff point is established when the committee deems a project to have the highest impact and other criteria is met. If the committee finds a proposed project has received a high score and is grouped in a certain order with other applications, the grant is awarded.

[10:58:41 AM](#)

Senator Bunde opined this decision is subjective.

[10:58:52 AM](#)

Mr. Black affirmed.

[10:58:57 AM](#)

Senator Dyson appreciated the Senate Finance Committee members' restraint to the temptation to "demagogue the issue" and he appreciated Co-Chair Wilken's intent to look forward rather than back. Senator Dyson intended to review past actions to identify lessons that could be learned. He asked the criteria imposed in the decision on the renovation of the City of Bethel assembly chambers, the car dump and other aforementioned projects. He wanted to know how these projects were deemed appropriate or whether the normal criterion was disregarded. He asked where the errors were made, or whether the decisions were valid.

[11:00:55 AM](#)

Senator Dyson further questioned whether marginal projects were approved because of the amount of funds available and because of a perceived need to expend the funds for grants.

[11:01:27 AM](#)

Co-Chair Green requested the witness respond to Senator Dyson's questions at the next hearing on this bill.

[11:01:37 AM](#)

Co-Chair Wilken clarified that this legislation would not require an independent audit of grants of less than \$300,000. Rather an unaudited review is specified. A review entails significantly less effort for an accountant.

[11:01:57 AM](#)

Co-Chair Wilken then made the following announcement and accompanying statement.

LB&A [Legislative Budget and Audit Committee] had a report in January 12th about a project that Pioneer Natural Resources is going to build called the Oooruguk. It's 26 miles northeast of Nuiqsut. It's [going to] be 60 production wells on a six acre island. It has an underground pipeline. It's going to produce 20,000 barrels a day. It's a big project - multi-multi million dollars.

To get their permits and to get to the point they are today they had to do 27 different studies and here's the name of them: everything from avian avoidance, cultural resources, ice encroachment, bathometric, hydrology, wetland, wildlife habitat, traditional knowledge, endangered species assessment - 27 distinct different studies.

I asked the representative from Pioneer, "Sir, did any of those studies show an impact on the Village of Nuiqsut?" and he said no.

Those are the kinds of things I think we need to be aware of. There may or may not be impact and if there is, we need to quantify it and make sure that the people of Alaska know that we're vetting those requests so that the monies that are given to this particular area of the state are done so properly and done so with their confidence that they are getting their due out of NPR-A.

That's what this bill is about. It's about impact.

AT EASE [11:03:33 AM](#) / [11:04:22 AM](#)

Co-Chair Green directed that further questions and concerns be submitted to Co-Chair Wilken.

[11:04:36 AM](#)

Senator Hoffman commented to Co-Chair Wilken's conversation with the representative of Pioneer Natural Resources. The parties responsible for conducting the studies have not done their job correctly if they deem that the resource development activities would have no impact. Such activities have a cultural impact.

[11:05:04 AM](#)

Co-Chair Wilken agreed emphasizing this as the need for six months to review the applications.

#

ADJOURNMENT

Co-Chair Lyda Green adjourned the meeting at [11:05:30 AM](#)