

ALASKA STATE LEGISLATURE
SENATE RESOURCES STANDING COMMITTEE

April 9, 2010

3:37 p.m.

MEMBERS PRESENT

Senator Lesil McGuire, Co-Chair
Senator Bill Wielechowski, Co-Chair
Senator Hollis French
Senator Gary Stevens
Senator Thomas Wagoner

MEMBERS ABSENT

Senator Charlie Huggins, Vice Chair
Senator Bert Stedman

COMMITTEE CALENDAR

COMMITTEE SUBSTITUTE FOR HOUSE BILL NO. 210(RES)

"An Act designating Kinzarof Lagoon as part of the Izembek State Game Refuge; authorizing a land exchange with the federal government in which state land adjacent to the Izembek National Wildlife Refuge and within the Alaska Peninsula National Wildlife Refuge is exchanged for federal land to serve as a road corridor through the Izembek National Wildlife Refuge and federal land located on Sitkinak Island; and providing for an effective date."

- MOVED SCS CSHB 210(RES) OUT OF COMMITTEE

HOUSE JOINT RESOLUTION NO. 26

Urging the United States Congress to adequately fund land surveys in Alaska in order to issue patents to the State of Alaska and Alaska Native corporations.

- MOVED SCS HJR 26(RES) OUT OF COMMITTEE

CS FOR HOUSE CONCURRENT RESOLUTION NO. 10(RES)

Urging the Governor to exercise all available legal options to restrain the United States Department of the Interior, National Park Service, from intruding on the sovereign right of the state to exercise jurisdiction over navigable water and submerged land and urging the Governor to allocate sufficient resources to the Department of Law, the Department of Natural Resources, and the

Department of Fish and Game to defend the state's right to manage the public use of its navigable water.

- MOVED CSHCR 10(RES) OUT OF COMMITTEE

COMMITTEE SUBSTITUTE FOR HOUSE BILL NO. 280(FIN) AM

"An Act relating to a gas storage facility; relating to the Regulatory Commission of Alaska; relating to the participation by the attorney general in a matter involving the approval of a rate or a gas supply contract; relating to an income tax credit for a gas storage facility; relating to oil and gas production tax credits; relating to the powers and duties of the Alaska Oil and Gas Conservation Commission; relating to production tax credits for certain losses and expenditures, including exploration expenditures; relating to the powers and duties of the director of the division of lands and to lease fees for a gas storage facility on state land; and providing for an effective date."

- HEARD AND HELD

PREVIOUS COMMITTEE ACTION

BILL: HB 210

SHORT TITLE: IZEMBEK STATE GAME REFUGE LAND EXCHANGE

SPONSOR(S): REPRESENTATIVE(S) EDGMON

04/01/09	(H)	READ THE FIRST TIME - REFERRALS
04/01/09	(H)	RES
04/08/09	(H)	RES AT 1:00 PM BARNES 124
04/08/09	(H)	Moved CSHB 210(RES) Out of Committee
04/08/09	(H)	MINUTE(RES)
04/10/09	(H)	RES RPT CS(RES) 6DP 3NR
04/10/09	(H)	DP: OLSON, SEATON, WILSON, EDGMON, NEUMAN, JOHNSON
04/10/09	(H)	NR: GUTTENBERG, TUCK, KAWASAKI
04/11/09	(H)	TRANSMITTED TO (S)
04/11/09	(H)	VERSION: CSHB 210(RES)
04/13/09	(S)	READ THE FIRST TIME - REFERRALS
04/13/09	(S)	RES
04/08/10	(S)	RES AT 3:30 PM BUTROVICH 205
04/08/10	(S)	Heard & Held
04/08/10	(S)	MINUTE(RES)

