

**ALASKA STATE LEGISLATURE  
HOUSE JUDICIARY STANDING COMMITTEE**

April 11, 2007

1:06 p.m.

**MEMBERS PRESENT**

Representative Jay Ramras, Chair  
Representative John Coghill  
Representative Bob Lynn  
Representative Ralph Samuels  
Representative Max Gruenberg  
Representative Lindsey Holmes

**MEMBERS ABSENT**

Representative Nancy Dahlstrom, Vice Chair

**COMMITTEE CALENDAR**

CS FOR SENATE BILL NO. 19(FIN) am

"An Act relating to a public officer's taking official action regarding, or influencing, a matter in which the public officer has a personal or financial interest; relating to restrictions on employment after leaving state service; prohibiting certain persons from engaging in activity as lobbyists; relating to financial disclosures from former public officials; and defining 'official action' under the Alaska Executive Branch Ethics Act and related law."

- HEARD AND HELD

CS FOR SENATE BILL NO. 20(STA) am(efd fld)

"An Act relating to disclosures by legislators, legislative employees, public members of the Select Committee on Legislative Ethics, and legislative directors subject to the Legislative Ethics Act; and relating to the applicability of the Legislative Ethics Act."

- HEARD AND HELD

HOUSE BILL NO. 149

"An Act relating to the authority of the Department of Environmental Conservation to require certain monitoring, sampling, and reporting and to require permits for certain discharges of pollutants; relating to criminal penalties for

violations of the permit program; and providing for an effective date."

- MOVED CSHB 149(RES) OUT OF COMMITTEE

HOUSE BILL NO. 14

"An Act relating to the purchase of alcoholic beverages and to access to licensed premises; relating to civil liability for certain persons accessing licensed premises; requiring driver's licenses and identification cards to be marked if a person is restricted from consuming alcoholic beverages as a result of a conviction or condition of probation or parole and relating to fees for the marked license; and requiring the surrender and cancellation of driver's licenses under certain circumstances."

- BILL HEARING POSTPONED TO 4/13/07

HOUSE BILL NO. 159

"An Act relating to the issuance of a certificate of birth resulting in a stillbirth."

- BILL HEARING CANCELED

#### **PREVIOUS COMMITTEE ACTION**

BILL: SB 19

SHORT TITLE: ETHICS: EXECUTIVE BRANCH & MUNICIPAL

SPONSOR(S): SENATOR(S) FRENCH, ELTON, MCGUIRE, WIELECHOWSKI, THOMAS, HUGGINS

01/16/07	(S)	PREFILE RELEASED 1/5/07
01/16/07	(S)	READ THE FIRST TIME - REFERRALS
01/16/07	(S)	JUD, STA, FIN
01/22/07	(S)	JUD AT 1:30 PM BELTZ 211
01/22/07	(S)	Heard & Held
01/22/07	(S)	MINUTE(JUD)
01/24/07	(S)	JUD AT 1:30 PM BUTROVICH 205
01/24/07	(S)	Moved CSSB 19(JUD) Out of Committee
01/24/07	(S)	MINUTE(JUD)
01/26/07	(S)	JUD RPT CS 5DP NEW TITLE
01/26/07	(S)	DP: FRENCH, HUGGINS, WIELECHOWSKI, THERRIAULT, MCGUIRE
01/30/07	(S)	STA AT 9:00 AM BELTZ 211
01/30/07	(S)	Meeting Postponed to 2/1/07
02/01/07	(S)	STA AT 9:00 AM BELTZ 211
02/01/07	(S)	Moved CSSB 19(STA) Out of Committee
02/01/07	(S)	MINUTE(STA)

