

ALASKA STATE LEGISLATURE
SENATE RESOURCES STANDING COMMITTEE

March 2, 2005

3:38 p.m.

MEMBERS PRESENT

Senator Thomas Wagoner, Chair
Senator Ralph Seekins, Vice Chair
Senator Fred Dyson
Senator Bert Stedman
Senator Kim Elton
Senator Ben Stevens
Senator Gretchen Guess

MEMBERS ABSENT

All members present

COMMITTEE CALENDAR

SENATE BILL NO. 53

"An Act relating to a credit for certain exploration expenses against oil and gas properties production taxes on oil and gas produced from a lease or property in the state; relating to the deadline for certain exploration expenditures used as credits against production tax on oil and gas produced from a lease or property in the Alaska Peninsula competitive oil and gas areawide lease sale area after July 1, 2004; and providing for an effective date."

HEARD AND HELD

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."

HEARD AND HELD

PREVIOUS COMMITTEE ACTION

BILL: SB 53

SHORT TITLE: AK PENINSULA OIL & GAS LEASE SALE; TAXES

SPONSOR(S): RULES BY REQUEST OF THE GOVERNOR

01/12/05 (S) READ THE FIRST TIME - REFERRALS

01/12/05 (S) RES, FIN
03/02/05 (S) RES AT 3:30 PM BUTROVICH 205

BILL: SB 110

SHORT TITLE: POLLUTION DISCHARGE & WASTE TRMT/DISPOSAL
SPONSOR(s): RULES BY REQUEST OF THE GOVERNOR

02/16/05 (S) READ THE FIRST TIME - REFERRALS
02/16/05 (S) RES, FIN
03/02/05 (S) RES AT 3:30 PM BUTROVICH 205

WITNESS REGISTER

Dan Dickinson, Director
Tax Division
Department of Revenue
PO Box 110400
Juneau, AK 99811-0400

POSITION STATEMENT: Supported SB 53.

Mark Myers, Director
Division of Oil and Gas
Department of Natural Resources
400 Willoughby Ave.
Juneau, AK 99801-1724

POSITION STATEMENT: Commented on SB 53.

Gary Rogers, Revenue Auditor
Tax Division
Department of Revenue
PO Box 110400
Juneau, AK 99811-0400

POSITION STATEMENT: Commented on SB 53.

Kurt Fredriksson, Acting Commissioner
Department of Environmental Conservation
410 Willoughby
Juneau, AK 99801-1795

POSITION STATEMENT: Supported SB 110.

Dan Easton, Director
Division of Water
Department of Environmental Conservation
410 Willoughby
Juneau, AK 99801-1795

POSITION STATEMENT: Supported SB 110.

Steve Borell
Alaska Miners Association
3305 Arctic Blvd., Ste 105
Anchorage AK 99503
POSITION STATEMENT: Supported SB 110.

Beryl Hubbard, Vice President
Trident Seafoods Corporation
Seattle WA
POSITION STATEMENT: Supported SB 110.

Bob Robichaud, Associate Director
Office of Law
Environmental Protection Agency
Seattle WA
POSITION STATEMENT: Supported SB 110.

Dick Coose
Concerned Alaskans for Research and Envy (CARE)
Ketchikan AK
POSITION STATEMENT: Supported SB 100.

ACTION NARRATIVE

CHAIR THOMAS WAGONER called the Senate Resources Standing Committee meeting to order at 3:38:35 PM Present were Senators Seekins, Dyson, Stedman, Elton, Ben Stevens and Chair Wagoner. Senator Guess arrived at 3:42.

SB 53-AK PENINSULA OIL & GAS LEASE SALE; TAXES

CHAIR THOMAS WAGONER announced SB 53 to be up for consideration.

DAN DICKERSON, Director, Tax Division, said the intent of SB 53 is to extend the Alaska Peninsula as part of the active oil and gas province in Alaska. It takes an exploration credit that was passed two years ago and says if the Department of Natural Resources (DNR) is contemplating a sale on the Alaska Peninsula, a four-year window will be opened. "If any exploration occurs, the state will bear some of that risk." The Governor and folks in Bristol Bay support this bill.

