

ALASKA STATE LEGISLATURE
SENATE RESOURCES STANDING COMMITTEE

March 22, 2013

3:35 p.m.

MEMBERS PRESENT

Senator Cathy Giessel, Chair
Senator Fred Dyson, Vice Chair
Senator Peter Micciche
Senator Click Bishop
Senator Hollis French

MEMBERS ABSENT

Senator Lesil McGuire
Senator Anna Fairclough

COMMITTEE CALENDAR

CONFIRMATION HEARING:

Big Game Commercial Services Board
Gene Peltola - Bethel

- CONFIRMATION ADVANCED

SENATE BILL NO. 59

"An Act relating to approval for oil and gas or gas only exploration and development in a geographical area; and providing for an effective date."

- MOVED SB 59 OUT OF COMMITTEE

SENATE CS FOR HOUSE JOINT RESOLUTION NO. 6(RES)

Relating to legacy wells and legacy well sites; urging the United States Department of the Interior, Bureau of Land Management, to open new areas of the National Petroleum Reserve - Alaska for environmentally responsible oil and gas development; and requesting the Office of the Governor to increase nationwide awareness about legacy wells and well sites.

- SCHEDULED BUT NOT HEARD

PREVIOUS COMMITTEE ACTION

BILL: SB 59

SHORT TITLE: OIL & GAS EXPLORATION/DEVELOPMENT AREAS

SPONSOR(s): RULES BY REQUEST OF THE GOVERNOR

02/19/13	(S)	READ THE FIRST TIME - REFERRALS
02/19/13	(S)	TTP, RES, FIN
02/26/13	(S)	TTP AT 3:30 PM BUTROVICH 205
02/26/13	(S)	Heard & Held
02/26/13	(S)	MINUTE(TTP)
03/05/13	(S)	TTP AT 3:30 PM BUTROVICH 205
03/05/13	(S)	Moved SB 59 Out of Committee
03/05/13	(S)	MINUTE(TTP)
03/06/13	(S)	TTP RPT 2DP 1NR
03/06/13	(S)	DP: MICCICHE, MCGUIRE
03/06/13	(S)	NR: GARDNER
03/15/13	(S)	RES AT 3:30 PM BUTROVICH 205
03/15/13	(S)	Heard & Held
03/15/13	(S)	MINUTE(RES)
03/20/13	(S)	RES AT 3:30 PM BUTROVICH 205
03/20/13	(S)	-- MEETING CANCELED --
03/22/13	(S)	RES AT 3:30 PM BUTROVICH 205

WITNESS REGISTER

GENE PELTOLA, SR., nominee
Big Game Commercial Services Board
Bethel, Alaska

POSITION STATEMENT: Commented on his qualifications and desire to serve on the Big Game Commercial Services Board.

JOE BALASH, Deputy Commissioner
Department of Natural Resources (DNR)
Juneau, Alaska

POSITION STATEMENT: Answered questions about SB 59.

REBECCA KRUSE, Attorney
Civil Division
Oil, Gas & Mining Section
Department of Law (DOL)
Anchorage, Alaska

POSITION STATEMENT: Answered legal questions about SB 59.

WENDY WOOLF, Office Assistant
Division of Oil and Gas
Department of Natural Resources (DNR)
Juneau, Alaska

POSITION STATEMENT: Answered questions about how the process in SB 59 would apply.

ASHLEY BROWN, Attorney
Civil Division
Oil, Gas & Mining Section
Department of Law (DOL)
Anchorage, Alaska

POSITION STATEMENT: Commented on legal issues in SB 59.

ACTION NARRATIVE

[3:35:40 PM](#)

CHAIR CATHY GIESSEL called the Senate Resources Standing Committee meeting to order at 3:35 p.m. Present at the call to order were Senators Dyson, Micciche, French, and Chair Giessel.

CONFIRMATION HEARING
Big Game Commercial Services Board

[3:36:36 PM](#)

CHAIR GIESSEL announced the confirmation hearing of Mr. Peltola for the Big Game Commercial Services Board to be the first order of business. She asked why he wants to serve on the board and what qualifications he had to offer for the job.