02/02/07 (S) STA RPT CS 3DP 2NR NEW TITLE  
 02/02/07 (S) DP: MCGUIRE, FRENCH, GREEN  
 02/02/07 (S) NR: STEVENS, BUNDE  
 02/07/07 (S) FIN AT 9:00 AM SENATE FINANCE 532  
 02/07/07 (S) Heard & Held  
 02/07/07 (S) MINUTE(FIN)  
 02/12/07 (S) FIN AT 9:00 AM SENATE FINANCE 532  
 02/12/07 (S) Moved CSSB 19(FIN) Out of Committee  
 02/12/07 (S) MINUTE(FIN)  
 02/12/07 (S) FIN RPT CS FORTHCOMING 6DP  
 02/12/07 (S) DP: HOFFMAN, STEDMAN, ELTON, THOMAS,  
 HUGGINS, OLSON  
 02/14/07 (S) FIN CS RECEIVED NEW TITLE  
 03/07/07 (S) TRANSMITTED TO (H)  
 03/07/07 (S) VERSION: CSSB 19(FIN) AM  
 03/12/07 (H) READ THE FIRST TIME - REFERRALS  
 03/12/07 (H) JUD  
 04/11/07 (H) JUD AT 1:00 PM CAPITOL 120

BILL: SB 20

SHORT TITLE: LEGISLATIVE DISCLOSURES

SPONSOR(S): SENATOR(S) FRENCH, ELTON, MCGUIRE, WIELECHOWSKI,  
 THOMAS, HUGGINS

01/16/07 (S) PREFILE RELEASED 1/5/07  
 01/16/07 (S) READ THE FIRST TIME - REFERRALS  
 01/16/07 (S) JUD, STA, FIN  
 01/22/07 (S) JUD AT 1:30 PM BELTZ 211  
 01/22/07 (S) Heard & Held  
 01/22/07 (S) MINUTE(JUD)  
 01/24/07 (S) JUD AT 1:30 PM BUTROVICH 205  
 01/24/07 (S) Moved CSSB 20(JUD) Out of Committee  
 01/24/07 (S) MINUTE(JUD)  
 01/26/07 (S) JUD RPT CS 2DP 3AM SAME TITLE  
 01/26/07 (S) DP: FRENCH, MCGUIRE  
 01/26/07 (S) AM: HUGGINS, WIELECHOWSKI, THERRIAULT  
 01/30/07 (S) STA AT 9:00 AM BELTZ 211  
 01/30/07 (S) Meeting Postponed to 2/1/07  
 02/01/07 (S) STA AT 9:00 AM BELTZ 211  
 02/01/07 (S) Moved CSSB 20(JUD) Out of Committee  
 02/01/07 (S) MINUTE(STA)  
 02/02/07 (S) STA RPT CS 5DP NEW TITLE  
 02/02/07 (S) DP: MCGUIRE, FRENCH, STEVENS, GREEN,  
 BUNDE  
 02/07/07 (S) FIN AT 9:00 AM SENATE FINANCE 532  
 02/07/07 (S) Heard & Held  
 02/07/07 (S) MINUTE(FIN)

02/12/07 (S) FIN AT 9:00 AM SENATE FINANCE 532  
02/12/07 (S) Moved CSSB 20(STA) Out of Committee  
02/12/07 (S) MINUTE(FIN)  
02/12/07 (S) FIN RPT CS(STA) 5DP  
02/12/07 (S) DP: HOFFMAN, STEDMAN, ELTON, THOMAS,  
HOFFMAN  
03/07/07 (S) TRANSMITTED TO (H)  
03/07/07 (S) VERSION: CSSB 20(STA) AM(EFD FLD)  
03/12/07 (H) READ THE FIRST TIME - REFERRALS  
03/12/07 (H) JUD  
04/11/07 (H) JUD AT 1:00 PM CAPITOL 120

BILL: HB 149

SHORT TITLE: POLLUTANT DISCHARGE PERMITS  
SPONSOR(S): RULES BY REQUEST OF THE GOVERNOR

02/21/07 (H) READ THE FIRST TIME - REFERRALS  
02/21/07 (H) RES, JUD  
03/12/07 (H) RES AT 1:00 PM BARNES 124  
03/12/07 (H) Heard & Held  
03/12/07 (H) MINUTE(RES)  
03/19/07 (H) RES AT 1:00 PM BARNES 124  
03/19/07 (H) Moved CSHB 149(RES) Out of Committee  
03/19/07 (H) MINUTE(RES)  
03/21/07 (H) RES RPT CS(RES) 4DP 1DNP 4NR  
03/21/07 (H) DP: WILSON, ROSES, JOHNSON, GATTO  
03/21/07 (H) DNP: SEATON  
03/21/07 (H) NR: KAWASAKI, GUTTENBERG, EDGMON,  
KOHRING  
04/11/07 (H) JUD AT 1:00 PM CAPITOL 120

**WITNESS REGISTER**

SENATOR HOLLIS FRENCH  
Alaska State Legislature  
Juneau, Alaska

POSITION STATEMENT: As joint prime sponsor, presented SB 19 and SB 20.

