

ALASKA STATE LEGISLATURE
SENATE COMMUNITY AND REGIONAL AFFAIRS STANDING COMMITTEE

March 13, 2012

4:05 p.m.

MEMBERS PRESENT

Senator Donald Olson, Chair
Senator Thomas Wagoner
Senator Albert Kookesh
Senator Linda Menard
Senator Johnny Ellis

MEMBERS ABSENT

All members present

COMMITTEE CALENDAR

SENATE BILL NO. 204

"An Act relating to loans for the purchase of fishing quota shares by certain community quota entities; and providing for an effective date."

- MOVED SB 204 OUT OF COMMITTEE

SENATE BILL NO. 152

"An Act requiring legislative approval before the issuance of an authorization, license, permit, or approval of a plan of operation for a large-scale metallic sulfide mining operation that could affect water in or flowing into or over the Bristol Bay Fisheries Reserve."

- HEARD & HELD

SENATE BILL NO. 157

"An Act allowing an insurer to cancel an insurance policy if property becomes unoccupied and the vacancy increases the hazard insured against."

- HEARD & HELD

PREVIOUS COMMITTEE ACTION

BILL: SB 204

SHORT TITLE: LOANS TO COMMUNITY QUOTA ENTITIES/PERMITS

SPONSOR(S): COMMUNITY & REGIONAL AFFAIRS

02/21/12 (S) READ THE FIRST TIME - REFERRALS
02/21/12 (S) CRA, FIN
03/01/12 (S) CRA AT 3:30 PM BELTZ 105 (TSBldg)
03/01/12 (S) Heard & Held
03/01/12 (S) MINUTE(CRA)
03/13/12 (S) CRA AT 3:30 PM BELTZ 105 (TSBldg)

BILL: SB 157

SHORT TITLE: CANCEL INSUR. ON CERTAIN VACANT PROPERTY
SPONSOR(s): LABOR & COMMERCE

01/17/12 (S) READ THE FIRST TIME - REFERRALS
01/17/12 (S) L&C, CRA
01/26/12 (S) L&C AT 1:30 PM BELTZ 105 (TSBldg)
01/26/12 (S) Heard & Held
01/26/12 (S) MINUTE(L&C)
02/23/12 (S) L&C AT 1:30 PM BELTZ 105 (TSBldg)
02/23/12 (S) <Bill Hearing Postponed>
02/28/12 (S) L&C AT 1:30 PM BELTZ 105 (TSBldg)
02/28/12 (S) Moved CSSB 157(L&C) Out of Committee
02/28/12 (S) MINUTE(L&C)
02/29/12 (S) L&C RPT CS 5DP NEW TITLE
02/29/12 (S) DP: EGAN, GIESSEL, DAVIS, PASKVAN,
MENARD
03/05/12 (S) CORRECTED L&C CS RECEIVED NEW TITLE
03/05/12 (S) BILL REPRINTED 3/5/12
03/06/12 (S) CRA AT 3:30 PM BELTZ 105 (TSBldg)
03/06/12 (S) -- MEETING CANCELED --
03/13/12 (S) CRA AT 3:30 PM BELTZ 105 (TSBldg)

BILL: SB 152

SHORT TITLE: LEG. APPROVAL OF BRISTOL BAY SULFIDE MINE
SPONSOR(s): FRENCH

01/17/12 (S) PREFILE RELEASED 1/13/12
01/17/12 (S) READ THE FIRST TIME - REFERRALS
01/17/12 (S) CRA, RES
02/28/12 (S) CRA AT 3:30 PM BELTZ 105 (TSBldg)
02/28/12 (S) Heard & Held
02/28/12 (S) MINUTE(CRA)
03/01/12 (S) CRA AT 3:30 PM BELTZ 105 (TSBldg)
03/01/12 (S) Heard & Held
03/01/12 (S) MINUTE(CRA)
03/13/12 (S) CRA AT 3:30 PM BELTZ 105 (TSBldg)

WITNESS REGISTER

DAVID SCOTT, Staff
Senator Donald Olson and
Community and Regional Affairs Committee aide
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Introduced SB 204 on behalf of the Senate
Community and Regional Affairs Committee.

