

SENATE FINANCE COMMITTEE  
February 26, 2013  
9:10 a.m.

9:10:37 AM

CALL TO ORDER

Co-Chair Meyer called the Senate Finance Committee meeting to order at 9:10 a.m.

MEMBERS PRESENT

Senator Pete Kelly, Co-Chair  
Senator Kevin Meyer, Co-Chair  
Senator Click Bishop  
Senator Mike Dunleavy  
Senator Lyman Hoffman  
Senator Donny Olson

MEMBERS ABSENT

Senator Anna Fairclough, Vice-Chair

ALSO PRESENT

Daniel Sullivan, Commissioner, Department of Natural Resources; Larry Hartig, Commissioner, Department of Environmental Conservation.

PRESENT VIA TELECONFERENCE

Joseph Sebastian, Kupreanof, Self.

SUMMARY

SB 26 LAND DISPOSALS/EXCHANGES; WATER RIGHTS

SB 26 was SCHEDULED but not HEARD.

SB 27 REGULATION OF DREDGE AND FILL ACTIVITIES

SB 27 was HEARD and HELD in committee for further consideration.

Co-Chair Meyer clarified that Commissioner Sullivan presented a general overview on permitting in the state that related to both bills.

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DANIEL SULLIVAN, COMMISSIONER, DEPARTMENT OF NATURAL RESOURCES, stated that SB 27 was part of an important multi-year effort from the Parnell administration on permitting reform and modernization that had "strong bipartisan support" from the legislature. In addition to SB 26 and SB 27, the governor introduced SB 59 - Oil & Gas Exploration/Development Areas that also dealt with permitting issues. He explained that his presentation titled "Statewide Permitting Reform" (copy on file under SB 26) placed the permitting reform and modernization efforts by the Parnell administration in a broader perspective of the three bills, how they fit together, and in the context of trends throughout the country.

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Commissioner Sullivan discussed Slide 2:

"Importance of Permitting Reform for Alaska's Competitiveness."

Permitting reform has bipartisan, national and local recognition and support.

- Permitting reform is a bipartisan effort as policymakers realize the economic benefits of allowing large-scale development projects to proceed in a responsible, timely manner
- States as politically diverse as California, Massachusetts, Indiana, and Kansas are fully engaged in modernizing their permitting processes
- The Federal government also recognizes the issues and has undertaken initiatives to reduce costs, simplify the system, and eliminate redundancy and inconsistency
- Last year (February 2012), *The Economist* ran a cover story called "Over-regulated America" in which it concluded that "America needs a smarter approach to regulation" that will "mitigate a real danger: that regulation may crush the life out of America's economy"

- In *Newsweek* (June 2011), President Bill Clinton lamented that it can take three years or more to permit major economic development projects. One of his top recommendations to put Americans back to work was to speed up the regulatory approval process and grant state waivers on environmental rules to hasten start times on construction projects

Commissioner Sullivan pointed out that the administration's permitting reform was part of a national, bipartisan trend. After the economic downturn many states primary focus became permitting reform and modernization.

Commissioner Sullivan turned to Slide 3:

"Importance of Permitting Reform for Alaska's Competitiveness."

Permitting reform is a national issue affecting U.S. competitiveness.

- Potential investors sometimes express reluctance to pursue projects in the U.S. and Alaska because of the ever-present risk of permitting delays and litigation

- In 2012, the investment firm Behre Dolbear Group, which undertakes an annual global survey of mineral sector investment, ranked the United States last (tied with Papua New Guinea) out of 25 countries in the category of "permitting delays"

- o "Permitting delays are the most significant risk to mining projects in the United States"
- o States are negatively impacted by federal rules that they are bound to enforce resulting in a 7- to 10-year waiting period before mine development can begin
- o Australia is one of the countries with the fewest permitting delays

- Contrast Alcan Highway construction

Commissioner Sullivan stressed that the issue was critically important to the administration, demonstrated by the introduction of three permitting bills this session.

Commissioner Sullivan referenced Slide 4:

"Importance of Permitting Reform for Alaska's Competitiveness."