LARRY HARTIG, Commissioner  
Department of Environmental Conservation (DEC)  
Juneau, Alaska

POSITION STATEMENT: Presented HB 149 on behalf of the administration.

CAMERON LEONARD, Senior Assistant Attorney General  
Natural Resources Section

Civil Division (Fairbanks)  
Department of Law (DOL)  
Fairbanks, Alaska

POSITION STATEMENT: Assisted with the presentation of HB 149.

LYNN TOMICH KENT, Director  
Division of Water  
Department of Environmental Conservation (DEC)  
Anchorage, Alaska

POSITION STATEMENT: Responded to questions during discussion of HB 149.

### **ACTION NARRATIVE**

**CHAIR JAY RAMRAS** called the House Judiciary Standing Committee meeting to order at [1:06:19 PM](#). Representatives Gruenberg, Coghill, Samuels, Lynn, and Ramras were present at the call to order. Representative Holmes arrived as the meeting was in progress.

SB 19 - ETHICS: EXECUTIVE BRANCH & MUNICIPAL  
SB 20 - LEGISLATIVE DISCLOSURES

[1:06:43 PM](#)

CHAIR RAMRAS announced that the first order of business would be CS FOR SENATE BILL NO. 19(FIN) am, "An Act relating to a public officer's taking official action regarding, or influencing, a matter in which the public officer has a personal or financial interest; relating to restrictions on employment after leaving state service; prohibiting certain persons from engaging in activity as lobbyists; relating to financial disclosures from former public officials; and defining 'official action' under the Alaska Executive Branch Ethics Act and related law."; and CS FOR SENATE BILL NO. 20(STA) am(efd fld), "An Act relating to disclosures by legislators, legislative employees, public members of the Select Committee on Legislative Ethics, and legislative directors subject to the Legislative Ethics Act; and relating to the applicability of the Legislative Ethics Act."

[1:07:25 PM](#)

SENATOR HOLLIS FRENCH, Alaska State Legislature, joint prime sponsor of SB 19 and SB 20, said that SB 19 was engendered by the problem which arose several years ago when then-Attorney General Renkes maintained [substantial] investments in certain entities and then took public action on those entities. The

subsequent investigation revealed a weakness in the state's ethics laws, and [SB 19] seeks to better define what amount of investment a public official can maintain and still take public action on the entity involved. He relayed that under Section 3 of SB 19, it would not be a violation for a public official to take an action if the action has only an insignificant effect on his/her investment regardless of how much he/she has invested, but it would be a violation if the action has a significant effect on his/her investment and the investment is greater than \$5,000.

SENATOR FRENCH explained that Section 1 of SB 19 provides that a former executive branch public official may not act as a lobbyist, except as a representational or volunteer lobbyist, for one year after leaving public service. Section 2 provides that a former executive branch public official must file a final report of financial and business interests upon leaving public office. Section 4 [provides that stock or ownership interest in an amount less than \$5,000 is presumed to be insignificant]; he offered his understanding that this presumption is rebuttable should a public official take an action that increases the value of the stock or ownership interest to \$5,000 or more.

[1:13:25 PM](#)

SENATOR FRENCH relayed that Section 5 would preclude a public official - for two years after leaving state service - from representing, advising, or assisting a person for compensation regarding a legislative or regulatory matter that was under consideration by the administrative unit the public official served. Section 6 expands the list of those public officials that would be precluded - for one year after leaving state service - from acting as a lobbyist; the additional persons are deputy heads of principal departments, division directors, legislative liaisons, employees of the governor and lieutenant governor who've held policy-making positions, members of boards or commissions that have the authority to adopt regulations, and members of the governing board and executive officer of a state public corporation.

REPRESENTATIVE SAMUELS asked why Section 5 has a two-year limitation and Section 6 has a one-year limitation.

