

**ALASKA STATE LEGISLATURE**  
**SENATE RESOURCES STANDING COMMITTEE**

March 5, 2012

3:35 p.m.

**MEMBERS PRESENT**

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

**MEMBERS ABSENT**

Senator Bert Stedman

**OTHER LEGISLATORS PRESENT**

Senator Cathy Giessel  
Senator Joe Thomas  
Senator Dennis Egan

**COMMITTEE CALENDAR**

COMMITTEE SUBSTITUTE FOR HOUSE BILL NO. 185(RES)

"An Act relating to an exemption from authorizations that may be required by the Department of Environmental Conservation for the firing or other use of munitions on active ranges."

- MOVED CSHB 185(RES) OUT OF COMMITTEE

SENATE BILL NO. 153

"An Act relating to a gas storage facility; relating to the tax credit for a gas storage facility; relating to the powers and duties of the Alaska Oil and Gas Conservation Commission; relating to the regulation of natural gas storage as a utility; 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 & HELD

**PREVIOUS COMMITTEE ACTION**

BILL: HB 185

SHORT TITLE: EXEMPT DISCHARGES FROM USE OF MUNITIONS

SPONSOR(s): REPRESENTATIVE(s) T.WILSON

03/10/11 (H) READ THE FIRST TIME - REFERRALS  
03/10/11 (H) RES  
03/18/11 (H) RES AT 1:00 PM BARNES 124  
03/18/11 (H) Heard & Held  
03/18/11 (H) MINUTE(RES)  
03/28/11 (H) RES AT 1:00 PM BARNES 124  
03/28/11 (H) Moved CSHB 185(RES) Out of Committee  
03/28/11 (H) MINUTE(RES)  
03/29/11 (H) RES RPT CS(RES) 7DP 1NR  
03/29/11 (H) DP: FOSTER, MUNOZ, P.WILSON, HERRON,  
DICK, FEIGE, SEATON  
03/29/11 (H) NR: GARDNER  
04/01/11 (H) TRANSMITTED TO (S)  
04/01/11 (H) VERSION: CSHB 185(RES)  
04/04/11 (S) READ THE FIRST TIME - REFERRALS  
04/04/11 (S) RES  
04/13/11 (S) RES AT 3:30 PM BUTROVICH 205  
04/13/11 (S) Heard & Held  
04/13/11 (S) MINUTE(RES)  
02/17/12 (S) RES AT 3:30 PM BUTROVICH 205  
02/17/12 (S) Scheduled But Not Heard  
02/21/12 (S) RES AT 3:30 PM BUTROVICH 205  
02/21/12 (S) Heard & Held  
02/21/12 (S) MINUTE(RES)  
03/05/12 (S) RES AT 3:30 PM BUTROVICH 205

BILL: SB 153

SHORT TITLE: NATURAL GAS STORAGE TAX CREDIT/REGULATION

SPONSOR(s): SENATOR(s) THOMAS

01/17/12 (S) PREFILE RELEASED 1/13/12  
01/17/12 (S) READ THE FIRST TIME - REFERRALS  
01/17/12 (S) RES, FIN  
02/09/12 (S) RES AT 3:30 PM BUTROVICH 205  
02/09/12 (S) Heard & Held  
02/09/12 (S) MINUTE(RES)  
03/05/12 (S) RES AT 3:30 PM BUTROVICH 205

**WITNESS REGISTER**

REPRESENTATIVE TAMMIE WILSON

Alaska State Legislature

Juneau, AK

**POSITION STATEMENT:** Sponsor of HB 185.

ALPHEUS BULLARD, Legislative Attorney  
Legislative Affairs Agency  
Alaska State Legislature  
Juneau, AK

**POSITION STATEMENT:** Answered questions about HB 185.

MCHUGH PIERRE, Deputy Commissioner  
Department of Military & Veterans Affairs (DMVA)  
Juneau, AK

**POSITION STATEMENT:** Supported CSHB 185.

SETH BEAUSANG, Assistant Attorney General  
Civil Division  
Environmental Section  
Department of Law (DOL)  
Representing the Department of Environmental Conservation (DEC)  
Anchorage, AK

**POSITION STATEMENT:** Explained provisions in HB 185 related to primacy issues.

KEVIN WARD, Regional Counsel  
Regional Environmental Office  
US Army  
Denver, CO  
Representing the Regional Environmental Coordinator  
US Department of Defense  
Washington, D.C.