Jobs and the Environment are Undermined by Permitting Delays and Overregulation

- While an overly burdensome regulatory system can discourage investments and job creation, it can also undermine, not enhance, environmental protection

- When companies forgo investing in places like Alaska and the U.S.—places with very high environmental standards—because of regulatory delays, it can result in passing energy and mineral investment to nations with substandard environmental regulations and little capacity or desire to protect the environment

- o Last year the Associated Press estimated that 5 to 20 million tons of oil leaked a year in Russia. At even the lower end, that would be the equivalent of a Deepwater Horizon blowout about every two months

- o Russia experienced approximately 18,000 oil pipeline ruptures in 2010 - the figure in the U.S. for the same year was 341

- The global environment would be much better off if hydrocarbons and other natural resources were produced in countries with the highest environmental standards rather than some of the lowest

Commissioner Sullivan expounded that the administration's goal was to maintain environmental standards and believed that Alaska had some of the highest environmental standards in the world. Establishing permitting efficiency created certainty and was not about "cutting corners".

Commissioner Sullivan moved to Slide 5:

"Importance of Permitting Reform for Alaska's Competitiveness."

Timely, predictable, and efficient permitting is critical to other statewide strategies

## Secure Alaska's Future: Strategic & Critical Minerals

- I. Undertake a statewide assessment of Alaska's strategic mineral potential—millions budgeted for this project
- II. Provide support for the development of known or highly prospective strategic mineral occurrences throughout Alaska through infrastructure partnerships and incentives
- III. Improve the structure and efficiency of permitting processes in order to expedite mineral development, including strategic minerals
- IV. Deepen partnership and cooperation with the federal government, local governments, Native corporations, and other potential new entrants to encourage domestic exploration, development, and processing of REEs and other strategic minerals
- V. Attract new investment and markets for Alaska's abundant mineral resources

## Secure Alaska's Future: Oil

- I. Increase production by making Alaska more competitive
- II. Ensure the permitting process is structured and efficient
- III. Facilitate and incentivize the next phase of North Slope development
- IV. Promote Alaska's resources and positive investment climate to world markets

Commissioner Sullivan reviewed Slide 6:

"Statewide Permitting Reform -Strategy-."

DNR has been working with a team from DEC, ADF&G, and LAW to develop and advance strategies that aim to:

- I. Improve agencies' internal permitting structure to create a more efficient, timely, and certain process
- II. Enhance coordination within different state departments and with different entities and stakeholders throughout the state
- III. Seek input from the public about the permitting process including input from municipalities, industry and non-governmental organizations

IV. Improve coordination between the state and the federal government—federal permitting issues have a strong influence on state projects

V. Anticipate and plan for permitting the next phases of resource development, e.g. the Shale Oil Task Force

*Objective: Improve the State of Alaska's permitting processes in order to advance the public interest by ensuring projects are permitted in a timely, predictable and efficient manner while safeguarding the environment.*

Commissioner Sullivan emphasized that the permitting bills were essential for accomplishing the permitting reform strategies.

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Commissioner Sullivan turned to Slide 7:

"Statewide Permitting Reform -Significant Progress Made-."

- In FY12, the Legislature provided approximately \$2.7 million in operating funds for the Division of Mining, Land & Water to create efficiency, timeliness and certainty in the permitting process

- We utilized capital funding from FY12 (\$2.5M for the Unified Permit Project and Document Management) to focus on business management software and services

- In FY13, the Legislature approved the continuation of FY12 operating funds as part of the ongoing base for permitting and an additional \$950.0 to cover increased personnel costs and fill vacant positions focused on permitting

- o FY13 capital budget included \$3.3M to continue work on the Unified Permit Project, including the continuation of IT strategies and Business Process Management

- We reclassified and updated over 50 position descriptions

- Since the beginning of FY12, the backlog has been reduced by 38.2% (1,015 authorizations)
- We have conducted public meetings statewide for input on state permitting processes
- We are evaluating internal processes to identify and fix inefficiencies

Commissioner Sullivan spoke to Slide 8 titled, "Statewide Permitting Reform -Significant Progress Made-." The slide depicted a graph that portrayed the Department of Natural Resources permitting backlog from FY 2006 through FY 2012. He reported that the department was focused on reducing the backlog. He noted that the backlog was reduced by approximately 1000, from a high of 2,658 in FY 2011 to 1,643 by the end of 2012. The department's goal was to eliminate the backlog within three years.

Commissioner Sullivan addressed Slide 9:

"Statewide Permitting Reform -Significant Progress Made-."