WANETTA AYERS, Director
Division of Economic Development
Department of Commerce, Community and Economic Development,
Anchorage, Alaska

POSITION STATEMENT: Did not state a position on SB 204.

DUNCAN FIELDS, Council Member
North Pacific Fishery Management Council
Kodiak, Alaska

POSITION STATEMENT: Testified in support of SB 204.

DONALD M. BULLOCK JR., Legislative Counsel
Division of Legal and Research Services
Legislative Affairs Agency
Juneau, Alaska,

POSITION STATEMENT: Addressed the legislative legal review for
SB 152.

SENATOR HOLLIS FRENCH
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Sponsor of SB 152.

KRISTEN PETERSON, Staff
Senator French
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Provided information on letters of support
for SB 152.

DANA OWEN, Staff
Senator Dennis Egan and
Aide, Senate Labor and Commerce Committee
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Introduced SB 157 on behalf of the Senate
Labor and Commerce Committee.

SHELDON WINTERS, Lobbyist
State Farm Insurance
Juneau, Alaska

POSITION STATEMENT: Testified in support of SB 157.

ACTION NARRATIVE

[4:05:37 PM](#)

CHAIR DONALD OLSON called the Senate Community and Regional Affairs Standing Committee meeting to order at 4:05 p.m. Present at the call to order were Senators Wagoner, Kookesh, Ellis and Chair Olson.

SB 204-LOANS TO COMMUNITY QUOTA ENTITIES/PERMITS

[4:06:01 PM](#)

CHAIR OLSON announced the consideration of SB 204 and noted that the committee heard it once before.

[4:06:12 PM](#)

DAVID SCOTT, Staff, Senator Donald Olson and Aide to the CRA committee, sponsor of the legislation, reminded the committee that during the previous hearing he described how the bill would change current law. He noted that Wanetta Ayers and Duncan Fields were available for questions. Responding to a question from the Chair, he confirmed that there had been no phone calls, in support or opposition to the bill.

SENATOR WAGONER referenced the side-by-side document in the packets that compared current law to the provisions in SB 204. He asked if there was a specific reason for reducing the maximum loan amount from \$2 million to \$1 million. It seems counterintuitive.

[4:08:54 PM](#)

WANETTA AYERS, Director, Division of Economic Development, Department of Commerce, Community and Economic Development (DCCED), asked if he was referring to the comparison with the quota financing currently available for commercial fisheries.

CHAIR OLSON said the current law has a loan limit of \$2 million and SB 204 reduces the maximum to \$1 million.

MS. AYERS explained that under the commercial fishing revolving loan fund, which is for individuals operating in the open access halibut fishery for quota share, the loan limit is \$2 million.

She acknowledged that proponents of the bill were concerned that the \$1 million loan limit may preclude some of the nonprofit organizations that would be financed under the Community Quota Entity (CQE) revolving loan fund from achieving that 50,000 pound limit, but the decision when the bill was initially drafted was that a \$1 million loan limit would be sufficient.

SENATOR WAGONER asked if each entity has the ability to buy up to 50,000 pounds.

[4:09:32 PM](#)

SENATOR MENARD joined the committee.

MS. AYERS answered that was correct. She added that DCCED believes that the structure of the fisheries enhancement revolving loan fund was more appropriate for these nonprofit CQEs.

[4:12:53 PM](#)

DUNCAN FIELDS, Council Member, North Pacific Fishery Management Council, reviewed the comparative relationship between a nonprofit community organization like a CQE and an individual that has an individual load limit. He then explained that 45 communities were qualified to form a nonprofit CQE to acquire IFQ shares and the thinking was that with a \$1 million limit the program could be funded with \$45 million. If the limit was \$2 million, it would be a substantially larger amount. In the balance was funding a program that all 45 communities could participate in versus the \$2 million limit offered to individuals in the commercial loan program.

SENATOR MENARD commented that this would help commerce in those Gulf of Alaska communities.

MR. SCOTT echoed the comments of Senator Menard.

SENATOR WAGONER asked where the quota came from.

[4:15:43 PM](#)

MR. SCOTT said his understanding was that the communities would purchase IFQ shares from the current bank.

SENATOR WAGONER asked if the communities could purchase his IFQs.