BILL: HJR 26

SHORT TITLE: STATEHOOD/ANCSA LAND SURVEY FUNDING

SPONSOR(s): REPRESENTATIVE(s) FAIRCLOUGH

03/18/09 (H) READ THE FIRST TIME - REFERRALS
03/18/09 (H) RES
04/06/09 (H) RES AT 1:00 PM BARNES 124
04/06/09 (H) Moved Out of Committee
04/06/09 (H) MINUTE(RES)
04/07/09 (H) RES RPT 3DP 3NR
04/07/09 (H) DP: WILSON, JOHNSON, NEUMAN
04/07/09 (H) NR: OLSON, SEATON, TUCK
02/15/10 (H) TRANSMITTED TO (S)
02/15/10 (H) VERSION: HJR 26
02/17/10 (S) READ THE FIRST TIME - REFERRALS
02/17/10 (S) RES
04/08/10 (S) RES AT 3:30 PM BUTROVICH 205
04/08/10 (S) Heard & Held
04/08/10 (S) MINUTE(RES)

BILL: HCR 10

SHORT TITLE: OPPOSE FED. CONTROL OF STATE LAND & WATER

SPONSOR(s): REPRESENTATIVE(s) HAWKER

02/27/09 (H) READ THE FIRST TIME - REFERRALS
02/27/09 (H) RES
03/30/09 (H) RES AT 1:00 PM BARNES 124
03/30/09 (H) Moved CSHCR 10(RES) Out of Committee
03/30/09 (H) MINUTE(RES)
04/01/09 (H) RES RPT CS(RES) NT 6DP 1NR
04/01/09 (H) DP: OLSON, TUCK, SEATON, WILSON,
JOHNSON, NEUMAN
04/01/09 (H) NR: GUTTENBERG
04/10/09 (H) BEFORE THE HOUSE
04/10/09 (H) TRANSMITTED TO (S)
04/10/09 (H) VERSION: CSHCR 10(RES)
04/11/09 (S) READ THE FIRST TIME - REFERRALS
04/11/09 (S) RES
04/15/09 (S) RES AT 3:30 PM BUTROVICH 205
04/15/09 (S) Scheduled But Not Heard
04/08/10 (S) RES AT 3:30 PM BUTROVICH 205
04/08/10 (S) Heard & Held
04/08/10 (S) MINUTE(RES)

BILL: HB 280

SHORT TITLE: NATURAL GAS: STORAGE/ TAX CREDITS

SPONSOR(s): REPRESENTATIVE(s) HAWKER, CHENAULT

01/15/10 (H) PREFILE RELEASED 1/15/10

01/19/10 (H) READ THE FIRST TIME - REFERRALS
01/19/10 (H) L&C, RES, FIN
02/08/10 (H) L&C AT 3:15 PM BARNES 124
02/08/10 (H) Heard & Held
02/08/10 (H) MINUTE(L&C)
02/15/10 (H) L&C AT 3:15 PM BARNES 124
02/15/10 (H) Moved CSHB 280(L&C) Out of Committee
02/15/10 (H) MINUTE(L&C)
02/17/10 (H) L&C RPT CS(L&C) NT 4DP 2NR 1AM
02/17/10 (H) DP: LYNN, NEUMAN, CHENAULT, OLSON
02/17/10 (H) NR: HOLMES, T.WILSON
02/17/10 (H) AM: BUCH
02/19/10 (H) RES AT 1:00 PM BARNES 124
02/19/10 (H) -- MEETING CANCELED --
02/26/10 (H) FIN AT 1:30 PM HOUSE FINANCE 519
02/26/10 (H) <Bill Hearing Canceled>
03/12/10 (H) RES AT 1:00 PM BARNES 124
03/12/10 (H) Heard & Held
03/12/10 (H) MINUTE(RES)
03/15/10 (H) RES AT 1:00 PM BARNES 124
03/15/10 (H) Moved CSHB 280(RES) Out of Committee
03/15/10 (H) MINUTE(RES)
03/17/10 (H) RES RPT CS(RES) NT 5DP
03/17/10 (H) DP: EDGMON, OLSON, P.WILSON, SEATON,
JOHNSON
03/17/10 (H) FIN AT 9:00 AM HOUSE FINANCE 519
03/17/10 (H) <Bill Hearing Postponed to 1:30 pm
Today>
03/17/10 (H) FIN AT 1:30 PM HOUSE FINANCE 519
03/17/10 (H) Heard & Held
03/17/10 (H) MINUTE(FIN)
03/18/10 (H) FIN AT 9:00 AM HOUSE FINANCE 519
03/18/10 (H) Heard & Held
03/18/10 (H) MINUTE(FIN)
03/18/10 (H) FIN AT 1:30 PM HOUSE FINANCE 519
03/18/10 (H) Moved CSHB 280(FIN) Out of Committee
03/18/10 (H) MINUTE(FIN)
03/22/10 (H) FIN RPT CS(FIN) NT 9DP 1AM
03/22/10 (H) DP: AUSTERMAN, FAIRCLOUGH, KELLY,
N.FOSTER, DOOGAN, THOMAS, JOULE,
STOLTZE
03/22/10 (H) HAWKER
03/22/10 (H) AM: GARA
03/24/10 (H) TRANSMITTED TO (S)
03/24/10 (H) VERSION: CSHB 280(FIN) AM
03/25/10 (S) READ THE FIRST TIME - REFERRALS
03/25/10 (S) RES, FIN