2012 Statutory Changes - HB 361

- The Division of Mining, Land and Water identified over 30 statutory changes that would help reduce applicant costs, create efficiencies, reduce redundancies, and reduce opportunities for legal challenges
- During the 2012 Legislative session, the Governor introduced HB 361, which included the highest priority changes related to leasing and disposal programs that would help reduce the permitting burden on the applicant and free more time for staff to work on processing applications
- The Legislature passed HB 361 and it has been signed by the governor.

Commissioner Sullivan noted that HB 361 passed with bipartisan support but was only one piece of the ongoing reform effort.

Commissioner Sullivan identified Slide 10:

"Statewide Permitting Reform -2013 Legislature-"

2013 Statutory Changes - HB 77 & SB 26

- Building on the success of 2012, the Division of Mining, Land and Water has identified additional statutory changes that would help streamline permitting requirements for the public to use and enjoy Alaska's land and resources

- Governor Parnell has introduced HB 77, which would reform and streamline procedures for obtaining, issuing, and appealing permits, leases, best interest findings, and other DNR authorizations

- It would allow DNR to establish a general permit for an activity on state land unlikely to cause significant and irreparable harm to the State

- It would prevent non-agency entities from being able to apply directly for a reservation of water; this does not affect holders of, or applicants for, standard water rights, temporary water use permits or water

Commissioner Sullivan examined Slide 11:

"Statewide Permitting Reform -2013 Legislature-"

2013 Statutory Changes - HB78 & SB27

- Section 404 of the Clean Water Act (CWA) requires a permit from the Corps of Engineers for discharge of dredged or fill material into waters of the U.S.

- Purpose is to provide the State authority to evaluate and, potentially, assume primacy for permitting of dredge and fill activities in waters and wetlands in the State, as provided for in the CWA

- State primacy would still be subject to federal oversight and must be as stringent as the current federal program, but should help ensure funding and staffing for the program, provide greater state participation and control, enable the State to focus

resources where most needed, and better insulate the program from national politics

Commissioner Sullivan voiced that primacy was a critical element for permitting modernization. He stressed the importance of the state to take "control over its own destiny" in regards to projects. He appreciated the legislature's support of permitting reform.

Senator Hoffman cited slide 8. He referenced the legislature's previous efforts to help reduce the permitting backlog through budget appropriations. He asked whether additional appropriations would expedite the process. Commissioner Sullivan cited slide 7. He explained that the slide highlighted the substantial budget requests the Department of Natural Resources (DNR) brought to the legislature in FY 2012 and FY 2013 to address permitting reform and the backlog. Starting in FY 2012 the department filled vacant positions and embarked on the Unified Permit Project and Document Management. He reported that the \$2.7 million funding for the Division of Mining, Land & Water was adequate. He appreciated the legislative support. He felt that the "informal" goal of eliminating the permitting backlog within three years was achievable with the "significant" funding already received.

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Senator Hoffman referenced the 5th bullet point on slide 5, "Attract new investment and markets for Alaska's abundant mineral resources", and questioned what the prospects for new investments were. Commissioner Sullivan responded that DNR was very aggressively promoting the state's "greatest natural resource basins in the world" both within and outside the United States. He informed the committee that over the last two years DNR hosted a strategic and critical minerals summit in Fairbanks resulting in a tremendous sold out response. He elaborated that the issue of permitting reform played a role in promoting Alaska's natural resources.

Senator Olson acknowledged DNR efforts. He questioned how much additional revenue the streamlined permitting processes brought to the state in the last year or two. Commissioner Sullivan deemed that the department had "enormous success" attracting companies to Alaska. He noted a "quiet boom" in the minerals sector. He stated that "one

third of all exploration investment in the United States in the past two years" occurred in Alaska. Oil and gas companies were showing a lot of interest. He pointed out that the largest LNG [liquid natural gas] consumer in the world; Korea Gas travelled to Alaska as a direct result of the administrations aggressive outreach efforts. He remarked that the oil and gas industry, in search of favorable or more competitive investment climates, monitored the state's permitting and tax reform efforts. He believed the strategy was "bearing fruit."