**POSITION STATEMENT:** Related background on primacy issues and how they may relate to base closures in HB 185.

GRIER HOPKINS, Staff  
Senator Joe Thomas  
Alaska State Legislature  
Juneau, AK

**POSITION STATEMENT:** Explained changes in CSSB 153( ), version D, for the sponsor.

GENE THERRIAULT, Vice President  
Resource Development  
Golden Valley Electric Association (GVEA)  
Fairbanks, AK

**POSITION STATEMENT:** Supported version D of CSSB 153( ).

#### **ACTION NARRATIVE**

[3:35:56 PM](#)

**CO-CHAIR THOMAS WAGONER** called the Senate Resources Standing Committee meeting to order at 3:35 p.m. Present at the call to order were Senators Stevens, Wielechowski, French, Co-Chair Paskvan and Co-Chair Wagoner.

**HB 185-EXEMPT DISCHARGES FROM USE OF MUNITIONS**

[3:36:46 PM](#)

CO-CHAIR WAGONER announced HB 185 to be up for consideration [CSHB 185(RES) was before the committee]. He said this bill was heard twice by the committee and a motion was pending.

[3:37:03 PM](#)

SENATOR MCGUIRE joined the committee.

[3:37:50 PM](#)

REPRESENTATIVE TAMMIE WILSON, sponsor of HB 185, explained that a problem was created when the Alaska Clean Water Act was amended in 2008 to its current form. The state's long standing comprehensive military munitions exemption, AS 46.03.100(e)(7), says "unless it results in a discharge into waters of the United States" and this language potentially allows for a more expansive unintended application of Alaska's Clean Water Act than the federal Clean Water Act (CWA) due to the many and varying interpretations of "waters of the US."

The proposed amendment in HB 185: "unless otherwise regulated by the federal Water Pollution Control Act" will maintain the state's primacy and at the same time allow Alaska military ranges to comply with state law by operating in accordance with federal law. If not passed, the possibility exists that military ranges would have to curtail operations because of unique interpretations of Alaska law even if the ranges are in compliance with federal law. A consequence of the potential limited uses of the military ranges is that the U.S. Department of Defense (USDOD) could decide to use this decision to downsize Alaska's military presence. The bottom line is that HB 185 maintains Alaska's primacy, protects the environment and allows military exercises to continue without potential legal issues.

REPRESENTATIVE T. WILSON said she took this bill on because Eielson is one of the bases that could Alaska could potentially lose.

[3:40:11 PM](#)

CO-CHAIR PASKVAN said last year one of his responses indicated that the effects and purpose of the legislation weren't clear and asked the drafting attorney what he thought.

[3:40:47 PM](#)

ALPHEUS BULLARD, Legislative Attorney, Legislative Affairs Agency, Alaska State Legislature, replied that he thought the sponsor had spoken to that. He didn't know if there was any distinction in enforcement of "into the waters of the United States" or what is regulated under the Clean Water Act. At this moment there is no difference. If the state were to more stringently define "waters of the United States" in the future, there might be some deviation.

[3:41:31 PM](#)

CO-CHAIR PASKVAN asked if the issue of primacy is to establish the Alaska Department of Environmental Conservation (ADEC) as the procedural agency to handle permitting with the federal law being the only substantive law applying.

MR. BULLARD answered that was his understanding.

SENATOR WIELECHOWSKI asked if the essence of this bill is changing current law that says "firing or other use of munitions in training activities is allowed unless it results in discharge into waters of the United States" to "waters regulated under 33 USC 12.51.13.76."

MR. BULLARD answered yes. One other change includes the word "service", but it doesn't expand the language.

SENATOR WIELECHOWSKI asked if passing this law means Alaska is turning over its sovereignty and allowing the federal government to decide what the definition is.

MR. BULLARD replied that wasn't entirely fair to say. He didn't think the state has that much to say about federal waters whether it's US waters or the Clean Water Act.