03/31/10 (S) RES AT 3:30 PM BUTROVICH 205
03/31/10 (S) Heard & Held
03/31/10 (S) MINUTE(RES)
04/05/10 (S) RES AT 3:30 PM BUTROVICH 205
04/05/10 (S) Heard & Held
04/05/10 (S) MINUTE(RES)

WITNESS REGISTER

REPRESENTATIVE BRYCE EDGMON
Alaska State Legislature
Juneau, AK

POSITION STATEMENT: Sponsor of HB 210.

CRYSTAL KOENEMAN
Staff to Representative Fairclough
Alaska State Legislature
Juneau, AK

POSITION STATEMENT: Commented on HJR 26 for the sponsor.

REPRESENTATIVE HAWKER
Alaska State Legislature
Juneau, AK

POSITION STATEMENT: Sponsor of HCR 10 and HB 280.

JULIE LUCKY
Staff to Representative Hawker
Alaska State Legislature
Juneau, AK

POSITION STATEMENT: Commented on HB 280 for the sponsor.

MARCIA DAVIS, Deputy Commissioner
Department of Revenue (DOR)
Juneau, AK

POSITION STATEMENT: Supported CSHB 280(FIN)am and amendments.

ACTION NARRATIVE

[3:37:54 PM](#)

CO-CHAIR BILL WIELECHOWSKI called the Senate Resources Standing Committee meeting to order at 3:37 p.m. Present at the call to order were Senators Wagoner, Stevens, French, and Wielechowski.

HB 210-IZEMBEK STATE GAME REFUGE LAND EXCHANGE

CO-CHAIR WIELECHOWSKI announced HB 210 to be up for consideration [SCS CSHB 210() 26-LS0788\E was before the committee].

[3:38:52 PM](#)

REPRESENTATIVE BRYCE EDGMON, sponsor of HB 210, thanked the committee for taking up the bill yesterday and today. He underscored the importance of this bill to people who live in King Cove and Cold Bay.

CO-CHAIR WIELECHOWSKI said this is a long overdue bill.

SENATOR FRENCH moved to report SCS CSHB 210(RES) from committee with individual recommendations and attached fiscal note(s). There were no objections and it was so ordered.

HJR 26-STATEHOOD/ANCSA LAND SURVEY FUNDING

[3:40:01 PM](#)

CO-CHAIR WIELECHOWSKI announced HJR 26 to be up for consideration. [HJR 26 was amended during the 4/8/10 hearing.]

[3:40:23 PM](#)

CRYSTAL KOENEMAN, staff to Representative Fairclough, said a question had been asked yesterday about the land patents and she explained that they establish "on-the-ground" certainty to the land title because they require a land survey. The land survey requires the property to be located and marked on the ground and the patent is the document that confirms that the state or ANCS or the state owns that specific piece of property.

SENATOR FRENCH moved to report HJR 26 from committee with individual recommendations and attached fiscal note(s). There were no objections and it was so ordered.

