

ALASKA STATE LEGISLATURE
SENATE JUDICIARY STANDING COMMITTEE

March 28, 2008

1:36 p.m.

MEMBERS PRESENT

Senator Hollis French, Chair
Senator Charlie Huggins, Vice Chair
Senator Lesil McGuire
Senator Bill Wielechowski
Senator Gene Therriault

MEMBERS ABSENT

All members present

COMMITTEE CALENDAR

SENATE BILL NO. 183

"An Act repealing the defined contribution retirement plans for teachers and for public employees; making conforming amendments; and providing for an effective date."

MOVED CSSB 183(JUD) OUT OF COMMITTEE

CS FOR HOUSE BILL NO. 149(RES)

"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. 286

"An Act relating to impersonating a public servant."

HEARD AND HELD

PREVIOUS COMMITTEE ACTION

BILL: SB 183

SHORT TITLE: REPEAL DEFINED CONTRIB RETIREMENT PLANS

SPONSOR(s): SENATOR(s) ELTON

05/16/07	(S)	READ THE FIRST TIME - REFERRALS
05/16/07	(S)	L&C, STA, JUD, FIN
01/29/08	(S)	L&C AT 1:30 PM BELTZ 211

01/29/08 (S) Heard & Held
 01/29/08 (S) MINUTE(L&C)
 02/14/08 (S) L&C AT 1:30 PM BELTZ 211
 02/14/08 (S) Moved SB 183 Out of Committee
 02/14/08 (S) MINUTE(L&C)
 02/15/08 (S) L&C RPT 2DP 1DNP 1NR
 02/15/08 (S) DP: ELLIS, DAVIS
 02/15/08 (S) DNP: BUNDE
 02/15/08 (S) NR: HOFFMAN
 03/18/08 (S) STA AT 9:00 AM BELTZ 211
 03/18/08 (S) Heard & Held
 03/18/08 (S) MINUTE(STA)
 03/19/08 (S) STA RPT 2DP 2DNP 1NR
 03/19/08 (S) DP: MCGUIRE, FRENCH
 03/19/08 (S) DNP: GREEN, BUNDE
 03/19/08 (S) NR: STEVENS
 03/19/08 (S) STA AT 9:30 AM BELTZ 211
 03/19/08 (S) -- Continued from 03/18/08 --
 03/26/08 (S) JUD AT 1:30 PM BELTZ 211
 03/26/08 (S) Heard & Held
 03/26/08 (S) MINUTE(JUD)
 03/28/08 (S) JUD AT 1:30 PM BELTZ 211

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
 04/11/07 (H) Moved CSHB 149(RES) Out of Committee
 04/11/07 (H) MINUTE(JUD)
 04/13/07 (H) JUD RPT CS(RES) 3DP 3NR
 04/13/07 (H) DP: GRUENBERG, LYNN, RAMRAS
 04/13/07 (H) NR: SAMUELS, HOLMES, COGHILL
 04/20/07 (H) TRANSMITTED TO (S)

04/20/07 (H) VERSION: CSHB 149(RES)
 04/23/07 (S) READ THE FIRST TIME - REFERRALS
 04/23/07 (S) JUD
 01/23/08 (S) JUD AT 1:30 PM BELTZ 211
 01/23/08 (S) -- MEETING CANCELED --
 01/25/08 (S) JUD AT 1:30 PM BELTZ 211
 01/25/08 (S) Heard & Held
 01/25/08 (S) MINUTE(JUD)
 03/28/08 (S) JUD AT 1:30 PM BELTZ 211