Senator Olson appreciated DNR's efforts to reach out to investors and noted that "responsible development" fostered the Alaskan lifestyle. He noted the streamlined permitting efforts and expressed concern over keeping industry in the "realm of responsibility" while developing natural resources. He observed that the oil industry recently demonstrated that it was not acting responsibly. He exemplified the 2012 Shell [Royal Dutch Shell] accidents with the drill ship Kulluk [in Kiliuda Bay, Alaska] and noted a natural disaster was narrowly avoided. He wondered how DNR was finding a balance between responsible development and industry mistakes. Commissioner Sullivan reported that DNR emphasized Alaska's strong record of developing resources and environmental protection as part of the department's outreach. He voiced that the state wasn't interested in investors who disregarded environmental standards. Conversely, he cited the Kensington Mine, where it took 10 to 20 years to permit, as an argument for the streamlined processes. He thought that the federal government's permitting process was flawed [with regard to off shore drilling permitting]. The [Arctic] permitting effort took five years and did not result in any successful exploration drilling. He voiced that the department agreed with maintaining high environmental standards. He thought that efficiencies, certainty, and timelines in the permitting process and sustained environmental standards were not mutually exclusive and attracted more investment with companies who wanted to uphold high standards.

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Senator Bishop expressed satisfaction with the reduced permitting backlog. He inquired whether DNR had a methodology or ranking of permit applications. Commissioner Sullivan replied that DNR did prioritize applications, and

that the process was evolving. The department was attempting to fix its internal permitting processes. He exemplified DNR's prioritizing of Pt. Thomson permitting. The department worked closely with multiple state agencies, Army Corp of Engineers, and the North Slope Borough to achieve a permit and avoid further delays in construction. The department devoted a big portion of its resources in the Pt. Thompson permitting effort. He stated that the department wanted to create a balance between smaller companies waiting for permits and the large developers in line for permits. The ultimate goal was to make the whole system more efficient for all applicants.

Senator Dunleavy questioned what the state was giving up to the federal government with SB 27. Commissioner Sullivan replied that the state stood to gain more control over wetland permitting. He offered that wetland permitting often took the longest amount of time. The state would process wetland permits on its own schedule and end delays.

Co-Chair Meyer appreciated the department's hard work addressing the permitting backlog. He mentioned his interest in helping small business thrive in Alaska and not rely on the major oil companies. He pointed out that the high cost of doing business in Alaska due to location and conditions coupled with its lengthy permitting process proved challenging for small businesses. He offered that most small companies could not wait years to develop a mine or new oil field. He concluded that making the permitting process easier in Alaska helped small businesses and diversified Alaska's economy.

#sb27

SENATE BILL NO. 27

"An Act establishing authority for the state to evaluate and seek primacy for administering the regulatory program for dredge and fill activities allowed to individual states under federal law and relating to the authority; and providing for an effective date."

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LARRY HARTIG, COMMISSIONER, DEPARTMENT OF ENVIRONMENTAL CONSERVATION, introduced SB 27. He related that the legislation authorized the Department of Environmental

Conservation (DEC) and DNR to evaluate and pursue primacy for Section 404 of the Clean Water Act, Regulation of Dredge and Fill Activities.

Commissioner Hartig defined the 404 Program of the Clean Water Act and explained the legislation. He read from prepared testimony, "Senate Finance Committee Testimony of Alaska Department of Environmental Conservation" Senate Bill 27 "404 Primacy", February 26, 2013 (Copy on file).

What is a 404 program?

Section 404 of the Clean Water Act requires that all dredge and fill activities in surface waters (the ocean, lakes, rivers, streams) and wetlands be permitted. This permitting is done by the U.S. Army Corps of Engineers under what is known as the "404 program." Per the Clean Water Act, EPA retains oversight over the Corps' 404 program.

Wetlands provide valuable functions that include habitat for plants and animals, wildlife corridors, improvements to water quality, and flood and storm attenuation. Wetlands in Alaska range from North Slope tundra to forested wetlands in the mountains of Southeast. With over 174 million acres of wetlands (65% of all wetlands in the nation), Alaska's stake in administering the 404 program is unlike that of any other state.

Examples of activities requiring 404 permits include filling in wetlands for any purpose such as roads, or residential or commercial building pads; and construction of breakwaters, dams, and levees. The 404 permitting process itself involves an evaluation of the dredge and/or fill activity to identify the "least environmentally damaging practicable alternative" (LEDPA) for a project. An authorization for a dredge or fill activity must be accompanied by what is known as 404(b)(1) findings on potential short-term or long-term effects of a proposed discharge of dredged or fill material on the physical, chemical, and biological components of the aquatic environment. This also includes an evaluation of cumulative impacts.