SENATOR FRENCH indicated that Section 5 would apply to all public officers who would have participated in a matter personally and substantially through the exercise of official

action, whereas the public officers specifically referenced in Section 6 wouldn't necessarily have done so.

REPRESENTATIVE HOLMES asked whether the two-year limitation established via Section 5 would also apply to someone specifically listed in Section 6 who actually does participate personally and substantially through the exercise of official action.

SENATOR FRENCH surmised that it would apply.

REPRESENTATIVE GRUENBERG opined that not all who are listed in Section 6 are actually public officers as defined in AS 39.52.960, whereas Section 5 appears to apply specifically only to public officers.

SENATOR FRENCH suggested that a representative from the Department of Law (DOL) might be able to clarify that point.

REPRESENTATIVE HOLMES offered her understanding that AS 39.52.960 includes all public employees, and surmised, therefore, that all who are listed in Section 6 would be covered by Section 5.

REPRESENTATIVE COGHILL pointed out that Section 6 specifically precludes lobbying, whereas Section 5 precludes representing, advising, and assisting for compensation.

[1:23:15 PM](#)

REPRESENTATIVE SAMUELS offered an example involving a legislative liaison for the Department of Environmental Conservation (DEC): under Section 6, such a person could become a lobbyist one year after leaving state service, but under Section 5, he/she would have to wait two years after leaving state service before addressing matters that fall under the purview of the DEC. Following this example, the governor's legislative liaison, because he/she works on matters involving all departments, would be precluded for two years after leaving state service from addressing any matter.

SENATOR FRENCH acknowledged that it would be hard to identify concretely which specific matters the governor's legislative liaison participated personally and substantially through the exercise of official action.

REPRESENTATIVE SAMUELS questioned whether the two-year limitation set out in Section 5 would make it difficult to recruit someone for the position of governor's legislative liaison.

SENATOR FRENCH said:

I know you have wrestled with these topics like we wrestled with them, and there's no right answer - ... there just isn't. You just have to find some balance point where you're satisfied that you're protecting the public good vis-a-vis ... the demands of public service and the requirement that you get qualified individuals [to] fill positions. ... I wish I could tell you there's a bright line. ... My default response is, if you're called to public service, you're called to public service, and there's a reason why you're called and there's a reason why you want to do it, and it involves sacrifice. The person that you mentioned, I believe, could probably find lots of valuable work in that profession, whether it's DEC or some other related field, they just can't come to the building and use that influence they gained, at public expense, and push pieces of legislation. They can write laws, they can draft laws, they can analyze laws, they can ... work in the office, they can go to trade groups, they can promote all kinds of agendas without being a lobbyist. I think that's the special point of influence that the public is concerned about.

[1:27:53 PM](#)

SENATOR FRENCH said that SB 20 pertains to legislative disclosures, and embodies the concept of informing the public more concretely and more specifically, though this may also put more of a burden on legislators. "We should ... disclose to the public what it is we do in exchange for the money we earn outside the building," he added. Characterizing Section 3 of SB 20 as the heart of the bill, he explained that it lowers the monetary threshold requiring disclosure to \$1,000, and requires a clear description of services performed, hours worked, and income received and/or deferred.

REPRESENTATIVE COGHILL noted that Section 3 of SB 20 proposes to significantly change statutory language adopted recently via ballot initiative.

SENATOR FRENCH characterized the language created by the ballot initiative as burdensome. In response to another question, he indicated that other Senate legislation currently going through the process specifically precludes a legislator from being paid for work that mirrors his/her legislative work.

CHAIR RAMRAS surmised that such legislation could impede the ability of many legislators to perform the duties of their chosen non-legislative profession.

REPRESENTATIVE COGHILL said he would be doing further research on the restrictions imposed by Sections 5 and 6 of SB 19.

REPRESENTATIVE SAMUELS surmised that as currently written, Section 5 of SB 19 would preclude a public officer from doing any legislation/regulation-related work for compensation for two years after leaving state service, and offered his belief that such a person would essentially become unemployable for that time period.

[1:35:37 PM](#)

REPRESENTATIVE HOLMES pointed out that that two-year limitation in Section 5 is part of existing law.

REPRESENTATIVE COGHILL concurred, but noted that that existing law currently provides an exemption [for legislation-related matters], and this exemption would be removed via the change proposed via Section 5.