BILL: HB 286

SHORT TITLE: IMPERSONATING A PUBLIC SERVANT

SPONSOR(S): REPRESENTATIVE(S) DAHLSTROM

01/04/08 (H) PREFILE RELEASED 1/4/08
 01/15/08 (H) READ THE FIRST TIME - REFERRALS
 01/15/08 (H) JUD
 02/01/08 (H) JUD AT 1:00 PM CAPITOL 120
 02/01/08 (H) Moved Out of Committee
 02/01/08 (H) MINUTE(JUD)
 02/04/08 (H) JUD RPT 3DP 1NR 1AM
 02/04/08 (H) DP: SAMUELS, DAHLSTROM, RAMRAS
 02/04/08 (H) NR: COGHILL
 02/04/08 (H) AM: HOLMES
 02/11/08 (H) TRANSMITTED TO (S)
 02/11/08 (H) VERSION: HB 286
 02/13/08 (S) READ THE FIRST TIME - REFERRALS
 02/13/08 (S) STA, JUD
 03/13/08 (S) STA AT 9:00 AM BELTZ 211
 03/13/08 (S) Moved HB 286 Out of Committee
 03/13/08 (S) MINUTE(STA)
 03/14/08 (S) STA RPT 1DP 2NR
 03/14/08 (S) DP: MCGUIRE
 03/14/08 (S) NR: STEVENS, FRENCH
 03/28/08 (S) JUD AT 1:30 PM BELTZ 211

WITNESS REGISTER

RON WOLFE, Natural Resource Manager
 Sealaska Corporation
 Juneau, AK

POSITION STATEMENT: Spoke in support of HB 149.

Kathie Wasserman, Executive Director
 Alaska Municipal League (AML)
 Juneau, AK

POSITION STATEMENT: Spoke in support of HB 149.

VANESSA SALINAS, Campaign Director
Alaskans for Responsible Mining
Anchorage, AK

POSITION STATEMENT: Spoke in opposition to HB 149.

JASON BRUNE, Executive Director
Resource Development Council (RDC)
Anchorage, AK

POSITION STATEMENT: Spoke in support of HB 149.

BOB SHAVELSON, Executive Director
Cook Inlet Keeper
Homer, AK

POSITION STATEMENT: Pointed out problems associated with HB 149.

EARL HUBBARD, Vice President
Regulatory Affairs
Trident Seafoods
Seattle, WA

POSITION STATEMENT: Spoke in support of HB 149.

NIKOS PASTOS, Environmental Coordinator
Alaska Inter-Tribal Council
Anchorage, AK

POSITION STATEMENT: Testified on HB 149 to oppose NPDES primacy until the state demonstrates tribal consultation.

CARL WASSILIE, Yupik Alaskan
Alaska Action Center
No address provided

POSITION STATEMENT: Spoke in opposition to HB 149.

LARRY HARTIG, Commissioner
Department of Environmental Conservation
Juneau, AK

POSITION STATEMENT: Responded to questions related to HB 149.

LYNN TOMICH KENT, Director
Division of Water
Department of Environmental Conservation
Anchorage, AK

POSITION STATEMENT: Responded to questions related to HB 149.

JENNIFER BAXTER, Staff
to Representative Nancy Dahlstrom

Alaska State Capitol
Juneau, AK

POSITION STATEMENT: Introduced HB 286 on behalf of the sponsor.

JEFF LANDVATTER

Alaska State Trooper and member of PSEA
Juneau, AK

POSITION STATEMENT: Spoke in support of H 286.

CHRIS GIFFORD, Police Officer

Member, Juneau Police Department Employees Association (JPDEA)
and Public Safety Employees Association (PSEA)
Juneau, AK

POSITION STATEMENT: Spoke in support of HB 286.

BARRY SCHIMMACK

Representing Himself
Chugiak, AK

said he is a concerned citizen in support of HB 286.

POSITION STATEMENT:

JERRY LUCKHAUPT, Counsel

Legislative Legal and Research Services Division
Juneau, AK

POSITION STATEMENT: Responded to questions related to HB 286.

ACTION NARRATIVE

CHAIR HOLLIS FRENCH called the Senate Judiciary Standing Committee meeting to order at [1:36:17 PM](#). Present at the call to order were Senators Wielechowski, Therriault, McGuire, Huggins, and French.

SB 183-REPEAL DEFINED CONTRIB RETIREMENT PLANS

[1:36:17 PM](#)

CHAIR FRENCH announced the consideration of SB 183 and asked for a motion to adopt Version \L committee substitute.

SENATOR WIELECHOWSKI moved to adopt the committee substitute (CS) to SB 183, 25-LS0566\L, Wayne, as the working document.