The goal of 404 permitting is to avoid or minimize impacts to aquatic resources, including wetlands. Where impacts are unavoidable, actions are taken or required to mitigate those impacts. The Clean Water Act intends for states to implement (to assume primacy for) the 404 program with the Corps of Engineers and the Environmental Protection Agency (EPA) acting in an oversight role. States seeking primacy for the 404 program require EPA's approval.

SB 27 gives the authority to DEC and DNR to evaluate the costs and benefits of a state run program; begin the application development process and to seek approval to implement the program if it makes sense to do so.

Commissioner Hartig emphasized that the legislation was a multi-step process to evaluate the costs and benefits of assuming primacy. The legislature would ultimately make the decision to move forward with primacy based on the costs and recommendations by the department.

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Commissioner Hartig continued with the testimony.

How do states assume the 404 program, and what can states gain authority over?

The Clean Water Act spells out the requirements for a state's application for 404 primacy. These include a formal request by the governor; a description of the program as the state will run it; the state Attorney General's declaration that the state program is consistent with the federal program; memoranda of agreement with EPA and the Corps; a description of staffing and funding; and copies of all applicable state statutes, regulations, and administrative procedures. EPA will not approve a program that is less stringent than the federal program.

Commissioner Hartig informed the committee that in 2012 the state gained total primacy over Section 402 of the Clean Water Act, Wastewater Permitting Program, National Pollutant Discharge Elimination System (NPDES). Primacy was implemented over a five year period with Environmental

Protection Agency (EPA) oversight. The department gained experience with the primacy application through the 402 primacy process. The agency mandated that the state develop an equivalent to the federal program. He explained that during the 402 process DEC had to seek legislative approval several times for new authorities or statute changes in order to comply with EPA requirements. The legislation was the first step in the primacy process. He assured the committee that the legislature remained the "gatekeepers" to seeking primacy.

Commissioner Hartig continued with the prepared testimony.

States may assume primacy for the permitting and compliance program for all waters and wetlands except tidally influenced waters and waters that are or could be used for interstate and foreign commerce and wetlands adjacent to those waters. The Corps will retain authority for permitting dredge and fill activities in these waters in Alaska even after Alaska formally assumes the 404 program.

Two other states already have primacy for the program, New Jersey and Michigan, while other states are considering it. The Department of Environmental Conservation (DEC) currently plays a secondary role in the 404 program in Alaska, reviewing permit applications, in some cases applying Alaska-specific conditions, and "certifying" that the Corps' permits meet State water quality standards.

While I have described the formal process for 404 assumption from the Corps, there is a second mechanism where states can administer Section 404 dredge and fill permits. This is done by partnering with the Corps in the issuance and administration of what are known as State programmatic general permits, or State PGP's. These permits are general permits for dredge and fill actions that are similar in nature and have minimal individual or cumulative effects. The Department likely already has statutory authority to administer State PGP's, but the proposed legislation and fiscal note provide for the state to explore and pursue both this option and the formal primacy option.

Multiple Alaska administrations over many years have considered primacy for the 404 program with the most

serious consideration about 10 years ago. The decision at that time was to first pursue State primacy from EPA to implement the federal Clean Water Act (Section 402), National Pollutant Discharge Elimination System Program - the wastewater discharge permitting program. DEC has completed that process with EPA approval of the program in 2008 and the State's final step to have full authority in 2012, when we accepted responsibility for the final industrial sector's permits.

With that recent experience, now is a good time for the Alaska to expand control over its waters, recognizing state priorities for prompt permitting for economic development while protecting water quality. The application process for 404 primacy will be similar, as will program development and implementation. The lessons learned from that experience will apply directly to 404 assumption. One lesson, however, is that we know that it will take time. There are multiple opportunities along the way for the public to weigh in on program development as well as opportunities for the legislature to have a say in whether the state proceeds with primacy - when we may seek additional statutory changes to ensure the program will be consistent with the federal program and when we seek the budget necessary to implement the program.

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Why is assumption of the 404 program important?