MARK MYERS, Director, Division of Oil and Gas, noted the division's preliminary best interest findings that were just put out for public comment on the recent Alaska Peninsula lease sale. He hoped to issue final findings and a commissioner's approval soon; the sale would actually occur in October 2005 and

has significant potential for natural gas and oil. The sale will cover onshore state lands and waters out to the three-mile limit with onshore drilling only.

The basin has 20 or so wells that were drilled before 1985. After that, there was only leasing and drilling on federal and submerged lands on the Outer Continental Shelf (OCS), but this was discontinued over environmental concerns. The community has had a change of heart and it now wants an oil and gas lease sale.

MR. MYERS said the companies hadn't really looked at the area in any great detail since about 1985 when it left and a big gap in oil and gas exploration data exists. This incentive credit is strategically placed to accelerate the acquisition of modern seismic data and the potential early exploration drilling in the basin. The credit is available for the first five years. Because there are no active leases in the area, a credit like this gets factored into the bid if people come to the sale at all. It is a frontier basin without data or oil and gas infrastructure. "There is significant geologic and economic risk."

The credit is up to 40% and if it is accepted, the state will be allowed to release the data in 10 years. Generally, data is released after 25 months unless confidentiality is extended, but seismic data is never released. This bill provides an opportunity to get data out there faster. He thinks it will bring more companies to participate in the sale and increase the size of their bids. It will be seen very positively by industry.

SENATOR GUESS arrived at 3:42.

SENATOR ELTON asked if he could quantify if the increased activity that has taken place in other oil and gas regimes since the passage of the original bill in 2003.

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MR. MYERS replied that he hadn't seen any increased spending activity. He has eight applications under the program and most of them are on the North Slope; two are on the NPRA. There is no way to quantify whether it has led to incremental bids because the program is too young. Much of the perspective acreage on the North Slope is already under lease. However, the value and number of the bids have increased as well as the number of companies bidding in the last two years. He pointed out that oil prices have been higher, too.

The increased number of applications indicates the credit is being used. But he didn't know in basins like the North Slope whether the credit was bringing the companies in or whether the companies using it were already planning on making the investment. There is an up-tic of interest in using this credit in some of the exploration license areas like Copper River and Nenana. Revenues will not increase until production beings, however.

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GARY ROGERS, Revenue Auditor, Tax Division, said he audits the exploration tax credits. Drilling an exploration well more than three miles from a preexisting well receives 20% allowable expenses. An exploration well drilled more than 25 miles from the unit receives 20% of exploration drilling costs. If the well is both more than three miles from a preexisting well and more than 25 miles from the unit, it gets 40% credit for the drilling costs. The credit also provides for a 40% credit in seismic exploration costs.

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Once the credit application has been audited and the credit has been issued, the explorer can either use it to offset his production tax liability or sell or transfer the credit to another party that has a production tax liability. In general, allowable expenses are directly related to the work; excluded are administration, environmental, overhead indirect costs. SB 53 extends the provisions of last year's credit program to the Alaska Peninsula lease sale area and extends its deadline.

SENATOR ELTON asked if the bill extends the tax credit in the Bristol Bay area to 2010 and they are given based on the distance the new wells are from existing wells.

MR. ROGERS responded that there actually are some old wells out there.

SENATOR ELTON sought to clarify:

If you go out and drill two wells in a season, say, right next to each other, the first well won't turn around and disqualify the second. We'll look at that as a project. Then the other point, which I think is made, I think when Mark said there have been 20 wells

drilled up to 1985, there's a cut off.... The ones that were done back... at the turn of the century...some very old ones, won't be considered. I think the cut off is roughly 30 years. Ones that were drilled as recently as 1985, you would have to be three miles from that well to get your total 40% credit.

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CHAIR WAGONER said the state might already have all of the information from that well.

MR. MYERS responded that the information from those old wells are public knowledge. But wells like the Amoco Pitcherov, drilled around 1985, would disqualify other wells drilled within a three-mile radius.

There's two components. The 20% credit applies for - any well gets at least 20% if it's more than three miles away from an existing well post 1979. There's a second criteria that it has to be 25 miles from an existing oil and gas unit as of 2003. There are no oil and gas units; so, if a well qualifies in the Bristol Bay area, at least for the first season, it will qualify for a full 40% credit.... There may be four or five wells that are post '79; the rest of the area would qualify at the full 40%.