CHAIR FRENCH announced that without objection, Version \L is before the committee. He said that considerable public testimony has been taken on this controversial bill. It reverts the state retirement system back to the defined benefit plan that the

state embraced for nearly 50 years. Under SB 141 the state moved away from that policy in 2005.

SENATOR MCGUIRE motioned to report the CS for SB 183, from committee with individual recommendations and attached fiscal note(s).

CHAIR FRENCH announced that without objection, CSSB 183(JUD), 25-LS0566\L, is moved from the Senate Judiciary Committee.

The committee took an at-ease from [1:40:18 PM](#) to [1:40:29 PM](#).

HB 149-POLLUTANT DISCHARGE PERMITS

CHAIR FRENCH announced the consideration of HB 149. Before the committee was CSHB 149(RES). The bill was heard previously.

[1:41:05 PM](#)

RON WOLFE, Natural Resource Manager for Sealaska Corporation, said that Sealaska has significant interest in 22 log transfer facilities (LTF) in Southeast Alaska, all of which are covered by a general National Pollutant Discharge Elimination System (NPDES) permit. For years Sealaska has supported state assumption of the NPDES program just as 45 other states have done.

The three issues regarding NPDES primacy are whether the Alaska Department of Environmental Conservation (DEC) may be a less trustworthy steward of Alaska's waters than the Environmental Protection Agency (EPA); whether DEC personnel have the qualifications to administer the program; and Sealaska's comfort level as a federally-recognized Indian tribe regarding the degree of consultation it will receive if DEC assumes primary for the NPDES program.

To illustrate the DEC commitment to protecting water quality he compared provisions of the LTF permits that were inserted by EPA and those that were imposed by DEC. The permits are intended to limit bark on the ocean floor as logs are transferred for shipment by sea. EPA permit conditions are the typical operational restrictions found in any NPDES permit, while DEC created a plan process that forces operators to begin remediation of bark accumulation at very low thresholds.

[1:43:52 PM](#)

MR. WOLFE said DEC personnel are qualified to regulate LTF operations because of their on-the-ground knowledge. DEC

regulators have made a great effort to visit the LTFs, examine the operations, and carefully review water quality around the facilities. In contrast, gaining field experience with Alaska LTFs has never been an EPA priority. That's understandable given the significant water quality issues in this region. When Sealaska's LTF permits were renewed, EPA contracted with DEC to draft the permits.

[1:45:38 PM](#)

Finally, although Sealaska has always had the opportunity to comment on EPA proposals, that federal agency has never sought tribal consultation. In contrast, DEC has always sought Sealaska views on policy initiatives affecting Southeast Alaska at the earliest stages of those proposals. Oftentimes Sealaska's views have not prevailed, but it has always felt that DEC was very mindful of the need to bring affected tribes into the policy development process. DEC has not relegated Sealaska to the role of reacting to policy decisions through general public comments.

[1:46:31 PM](#)

KATHIE WASSERMAN, Executive Director, Alaska Municipal League (AML), said the AML has submitted written testimony supporting HB 149. She explained that when she became the mayor of Pelican she learned that their NPDES permit had expired six years ago, but the EPA had never contacted the city. When she contacted EPA it became clear that they knew nothing about small remote Alaska communities. DEC helped Pelican get the permit back on track. As she said in her letter, there are some concerns with DEC, but at least it has a process and everyone knows who to call and talk to. AML is in favor of primacy going to the State of Alaska, she said.

[1:49:02 PM](#)

VANESSA SALINAS, Campaign Director, Alaskans for Responsible Mining, said giving the state primacy sounds like a good idea because permitting responsibilities should be close to the projects, but she questions the feasibility of such a move when DEC is so woefully under staffed. The fiscal note attached to SB 110 that mandated this move back in 2005 required more than \$1.5 million in general funds revenue each year. Industry fees are capped at 16 percent and she wonders where the funds will come from to fund this initiative.

According to a program coordinator with DEC, just 7 of the 17 environmental health officers that have been hired in the last seven years are still employed and five have been with the agency for six months or less. The additional long-term

employees may retire in the next 5 years. Clearly, DEC is experiencing a staffing shortage and there is no solution in sight. State salaries are down and the benefit package for new hires has been severely cut. Until new hires can be offered a competitive employment package, qualified candidates won't be knocking at agency doors. The division of geological and geophysical survey director has stated that the increased mineral activity this year will test that section. According to a DNR career development coordinator, state government is looking at a 45 percent retirement rate through 2011.