SENATOR WIELECHOWSKI recapped that they are saying there is a law on the books against shooting munitions if it results in discharge into the waters of the United States and that is being changed to give control over what happens on a military base regarding munitions to the federal government. In other words, the federal government could change the law in a way that maybe we wouldn't like and by passing this, Alaska is losing its authority in that regard.

[3:45:10 PM](#)

MR. BULLARD replied that some latitude is lost, but he didn't know how much. The language "waters of the United States" was originally selected when this section was drafted to comply with the Clean Water Act and the sponsor was seeking to keep this section consistent with the Clean Water Act.

CO-CHAIR PASKVAN said getting to the point, assume that the federal government standard stays the same and Alaska eventually wants to have a say in what is discharged into its waters. Does this bill authorize that?

MR. BULLARD replied it's possible in the future, that the state might more strictly construe "waters of the United States" than the federal Pollution Control Act does, but whatever happens in federal waters will eventually be under the say of the federal government, so he didn't know how much sovereignty would be lost.

CO-CHAIR PASKVAN said there was a "big dust up" in Interior Alaska last year on the issue of what waters are state and what waters are federal. Ultimately the question is: can Alaska have a substantive say if this law would say that the federal law is the only substantive law that would be considered under any permitting process? If the federal law is the only substantive law, that seems to eliminate Alaska's voice if we had a specific concern as to discharges into the waters in Alaska.

MR. BULLARD recognized his concern as legitimate, but without understanding what the future changes might be it was hard for him to comment.

[3:48:33 PM](#)

CO-CHAIR WAGONER said not passing this law could jeopardize at least two bases in the State of Alaska due to the lack of their inability to operate on their firing ranges. Is that the essence of this bill and is the federal government trying to help us out with that?

MR. BULLARD replied that those were policy considerations and he didn't know what the considerations of the military or the federal government are. Without the state's own definition of "waters of the United States," they lack certainty. Having a specific law cited would provide certainty as to how this is going to be enforced.

CO-CHAIR WAGONER said he wanted to hear from the military side of this issue.

[3:49:29 PM](#)

MCHUGH PIERRE, Deputy Commissioner, Department of Military & Veterans Affairs (DMVA), said the fact is that everyone is at risk right now. Alaska, as a state, is already competing with other states to make sure we are in an environment in which it is the easiest to do business. That means putting provisions into law that make sure Alaska is the best place to do business for the military.

He said this is one of those areas the military said could be a hindrance and offered to help clean it up so it still mirrors what the state wants to do and what the federal government needs under the Clean Water Act. In summary, he said, if there is any question about what can and cannot be done in the future, instead of operating in a grey area, USDOD will operate where it knows it can take care of business.

CO-CHAIR PASKVAN asked if other states' departments of environmental conservation maintain more than just a procedural role. In other words do other states have their substantive state law operate with the substantive federal law.

MR. PIERRE replied that he couldn't speak to other states' environmental conservation departments, but every other state has this exemption very clearly defined for military firing ranges. Alaska is the only state that does not; and we did have it defined until we accidentally changed it and didn't incorporate this into it.

CO-CHAIR PASKVAN mused maybe it's ADEC, because they were going to take over primacy last fall, and then they haven't.

[3:52:05 PM](#)

SETH BEAUSANG, Assistant Attorney General, Civil Division, Environmental Section, Department of Law (DOL), representing the Department of Environmental Conservation (DEC), Anchorage, AK, said DEC assuming primacy over these kinds of permits is a multi-stage process and they hadn't gone through all the stages, but they are in the process.

CO-CHAIR PASKVAN asked if he knew whether other states maintain a say in their substantive laws to their state's Clean Water Act in similar situations.

MR. BEAUSANG answered that he didn't know, but he would research it.

CO-CHAIR PASKVAN asked how many states have sought primacy under these circumstances where the state DEC is applying substantive federal law.

MR. BEAUSANG said he didn't know that either, but he would research it and provide an answer.

3:53:58 PM

KEVIN WARD, Regional Counsel, Regional Environmental Office, US Army, Denver, CO, said was he was speaking on behalf of the US Department of Defense Regional Environmental Coordinator. He believed that approximately 45 states have primacy for their CWA programs and in part they rely upon the substantive requirements of the federal CWA in establishing their state law requirements. In the Alaska situation, he said, even with the proposed changed, the state and its DEC would be in a position not just to implement procedural requirements, but also to implement state substantive requirements as it would pertain to classifying state waters. For example, what types of discharges would be allowed to waters in the state, pollutants, discharge limitations, et cetera. This amendment exclusively addresses the issue of what waters would be covered. To answer that question, there would be reference to the federal CWA. Otherwise, the state procedural and substantive requirements would apply.