CHAIR RAMRAS relayed that SB 19 and SB 20 would be held over.

HB 149 - POLLUTANT DISCHARGE PERMITS

[1:38:17 PM](#)

CHAIR RAMRAS announced that the final order of business would be HOUSE BILL NO. 149, "An Act relating to the authority of the Department of Environmental Conservation to require certain monitoring, sampling, and reporting and to require permits for certain discharges of pollutants; relating to criminal penalties for violations of the permit program; and providing for an effective date." [Before the committee was CSHB 149(RES).]

CHAIR RAMRAS offered his understanding that HB 149 is intended to fix aspects of the legislation [passed in 2005] that pertained to the federal Clean Water Act's National Pollutant

Discharge Elimination System (NPDES) permit program, and would allow Alaska to enjoy primacy regarding discharges into its own waters.

[1:41:31 PM](#)

[Chair Ramras turned the gavel over to Representative Coghill.]

LARRY HARTIG, Commissioner, Department of Environmental Conservation (DEC), relayed that HB 149 is essential in the state's pursuit of primacy and enjoys the support of industry. There's been a lot of work done between the Environmental Protection Agency (EPA) and the DEC on putting together the state's application, getting the EPA's initial reaction to that application, and resolving the EPA's concerns on that application; furthermore, the EPA and the DEC have worked out a schedule whereby the EPA will receive from the state a revised, complete application for primacy, which will then be reviewed with the goal of being able to give the DEC primacy [by] Spring of 2008.

COMMISSIONER HARTIG relayed that the state still needs several things: new statutes and regulations; an attorney general's statement regarding the DEC's authority under state law; and a program description that would include budgetary information. The goal is for the DEC to have an exemplary program that will fulfill the desires and expectations of Alaskans. Again, HB 149 constitutes a critical piece of the package; without it, the state will not have a complete application, even though the state has already expended approximately \$3.7 million towards obtaining primacy.

[Representative Coghill returned the gavel to Chair Ramras.]

[1:45:58 PM](#)

CAMERON LEONARD, Senior Assistant Attorney General, Natural Resources Section, Civil Division (Fairbanks), Department of Law (DOL), relayed that all of the bill's sections resulted from discussions and negotiations between the administration and the EPA, and are intended to address the EPA's concerns regarding Alaska's existing statutes. The underlying principal of all of those concerns is that the EPA can only approve a state program if it is as stringent as the federal program being replaced.

MR. LEONARD explained that Sections 1 and 5 go together somewhat because they both address the question of where requirements for

monitoring and reporting should be placed; one option would be to place them in the discharge permits, and another option would be to place them in "orders" outside the context of the permit. The permits themselves would be enforceable by third parties via "citizen suits," and so placing a requirement in the permit as a permit condition would allow the requirement to be enforced by either the EPA, the DEC, or third party suits. Section 1 provides the DEC with the authority to place requirements on facilities even outside the context of a permit, and Section 5 clarifies that the DEC has the same authority as the EPA to place [requirements] in the permit itself as a permit condition.

MR. LEONARD, in response to a question, offered his understanding that the term, "facility" is broadly defined statutorily; in general, a "facility" would include any operation that resulted in a discharge which triggered the aforementioned permitting requirements. In response to another question, he relayed that the terms used in Section 1 are the same terms used in the federal law referenced in Section 1. Typically, the term "monitoring" as it is used in the bill refers to monitoring the effluent itself to measure the concentrations of pollutants in the effluent, ambient monitoring sampling in the receiving environment, and biological monitoring.

REPRESENTATIVE COGHILL noted that AS 46.03.900(8) defines "facility" as:

(8) "facility" means any offshore or onshore structure, improvement, vessel, vehicle, land, enterprise, or endeavor;

[1:49:19 PM](#)

CHAIR RAMRAS asked whether there should be 24-hour monitoring of facilities [by the DEC].