Another area of concern is tribal sovereignty. EPA has the legal obligation to formally consult with Alaska Native tribes on a government-to-government basis on all permits. Under the proposed Alaska program, tribes will lose sovereign authority because the state doesn't formally recognize tribes.

[1:51:46 PM](#)

MS. SALINAS said that DEC is only committed to making reasonable efforts to inform and seek participation of local and federally recognized tribes. She urged the committee to halt the transfer of the NPDES permit authority until funds are allocated for adequate departmental staffing, and tribal trust obligations of government-to-government relations are addressed in a manner that is acceptable to tribes.

[1:52:24 PM](#)

JASON BRUNE, Executive Director, Resource Development Council (RDC), said RDC's diverse membership of includes: oil and gas, tourism, fisheries, mining, timber, construction, labor organizations, all of the regional Native corporations, local communities, and a variety of industry support firms. He characterized HB 149 as a cleanup bill that relates to what the legislature charged DEC to do in 2005 under SB 110; these provisions are required by EPA for Alaska to assume primacy over NPDES. Currently only five states do not have primacy. For a state to obtain primacy its requirements must be at least as strong as the EPA requirements, and HB 149 makes the changes to ensure that Alaska statutes achieve this. It goes without saying that Alaskans have a strong interest in ensuring that things are done right in their state so NPDES primacy for Alaska is a no-brainer. He urged the committee to move HB 149 so that the final steps toward assuming this program can be completed.

[1:54:52 PM](#)

BOB SHAVELSON, Executive Director, Cook Inlet Keeper, said the organization has worked on water quality and fish habitat

protection for about 13 years. There are a lot of good arguments for getting primacy, but the bill that passed under the Murkowski Administration has a number of flaws, principally the workgroup that set up the process was dominated by industry dischargers. There was a municipal seat for wastewater dischargers, but the public was not part of the process, so it was a lopsided prospect. The notion of states rights arises because that workgroup recommended not allowing the state to have more strict laws than the federal government. That denies the fact that Alaska has the best fish management program in the country and it ties Alaska's hands. "If we're concerned about states rights we should recognize that there's a provision in there that undermines those rights," he said.

MR. SHAVELSON pointed out that the bill caps fees for industry so the general fund and the public will pick up any cost overruns from the very low \$1.5 million fiscal note attached to SB 110. By comparison industry pays 57 percent of the fees in Oregon, 75 percent in Washington, and 100 percent in Montana. Alaska will be providing a public subsidy. Looking at streamlining is good, but when it goes too far, permit quality is diminished. As currently proposed the permitting staff is reduced by 28 percent, and the compliance and enforcement staff is reduced by 16 percent, so DEC would be trying to do the same amount of work that EPA has done with less staff. RDC fears that will result in rollbacks to protection of fish and water quality.

Referring to comments Mr. Wolfe made about tribal sovereignty, he said that RDC understands that the executive order was meant to cover federally recognized sovereign tribes, not corporations. In working with tribes in Cook Inlet he found that EPA has been very good in the government-to-government consultation required by that executive order. DEC has made a good effort, but there is no legal recognition of tribes at the state level. That is reflected in this final plan and there is considerable loss of tribal sovereignty. He suggested that there is a need for a third-party review to understand the fiscal and substantive impacts. The system in place works and it would be a good idea to look carefully and get an objective opinion on what this change will mean.

[1:58:28 PM](#)

CHAIR FRENCH asked who would conduct the third-party review.

MR. SHAVELSON suggested a broad-based commission that includes: industry, tribes, fishing, conservation, and the public.

EARL HUBBARD, Vice President of Regulatory Affairs, Trident Seafoods, said the more Trident tunes in to the advantages of primacy, the more it looks at it as a problem solver. He explained that to process seafood in Alaska a company needs a general or individual federal NPDES discharge permit. A problem with EPA is that resources to reissue or write new permits are severely limited. In fact, every single general permit that EPA has issued has expired. A new discharger wishing to get into the fish processing business could not do so legally because EPA does not have the resources to write a new permit. That is a difficulty when you look at the considerable contribution that seafood processing makes to the economy of Alaska, he said. It most definitely is not possible to have allowed every NPDES discharge permit in the state to expire and at the same time to argue that EPA has adequate resources to cover its responsibilities.

