

MINUTES
SENATE FINANCE COMMITTEE
May 10, 2007
9:41 a.m.

CALL TO ORDER

Co-Chair Bert Stedman convened the meeting at approximately [9:41:26 AM](#).

PRESENT

Senator Bert Stedman, Co-Chair
Senator Lyman Hoffman, Co-Chair
Senator Charlie Huggins, Vice Chair
Senator Kim Elton
Senator Joe Thomas
Senator Donny Olson
Senator Fred Dyson

Also Attending: MARIT CARLSON-VON DORT, Staff to Senator Lesil McGuire; CHIP THOMA; MICHAEL PAWLOWSKI, Staff to Representative Kevin Meyer; BRIAN ANDREWS, Deputy Commissioner, Department of Revenue; LARRY DIETRICK, Director, Division of Spill Prevention and Response, Department of Environmental Conservation;

Attending via Teleconference: From an Offnet location: PAT GAMBLE, President and Chief Executive Officer, Alaska Railroad Corporation; LISA PARKER, Manager, Government Relations, Agrium Inc.; JOHN DUFFY, Borough Manager, Matanuska Susitna Borough; PATTI MACKEY, Executive Director, Ketchikan Visitors Bureau, and Chair of the Board of Directors, ATIA.

SUMMARY INFORMATION

[9:41:33 AM](#)

HB 229-KENAI GASIFICATION PROJECT; RAILROAD BOND

The Committee heard from the Alaska Railroad, Agrium, and the Matanuska Susitna Borough. The Committee adopted one amendment and the bill reported from Committee.

SB 144-TOURISM CONTRACT MATCHING FUNDS

The Committee heard from the bill's sponsor, a tourism industry representative, and a member of the public. The bill was held in Committee.

HB 238-OIL & HAZARD SUBSTANCE RESPONSE ACCOUNT

The Committee heard from the bill's sponsor, the Department of Revenue and the Department of Environmental Conservation. The bill was held in Committee.

HB 162-MORTGAGE LENDING

This bill was scheduled but not heard.

#hb229

[9:41:38 AM](#)

HOUSE BILL NO. 229 am

"An Act authorizing the Alaska Railroad Corporation to participate in a project consisting of the acquisition, construction, improvement, maintenance, equipping, or operation of real and personal property, including facilities and equipment, for the Kenai gasification project and Port MacKenzie rail link, authorizing the corporation to issue bonds to finance all or a portion of the project, and identifying these as bonds for an essential public and governmental purpose; and providing for an effective date."

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

[9:42:30 AM](#)

PAT GAMBLE, President and Chief Executive Officer, Alaska Railroad Corporation, testified that this bill would allow the Railroad to utilize its tax-free bonding authority to issue up to \$2.9 billion in bonds to enable the construction of the Agrium Gasification Plant in Kenai. He identified the three components of the bond proposition as funding for the plant, the ability to purchase assets necessary to facilitate the movement of coal for the plant, and the authorization of the Railroad to

use its bonding authority to support a potential rail extension from Willow to Port MacKenzie.

[9:44:39 AM](#)

Mr. Gamble reminded that tax free bonds would carry no recourse to State. The bonds would carry no recourse to the Alaska Railroad for the Agrium or the portions of the bonds dedicated to the rail extension. The Railroad would finance the costs of two trains to be used to transport materials to the plant.

[9:45:18 AM](#)

Co-Chair Stedman asked if these would be considered "conduit bonds".

Mr. Gamble affirmed that the bill called for conduit financing for the rail extension and the gasification plant.

[9:45:26 AM](#)

Co-Chair Stedman asked the expected length of time that the Railroad would retain authorization for this type of financing.

Mr. Gamble understood the question to relate to the term of the bonds.

Co-Chair Stedman clarified that he wanted to know how long the Railroad would continue to hold the authorization for the issuance of the bonds.