COMMISSIONER HARTIG said that the NPDES program is a self-monitoring/self-reporting type of program; this is how it currently works under the EPA and how it would work under the DEC. Therefore, neither the EPA nor the DEC would have a representative at each facility, but a facility - under the terms of the permit - would be required to periodically sample its discharge, send that sample to a laboratory for analyses, and report the results to the appropriate agency. The frequency of the monitoring and what would be monitored would be dependant upon a review of the types and variability of materials that

could be present in the discharge. For example, if a facility would be monitoring for a substance the amount of which doesn't fluctuate much over time, the monitoring frequency would be less than if the facility is monitoring for a substance the amount of which does fluctuate greatly over time.

COMMISSIONER HARTIG, in response to a question, indicated that on-site, 24-hour monitoring of all permitted facilities would not be possible as a practical matter because of budgetary constraints. Furthermore, there are strict civil and criminal penalties for noncompliance; a facility may not tamper with any monitoring or falsely report results, and the discharge monitoring reports must be certified for accuracy and completeness by a manager of the facility. Additionally, the DEC will be conducting periodic inspections of facilities, will be collecting samples during those visits, and will be comparing its testing results with the facilities' results. The DEC will have as rigorous a program as the EPA in terms of monitoring and inspecting, he opined, no different than what all the other states that have been granted primacy are required to have.

CHAIR RAMRAS expressed concern that the state would be instituting two different standards regarding facilities that are vessels: one standard for vessels [that are permitted by the DEC], and one standard for cruise ships traveling through Alaska waters.

[1:56:03 PM](#)

MR. LEONARD went on to explain that Section 2 of the bill proposes to conform the language in state statute with the language in the Clean Water Act; this change will alleviate the EPA's concern that the terms used by the DEC are [not] as broad as those used by the EPA. He also noted that some of the language being deleted from existing AS 46.03.100(a) via Section 2 is being reinserted into existing AS 46.03.100(e) via Section 4. He then explained that Section 3 of the bill proposes to clarify that it would be the DEC's responsibility to decide whether a particular discharge needed an individual permit or a general permit or could simply be covered under regulations. In response to a question, he mentioned that the term, "effluent" is used interchangeably with the term, "wastewater"; that both terms refer to what is discharged from a particular operation; that there is a wide variety of wastewater, including domestic wastewater and industrial wastewater; and that the bill addresses only effluent discharges to surface waters - not land

waters or ground waters - regardless of whether the surface waters are fresh or marine.

1:59:28 PM

LYNN TOMICH KENT, Director, Division of Water, Department of Environmental Conservation (DEC), in response to a question, explained that the types of discharges that the DEC oversees include sewage from community systems; discharges from the oil and gas industry; discharges associated with the timber industry, though such discharges are not generally considered to be liquid waste; discharges associated with mining operations; domestic discharges from "camps"; discharges associated with seafood processing facilities; and storm water discharges related to construction activities and some permanent facilities.

MR. LEONARD, in response to a question, relayed that discharges from cruise ships are exempted from the NPDES.

MS. KENT, in response to other questions, indicated that discharge from a cruise ship - although cleaner if run through an advanced wastewater treatment system - might most closely resemble discharge from a community wastewater system but might also resemble discharge from a facility involved in the oil and gas industry.

MS. KENT, in response to further questions, relayed that community wastewater systems discharge into both fresh and marine waters, and the dominant constituents include fecal coliform bacteria, total suspended solids, metals, and "pH and ammonia"; that oil and gas industry discharges - generally into marine waters - include hydrocarbons and metals such as arsenic, lead, cadmium, zinc, and other trace metals; that timber industry discharges from log transfer facilities consist of bark and debris from the lumber being transferred - generally via marine waters - and storm water discharges from "upland" facilities; that mining industry discharges include suspended solids - naturally-occurring fine particles of rock and sand - and metals; that camps have discharges similar to community wastewater systems; that seafood industry discharges - generally into marine waters - include ground up waste leftover from processing seafood; and that storm water discharges include oils and grease from parking lots, and suspended solids. The facilities that are required to obtain a storm water discharge permit include construction facilities and other facilities with

ongoing operations that could result in discharges to a surface water body.

MR. LEONARD, in response to a question, indicated that Section 8 of the bill [establishes a class A misdemeanor for violations and uses a simple "negligence" standard].

CHAIR RAMRAS surmised that this standard mirrors the federal standard under the Clean Water Act.

MR. LEONARD concurred.