SENATOR WIELECHOWSKI said he had a note saying this bill doesn't change anything and that there may be a change in the future by the federal government and asked if it is fair to say that nothing changes if they pass this bill today.

3:57:12 PM

MR. WARD answered that the ADEC program is being implemented through a number of stages. The stage that would apply to military munitions and ranges according to the current schedule will not be implemented until October 2012. So, if something is not enacted today and since USEPA remains the authority, nothing would change. But after October 2012, it is possible that this would have an effect depending on how "discharge waters into the US" is interpreted. If it is interpreted in a way that is unique to Alaska as opposed to the requirements of the federal CWA, that could have a negative effect on military operations.

CO-CHAIR WAGONER said the economy in his district was not dependent upon the military and asked how much a situation like

this would weigh in deciding whether to keep a base open, move it or close it down.

MR. WARD replied that he was not privy to base closure discussions in the DOD, but after the last round of base closures in 2005 a number of criteria were used to evaluate bases and installations throughout the US. One was military value: factors included an installation's ability to absorb current and future munitions requirements, whether the condition and availability of land facilities and air space including training areas were suitable for training and staging and whether the military installation had the ability to accommodate unforeseen contingencies et cetera.

[4:00:48 PM](#)

SENATOR WIELECHOWSKI said he was trying to balance the state law on the books right now that controls firing of munitions into the waters of the US - his district backs up to a military base and there have been firings of munitions into waters and land that have had environmental impacts - and his concern about turning the state's right to control where munitions are fired over to the federal government that could say it's okay to do that.

CO-CHAIR PASKVAN said he understood the intent and he heard that this law would only be necessary if ADEC were to interpret the law differently than it currently interprets it. But if that doesn't happen in October 2012, then this law isn't needed.

[4:03:24 PM](#)

REPRESENTATIVE T. WILSON said that laws are good only until they get sued and that is the purpose of this measure. Do we want to wait until October? In March, they will be looking at Eielson and all the relevant legislation and the question is if this will be one of the black marks that goes on the evaluation. She thought they should act now and added that she wouldn't put this forward if she thought it jeopardized anything with the CWA or pollution, because the State of Alaska is good at taking care of its land.

[4:05:04 PM](#)

CO-CHAIR WAGONER asked if one of the reasons the Striker Brigade was moved to Alaska was because of the ability to train better than in other areas in the US.

MR. PIERRE answered yes; Alaska has two brigade combat teams now, 3,500 to 4,000 troops between Fort Wainwright and Joint

Base Elmendorf-Richardson (JBER); with their families that's 7,000 to 8,000 people. The USDOD just announced at a defense community conference last week that the Army is going to cut two of the eight brigade combat teams; two of those eight are in Alaska. The primary reason Alaska is a good place for the Army to be is because it has the open access to training. Senator Wielechowski's district has a large section for training on the Mountainside: but the Joint Pacific Alaska Range Complex is in the Interior near Senator Paskvan's district and the legislature just invested close to \$80 million to build a bridge for Striker vehicles to access it.

CO-CHAIR PASKVAN said he understood that the USEPA supports this measure, but he wanted the ADEC to explicitly respond to the question of if they are willing to give up Alaska's future involvement in clean water.

MR. PIERRE replied that it wouldn't be proposed here if they weren't.

CO-CHAIR PASKVAN said he wanted to hear that explicitly from the administration that they are willing to give up that right.

[4:08:05 PM](#)

MR. BEAUSANG said because he was primarily present to answer legal questions he hesitated to answer the question directly, but he noted a letter submitted to the committee in the last session making it clear that DEC supports this change. The general reason is that is an effort to promote consistency between state and federal requirements.

It's also not accurate to say that ADEC is giving up its role in CWA permitting even for munitions discharges. They will have a role to the extent that permits are required: the department would issue body and state standards that would apply. The only thing this act is trying to do is to make it consistent between state and federal law when those permits would be required.