[9:46:01 AM](#)

Mr. Gamble replied that, for accounting purposes, the authorization would not be "carried on the company's balance sheet." The period of authorization was not specified and would carry no commitment, but would remain in perpetuity unless exercised or amended within the bill.

[9:46:52 AM](#)

Co-Chair Stedman proposed that the authorization be accompanied by a termination date to stipulate that if the project did not reach fruition, the authorization would expire.

Mr. Gamble replied that he would not expect a termination date on the bond authorization to affect the Railroad's financing, and deferred to Agrium to respond independently.

[9:47:44 AM](#)

LISA PARKER, Manager, Government Relations, Agrium Inc., informed that Agrium had experienced difficulties operating its plants at capacity due to declining resources. Agrium currently operated its plant at 50 percent capacity, yet intended to operate permanently at full capacity as soon as possible. Agrium would potentially be prepared to bring the project "online" by late 2011 or early 2012.

[9:49:25 AM](#)

Co-Chair Stedman asked regarding a "reasonable" timeframe for the authorization of the \$300 million for the Mat-Su rail extension.

Mr. Gamble responded that the Environmental Impact Statement (EIS) would take a minimum of two years to complete. Due to the fact that construction would be possible only seasonally, he estimated project completion at a minimum of five years, but deferred to the Mat-Su Borough for verification of his calculation.

[9:50:53 AM](#)

Senator Elton understood the definition of a "mega project" to be a project exceeding one or two billion dollars. According to that definition, this proposal would be considered a mega project. He asked the types of preparation and diligence performed by the Railroad's board of directors in relation to a mega project.

[9:51:41 AM](#)

Mr. Gamble informed that the board of directors was a management board rather than an oversight board. The board delegated the authority to run the day to day operations of the Railroad. The bonds would not be issued all at once and the board would approve each issuance of bonds separately, based on an evaluation of the risks related to each phase of the project.

[9:53:11 AM](#)

Senator Elton inquired as to the diligence exercised by the board with regard to financial matters.

[9:53:35 AM](#)

Mr. Gamble told of the debt management office managed by the Chief Financial Officer of the Railroad which was dedicated to that work. Additionally, the market itself would determine the risk and the interest rates, allowing the buyers to participate in the diligence process.

[9:54:41 AM](#)

Ms. Parker added that Agrium had been a publicly traded company on the New York and Toronto stock exchanges for the past 12 years. The company would conduct internal due diligence before the project was initiated.

[9:55:26 AM](#)

Senator Thomas was unsure of the source of the aforementioned \$300 million figure.

Mr. Gamble answered that that amount would be "rolled into" the general bonding authorization.

Senator Thomas understood that those funds would specifically be Railroad bonding and not associated with State liability.

Mr. Gamble confirmed that the funds would be conduit financing, akin to the Agrium project financing.

[9:56:09 AM](#)

Senator Thomas observed that when an extension of exportation of natural gas from Cook Inlet seemed likely, the expected reserves increased. He asked if this trend would impact the proposed project.

[9:57:07 AM](#)

Ms. Parker reiterated that Agrium would prefer to continue to utilize natural gas, which would save the company \$2 billion on

this project. However, natural gas reserves were diminishing, and the plant was currently operating for only half of the year, at 50 percent capacity. The North Slope would not be a supplier of gas for at least ten years. Agrium's intent was to purchase gas from Cook Inlet producers to operate the plant at 50 percent capacity until its conversion to coal, and then to remain using coal.

[9:58:51 AM](#)

Senator Olson asked if a market for the plant's product would develop if it were operating at 100 percent capacity.

Ms. Parker affirmed.

Senator Olson identified a five year difference between the estimated completion dates of the gasification plant and the natural gas pipeline from the North Slope. He asked how Agrium planned to repay the bond debt in that five year time frame.

[9:59:41 AM](#)

Ms. Parker explained that if Agrium converted the plant to a coal gasification facility, it would continue to employ coal and would not return to natural gas. The bond repayment would be negotiated with the bond market and the Alaska Railroad Corporation.