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SENATOR SEEKINS asked if every new well would qualify unless it was within three miles of a preexisting well from back then; so if there is a really hot strike, every other well around it qualifies for the 40% credit no matter what.

MR. DICKERSON replied that is correct.

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SENATOR ELTON said he understood that happened for the first year, but would the credit only be for new wells outside the three miles in the second year.

MR. DICKERSON replied that is correct.

CHAIR WAGONER noted a large number of supporting letters from municipal and tribal governments, which represented the communities in the area, but commercial fishing groups hadn't commented yet. He announced that the bill would be held until the next meeting.

[3:56:09 PM](#)

SB 110-POLLUTION DISCHARGE & WASTE TRMT/DISPOSAL

CHAIR THOMAS WAGONER announced SB 110 to be up for consideration.

KURT FREDRIKSSON, Acting Commissioner, Department of Environmental Conservation (DEC), supported SB 110 regarding the National Pollutant Discharge Elimination System (NPDES) Assumption. He wanted to focus on how it will strengthen the ability of Alaskans to protect the state's water resources and build a strong economy.

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Since creation of DEC in 1971, our duties have been clearly spelled out by the Legislature to adopt and enforce regulations, which set standards for the control of water, land and air pollution (AS 44.46.020). DEC fulfills these state obligations consistent with national pollution control programs authorized under the Clean Air and Clean Water Acts. These state and federal laws are designed to accomplish uniform environmental quality goals nationwide using pollution controls tailored to each state's unique circumstances.

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

EPA makes the wastewater permitting rules in Alaska. EPA decides what's important and what's not. EPA decides the permit review timeframes. EPA decides what goes into the permits and who gets inspected. EPA

decides how Alaska's water quality standards will be applied to specific discharges. EPA sets Alaska's water quality priorities.

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

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

Alaska has never pursued the opportunity provided by the federal Clean Water Act to shape the NPDES water pollution control permit program to fit Alaska's unique circumstances. SB 110 would allow DEC to develop a comprehensive water quality protection program where all program components, from legislative budgeting and oversight to fieldwork and enforcement, are conducted here in the state where Alaskans can shape solutions to fit Alaska's challenges. Alaskans are capable of protecting our water resources.

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

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

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

Federal programs do not adapt easily to Alaska. National goals do not always address our greatest needs. Alaska's elected representatives have made clear our commitment to environmental protection and our responsibility to develop our resources for the wellbeing of all Alaskans. If we are to realize the primacy for resource development, we must accept responsibility for managing our water resources. That means assuming primacy for the NPDES program. With primacy there will be no rollback of environmental protection; anyone who supports primacy on that basis will be disappointed.

NPDES primacy means:

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

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

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DAN EASTON, Director, Division of Water, SB 110 started with Senate Bill 326 (enacted in 2002) and directed DEC to evaluate the potential benefits and consequences of the state assuming primacy of the NPDES program. The department released its report in January 2004.

The report recommended that the state seek primacy and determined that it would need a total of 43 positions and a budget of \$4.8 million to run the program based on workload models and comparisons with other states.

Last year, the Legislature passed House Bill 546 directing the state to apply for partial NPDES primacy just for the timber sector. The fiscal note with the bill provided a full-time position and a combination of state and one-time federal grant funds for the effort.

In an unexpected twist, EPA notified DEC last October that partial primacy for just the timber sector would be "problematic." Reconciling ourselves to second-best, we executed a "work share agreement" with EPA. That agreement makes DEC the lead in the substantial effort of developing the next general permit for log transfer facilities, but it will remain an EPA issued and enforced permit absent state primacy for the full NPDES program.

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In November 2004, DEC formed an advisory workgroup to examine the concerns, costs and benefits associated with state primacy specifically from the permittee perspective.

The work group met in six day-long meetings between November 2004 and January 2005. Members from each major NPDES permittee group participated - the Alaska Oil and Gas Association (AOGA), the Alaska Forest Association (AFA), the Alaska Miners Association (AMA), the Alaska Water and Wastewater Management Association and the Alaska Native Tribal Health Consortium. Public notice of the meeting schedule was provided and the meetings were open to the public. workgroup proceedings, findings and recommendations were captured in a report completed last month. The report is available on the department's web site.