HCR 10-OPPOSE FED. CONTROL OF STATE LAND & WATER

[3:41:29 PM](#)

CO-CHAIR WIELECHOWSKI announced HCR 10 to be up for consideration [CSHCR 10(RES) was before the committee].

[3:41:59 PM](#)

REPRESENTATIVE HAWKER, sponsor of HCR 10, said all concerns had been responded to since the last hearing and he hadn't heard any subsequent queries or issues with the bill.

SENATOR FRENCH moved to report CSHCR 19(RES) from committee with individual recommendations and attached fiscal note(s). There were no objections and it was so ordered.

HB 280-NATURAL GAS: STORAGE/ TAX CREDITS

[3:42:36 PM](#)

CO-CHAIR WIELECHOWSKI announced HB 280 to be up for consideration [CSHB 2180(FIN)am was before the committee].

[3:44:39 PM](#)

CO-CHAIR WIELECHOWSKI said a series of amendments had been combined into one. He moved Amendment 1 and objected for purposes of discussion.

AMENDMENT 1

OFFERED IN THE SENATE

TO: CSHB 280 (FIN) am

Page 2, line 11:Delete "and"

Page 2, line 13, following "day":

Insert "; and

(3) that the facility qualifies as a gas storage facility for the purposes of this section"

Page 9, line 4:

Delete ", treaters, and separators"

Insert "and gas treatment plants, but not including a liquefied natural gas or manufacturing plant or facility"

Page 9, line 19:

Delete "claimed"

Insert "received for each gas storage facility"

Page 10, lines 11 - 12:

Delete all material and insert:

"(4) must be regulated under AS 42.05 as a utility and be available to furnish the service of natural gas storage to the public for compensation; in this paragraph, "service of natural gas storage" has the meaning given in AS 42.05.990"

Page 10, line 28:

Delete "any taxable year ending before the date of the refund claim"

Insert "the calendar year in which the claim is made"

Page 11, lines 25 - 28:

Delete all material.

Reletter the following subsections accordingly.

Page 12, following line 24:

Insert a new bill section to read:

**** Sec. 14.** AS 43.55.020(f) is amended to read:

"(f) If oil or gas is produced but not sold, gas is produced but is stored in a gas storage facility, or [IF] oil or gas is produced and sold under circumstances where the sale price does not represent the prevailing value for oil or gas of like kind, character, or quality in the field or area from which the product is produced, the department may require the tax to be paid upon the basis of the value of oil or gas of the same kind, quality, and character prevailing for that field or area during the calendar month of production or sale."

Re-number the following bill sections accordingly.

Page 12, line 25:

Delete "a new subsection"

Insert "new subsections"

Page 13, line 4:

Delete "'gas storage facility,'''"

Page 13, following line 5:

Insert a new subsection to read:

"(j) In this section, "gas storage facility" has the meaning given in AS 31.05.032"

Page 15, line 26 through page 16, line 12

Delete all material.

Insert "(o) For the purposes of (m) and (n) of this section, a Cook Inlet well lease expenditure is a lease expenditure that is incurred in the Cook Inlet sedimentary basin that is

(1) directly related to an exploration well, a stratigraphic test well, a producing well, or an injection well other than a disposal well, if the expenditure is a qualified capital expenditure and an intangible drilling and development cost authorized under 26 U.S.C. (Internal Revenue Code), as amended, and 26 C.F.R. 1.612-4, regardless of the elections made under 26 U.S.C. 263(c); in this paragraph an expenditure directly related to a well includes an expenditure for well sidetracking, well deepening, well completion or recompletion, or well workover, regardless as to whether the well is or has been a producing well; or

(2) an expense for seismic work conducted within the boundaries of a production or exploration unit."

CO-CHAIR WIELECHOWSKI objected for discussion purposes.

[3:45:27 PM](#)

REPRESENTATIVE MIKE HAWKER, sponsor of HB 280, explained that the Department of Revenue had raised a number of issues based on their final comprehensive review of the bill, and he worked very closely with them on this amendment that clarifies his intent and responds to the department's concerns. There are three actual changes in the amendment. In the bill the AOGCC is the certifying agency for the gas storage facility. It was pointed out that in those certifications they were never asked to certify that the gas facility itself actually meets the definition of a gas storage facility in the bill; so a provision was added to clarify that.