Senator Olson commented that the public was "very satisfied" with the impacts of natural gas usage, and asked the reaction of residents of the Kenai Peninsula to the proposed coal burning facility.

Ms. Parker shared that Agrium had received positive comments from people in the community. New technologies would make a coal project much cleaner than in the past. Extensive permitting would be required, including air and water quality permits and an environmental assessment.

[10:01:16 AM](#)

Senator Huggins stated that Agrium was one of the few industrial production bases in Alaska. The rail spur would serve approximately 50 percent of the State's population in the Anchorage and Kenai areas, as well as provide alternate

transportation for hauling construction materials to the North Slope for the erection of a natural gas pipeline. The State built very little new infrastructure, and the rail spur would decrease the wear on area roads, thus decreasing the needed maintenance and upkeep of the existing infrastructure. He relayed that the communities he had contacted supported the proposal.

[10:04:25 AM](#)

Senator Elton asked for clarification that the only asset that the Railroad would commit to the project was the "rolling stock".

Mr. Gamble affirmed.

[10:04:49 AM](#)

Senator Thomas asked if Agrium intended to sell electrical surplus energy back into "the grid".

Ms. Parker affirmed. She elaborated that the arrangement was currently to produce 190 megawatts of power, of which the plant would use 120 megawatts and sell 70 megawatts to the grid. The Homer Electric Association had been involved in those discussions.

[10:05:27 AM](#)

Senator Dyson asked if the project would require a new intertie line to transport the power produced.

Ms. Parker responded that the project would not require a new intertie line.

[10:06:00 AM](#)

Senator Dyson had received contradictory information.

[10:06:08 AM](#)

JOHN DUFFY, Borough Manager, Matanuska Susitna Borough, testified via teleconference from an offnet location in support of the project and the bill as amended. He referenced three studies that examined the impact of the proposed rail spur, and

informed that the studies supported the project, as it would allow for increased efficiency and mining development. He set forth that Alaska currently imported cement, but could produce its own cement and transport that product to market with the construction of the rail spur. The railroad would also provide savings for the transportation of materials to the North Slope when construction of the gasline began. The Borough would assist in the attainment of an EIS.

[10:08:25 AM](#)

Co-Chair Stedman shared that the Committee was considering the inclusion of a termination date of five years for the authorization of the Mat-Su rail extension, and asked Mr. Duffy's reaction.

[10:09:01 AM](#)

Mr. Duffy agreed with Mr. Gamble that a five year termination date was "appropriate".

[10:09:09 AM](#)

Co-Chair Stedman proposed an eight year time frame for authorization of Agrium's bonding portion of the project, after which time Agrium could request reauthorization if necessary.

[10:09:39 AM](#)

Mr. Gamble voiced that Railroad's support of that proposal, and deferred to Agrium.

Ms. Parker concurred.

[10:09:58 AM](#)

Amendment #1: This conceptual amendment reads as follows.

Place a five year sunset date on the portion of authorization (\$300 million) in the bill allocated to the Mat-Su Rail extension to Pt. Mackenzie.

Place an eight year sunset date on the balance of the authorization (\$2.6 billion) to finance the facilities and

equipment associated with the Agrium Kenai Gasification Project.

Co-Chair Stedman moved for adoption.

There was no objection and the amendment was ADOPTED.

[10:10:40 AM](#)

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

There was no objection and SCS HB 229 (FIN) was MOVED from Committee with previous zero fiscal note #1 from the Department of Commerce, Community and Economic Development, Alaska Railroad Corporation.

#sb144

[10:11:32 AM](#)

CS FOR SENATE BILL NO. 144(STA)

"An Act relating to matching funds in state tourism marketing contracts with trade associations; establishing the Alaska Tourism Marketing Funding Task Force; and providing for an effective date."