Almost half of Alaska is considered wetlands - 65 % of the nation's wetlands are in Alaska. With wetlands so omnipresent in Alaska, most major projects - and a very large number of minor projects, like housing pads - require 404 permitting. Yet the Corps is experiencing budget cuts and staff reductions. In a state like Alaska with a very narrow window for construction, such delays can and do result in project delays of a year or more. A state-run program that is accountable to Alaskans and the legislature will assure that it is the State that decides the level of resources to devote to a program that is so essential to the state's economy. The state will have control of its permitting priorities.

Commissioner Hartig elaborated that the state had primacy over the Clean Air Act for several decades. Experience with the Clean Air Act and Section 402 primacy demonstrated that the state was more flexible with setting permitting priorities than the federal government.

Commissioner Hartig continued with his testimony.

Both DEC and DNR have placed significant emphasis in recent years on permit reform. From automated permit application to improved business processes, the State is well-poised to apply these streamlining improvements to the 404 program. These faster, streamlined practices place more emphasis on results - protection of wetlands and water resources - and less on cumbersome processes.

With a state-run program, two agencies - DEC and DNR - that have a long history of successful interaction - will run the program, rather than the four currently involved: The Corps, EPA, DEC, and DNR. Two vs. four simply means less bureaucracy. ADF&G will, of course, retain its Title 16 permitting authorities and DEC and DNR will coordinate and consult with ADF&G as part of the 404 process.

Other benefits of a State-administered program:

Cost savings for applicants in permitting major new projects.

Greater certainty of adequate funding and staffing for the program.

Permits and mitigation solutions that truly reflect Alaska's priorities and unique conditions with Alaska specific program guidance.

An improved appeals process that is timelier and less apt to stall projects needlessly and indefinitely.

Judicial proceedings generally decided by Alaska courts instead of outside federal courts.

A stable, risk-based, and predictable enforcement regime.

Replacement of formal federal ESA and EFH consultation processes with less formal, faster processes while still achieving the objectives of those programs.

What does the legislation do?

The legislation before you provides two parallel tracks: Study 404 primacy and prepare an application for the program, and begin capacity building from the start. First, it directs DEC and DNR to evaluate costs, benefits, and consequences of the state assuming primacy for the 404 program, providing resources to the departments to do so. At the same time as the agencies are performing this evaluation, State staff can partner with Corps staff in the issuance of state Programmatic General Permits and authorizations under these general permits, assist the Corps with priority permit issuance, and work alongside the Corps in implementing mitigation projects associated with permitted projects in a way that works for Alaska's unique situation. This capacity building provides tremendous benefit to the state agencies when the state does gain primacy for the program, providing trained staff and tested processes for running the actual program. Additionally, it provides benefits to Alaska's permit applicants who will gain from the state staffing addition: shorter turnaround times for 404 permits, while continuing to protect water quality.

In addition, this legislation provides the authority for DNR and DEC to administer the program and provides the authority for DEC to apply to EPA for authorization for the state-run program, as well as providing both agencies the authority to issue regulations needed for the program.

Because the state is still early in the process of fully understanding the ramifications of 404 assumption, this bill will likely not be the last 404 legislation that comes before you. As we research statutory requirements, it is likely that we will back

with needed changes: Statutory change has been required of other states seeking authority for the program. In addition, DEC and DNR will be evaluating the resources necessary to implement and run a state 404 program. The estimates in the fiscal notes that accompany this bill are for the application process and to begin the initial capacity building I've mentioned. By the FY16 budget cycle, however, we expect a decision point regarding whether to advance the primacy effort. At that point, DEC and DNR will have a much better understanding of the resources that will be required for the full program. We expect that additional resources, likely significant because it is a significant program, will be required at that time.

#### Fiscal Impacts

There are three fiscal notes for SB 27. The dollar amounts from the DNR and Law fiscal notes are included in the services line of the DEC fiscal note - DEC's fiscal note represents the full funding request for the early stages of evaluating and beginning preparation for a potential primacy application; and to increase the State's understanding of the program through capacity development. The fiscal note does not include the full costs to implement a State 404 program. (The concluding paragraphs of the presentation are on file.)

Commissioner Hartig commented that SB 27 did not affect the EPA's study of the Bristol Bay Watershed Assessment under Section 404 of the Clean Water Act.