[2:03:05 PM](#)

MR. HUBBARD said that the alternative to a general permit is an individual permit and for those there's a 3-5 year waiting list. Consider, he said, that every general permit has expired and there is no opportunity to discharge legally for 3-5 years for any newcomer to the industry. The impact to coastal and rural communities in Alaska is stunning. EPA does offer enforcement discretion in the absence of an authority, but enforcement discretion isn't needed unless you're breaking the law. In these litigious times nobody wants to rely on that. These are good people, but there aren't enough of them.

MR. HUBBARD acknowledged that there have been issues with DEC, but that agency does respond and listen to find ways that are legal and appropriate. Primacy is an opportunity with good timing because the components are in place, he said. You have DEC professionalism, the tools, and an application that's ready to go. EPA is probably thankful that Alaska can do this so it can focus on the three other Region 10 states.

[2:07:04 PM](#)

NIKOS PASTOS, Environmental Coordinator, Alaska Inter-Tribal Council, said he's also treasurer of a non-profit called The Center for Water Advocacy. He read a resolution opposing NPDES primacy until the State of Alaska demonstrates tribal consultation. It resolves that transferring NPDES primacy to the state is an act of cultural destruction in violation of federal statutory and trust obligation. Until the state has demonstrated a record of government-to-government consultation with tribal

governments. All the tribes that have been consulted are opposed to the state taking primacy. It would be a mistake to say that the state would manage discharge permits as well as EPA. The federal government is obligated to include tribes and the state hasn't even recognized the legitimacy of long-standing tribal governments that existed before the United States became a country.

[2:11:13 PM](#)

MR. PASTOS said there is a consensus among tribes that water is sacred; it's vital to the well being of the people and their traditional food. He doesn't understand why foreign corporations have more priority than people who have lived in Alaska since time immemorial. There are flaws in the way the permitting process would be streamlined for large mining industry, foreign fishing fleets, and outside timber interests. The Alaska Inter-Tribal Council is opposed to HB 149 and to the state taking primacy.

[2:12:43 PM](#)

CHAIR FRENCH asked for a copy of the resolution to make it part of the record.

CARL WASSILIE, Yupik Alaskan and member of Resisting Environmental Destruction on Indigenous Lands (REDOIL), said he is speaking on behalf of Alaska Action Center (AAC). AAC supports communities that are impacted by outside interests that threaten the well-being and health of future generations. REDOIL is a group of Alaska Natives that addresses human and environmental impacts of the fossil fuel industry in Alaska, and supports sustainable development on indigenous lands. He supports tribal self-determination and the recognition that the state has failed to recognize the tribes of Alaska. That needs to be addressed before the issues about the permitting system, he said. The relationship between the state and the tribes and the communities in Alaska need to be well defined and established.

MR. WASSILIE said he and REDOIL are opposed to HB 149. It's important to know the history of the Clean Water Act to understand its relation with human health impacts. The fact that that has been forgotten can be seen in Cook Inlet in the streamlined process of waiving permits for more pollution. These issues need to be addressed before permitting is turned over to the state, he said. At this time the state doesn't have the personnel capacity or the relationship with communities to

recognize tribes even though most industry is operating in or around tribal waters.

2:17:00 PM

SENATOR WIELECHOWSKI asked DEC to respond to the testimony on the loss of tribal sovereignty, government-to-government interaction, and whether DEC has a plan to consult sovereign tribes as EPA does now.