[3:37:08 PM](#)

GENE PELTOLA, SR., nominee, Big Game Commercial Services Board, Bethel, Alaska, said he has had an interest in hunting, fishing and trapping all his life. His knowledge and experience could be an asset to the board.

SENATOR FRENCH asked if he had attended any of the Big Game Commercial Services Board meetings.

MR. PELTOLA answered no.

SENATOR FRENCH asked how he would resolve conflicts when there is a fair amount of evidence on both sides of an issue.

MR. PELTOLA said he would look at all the information and listen to comments and then make an educated determination.

SENATOR FRENCH said sometimes Mr. Peltola would feel different than other board members and asked him if he would hold firm in those instances.

MR. PELTOLA said he would hold to his conclusions.

[3:40:06 PM](#)

CHAIR GIESSEL asked if he was aware that the board was considering implementing a guide concession area.

MR. PELTOLA said he felt strongly about preservation of the resource foremost and didn't really have a concern.

CHAIR GIESSEL thanked him for calling in today.

MR. PELTOLA disclosed that he was related to Senator Hoffman and Representative Herron.

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CHAIR GIESSEL asked if anyone wanted to testify on Mr. Peltola; finding no one she closed public testimony and announced that his name would be forwarded to the full body. She said this does not reflect intent of any of the members to vote for or against the confirmation of this individual during any further sessions.

[3:42:41 PM](#)

At ease from 3:42 to 3:43 p.m.

SB 59-OIL & GAS EXPLORATION/DEVELOPMENT AREAS

[3:43:42 PM](#)

CHAIR GIESSEL announced SB 59 to be up for consideration.

JOE BALASH, Deputy Commissioner, Department of Natural Resources (DNR), Juneau, Alaska, said the department was glad the committee could take its time with SB 59 and wait for testimony and letters of support and opposition, one in particular from the North Slope Borough. He said they had gone to great lengths to work with the borough in a cooperative way and had been meeting regularly with the mayor and her staff as the process they seek to undertake is one that is going to be beneficial to the local residents as well as the department and the wider stakeholder network of interests.

SENATOR FRENCH asked if he had reviewed testimony from March 19, 2013 by Ms. Weissler for SB 59.

MR. BALASH answered that he had.

SENATOR FRENCH asked him to go through her points, because Ms. Weissler is an attorney who used to work in the DNR and has an extensive background in permitting.

[3:46:12 PM](#)

MR. BALASH said he would be able to speak generally about the points.

SENATOR FRENCH said her first point was that a pending Supreme Court decision, Commissioner Sullivan, DNR, versus Red Oil, the Gwich'in Steering Committee, could affect the implementation of this bill.

MR. BALASH responded that he didn't mean to be flip, but if DNR waited for any and all litigation to be resolved before taking action, they would be waiting a long time.

SENATOR FRENCH said he agreed with that general philosophy, but he thought whether this case would overturn or impinge on some aspect of the bill was a fair question.

MR. BALASH said he didn't disagree, but the issues are fairly narrow with regard to the best interest finding for a leasing decision, but he was talking about the subsequent stages of activity: the exploration and development stages.

He was aware of the issues raised in the Red Oil litigation and his understanding was that they were briefed, arguments were held, and they are just waiting for a decision from the court - but they don't know when to expect that. Some of the attorneys from the Department of Law who were working on it, Becky Kruse for one, were on line and they could comment on that.

[3:48:22 PM](#)

CHAIR GIESSEL asked if Ms. Kruse heard the question.

REBECCA KRUSE, Attorney, Civil Division, Oil, Gas & Mining Section, Department of Law (DOL), Anchorage, Alaska, explained that the Red Oil decision deals with the substance of the decision that occurs at various phases of development and this bill doesn't deal with that; it just deals with how large of an area is being looked at a time. So the outcome of the Red Oil decision should not affect this bill.