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Commissioner Sullivan pointed out that 404 permitting was the major and most lengthy piece of the permitting process for most of the large development projects in the state. He related that DNR was declared a "cooperating agency" by the federal government. The department coordinated information between other state agencies with federal agencies during the permitting process. He stated that DNR was frustrated that despite its status as a cooperating agency, it did not have a participatory role at the decision making level on federal permitting decisions that affected the state. He advised that primacy granted the state the ability to affect the process and control its own destiny. He remarked

that recently a number of "vague" federal policy decisions which affected the state were made with very little Alaskan input. Assuming primacy ensured that the state's policies would not be driven by "vague" federal regulation.

Senator Dunleavy questioned what the state was giving up to the federal government and what it was gaining in assuming primacy. Commissioner Hartig elucidated that when the state took over permitting responsibility with the EPA while assuming Section 402 Primacy, DEC discovered that the EPA had a permitting backlog and unfinished regulatory agendas. The EPA wanted the state to adopt and develop the unfinished regulations. The state declined to proceed with any unfinished regulations that were not legally mandated. He offered that if primacy meant that the state did all the work at the federal government's direction, then the state gave up a lot. He commented that primacy granted the state direct contact with the permittees and the public and the ability to respond more efficiently to their needs. He stated that what Alaska gave up and what it gained was up to the state. He believed that the state would gain decision making control over the federal government.

Senator Dunleavy believed that the State's education system was essentially controlled by the federal government through funding and mandates. He wondered whether there was an actual gain for the state. Commissioner Hartig delineated that Alaska would not obtain funding from the federal government to run the program. The state had the opportunity to apply for federal grants for the evaluation and application process. The assumed 404 Primacy program would operate on state funds from permitting fees and state general funds. Without federal funding the federal government would lack the leverage to control or mandate the process. He concluded that federal agencies maintained a certain amount of oversight, but that the state gained a "fair amount" of discretion.

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Senator Dunleavy warned that the state needed to proceed with caution. Even though federal funding was diminishing, federal mandates were still enforced.

Co-Chair Meyer wondered whether the state would be getting enough benefit to offset \$1.8 million costs to the state for assuming primacy.

Co-Chair Kelly commended Commissioner Hartig for his informative presentation. He referred to the term "capacity" in the presentation and questioned whether it was a fiscal term. He wondered whether "capacity" related to other general permitting legislation. Commissioner Hartig relayed that the DEC fiscal note contained five positions for DEC and two for DNR. The positions would be dedicated to evaluating 404 Primacy. He explained that capacity was being built during the evaluation phase of the process. The department learned from the 402 program that it needed to start building capacity from the evaluation stage. If primacy was assumed experienced staff was imminently necessary to fulfill the responsibilities of the permitting process. He anticipated more positions would be necessary. He added that if primacy was likely DEC would submit a detailed proposal to the legislature including the costs to completely build the capacity to run the program.

Co-Chair Kelly inquired whether statutory authority was necessary to proceed with primacy or if it could be achieved through the appropriation process. Commissioner Hartig believed that DEC possessed the authority to pursue primacy, but that DNR clearly did not. He indicated that primacy was a multi-agency effort and that DEC and DNR would share duties. Historically, DEC was the natural resource regulator and DNR's expertise was in land management and mitigation. He thought the arrangement would continue, but that the delineation of duties would evolve as capacity was built.

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Senator Bishop shared that the Army Corps of Engineers required small mines to do over flights and photograph their properties for mitigation purposes. He believed that placed a financial strain on miners. He asked whether primacy allowed the state to advocate on its own behalf in similar instances. Commissioner Hartig responded that the legislation was intended to help small business as well as large. He was aware of the problem with placer miners obtaining permits. He reported that one problem was the remote locations of the mines and how the Army Corps of Engineers developed a process to make determinations and identify wetlands with a declining budget. The department was working with DNR and the corps to obtain state assistance to help the miners.

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Commissioner Sullivan added that primacy would allow consideration of local insight and issues into the mitigation process.