2:18:31 PM

LARRY HARTIG, Commissioner, Alaska Department of Environmental Conservation, explained that tribal consultation does not go away with state primacy. EPA still has its government-to-government obligations to the tribe and its oversight of all permits that DEC would issue. Tribes would not have direct consultation with DEC, but they could consult with EPA and have all the rights they have now. If EPA thought that DEC wasn't listening to the tribe it would say so. The other point is that DEC is making a concerted effort to have in place an equivalent government-to-government consultation for the APDES program. DEC developed a guidance document to get tribes interested and is sending copies to tribes that have expressed a concern. The document is still in draft form and comments are being accepting. That will be part of the application package to EPA, which is scheduled to be presented on May 1. As part of the application package, it will become part of the program. However, if better ways of doing the consultation are found that could be modified. DEC is attuned to the issue and ready to provide the functional equivalent of what tribes have now with the federal government. Because the State of Alaska is not a nation there can only be a state-to-tribe relationship, which by its very nature will be different than the government-to-tribe relationship. It will have to be different, but it doesn't mean the DEC won't listen to their concerns.

2:21:21 PM

SENATOR WIELECHOWSKI asked about DEC recruitment and retention and the statement that it may not be able handle the increased workload associated with primacy.

COMMISSIONER HARTIG said that Mr. Shavelson brought up good points, but they also apply to federal and state agencies and private industry. Everyone is faced with those demographics. It comes down to whether the state will be a competitive employer. He is a member of the Governor's task force on recruitment and retention and she is acting on recommendations that have been made, he said. DEC has an internal advisory group, and it has

also contracted for a private survey to improve recruitment and retention. DEC probably compares with EPA or any other agency on this issue, he said.

[2:23:53 PM](#)

COMMISSIONER HARTIG said the other point that Mr. Shavelson raised about DEC having fewer people to work on primacy than EPA doesn't take into account the current DEC permitting staff. His recollection is that the combination of the current permitting staff and the NPDES staff will be larger than the current EPA permitting staff.

LYNN TOMICH KENT, Director, Division of Water, Department of Environmental Conservation, explained that to implement NPDES primacy DEC will have 43 positions dedicated to the program. That includes compliance, permitting, record keeping, and data management.

SENATOR WIELECHOWSKI asked if 43 new positions will be created.

MS. KENT replied that includes existing staff and the 13 additional positions that were allotted under SB 110; 12 of those positions have been filled.

[2:25:35 PM](#)

SENATOR WIELECHOWSKI asked what percentage of the fees will be paid by industry.

COMMISSIONER HARTIG explained that it varies among states, but there is a misassumption here that only industry gets NPDES permits. Everybody that has a discharge of pollutants to waters of the United States needs a permit so , municipalities and small villages would carry the ball too. Few states cover 100 percent of the program. In the last year or so the General Accounting Office (GAO) tried to get EPA to require states to fully fund NPDES programs by providing a disincentive for federal grant dollars. There was pushback from the states and GAO backed off. The states said they shouldn't be told how to spend their general fund dollars. He believes Alaska's percentage is about the same as other states, and the oil and gas industry already supports a large portion of the program through general fund contributions. He added that the fee structure is up to the legislature and not DEC.

[2:27:48 PM](#)

CHAIR FRENCH clarified that he is commenting tangentially on Mr. Shavelson's point that some states get from 57-100 percent of

their fees paid by industry, and he is saying that is something the legislature has the authority to institute.

COMMISSIONER HARTIG replied that is up to the state. Currently Alaska permittees pay 16 percent of the program fees and more municipalities than industry folks have permits.

SENATOR WIELECHOWSKI recalled that there was a question about DEC writing letters to EPA on behalf of industry dischargers, and asked if DEC would continue that practice if the state assumes primacy.

COMMISSIONER HARTIG replied it's not a policy.

SENATOR WIELECHOWSKI asked if DEC would do that anymore if this bill is enacted.

COMMISSIONER HARTIG said no.

[2:29:09 PM](#)

SENATOR THERRIAULT asked if the dynamic before was that DEC was encouraging the EPA to issue a permit. If the state assumes primacy it would be the issuing entity so it wouldn't write a letter to itself.

COMMISSIONER HARTIG explained that DEC will regulate by following the law, the science, the facts, and good public policy.

CHAIR FRENCH asked if DEC has contacted the Inter Tribal Council to discuss sovereign-to-sovereign relations.

COMMISSIONER HARTIG said he welcomes that conversation; he has an open door. "We're serious about wanting to have a good relationship with the tribes." Good input is part of that and he looks forward to any comments or discussion on the draft guidance.