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

[10:11:51 AM](#)

MARIT CARLSON-VON DORT, Staff to Senator Lesil McGuire, read portions of the sponsor statement [copy on file] into the record as follows.

In 2001 the State of Alaska privatized the functions of the tourism marketing program by contracting with the Alaska Travel Industry Association. Prior to the current structure, Alaska's travel industry was promoted by a membership organization which was comprised of both private sector and State officials. Since that time the Department of Commerce, Community and Economic Development has

contracted with the Alaska Travel Industry Association to design and implement Alaska's tourism marketing program. State statute currently requires 50/50 matching funds; State general funds matched by private industry dollars. The recent passage of the travel industry taxes has had the dual effect of generating significant revenues to the State's general funds, and also the potential of eliminating the viability of voluntarily raising private sector dollars required to meet that 50 percent match. Without the commitment of the cruise industry funding the Alaska Travel Industry Association's ability to successfully market Alaska and compete with travelers in the national and worldwide marketplace is greatly compromised, particularly with respect to those independent travelers, those people that are coming to Alaska on their own via the Alcan highway or flying into our airports, and this is a particular area of visitors that has remained relatively stagnant and even declined in the last several years.

[10:13:40 AM](#)

Ms. Carlson-Von Dort continued her testimony as follows.

Senate Bill 144 will allow Alaska's travel industry to continue to receive State funds by temporarily changing the statutory match required in AS 44.33.125 from 50/50 to 70/30. This change will be repealed on July 1 of 2008. Additionally, Senate Bill 144 will create a nine member task force operating from September through December of 2007 to investigate long term marketing funding solutions. This task force would be made up of one House member appointed by the Speaker [of the House of Representatives], one Senate member, appointed by the Senate President, two members of the Alaska Travel Industry Association, two members of the cruise industry, which would both be appointed by their respective organizations, one member, which would be the Governor's Special Assistant to Commerce, one member of the Department of Commerce, Community and Economic Development, to be appointed by the Governor, as well as one member to be appointed at the Governor's discretion. This task force shall submit its findings and recommendations to the Governor and the legislature by the 30th day of the second regular session of the 25th Alaska State Legislature.

The purpose of this temporary statutory change would be to insure the maintenance of the Alaska Travel Industry Association's marketing budget, therefore maintaining and stabilizing visitor numbers while allowing the State and the industry to better evaluate how the cruise industry is going to participate, will or will not participate, in additional funding. Tourism, as I'm sure you all know, Mr. Chairman, has proven to be a tremendous economic engine for the State. It is one of Alaska's largest industries with an estimated \$2.4 billion annual economic impact, as well as being one of Alaska's leading generators of employment. It is essential for the State's economic well-being to support this renewable resource industry and foster its growth. I think that Senate Bill 144 strikes a very good balance by helping the industry continue to market itself through its time of financial uncertainty, i.e. this year, without mandating increased State expenditure. Really, what we're concerned about is whether or not the Alaska Travel Industry is going to be able to take advantage of all the dollars that are currently, the \$5 million that are currently in the core program budget. I mean, it would be certainly a shame to not be able to, to essentially leave those dollars on the table and not be able to utilize them to market Alaska.

[10:16:28 AM](#)

Senator Olson understood the task force would "expire" on December 31 of 2007.

Ms. Carlson-Von Dort affirmed.

Senator Olson observed a zero fiscal note, and asked if the task force would be able to produce a meaningful report without funding and in such a short amount of time.

Ms. Carlson-Von Dort affirmed, responding that the Department of Commerce, Community and Economic Development had reviewed the fiscal impact.

[10:17:21 AM](#)

Senator Thomas identified two task force appointees from the Alaska Travel Industry Association (ATIA) and two from the

cruise industry. He pointed out that the cruise lines were members of ATIA, and asked if there was a mechanism to ensure that the cruise industry would not be represented by four of the task force members.