Senator Hoffman supported Section 402 Primacy. He communicated that Section 404 Primacy entailed taking on 65 percent of the nation's wetlands. The state's program must be as stringent as the federal governments. The state did not know the total costs of taking over the program. He related that Alaska had some of the highest tidal fluctuations in the world. He recalled that Alaska would not control tidal influence wetlands with Section 404 primacy. He called for the clear delineation of Alaska's responsibilities in such cases. He pointed out that there were many unanswered questions in seeking 404 primacy. He wondered what the exact benefits and actual financial costs of primacy were. He cautioned that careful evaluation of the costs and benefits of primacy was paramount. Commissioner Hartig replied that he strongly agreed. The state was currently not in the position to answer the unanswered questions. The legislation provided an opportunity to proceed methodically. He reminded the committee that in 2016 a detailed analysis would be provided to the legislature. He felt that industry and the public would also weigh in on whether it was advantageous for the state to assume primacy by evaluating the state's performance in permitting and regulatory oversight.

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Senator Hoffman remarked that state assumed primacy required that the state "pay the tab" for the program and significantly expand its bureaucracy while the federal government maintained ultimate oversight.

Co-Chair Meyer judged that the state was not anxious to assume the costs of the program but expediting the permitting process offered benefits. He relayed that the state received federal funding for dredging the Port of Anchorage and other ports. He asked whether the legislation impacted the dredging funding for the port. Commissioner Hartig thought that the 404 program was outside of the scope of dredging harbors and the Army Corps of Engineers would continue to provide the service. He opined that

primacy allowed a maturing state to control its destiny on key programs that impacted the state.

Commissioner Sullivan agreed with Senator Hoffman regarding federal oversight and the budgetary impact. He reiterated that primacy established state control over decision making on very important projects.

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Co-Chair Meyer OPENED public TESTIMONY

JOSEPH SEBASTIAN, KUPREANOF, SELF (via teleconference), testified against SB 27. He shared concerns over the total and cumulative costs of assuming primacy for many years, expanding state bureaucracy, and the need for more personnel with specialized expertise. He opined that assuming primacy was a "duplication of efforts" that the federal government currently provided. He did not feel that the benefits of primacy would yield benefits that were commensurate with the costs and "burden" to the state.

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Co-Chair Meyer CLOSED public TESTIMONY

Co-Chair Meyer requested a written response from DEC regarding any potential impact from SB 27 on the Port of Anchorage dredging.

Co-Chair Meyer asked for clarification on the fiscal note. Commissioner Hartig explained the DEC fiscal note. The total amount of \$1,434,700 was appropriated for five positions in FY 14; the out years increased to \$1,854,300 in FY15 with 3 additional positions and future years at \$1.828.800 through 2019. He restated that in FY 2016 the total costs to assume primacy would be known. He pointed out that the DEC fiscal note contained appropriations for DNR and the Department of Law (DOL) in the services category for \$870,000 which included two positions for DNR. He added that two additional DNR positions would be necessary in FY 15.

Co-Chair Meyer asked what would happen to the positions if the program was not approved. Commissioner Hartig replied that the department might need to retain some of the additional resources for the permitting program. The

majority of the additional positions would not be retained resulting in budget reductions. He envisioned that the process would develop incrementally.

Senator Hoffman asked how much the federal government currently spent on administering the program in Alaska. Commissioner Hartig responded that he obtained partial information regarding the full program. He voiced that the state would not assume the full program because of geographic limitations. Navigable rivers, tidal influence, and adjacent wetlands were not included. He ascertained that the state would assume 20 to 50 percent of the permitting. He did not know what level of expertise was necessary. He offered the information from the Army Corps of Engineers. The district maintained 49 employees with a budget of \$7.9 million annually. The amount of administrative support was unknown. The corps was headquartered in Anchorage with field offices in Fairbanks, Juneau, Kenai, and Sitka. Approximately 1,500 to 1,800 permit applications were processed each year and 85 percent were Section 404 applications.

Senator Hoffman queried how many federal positions would be lost under state assumed primacy. Commissioner Hartig replied that he did not know. Senator Hoffman asked whether 25 additional employees were necessary for the state to accomplish the program. Commissioner Hartig thought that was a ballpark estimate.

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Co-Chair Meyer referenced the DEC fiscal note and relayed that some costs were anticipated to be offset by program receipts. He requested clarification. Commissioner Hartig replied that permitting fees were associated with the program and provided a "mechanism" to recover a portion of the state's costs.

Co-Chair Meyer commented that he shared the committee members concerns with the fiscal note.

SB 27 was HEARD and HELD in committee for further consideration.

10:44:21 AM

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ADJOURNMENT

The meeting was adjourned at 10:44 a.m.