SENATOR MCGUIRE said she supports the bill and added that it's easy to let yourself go down rabbit trails. Evidence shows that every other state has it and Alaska had it up until 2008 and she wasn't aware of any catastrophic incidents. Keeping the balance between state and federal government primacy is always difficult, but she didn't want to do anything at this stage that would render Alaska less competitive when Base Realignment and Closure Commission (BRAC) closures are being discussed. Defense

spending has gone way down and it's not a given that Alaska gets the support it has had in past years for its bases.

[4:11:36 PM](#)

SENATOR WIELECHOWSKI said his concern was that under current law, a provision says you can't fire munitions if it results in a discharge into the waters of the US. We would be saying you can't fire munitions in a training area unless it's otherwise regulated under the federal Water Pollution Control Act (WPCA). Passing this would be changing state law where the state directly controls what it is allowing and disallowing and giving it to the federal government. Is that a correct understanding?

MR. BULLARD responded that current law has an exemption for munitions fired from active ranges that go into the waters of the US. Under HB 185, the state would have an exemption for munitions unless the munitions that went into the waters of the US were otherwise regulated by the federal WPCA, which is the current interpretation under "waters of the United States." It's possible in the future that "waters of the United States" could be defined differently so that those two were not aligned.

CO-CHAIR WAGONER asked with passage of this bill if they would remain aligned.

MR. BULLARD answered yes.

SENATOR MCGUIRE moved to report CSHB 185(RES) from committee with individual recommendations and attached fiscal note(s). There were no objections and CSHB 185(RES) moved from the Senate Resources Standing Committee.

SENATOR WIELECHOWSKI said he contemplated objecting, but he thought he understood the bill a little better with the explanations.

CO-CHAIR WAGONER handed the gavel to CO-CHAIR PASKVAN.

[4:15:26 PM](#)

At ease from 4:15 to 4:17 p.m.

**SB 153-NATURAL GAS STORAGE TAX CREDIT/REGULATION**

[4:17:36 PM](#)

CO-CHAIR PASKVAN announced SB 153 to be up for consideration. [CSSB 153( ), version 27-LS1187\I, was before the committee]. He said Senator Thomas presented the merits of the bill at the

February 9 meeting and testimony was taken. He noted the new committee substitute (CS).

4:18:35 PM

CO-CHAIR WAGONER moved to adopt CSSB 153( ), version 27-LS1187\D.

CO-CHAIR PASKVAN objected for discussion purposes.

4:19:24 PM

SENATOR JOE THOMAS, sponsor of SB 153, recapped that the cost of fuel oil, particularly in the Interior and through much of the northwest and western part of the state, is crippling the economy. In Fairbanks, heating fuel is \$4 a gallon and people are spending \$667 million annually on energy costs or about \$6,667 for every man, woman and child; and much of this money is leaving the community.

He explained that Fairbanks currently pays \$23.35 for 1 bcf/gas and \$.23 per kilowatt hour for electricity. Heating bills run \$1,000 to \$1,500 a month for September through April. He said that many Alaskans take advantage of the weatherization and energy efficiency programs, but these increased costs have eaten up much of the savings and while the increasing price of oil is great for the state it's crippling for individuals.

He said that natural gas is the lowest cost fuel, but it's three times the price in Southcentral and it is only available to 1,100 customers in Fairbanks because Fairbanks Natural Gas (FNG), the distributor, is limited by what it can get. If the winter is cold in Southcentral as well, FNG is the first one to be limited on the amount of gas they can purchase and resell. The ones that have auxiliary power are cut off first.

SENATOR THOMAS said Fairbanks has distribution lines, but they aren't connected up because of the natural gas limitation. If they could access more gas, things would be different. This is why the trucking project has come to light. SB 153 begins to address that problem by incentivizing the private sector to deliver additional trucks of natural gas to Fairbanks over the next couple of years. It would extend \$15 million of tax credits to a liquid natural gas trucking project such as the one proposed by Golden Valley Electric and Flint Hills with some involvement from FNG. This is basically equivalent to \$15 million in tax credits that currently is applicable to the Cook Inlet Gas Storage Alaska project (CINGSA).