[2:10:08 PM](#)

REPRESENTATIVE SAMUELS offered his understanding that the prior authorization referenced in Section 3 isn't currently mandatory and won't be even with passage of the bill.

MR. LEONARD concurred; Section 3 just clarifies that it will be the DEC that decides "which form to use."

CHAIR RAMRAS asked whether the DEC has adequate funding for the NPDES program.

MS. KENT said that funding was included in the fiscal note pertaining to the legislation that passed in 2005, and so funding for the NPDES program is part of the DEC's base budget.

COMMISSIONER HARTIG, in response to a question, said that the governor supports state primacy, which will only be achieved if the EPA believes that the DEC has adequate funding for the NPDES program.

MR. LEONARD, in response to comments, clarified that Section 1 only addresses the DEC's authority to require facility operators to perform monitoring, sampling, and reporting activities outside the context of a permit, even though there is much more to the NPDES program.

CHAIR RAMRAS asked why one might want the EPA to implement the NPDES program instead of the DEC.

COMMISSIONER HARTIG suggested that one reason might be that the EPA currently provides permits for free whereas the DEC charges for permits, and although some of the industries that seek discharge permits initially raised that issue as a concern, they have since reached a consensus in favor of having the DEC

implement the NPDES program. Another issue that has been raised - primarily by those concerned with protecting the environment - is whether the DEC will take enforcement as seriously as the EPA.

MS. KENT, in response to questions, reiterated that funding for the NPDES program has already been provided through the legislation that passed in 2005, and offered her understanding that the annual cost of the NPDES program is [about] \$4.8 million.

[2:16:45 PM](#)

MS. KENT, in response to further questions, offered her understanding that that amount is sufficient since some facilities are smaller and [permitting costs] will be covered under a general permit, which specifies the maximum quantity of waste that can be discharged from a facility; that currently there are about 2,000 permitted facilities; and that in performing a resource-needs analysis for the NPDES program, the DEC found its needs be comparable with the needs of the other "Region 10" states that have already implemented the program.

CHAIR RAMRAS asked Ms. Kent to provide the committee with statistics grouping facilities together by type and illustrating the cost allocations for each type.

MS. KENT said she would provide that data.

REPRESENTATIVE HOLMES asked why the state would want to take on the additional fiscal burden associated with having primacy, particularly given that the state might be facing a fiscal deficit in future years.

MS. KENT said that when the [administration] decided to pursue primacy for the NPDES program, a workgroup that included representatives of the major [types] of permit holders was formed, and one of the charges of the workgroup was to consider the potential costs and benefits of such a program. Attaining primacy, the workgroup reported, would result in permit holders being regulated by just one government entity rather than two; would result in Alaskans writing the permits rather than those that might not be familiar with Alaska-specific conditions; would result in permits being issued faster without requiring applicants to go out of state; and would result in the program being held accountable by Alaska's lawmakers and public.

MS. KENT, in response to a question, explained that after the state attains primacy, the EPA will maintain an oversight role and will be looking over the state's shoulder to ensure that the state program is run the way the EPA thinks it should be run, that the state program meets the standards established in the federal Clean Water Act, and that the state's funding of the program doesn't dip below the level necessary to run a credible program. In response to another question, she said that in order to rank the different types of discharges according to cleanliness, the DEC would use "water quality standards" to define "clean water" and would consider facility-specific [criteria].

COMMISSIONER HARTIG added that any discharges must meet the water quality criteria established by regulation and that criteria would cover "drinking water standards," though there may be secondary issues such as taste, appearance, and smell; from an environmental standpoint, all discharges should be relatively equal. In response to a further question, he said that if all discharges are meeting water quality standards, then they are meeting Alaska law, which is designed to protect the environment, and that if permit holders are meeting the monitoring requirements of the NPDES program, they will be meeting all the requirements of Alaska law.

CHAIR RAMRAS surmised that failure to properly monitor, sample, and report would result in a criminal violation.

[2:27:22 PM](#)

MR. LEONARD said that a negligent failure to comply with any of the [NPDES] program requirements would subject a permit holder to the criminal penalty established by Section 8 of HB 149. In response to another question, he said that any such violations could also be pursued civilly.

CHAIR RAMRAS asked why the NPDES program contains an exemption for cruise ships.