[2:31:07 PM](#)

SENATOR MCGUIRE motioned to report CSHB 149 from committee with individual recommendations and attached fiscal note(s).

CHAIR FRENCH announced that without objection, CSHB 149(RES) is moved from the Senate Judiciary Committee.

HB 286-IMPERSONATING A PUBLIC SERVANT

CHAIR FRENCH announced the consideration of HB 286.

JENNIFER BAXTER, Staff to Representative Nancy Dahlstrom, said HB 286 makes it a class C felony for impersonating a public servant in the first degree. A person commits this crime by violating AS 11.56.830 by pretending to be a peace officer. Currently it is a class B misdemeanor to impersonate any public servant.

This bill targets those who intend to harm an individual or group while appearing as a person whose job it is to protect others and uphold the law. Class B misdemeanors usually bring little or no jail time unless the person has a significant criminal history. HB 286 will add teeth to existing law by providing law enforcement agencies with another tool. The bill serves as a strong deterrent for those who deliberately make choices that put families, neighbors and communities at risk.

[2:34:47 PM](#)

JEFF LANDVATTER Alaska State Trooper and member of PSEA, said being a police officer is about trust. Society places high value on a police officer and you know you can trust them. So when someone pretends to be a police officer it breaks that public trust. What better way to strike terror in the community, he said. The legislature needs to send a clear message that the State of Alaska will not tolerate impersonating a police officer.

[2:36:36 PM](#)

CHAIR FRENCH asked Trooper Landvatter if he has personal experience with people who have impersonated a police officer.

TROOPER LANDVATTER described a situation in Juneau where a person bought a surplus police car and set it up to look authentic. He doesn't know if the person tried to impersonate an officer, but he clearly tried to imitate a police car. He has heard of other situations in Wasilla where someone actually pulled someone over. In the lower 48 people have been raped and murdered by someone impersonating a police officer and it's a concern that it could happen in this state. This is a preemptive law to protect Alaska, he said.

[2:38:22 PM](#)

CHAIR FRENCH asked if the bogus police car was actually operated on the highway in Juneau.

TROOPER LANDVATTER replied that he saw it being driven, but he doesn't know if the person tried to exercise authority to pull someone over.

CHAIR FRENCH asked if he's ever come across a "cop wannabe."

TROOPER LANDVATTER said yes.

CHAIR FRENCH asked if that's part of the phenomenon here.

TROOPER LANDVATTER said to a certain extent that might be the case. Becoming a trooper or police officer is a difficult process and some people simply aren't able to attain that goal. A certain number of those people end up hanging around police officers and some become volunteers and ride with officers to feel part of the action. Some also take it to the next step and do something on their own.

[2:39:43 PM](#)

CHAIR FRENCH said that's an important line to cross and he's been puzzling with that here because laying a felony crime on someone is a very serious thing to do. If someone tries to exercise the authority of being an officer he's willing to stop the person with a harsh measure, but if someone does nothing more than drive a car that looks like a police car, it may not be right but he's not sure it's a felony. He said he's been puzzling with how to suss out that difference and has an amendment to offer.

TROOPER LANDVATTER pointed out that it's the same as a person who puts on a uniform and walks down the street. He or she hasn't taken any action, but people are drawn to the uniform or the police car as a place of safety or a place to get help.

[2:40:59 PM](#)

SENATOR HUGGINS relayed a personal experience and asked if a kid who speeds around in his dad's trooper vehicle with lights flashing would violate this law.

TROOPER LANDVATTER responded that the kid would be using a patrol car without authorization to drive too fast so other elements of the law could be used in a prosecution. Pulling someone over elevates the act to the next level of impersonating an officer. Those are two different things.

[2:42:05 PM](#)

CHAIR MCGUIRE suggested that the underlying statute is poorly written and perhaps it should be reviewed. For example, page 1, line 6, talks about pretending to be a police officer, which doesn't provide much detail and page 1, lines 10-12, talk about any act related to pretending to be a public servant, which is very broad.

She asked if undercover agents are used on his police force because that could be a place for real mischief. Trooper Landvatter replied in the affirmative. She then asked how often citizen arrests occur and if this might be interpreted as impersonating a police officer.