Ms. Carlson-Von Dort understood that the cruise industry representatives would not embody the interests of ATIA, thus representation would be equally allocated.

[10:18:06 AM](#)

PATTI MACKEY, Executive Director, Ketchikan Visitors Bureau, and Chair of the Board of Directors, ATIA, testified via teleconference from an offnet location in Ketchikan in support of the bill. The proposed 70/30 match with a one year termination provision was the most reasonable proposal to address the current tourism marketing needs. She added that the composition of the task force should be as diverse as possible in order to best represent tourism in Alaska, and urged support of the bill.

[10:20:46 AM](#)

CHIP THOMA, Juneau Resident, testified in opposition to the bill. He provided written testimony [copy on file] and read his testimony as follows.

The state funding request by the Alaska Travel Industry Association (ATIA) is a dramatic change from past agreements in Alaska tourism promotion. Going from a 50/50 percent share to a 70/30 percent state-industry split is a fiscal departure that should be based both on demonstrated need and a logical advertising strategy for the future. Yet neither situation has occurred; it's all speculative. It's speculative that the cruise industry is going to drop its support, it's speculative whether ATIA is going to be able to raise the money. They should be able to.

The ATIA has failed to make the case that in the past state appropriations were well spent, or that increased 70/30 funding is the simple answer. Instead, ATIA blames the cruise ship initiative as the 'probable' cause of its funding woes, while ignoring the obvious fact that private advertising for cruises in Alaska now tops \$70 million a year. Market forces appear to be working naturally to make

the ATIA irrelevant in the big picture of advertising for a \$2.5 billion a year Alaska tourism industry. ASMI [Alaska Seafood Marketing Institute] and other private Alaska ads may total \$20 million more, bringing the total 'other' spending on Alaska tourism to \$90 million. That's a lot of money, and I don't think the ATIA is going to have one dent in that. All the advertising I see in the magazines I read, it's all Holland America, Princess, these are all fold-out ads. These people are doing a lot of advertising. All the glaciers, the water, the kayaks, the whales, that's all cruise ship type advertising, and the ATIA should not be involved in that and yet they are.

Governor Jay Hammond determined the participation rate for state funding for new industry over three decades ago: no subsidies. ATIA should wake up, use its considerable marketing skills to raise monies for the 50 percent share agreement they now enjoy, before it all dissolves in the wake of a wealthy cruise ship industry. I know a lot of organizations that hire fund raisers and they have fund raisers on commission, and I think the ATIA would be very, very wise to bring somebody on board who really knows what they are doing, can raise some money for this group, give them 10 percent of what they're going to raise and let them try to match that 50/50. If they think they have to go above \$10 million, then they should raise \$5 million or \$6 million and try to match with that.

Finally, I hope you set an appropriate funding level and participation rate by the state and the tourism industry. Please reject SB 144 as an inappropriate level of state tourism funding, and return to the 50/50 share and participation rate.

[10:24:09 AM](#)

Senator Huggins asked Mr. Thoma's affiliation with ATIA or other involved parties.

Mr. Thoma declared that he represented only himself. He explained that his interest in this issue was due to the fact that ATIA received State funding to advertise tourism, while other industries did not enjoy similar support. He opined that the healthy tourism industry did not require State support.

Senator Huggins repeated his query as to Mr. Thoma's involvement in this issue.

[10:25:34 AM](#)

Mr. Thoma replied that he was Juneau resident and was "inundated" with ATIA advertisements on television. These advertisements urged viewers in Alaska to "go out and enjoy the outdoors," and he considered them an inappropriate use of State funds.

[10:25:58 AM](#)

Senator Olson informed that ATIA and the tourism industry had positive effects in his community, and asked if Mr. Thoma supported the establishment of a task force to determine the proper use of tourism funding.

[10:26:53 AM](#)

Mr. Thoma had no comment or opposition to the creation of a task force, but reiterated his opposition to the proposed 70/30 funding ratio.