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MR. EASTON said in the end this report says that support for state assumption of the NPDES program varied between the permittee sectors.

The department's budget currently includes about \$3.3 million and 30 staff devoted to activities that would contribute to the state NPDES permitting program.

Those figures include the resources provided for the timber primacy effort. These positions currently are certifying the NPDES permits issued by EPA as required by the Clean Water Act and issuing state permits for small discharges that EPA has not made a priority.

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

Costs would be divided between state general funds, federal grant funds and permitting fee receipts. Permit fees will be based on charging for direct costs according to the resource agency fee policy established by House Bill 261 in they year 2000.

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SENATOR BERT STEDMAN asked if fish streams and mixing zones would be protected and what would be the difference in fees to the end user compared to the situation today.

MR. EASTON replied that mixing zones are a permitting tool provided for in state regulation and are not really affected by the issue of NPDES primacy. The current policy established in 2000 for fees states that the state charges for direct and indirect costs. The actual change would not be that great and he would continue to apply fees the way they are now.

SENATOR KIM ELTON asked how much EPA spends on the Alaska NPDES program and how many employees it has.

MR. EASTON replied that the state has 30 employees and the total is 51; so EPA has 21.

SENATOR ELTON assumed that EPA is spending more than \$1.5 million on 21 employees. He asked if Mr. Easton's division could do it cheaper and with less staff.

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MR. EASTON replied that the actual combined number of employees working on NPDES permits would go down from 51 to 43. "That's what happens when you have one agency doing something instead of two."

SENATOR ELTON asked what happens if a future legislature gives him a smaller budget and does he have the authority to increase receipts from the industry or if he doesn't do that, does EPA yank the program back from him.

MR. EASTON replied no he does not have authority through the budget process to increase fees, because the fee policy is established by statute. The department can only charge for direct costs. "Yes, ultimately if general funds were reduced to a point where we couldn't operate the program satisfactorily, we would run a risk of having to yield it back to EPA."

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SENATOR ELTON asked if EPA has ever taken that authority back from other jurisdictions.

MR. EASTON replied no.

SENATOR ELTON remarked that on page 5, there seems to be a change in the hearing process for a permit that would allow the permit applicant to meet with staff prior to the public hearing process and asked if EPA has that format now.

MR. EASTON replied that EPA does not have that format, but the state does. It is called the provision for pre-application conference. He is proposing using a state process in lieu of the current federal process.

SENATOR GRETCHEN GUESS supposed if there were budget cuts and the EPA took primacy back, it seems that the processing time for permitting would increase.

MR. EASTON replied that would be the case.

[4:16:22 PM](#)

SENATOR GUESS asked if there was a legal opinion on whether or not the EPA would support this bill, particularly section 5 about how the program would run.

MR. EASTON replied that EPA has worked within the workgroup and is thoroughly familiar with everything in the bill, but it would not be completely accurate to say that it has no problems. Some elements of the state program will need some discussion and work.

CHAIR WAGONER summarized that the state would take \$2.2 million out of the general fund and then charge applicants an additional \$300,000 that they are not currently paying to increase the speed of processing. "Now, how much faster is the permitting going to be?"

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MR. FREDRIKSSON remarked that the federal permit program operates everything from small discharges to the Red Dog Mine discharges. DEC looked at what efficiencies could be brought about, and at mining in particular, and has calculated 31 months to get an NPDES for a large mining operation today. He thought the state could do it in 18 months.

We feel we can have not only a more efficient permitting process, but a permitting process that's targeted really on Alaska realities as opposed to what we tend to see with the EPA. This is not taking a shot at them, but they are coming from a national level. They treat things across the board as a one-size-fits all and we think we can break through that. So, that is what this offers.

CHAIR WAGONER asked if the state reduces permitting time from 36 months to 18, that would be saving them a lot of money, so why are we only receiving \$300,000 in fees. "Why aren't we collecting more?"

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MR. EASTON replied that it would be possible to make a policy that would collect more fees, but he didn't recommend it right now.

SENATOR GUESS asked since part of this is wastewater, would those rates increase in Anchorage.

MR. EASTON replied that they would go up. He elaborated that many coastal communities have a 301(h) waiver. Juneau isn't one, but Anchorage is, as well as Petersburg, Ketchikan and others. Those permits are not delegatable by the EPA. There won't be an increase in fees, but they don't get the state to be their permitter.