[3:46:00 PM](#)

CO-CHAIR MCGUIRE joined the committee.

REPRESENTATIVE HAWKER said the next provision that was clarified is the one that allows the small producer buy-back credit. The previous version said in order to avail yourself of the state purchasing the credits you have earned, that your tax liability from all years has be zero. The department pointed out that it is possible that someone could be in a very honest tax dispute from a prior year, which would leave an open return. The department suggested providing a little leeway and allowing the credits to be viewed on an incremental annual basis. So in order to cash out a credit, your current year tax liability had to be zero.

The third change involved a struggle that several bills moving through the legislature have had in attempting to define a "well lease expenditure," the idea being to allow a credit structure for the improvement of existing wells in existing infield drilling for the purposes of enhancing, improving, and maintaining the deliverability of gas. This bill adopts language that was close to the original definition. Previously they included an allowance for the ".023" CAPEX credits and overhead allocation on the direct costs; this version eliminates the overhead component.

CO-CHAIR WIELECHOWSKI said it is a very complex bill.

3:49:31 PM

JULIE LUCKY, staff to Representative Hawker, said the amendment makes two changes on page 2, lines 11 and 13. This is where the AOGCC will certify that the gas storage facility actually meets the definition of a GSF. The changed on page 9, line 4, is one of those negative assurances that they did not intend to include liquefied natural gas in a definition and they do not intend to allow the RCA to have regulatory authority over liquefied natural gas or manufacturing plants or facilities. Page 9, line 19, gives statutory authority to the Department of Revenue (DOR) to give the information to the RCA.

She said there was some concern on page 10, lines 11 - 12, about insuring that the state knows which facility was available for the credit. It seemed that the cleaner approach was to lay it out in the area of the statute that says a credit can be claimed if you are one of these things: you must be regulated as a utility under AS 42.05 and also be available to furnish the service of natural gas storage to the public for compensation (as that term is defined earlier in the bill).

MS. LUCKY said language on page 10, line 28, talks about the calendar year versus having a zero tax liability for any previous years, and language on page 11, lines 25-28, was seen as duplicative and is about how the RCA has the authority and information to insure that the price a company gets as a tax claim is passed on to the consumer.

3:53:16 PM

The change on page 12, line 24 goes through page 13, line 5, because there are technical changes that need to be made by the addition of the new section 14. This was a way of insuring that they are not changing the way production taxes are calculated by the DOR now.

She said the last change was on page 15, line 26, through page 16, line 12, and deleted the well lease expenditure section and inserted the language that all parties have agreed to. Doing that removes the overhead language even though they don't actually see a deletion.

SENATOR FRENCH asked if this is a transition between Section 14 and the next part she was talking about.

MS. LUCKY explained that the changes on page 12, line 25, page 13, line 4, and page 13, line 5, are all technical changes to accommodate the insertion of Section 14.

[3:56:19 PM](#)

MARCIA DAVIS, Deputy Commissioner, Department of Revenue (DOR), said that Ms. Lucky had accurately characterized the amendments. She explained that the language on page 2, lines 12-19, became necessary because the department had taken issue with a simple statement that was intended to address how "non-native gas" that is coming out of storage (that was not produced for purposes of production tax law) is treated. Their concern was the unique situation where a producer owns gas, stores it, has not yet sold it and then when and if it comes out of storage, how the department evaluates it. They made it absolutely clear that the department retains its discretion to value the gas either at prevailing value at the time it was produced or at the time it was sold, because those could be two different time periods and two different values.

[3:58:39 PM](#)

SENATOR FRENCH asked what would guide them in making that decision.

MS. DAVIS answered that other laws direct them to select either prevailing or market value; they use market value unless for some reason it isn't a good indicator of what the prevailing market value is. And simplistically under regulations you take the "higher of" either the market or the prevailing value for gas. Oil has a little bit of a buffer.

SENATOR FRENCH asked if that is at the time it was produced or sold.