[10:27:07 AM](#)

Senator Olson asked how long Ms. Mackey had been involved with the tourism industry, and if she recalled any information regarding a tourism task force created 10 to 15 years prior.

[10:28:05 AM](#)

Ms. Mackey replied that she had been employed in the tourism industry for approximately 12 years, and had an extensive marketing background. She shared that the previous task force presented the "millennium plan" to the legislature seven to eight years ago. That plan recommended a change in the trends in the industry to consolidate all entities involved in tourism marketing. The State had been operating under that model since it was proposed by the task force.

[10:29:13 AM](#)

Co-Chair Stedman asked for a brief synopsis of Ms. Mackey's work history.

Ms. Mackey shared that her background was in marketing, specifically communications, which included broadcasting and journalism. She was also the former chair of the marketing committee utilized by ATIA to create its statewide budget.

Co-Chair Stedman asked if any recent studies were available to demonstrate the fiscal return for the State's investment in tourism advertising.

Ms. Mackey responded that studies were conducted with the cooperation of the Department of Commerce, Community and Economic Development, and return on investment information had been provided.

[10:30:58 AM](#)

Co-Chair Stedman requested the aforementioned "return on investment" information.

[10:31:03 AM](#)

Senator Thomas asked the composition of the ATIA board.

[10:31:22 AM](#)

Ms. Mackey answered that board members were elected by the ATIA membership, and those positions were based on regional representation. Seats on the board were also designated for members of the cruise industry to ensure its inclusion. The board was currently comprised of 23 members, and was representative of many facets of the tourism industry in Alaska.

[10:32:13 AM](#)

Senator Thomas asked if seats on the board were designated for each region of the state.

Ms. Mackey affirmed. Seats were designated by region, in addition to some "at large" seats.

[10:32:53 AM](#)

Ms. Carlson-Von Dort informed of a table distributed to each member titled "The Net Return to the State of Alaska from:

Timber, Tourism, Minerals, Commercial Fisheries" [copy on file] dated March 21, 2006.

[10:33:33 AM](#)

Co-Chair Stedman ordered the bill HELD in Committee.

#hb238

[10:33:38 AM](#)

CS FOR HOUSE BILL NO. 238(FIN)

"An Act relating to the response account of the oil and hazardous substance release prevention and response fund; and providing for an effective date."

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

[10:33:53 AM](#)

MICHAEL PAWLOWSKI, Staff to Representative Kevin Meyer, testified that Section 3 of the bill would create a subaccount within the State's oil and hazardous substance release prevention and response account. The response account contained \$50 million and was established in reaction to the Exxon Valdez oil spill to provide for emergency clean-up in the event of an oil or other hazardous substance spill. Section 3 of the bill would add language similar to that used for the Constitutional Budget Reserve subaccount to create a response account subaccount by transferring \$40 million into the subaccount. Section 2 of the bill would allow realized earnings from the subaccount to be deposited into the prevention account. The subaccount would be managed more aggressively than the prevention account, and earnings from the subaccount would provide operating funds to the Department.

Mr. Pawlowski continued that Section 1 addressed concerns of market fluctuations, providing for a one cent per barrel surcharge on oil in the event that the balance of the oil and hazardous substance release prevention and response fund was calculated to be less than \$50 million. The surcharge would be triggered by expenditures from the account in relation to

prevention or response activities, but would not be employed to compensate for losses from the subaccount.

Mr. Pawlowski identified a decline in the balance of the prevention and response account due to a decline in oil production. This bill was an attempt to provide "extra operating income" to the fund in the future by investing the fund's "underutilized resource".

[10:37:02 AM](#)

Co-Chair Hoffman informed that he served in the legislature when the prevention and response account was initially created. He asked the amount of funds expended from the account since its inception, and how that figure would compare to the anticipated revenue generated from the subaccount.