SENATOR THOMAS said he was looking to drive the price of gas down in the Interior through the use of the credits, because it is a regulated utility, so savings have to be passed through to the consumers.

[4:23:42 PM](#)

GRIER HOPKINS, staff to Senator Joe Thomas, explained that version D has one substantive change from version I; the rest is formatting and organization within statute. Version D mirrors HB 289, which is the House companion bill that just passed out of the House Resources Committee. The one substantive change that came out of the committee was the lowering of the floor for the size of LNG storage facility that can apply for a tax credit from 1 million gallons to 25,000 gallons, because Representative Feige wanted the smaller utilities along the Railbelt to have access to this credit. It is a substantial drop, but it will open up the opportunity for small utilities, such as Alaska Power and Telephone or the Copper Valley Electric Association, that are not connected to the grids to get backup power or lower their own costs. The new floor to qualify for the tax credit brings storage size to about 2.1 mmcf/gas, but it's mostly for the optional 50 percent of the construction costs.

MR. HOPKINS explained that the other change is that version I addressed storage credits within existing statute and that was modeled after HB 280 from the 2010 legislature, sponsored by Representative Hawker and the Legislative Budget and Audit Committee. Senator Thomas met with a number of members from both bodies who were interested in changing the volume because of the differences in storing LNG methods and wanted to see it in an entirely different section in statute.

MR. HOPKINS said Section 1 of version D addresses the lease exemption specifically, which was taken identically from version I, Section 2. He referred any questions on the lease exemption to Gene Therriault from Golden Valley Electric Association (GVEA).

[4:27:34 PM](#)

He explained further that version D has a definition of "natural gas storage facility" and specifically adds "LNG or an above ground containment structure", because LNG is stored in a thermos, essentially, above ground. That is very similar to version I except for the addition of the above ground storage language.

Section 3 creates the section in statute for the tax exemption, AS 43.20.047 (following directly from 43.20.046). Language matches previous language except for the changes in how the credits are applied: the \$15 million cap or the 50 percent of construction costs where ever it says "storage of natural gas" to storage of "liquefied natural gas". From there on it mirrors the goal of what version I intended to do, but with slightly different formatting and continues on for some pages. It has a definition for "liquid natural gas storage facility." Language on page 4, lines 5-9, makes sure that any savings passed on to the utilities will be passed on to the customers through RCA regulation.

CO-CHAIR PASKVAN removed his objection to version D and finding no further objection, announced that it was officially before the committee. He asked Mr. Therriault if he supported the CS.

4:30:24 PM

GENE THERRIAULT, Vice President, Resource Development, Golden Valley Electric Association (GVEA), said he had worked closely with the sponsor and staff in both the Senate and the House and supported version D of SB 153. It addresses the concerns that the prime sponsors heard from some legislators in trying to insert "liquefied natural gas storage" language into the existing statute that was put into place in 2010 and specifically denied to application to gaseous methane or storage of natural gas in a gaseous form. They have duplicated sections of the statute and made them applicable to liquid storage.

MR. THERRIAULT said they also understood Representative Feige's concern of making the product available to other smaller communities so they could get state assistance to receive the resource and actually put it to good use. He said they are trying very much to serve the largest volume possible under the concept of larger volumes bring better prices. So as the product is brought into Interior Alaska, if there are utilities or some industrial use up and down the highway system that could avail themselves of putting in smaller storage, they would be the industrial base in a smaller community, like Alaska Power and Telephone in Tok that produces the electric power. Perhaps others in the community could figure out how to avail themselves of the resource for space heat. He said that he did not have any problem dropping the volume threshold down to the 25,000 gallons.

CO-CHAIR PASKVAN clarified that when one thinks of \$4.00 a gallon for heating oil to get the same number of BTUs using gas

under the current cost structure it would cost \$1,400. So if Southcentral had to pay the equivalent of \$4 a gallon for gas, their bill would increase from about \$1,400 to \$4,000 a year. Then people would understand why that is budget busting. If you add doubling the electric price per month as well, the crisis gets bigger. He said he would hold SB 153 in committee for further work.

[4:34:56 PM](#)

CO-CHAIR PASKVAN, finding no other business to come before the Senate Resources Standing Committee, adjourned the meeting at 4:34 p.m.