MS. DAVIS answered that up to now they have been deferring the price, by regulation, to the price at the point of audit. So, if you're a tax payer and a producer and you have produced gas and

want to put it into storage, you need to report the gas as having been produced. That gas has to be reported at a prevailing value posted for the region, which would be the Cook Inlet gas in this case. If they actually have a contract price and know they are going to be selling it, then they would likely report that. But not all gas that is stored is under contract.

SENATOR FRENCH asked if gas comes out of the ground in the summer and it is \$7, and then it's stored until winter when they can get \$12, which value would the state choose.

MS. DAVIS replied that the taxpayer may report it and price it at the \$7 when it's produced in its monthly estimates. Once it gets to the annual return, if they have sold the gas at \$12 they will essentially revise their monthly estimates. If it spans a period that moves beyond the tax year, so that it has been in storage longer than when they had to report the tax (\$7), then they will file an amended return or the tax division would pick it up on audit - presuming in that instance that the market value is higher than the prevailing value.

CO-CHAIR WIELECHOWSKI asked if the amendment addresses applying only to south of the 68th latitude.

MS. DAVIS answered that there was no change put in to alter the geographic zone. But rather, Representative Hawkers satisfied them with language saying that anyone getting the tax credit from DNR is going to have to be a "42.05 regulated utility." That means it's going to have to meet criteria, and the definition which means it's a depleted or nearly depleted reservoir, which would remove a lot of the reservoirs that could potentially claim to be storage on the North Slope. And two, it's going to have to require that storage be the dominant prevailing use of that reservoir. Requiring regulation by a "42.05" will make it difficult to game the statute for storage as far as the North Slope goes. The administration is comfortable with this.

CO-CHAIR WIELECHOWSKI asked if open access in Section 4 of the original draft had been addressed.

4:03:24 PM

REPRESENTATIVE HAWKER responded that Mr. Banks' concerns had been alleviated with the overall structure of the bill that specifically allows a producer to build a warehouse for their own gas on its way to market.

MS. DAVIS said that DOR didn't "have a dog in that fight."

4:04:20 PM

CO-CHAIR WIELECHOWSKI said there had been a question on page 8 about whether or not a natural gas storage facility could include an LNG plant and asked if the administration was okay with language now.

MS. DAVIS answered yes.

CO-CHAIR WIELECHOWSKI asked if she was okay with the concern about the vagueness in "must be available for storage of gas that is owned by a utility regulated under AS 42.05" on page 10, lines 11-12.

MS. DAVIS answered yes; the language change that was put in on the bottom of page 1 very clearly requires that not only the gas storage facility itself be a regulated utility under AS 42.05 (which means that the RCA will be examining any rates offered for storage), in addition it's making it clear that it also be available to furnish the service of natural gas storage to the public for compensation. The concern she heard expressed was that simply being available for storage didn't necessarily dictate that the terms offered would be reasonable. That now is gone with the fact that the storage facility is going to be regulated by the RCA.

4:06:01 PM

CO-CHAIR WIELECHOWSKI said they talked about Section (o) of Section 18 quite a bit.

REPRESENTATIVE HAWKER said they "had been around that wheel many times" and this is the best definition they could come up with.

MS. DAVIS said the administration was okay with that language; tying it to IRS terms that have very clear definitions makes it very clean and easy to use for industry as well. The department appreciated the removal of the "overhead expense" item simply because it doesn't exist under any of the other credits.

4:07:07 PM

CO-CHAIR WIELECHOWSKI asked if the administration had any other concerns with the bill.

MS. DAVIS answered no; they support the idea of gas storage. This approach seems to be fair and clear as far as it goes (Cook Inlet) as opposed to a statewide credit.

CO-CHAIR WIELECHOWSKI thanked the administration and Representative Hawker for working very collaboratively together, and said they would hold the bill for a very short time so that members could digest the amendment.

[4:10:17 PM](#)

CO-CHAIR WIELECHOWSKI withdrew his objection, and finding no further objection, Amendment 1 was adopted. He held HB 280 for tomorrow and adjourned the meeting at 4:10 p.m.