[2:44:34 PM](#)

TROOPER LANDVATTER replied those don't happen that often; most of the time it's in a shoplifting situation.

SENATOR THERRIAULT commented that all the bills today have strange ties. He highlighted an issue from several years ago when the citizens of the sovereign nation of Chickaloon purchased a vehicle and began pulling people over on the Glenn Highway and issuing traffic tickets. He questioned whether that act would be impersonating a police officer.

[2:45:42 PM](#)

TROOPER LANDVATTER clarified that he isn't an expert on this law, but his opinion is that if they're operating under a community or municipality then they have the authority to enforce local ordinances.

[2:46:45 PM](#)

CHRIS GIFFORD, Vice President, Juneau Police Department Employees Association (JPDEA) and member of the Public Safety Employees Association (PSEA) stated support for HB 286 making it a felony crime to impersonate a police officer. Everyday brave men and women take an oath to protect and serve the state or community they work for, he said. They are expected to enforce laws, perform traffic stops, promote highway safety, fight the war on drugs, investigate violent crimes and more. Every time they contact someone they're entrusted with personal and confidential information. From childhood people are taught to trust police officers and go to them for help. That trust is an awesome responsibility that should be protected with the utmost care. When someone impersonates a police officer that trust is broken and the potential for harm is great. Elevating this crime to a more serious charge will possibly reduce the frequency of this crime.

[2:50:01 PM](#)

BARRY SCHIMMACK said he is a concerned citizen from Chugiak who supports HB 286. He noted that he submitted written testimony and then relayed that in Colorado a bill was passed that has specifics disallowing the display of police lights. He described the brutal murder of his Colorado friend who was pulled over and tricked into believing she was with a legitimate police officer. In the Anchorage area there have been two instances of impersonating an officer in the last two years and as the father of three girls he is nervous about that sort of thing. Perhaps the bill needs more teeth, but he supports it fully because he doesn't want any Alaskan to meet the same fate as his friend. Knowing that this now is a felony crime hopefully will have an effect.

[2:56:02 PM](#)

CHAIR FRENCH moved Amendment 1, 25-LS1169\A.1, Luckhaupt, and objected for discussion purposes.

AMENDMENT 1

OFFERED IN THE SENATE

TO: HB 286

Page 1, line 6, following "officer":

Insert "and purports to exercise the authority of a peace officer in relation to another person"

CHAIR FRENCH explained that the idea is that you have to do some act to exercise the authority of that badge, that car or those lights to interrupt someone's life and get access to their personal information. That steps over the line and indicates that you're a bad actor.

[2:57:55 PM](#)

SENATOR THERRIAULT asked if there's a reason for not adding this to the other sections of statute.

CHAIR FRENCH said that's a good suggestion. Current law talks about doing any act in that capacity and that is so broad that it would encompass driving down the road in a police car or walking around in a police uniform. But if the committee is interested in having all aspects of impersonation, he wouldn't object. He asked Mr. Luckhaupt why this idea shouldn't apply to both the B misdemeanor and the C felony.

[2:58:50 PM](#)

JERRY LUCKHAUPT, Legislative Counsel, Legislative Legal and Research Services Division, said you could apply any requirements to this particular act. The existing statute talks about pretending to be a public servant and doing some act in that capacity. In his view just dressing up or driving a car that used to be a police vehicle isn't enough. You'd have to represent yourself as a police officer and pull someone over or call them and get information about another person. Those are examples of how these laws have been used in other states to sustain prosecutions. There haven't been prosecutions of exotic dancers, for example, who dress up like a cop because they aren't performing an official act.

[3:01:10 PM](#)

SENATOR THERRIAULT observed that the amendment addresses the problem of pretending to be a peace officer in Section 1, but it doesn't address the problem of impersonating a public servant in Section 2. He suggested the committee consider tightening that section as well.

CHAIR FRENCH said it's a good suggestion and he'd like the committee to take time to mull the question and work with the sponsor. He held HB 286 in committee with Amendment 1, 25-LS1169\A.1, pending.

There being no further business to come before the committee, Chair French adjourned the meeting at [3:02:37 PM](#).