MR. LEONARD offered his understanding that the NPDES program generally exempts discharges from all vessels, not just cruise ships.

COMMISSIONER HARTIG, in response to a question regarding monitoring cruise ships, said that the DEC would do as directed by the legislature.

CHAIR RAMRAS asked whether the standards outlined in the NPDES program would provide adequate protection.

COMMISSIONER HARTIG offered his belief that the monitoring aspect of the NPDES program, coupled with periodic inspections, would provide adequate protection, particularly given the histories of the facilities that would be covered under the program. In response to comments, he relayed that if the state doesn't attain primacy, it won't result in a cost savings to the state, since it would still need those funds to run the existing DEC program.

MR. LEONARD, in response to questions, said that Section 4 proposes to alter the exemptions outlined in AS 46.03.100(e) so that they align with federal law; that these changes are required in order for the EPA to approve the state's program; and that under proposed AS 46.03.100(e)(1), a person discharging only domestic sewage into a publicly owned treatment works would be exempted from the permitting requirements outlined in AS 46.03.100. Again, Section 4 would merely align the state's exemptions with the federal exemptions.

REPRESENTATIVE COGHILL expressed disfavor with Section 4's proposal - via paragraphs (4) and (7) - to insert the term, "waters of the United States" into state statute. He questioned whether doing so would result in the state surrendering something.

MR. LEONARD, returning to his sectional analysis of HB 149, reiterated his explanations of Sections 5 and 8, and relayed that Sections 6 and 7 address terminology and clarify that the term "waste material" as used in state law includes "pollutants" as defined under the Clean Water Act.

[2:39:42 PM](#)

REPRESENTATIVE COGHILL asked whether the code referenced in Section 6 regarding the definition of "pollutants" could be amended.

MR. LEONARD said that that definition could be changed by Congress, though it hasn't been changed for quite some time. Because Section 6 merely references the federal code, any change to that code would, by reference, be incorporated into Alaska law.

REPRESENTATIVE COGHILL opined that the bill should instead use the terminology used in the referenced code - rather than merely referencing that code - and surmised that doing so would enable the state to become aware of any changes made to the federal code.

REPRESENTATIVE GRUENBERG asked whether the aforementioned code must be referenced in state statute - rather than having its verbiage merely duplicated - in order for the state to be in compliance for purposes of attaining primacy.

MR. LEONARD indicated that the code did need to be referenced.

REPRESENTATIVE HOLMES asked whether the bill proposes to make any changes other than what is strictly required to attain primacy.

MR. LEONARD said it does not. In response to another question, he said that the state may establish more stringent standards than those outlined in federal law.

COMMISSIONER HARTIG, in response to a further question, relayed that the EPA will retain its authority in the other environmental programs it shares with the state, and that HB 149 only addresses primacy as it relates to the NPDES program.

MS. KENT, in response to a question, said that 43 employees currently administer the state's existing program.

[2:44:27 PM](#)

REPRESENTATIVE GRUENBERG, referring to a letter from the Sealaska Corporation dated 4/10/07, asked whether currently all litigation pertaining to discharge permits goes through the federal courts.

COMMISSIONER HARTIG said that currently, with the EPA administering the NPDES program, an appeal regarding an NPDES permit is initially heard by the EPA's Environmental Appeals Board and then by the 9th Circuit Court of Appeals if someone wishes to pursue the appeal further. In response to a question, he offered his understanding that after the state attains primacy and after July 1, 2007, such an appeal would be dealt with via the state's Office of Administrative Hearings, and then by the Alaska Superior Court.

MR. LEONARD relayed that currently, in addition to the federal appeal process, a person could raise a challenge - through the state appeal process - regarding the state's role in certifying an NPDES permit. One advantage of attaining primacy is that there will only be one avenue of judicial review.

REPRESENTATIVE GRUENBERG characterized that as a major advantage from a legal point of view.

[2:48:16 PM](#)

REPRESENTATIVE SAMUELS moved to report CSHB 149(RES) out of committee with individual recommendations and the accompanying fiscal notes. There being no objection, CSHB 149(RES) was reported from the House Judiciary Standing Committee.

#### **ADJOURNMENT**

There being no further business before the committee, the House Judiciary Standing Committee meeting was adjourned at 2:48 p.m.