MR. SCOTT said yes.

SENATOR WAGONER said the math does not work; his IFQ shares were worth \$37.50 per pound so either he'd get just \$20 per pound or the \$1 million would buy approximately half the quota.

SENATOR KOOKESH pointed out that the lower limit provides an opportunity for more communities to get a foot in the door.

MS. AYERS confirmed that was correct. She added that as funds revolve through the loan fund and entities are able to go back and obtain subsequent loans, DCCED believes it will be a successful program.

CHAIR OLSON thanked Ms. Ayers and Mr. Fields.

[4:18:22 PM](#)

SENATOR WAGONER moved to report SB 204 from committee with individual recommendations and attached fiscal note(s).

CHAIR OLSON announced that without objection, SB 204 moved from the Senate Community and Regional Affairs Standing Committee.

At ease from 4:18 p.m. to 4:20 p.m.

SB 152-LEG. APPROVAL OF BRISTOL BAY SULFIDE MINE

[4:20:32 PM](#)

CHAIR OLSON announced the consideration of SB 152.

[4:21:23 PM](#)

DONALD M. BULLOCK, Legislative Counsel, Legislative Legal Services, Legislative Affairs Agency, said he looked at whether SB 152 conflicted with either Article I, sec. 15 or Article II, sec. 19 of the Constitution of the State of Alaska.

Article I, sec. 15 has to do with prohibited state action. In part, it says:

No law impairing the obligation of contracts, and no law making any irrevocable grant of special privileges or immunities shall be passed.

The issue is that there is no information on whether there would be any contracts in place that would be voided or could not be carried out as a result of this legislation.

Article II, sec. 19 has to do with local or special acts. In part, it says:

The legislature shall pass no local or special act if a general act can be made applicable.

Although the bill only identifies the specific headwaters of Bristol Bay, it would probably survive a challenge under the local and special prohibition because of the statewide interest in the Bristol Bay fishery.

MR. BULLOCK said the requirement of legislative approval is probably the most significant provision in the bill. It is a separation of powers issue. The legislature has enacted laws and same with the federal government that relate to permits and what has to be done to receive a permit, license, authorization, or the approval of a plan of operation. The executive branch carries out that function, and the bill would effectively give the legislature the opportunity to veto an executive branch decision that presumably was made within the authority received from the legislature. Article II, sec. 1 and Article III, sec. 1 describes the powers that the legislature has and the powers that the executive has.

[4:23:57 PM](#)

SENATOR MENARD questioned whether he was cautioning the committee about going forward with the bill.

MR. BULLOCK said he couldn't talk about the outcome; he could talk about the constitutional issues.

The other issue raised by the bill relates to the risk to the state if there was legislation or a regulation that effectively prohibited the development of vested mineral rights. This is a property interest that is protected by the takings clause under both the Alaska and U.S. Constitution. If there is a taking by the government, there may be a risk that the state would have to compensate the company or person that can no longer economically develop their claim.

If SB 152 were to pass and the legislature vetoed something that DNR had approved, a challenge from the mineral interest owner could be expected under the separation of powers. Even without this legislation, if there was a change in the regulation that related to a vested mining interest, there is a risk that the state may have to compensate the owner of the mineral interest if the economic value has been effectively taken. It would

probably be a question for a jury or other fact finder as to what the value would be.

4:27:57 PM

CHAIR OLSON asked if other states have similar legislation with regard to legislative approval.

MR. BULLOCK answered that virtually every state has a separation of powers issue, and the legislature can deal with this situation in other ways, such as appropriation. He explained the administrative process for classifying land that is and is not open to mining. If an area is open to mining, a company can come in and discover the mineral, locate and set the boundaries, and record it. That company has acquired a right to mine, and that is similar to the federal mining laws that date back to the 19th century. He said the concept of regulatory taking has come up in other states so there would be that issue as well as the separation of powers regarding who makes the decision as to whether something can go forward.

He noted that a bill currently in the legislature would in the future close some land in the Alyeska area to mining. That does not present a problem when it's done ahead of time; it's after the rights have been vested that the risks and problems arise.

CHAIR OLSON asked if the bill would conflict with either federal law or the U.S. Constitution.