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SENATOR ELTON asked if the state takes primacy on issuing permits, does it incur obligations to enforce conditions.

MR. EASTON replied yes. Permitting includes a lot of things - developing, modifying, renewing permits, as well as inspection enforcement and review of discharge monitoring reports. It's all reflected in the fiscal note.

SENATOR ELTON asked if that would include potential legal fees.

MR. EASTON replied yes.

[4:24:03 PM](#)

STEVE BORELL, Alaska Miners Association, testified that it was not until last fall that the mining industry was convinced that state primacy was best for Alaska. He commended an article in the "Alaska Miner" on its benefits. Other factors not mentioned earlier are EPA decisions on Alaska permits in light of court cases decided elsewhere in the country and with concerns to other developments in region 10. The EPA decisions might require including conditions that do not fit Alaskan conditions, which causes problems for the permittee. He supported state primacy and SB 110.

[4:27:06 PM](#)

SENATOR GUESS asked what other states don't have primacy and if he thought that the EPA only looks at states where it will still do the permitting or look at all the states.

MR. BORREL replied that the only other state he knows of is Idaho. If there is an issue going on somewhere in the country, EPA's consideration of it sometimes causes Alaskans to suffer.

[4:29:35 PM](#)

BERYL HUBBARD, Vice President, Trident Seafood Corporation, supported state primacy. All fisheries depend on high environmental quality, particularly high water quality. "Commercial sales rely on the image of that." Actual or perceptions of environmental quality are vital to the seafood industry. Primacy offers Alaskans greater control of programs and accountability before the state. Alaska will enforce the Clean Water Act and state regulations more efficiency. The economy gained through the efficiency of public services is beneficial to business. In terms of environmental stewardship

and regulatory management, the state would be better able to run its program more efficiently. The state having primacy would make it easier for the two agencies to work together.

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MR. HUBBARD emphatically stated that Mr. Easton and Mr. Fredriksson are exceptional individuals in terms of their managerial abilities.

[4:37:00 PM](#)

BOB ROBICHAUD, Associate Director, Office of Law, Environmental Protection Agency (EPA) supported SB 110. He noted that only five states do not have program authority. He has worked closely with the state over the last couple of years and DEC has great staff working here.

[4:39:30 PM](#)

SENATOR GUESS asked if it's EPA's opinion that unlike the past bill, the provisions in SB 110 are not problematic.

MR. ROBICHAUD replied that for the most part, that is true, but there will be discussion over some things.

SENATOR GUESS asked if Alaska is not at risk of having another problematic bill next year.

MR. ROBICHAUD replied that is correct.

[4:40:55 PM](#)

DICK COOSE, Concerned Alaskans for Research and Envy (CARE) and retired federal forester, supported SB 110. "In my mind, this is only one of several programs in which the federal government continues to treat the state of Alaska like a territory." It is important to note that local knowledge of resource management is more efficient than that used by the EPA. The DEC works better with local people and uses sound science. He used the example of EPA discharge policy for canneries in Ketchikan that required the fish waste to be ground up like flour and to be kept in a one-acre spot. Before it was just chopped up. This requirement was just picked out of the air and has caused nothing but problems.

The resources of Alaska are its wealth. Its financial health depends on sound management policies; the funding of this program is small, but its benefits are great.

[4:45:24 PM](#)

SENATOR GUESS mentioned that three industries are not represented in the working group - construction, oil and gas and wastewater. She asked why they are not there and if he speaks on their behalf.

MR. EASTON replied that it is dangerous to speak for other people and he would encourage the industry to express their views.

CHAIR WAGONER said there is plenty of time to hold this bill.

[4:47:52 PM](#)

SENATOR ELTON noted his concerns with provision 4 that set up the recipe for the public hearing process. He also asked if the permit process dropping from 31 months to 18 is an important component in the time savings. If it is, he wanted to know how much of a component is it.

MR. EASTON replied that he assumed Senator Elton didn't want an immediate response and that he would work on it for the next hearing.

[4:49:55 PM](#)

CHAIR WAGONER thanked Mr. Easton for his very thorough presentation and adjourned the meeting at [4:50:32 PM](#).