[10:37:57 AM](#)

Mr. Pawlowski referred to a table titled "Department of Environmental Conservation, Division of Spill Prevention and Response, Response Account Expenditure History Since Inception (10/2/1994 to Present)" [copy on file]. He pointed out that the largest disbursement of funds was \$2.1 million, and concluded that "not that much has been spent."

Co-Chair Hoffman asked if the legislation contained a mechanism to enable the State to access the \$40 million in the investment account in the event of a major spill incident.

Mr. Pawlowski deferred to the Department of Revenue to respond to questions regarding access to the funds in the subaccount.

[10:39:21 AM](#)

BRIAN ANDREWS, Deputy Commissioner, Department of Revenue, responded that the \$40 million would be invested in a portfolio of stocks and bonds, and would be fully accessible within three days.

[10:39:55 AM](#)

Senator Thomas asked if the bill contained a provision to ensure that the \$50 million balance of the account would be maintained,

regardless of whether the money was in the regular fund or the subaccount.

[10:40:38 AM](#)

Mr. Pawlowski replied that the bill would not provide for the reinstatement of a surcharge in the event of investment loss. The surcharge would be triggered only by expenditures from the account. The management of realized earnings in excess of the \$50 million balance of the account would be "left up to regulation and discussion."

[10:41:18 AM](#)

Senator Thomas asked if the earnings of the subaccount would be used to replenish the original response and prevention account.

Mr. Pawlowski explained that the earnings of the investment account in excess of \$50 million would be deposited into the prevention account and utilized to respond to oil spills or other emergency scenarios.

[10:41:45 AM](#)

Senator Thomas clarified that his question related to earnings above the original fund balance of \$50 million.

Mr. Pawlowski was unsure. He estimated that the realized earnings would "probably be deposited into the prevention account." The prevention account would not lapse and the earnings would create a positive balance in the prevention account. He directed the Committee's attention to four pages of graphs relating to the response fund [copy on file] prepared by Representative Meyer's office.

[10:43:11 AM](#)

Senator Huggins asked the activities the response funds were allocated to, and how the State "recouped" those costs from the parties responsible for the spill.

Mr. Pawlowski informed that existing statutes were "very clear", and provided that all expenditures from the response account were "cost recoverable". The State would pursue repayment from the responsible party for the full amount of the response costs.

[10:43:58 AM](#)

LARRY DIETRICK, Director, Division of Spill Prevention and Response, Department of Environmental Conservation, informed that the full amount of expenditures related to spill response would be recovered by the State. He exemplified a spill incident involving the M/V Selendang Ayu, and shared that the State was currently in settlement discussions to recover the funds spent in response to the accident involving that vessel. Approximately 80 percent of expenses associated with that response had been recovered thus far.

[10:44:50 AM](#)

Senator Huggins deduced that expended funds would not be available for investment, and asked if there was a provision to compensate the State for lost investment opportunities while awaiting settlement.

[10:45:21 AM](#)

Mr. Pawlowski answered that the sponsor had considered the issue, but decided not to pursue lost "opportunity costs". The statutory fines, penalties, and damage costs were deemed "sufficient" by the sponsor.

[10:46:01 AM](#)

Co-Chair Hoffman asked if the industry would be liable to replenish the response fund if poor investment returns led to a balance lower than the required \$50 million. He reminded that the industry would benefit from good investment returns by not paying the surcharge, and asked if it would contribute to the fund during times of poor returns.

Mr. Pawlowski responded in the negative. He pointed out that the industry currently was not required to compensate the State in times of extra earnings.

[10:47:06 AM](#)

Co-Chair Hoffman remarked that the State was assuming a risk by passing this legislation. If the investment account suffered losses, the State would be liable for the decrease, and the oil

companies would not be charged. If however the investment account had realized earnings, the industry would benefit as the surcharge would not be triggered by the balance of the account. He opined that realized earnings from the investment subaccount should be deposited into the general fund.