MR. BULLOCK said this would probably be limited to state action; the state does not have any power over any agency decision of the federal government.

4:30:29 PM

SENATOR MENARD asked what mine project since the 19th century was held up the longest due to regulatory requirements.

MR. BULLOCK said the Kennecott project in Juneau was delayed because of environmental concerns about the drainage from the mine tailings. The matter went to the U.S. Supreme Court because there was a conflict in the interpretation of laws administered by the Corps of Engineers and the Department of Environmental Conservation. He noted that environmental litigation has to be anticipated in any mining project.

4:33:19 PM

SENATOR HOLLIS FRENCH, sponsor of SB 152, Alaska State Legislature, said he would first like to address the idea that

the legislature's action could constitute a taking of a vested right. He said he would like Mr. Bullock to explain further how the agency's action is any different from the legislature's. He asked if it would be a taking if DNR ultimately denies a permit to Pebble because the legislature's action would be exactly the same.

He said it is possible that the action is an encroachment on the executive function, but the legislature already exercises power in many blended areas. The governor's nominations of commissioners and attorney general is a blended area where the legislature exercises a check on his authority. The governor has some blended legislative authority as well. He can veto the legislature's capital appropriations.

CHAIR OLSON opined that those were different than the separation of powers in the specific action that Mr. Bullock addressed.

SENATOR FRENCH pointed out that there has been a law on the books since the mid-70s on the same topic with respect to oil and gas in Bristol Bay. Although the constitutionality of that statute has not been challenged, it has some precedential value.

[4:35:35 PM](#)

SENATOR WAGONER asked who provided the maps.

SENATOR FRENCH answered he got them from Rick Halford.

SENATOR WAGONER said the exploration license area depicted on the maps was between 125 and 150 miles away from the proposed site of the Pebble Mine.

SENATOR FRENCH reviewed the map and thanked Senator Wagoner for the correction; he agreed completely.

CHAIR OLSON asked for a corrected map and Senator French agreed to provide one accurate map to all committee members.

CHAIR OLSON asked what kind of support the bill had elicited.

[4:38:15 PM](#)

KRISTEN PETERSON, Staff for Senator French, said the office had received a fair number of letters of support from members of the Renewable Resources Coalition.

CHAIR OLSON held SB 152 in committee.

SB 157-CANCEL INSUR. ON CERTAIN VACANT PROPERTY

[4:38:55 PM](#)

CHAIR OLSON announced the consideration of SB 157.

[4:39:19 PM](#)

DANA OWEN, Aide, Senate Labor and Commerce Committee, sponsor of SB 157, explained that the purpose of the bill was to correct what some insurance companies believe is a shortcoming in the statute. This amendment would clarify that an insurance company is able to cancel an insurance policy if the risk that is insured against increases.

The Labor and Commerce Committee deleted the reference to "unoccupied" property because so many Alaskans leave their dwellings for long periods. The new language on page 2, lines 6-9, [which amends AS 21.36.210(f)] adds the following reason that an insurer may cancel a policy of personal insurance:

(6) vacancy of the insured property that increases a hazard insured against; in this paragraph, "vacancy" means entire abandonment of the property by the insured and the property does not contain contents of substantial utility.

CHAIR OLSON questioned the urgency of the bill.

MR. OWEN responded that insurance companies saw the ambiguity in the statutes and wanted clarification.

SENATOR WAGONER commented on the downturn in the Alaska economy in 1980s when people dropped their keys at the bank and left their homes full of items that were of substantial utility. He said he understood the concern, but had a problem with the language.

[4:46:22 PM](#)

SHELDON WINTERS, Lobbyist, State Farm Insurance, said he would address previous questions. He agreed with Senator Wagoner that the language in the CS was very restrictive, but it was better than the current statute. With regard to the question about urgency, he said this is an effort to keep rates as low as possible. All other states have adopted a similar provision with no opposition.

SENATOR MENARD confirmed that the Labor and Commerce Committee deliberated on the language.

CHAIR OLSON announced he would hold SB 157 in committee.

4:50:06 PM

There being no further business to come before the committee, Chair Olson adjourned the Senate Community and Regional Affairs Standing Committee at 4:50 p.m.