[10:47:59 AM](#)

Co-Chair Stedman asked Mr. Pawlowski to speak to the "risk shift".

Mr. Pawlowski agreed that the State would assume financial risk in the establishment of an investment subaccount. If the State was required to access funds in the investment account during a time of poor market conditions, the State could be forced to "buy in at a loss". As currently in statute and specified in the proposed legislation, the only recoverable dollars would be actual expenditures. The current spill prevention and response account assumed very little risk, but had earned only \$1.25 million the previous year.

[10:49:02 AM](#)

Co-Chair Hoffman articulated that the original legislation provided a mechanism that would require the oil industry to replenish the account as funds were expended through prevention and response activities. Under the proposed legislation, the State would assume the responsibility to maintain the balance of the fund. If the investments did not return profits, the State would be liable for the full fund balance without contribution from the industry. If the investments proved successful, industry would not be required to contribute in that situation either, thus relieving it of participation in the funding of the spill prevention and response account. Co-Chair Hoffman concluded that if the legislature sought to ensure that the \$50 million balance was always available to abate spills, it would not pass this bill.

Mr. Pawlowski granted that Co-Chair Hoffman's logic was correct. He characterized the issue as a "policy call", balancing potential earnings with potential losses. He pointed out that the funding for the Division had been consistently declining, and this bill would provide a mechanism for continued funding. He elaborated that industry would be financially liable for

clean-up if a spill occurred via direct cost recovery and the imposition of the surcharge.

[10:51:02 AM](#)

Co-Chair Stedman asked the Department of Revenue to speak to the fiscal note.

Co-Chair Hoffman asked Mr. Dietrick if the Department of Environmental Conservation supported the legislation.

Mr. Dietrick deferred to the Department of Revenue.

[10:51:32 AM](#)

Mr. Andrews informed that the entire \$50 million balance of the account was currently invested in a "short term money market" portfolio, and would be reinvested into a moderate risk portfolio comprised of stocks and bonds. The costs reflected on the fiscal note would be investment management, custodial and accounting expenses. The costs associated with the investment account would represent approximately 10 basis points of the entire investment, which he considered reasonable.

[10:52:46 AM](#)

Senator Elton asked why the bill would invest a "hard dollar amount". He exemplified the Permanent Fund, which was invested based on percentages. He asked if the "hard dollar amount" was problematic for the Department of Revenue.

Mr. Pawlowski replied that the investment figure was selected as a "beginning point". The figure was "relatively arbitrary" and was selected to allow the Division of Spill and Prevention Response to continue to function as distinct investment policies were established.

[10:53:51 AM](#)

Senator Elton asked if funds would be moved from the investment account when the balance exceeded \$40 million.

Mr. Andrews responded that the existing account had never been drawn below \$40 million, therefore the Department was "comfortable" with that figure as the initial investment amount.

He explained that realized earnings which would fund the operating expenses of the Division were generated through transactions. The unrealized earnings were "market appreciation", which could vary year to year depending of the condition of the market.

[10:55:03 AM](#)

Senator Elton suggested that an investment account based on a percentage of the total balance of the spill response fund would simplify the calculation and include consideration of market fluctuations.

Mr. Pawlowski responded that a "percentage approach" would require the Department to engage in continuous accounting and monitoring activities, and would be unduly burdensome. The \$40 million figure was a "transitional investment", and would not be the required balance of the subaccount.

[10:56:08 AM](#)

Senator Thomas agreed with the underlying philosophy of increasing the return on the spill response and prevention account, but recommended that the oil industry maintain its responsibility to contribute to the fund through the surcharge.

[10:57:22 AM](#)

Co-Chair Stedman ordered the bill HELD in Committee.

AT EASE [10:57:42 AM](#)/[11:06:03 AM](#)

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ADJOURNMENT

Co-Chair Bert Stedman adjourned the meeting at [11:06:16 AM](#)