SENATOR FRENCH asked Mr. Balash if he agreed with the second sentence of point B:

DNR testified that they may decide there are sufficient site specific public interest concerns regarding a particular exploration or development project to warrant providing for public notice and comment on a project plan of operations. There is no

provision in the proposed statute to allow for such public notice and comment in areas covered by a general approval and no criteria to define the circumstances under which such notice should occur.

MR. BALASH said he was familiar with Ms. Weissler's previous written testimony, but there were some new points that he hadn't seen and so he would asked if Wendy Woolf could comment. He noted that the process they would undertake to develop the program involves first a set of regulations governing how these decisions will be made and language on page 1, line 11, in AS 35.05.945(b) describes the public notice and comment opportunities. He said he was at a loss as to how to answer somebody who was calling him a liar.

[3:51:29 PM](#)

SENATOR FRENCH responded that he didn't call Mr. Balash a liar, but he just wanted to know if he agreed with Ms. Weissler assertion that there is no provision in the proposed statute to allow for such public notice and comment in areas covered by a general approval.

MR. BALASH went back again to the words that started on line 9:

When authorizing exploration and development of this subsection, the department will provide public notice and the opportunity to comment using the methods described in [AS]38.05.945(b) and (c).

SENATOR FRENCH asked if that would fall under the heading of a "general approval."

MR. BALASH responded that his understanding and expectation was that each of the specific decisions that get made - authorizations made through this mechanism - will have to spell out where they apply, when they apply, and under what conditions.

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WENDY WOOLF, Office Assistant, Division of Oil and Gas, Department of Natural Resources (DNR), Juneau, Alaska, explained that she thought the comments meant that once they had done an area-wide approval for a phase, there is nothing in this statute that would require a site specific approval should they choose to. This statute is a discretionary tool the department will use; it also is not a general approval. When a site specific plan comes in the department still has to approve the plan, but

they don't have to do the public notice if the plan that is submitted meets all the criteria, parameters, mitigation measures, and everything that is in place that has gone through a public review process. If a plan were to come through that didn't meet those criteria they would need to go out with a public notice and all of those kinds of procedural activities would be defined in regulation so that the public and the operators would be very clear on how the process would be implemented.

[3:54:06 PM](#)

SENATOR FRENCH said he wanted to know whether the department agreed with the second paragraph of Ms. Weissler's subsection 4 that says:

With the elimination of public comment on plans of operation as proposed by SB 59, it's possible that no DNR project permit will be subject to public review and comment.

MR. BALASH answered that the tool they were requesting in SB 59 in many ways is one that will take the specific concerns of a given community into account in either the exploration stage or the development stage, or both. Once that decision has been made on the given stage of development, what would remain is - so long as the site specific plan submitted to the department complies with the terms and stipulations contained in the decision that was publically noticed that did have an opportunity for public comment - then the department would have the ability to go ahead and approve that site specific plan without further comment period. That would be a decision by the department that is subject to appeal. But the scenario where something happens that nobody knows about - there has to be a decision that has been noticed and an opportunity for comment.

He noted that when asked how often the department even receives comment on some of these decisions and site specific plans, he responds that by and large they don't get comments at all. In some ways they are trying to make this decision making process more meaningful on the front end of the development activity rather than in a situation that gets controversial in the midst of development that requires conditions or changes to a given project that costs not only time but also money - to rework a particular project in a way that will address local concerns that would be raised in that kind of a setting.

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MS. WOOLF expanded that there is no statutory or regulatory requirement for the department to do a public notice for an individual plan of operations, but it has just been their practice. More important, it has been their practice because in the past there used to be statutes and regulations in place that dealt with that sort of thing and so their projects tended to have more public notice and review because of other statutes and regulations. She said there is a requirement to do a notice at the beginning of an exploration phase or development phase.

[3:58:30 PM](#)

SENATOR BISHOP joined the committee.

SENATOR FRENCH asked how many permits receive no comments, adding that he thought it would help alleviate their concerns about restricting public comment if they knew that the vast majority never get a single one.

MS. WOOLF answered that she didn't have the number but would get it to him.

SENATOR MICCICHE asked if the appeals and the ability to comment and the notice were unchanged.

MS. WOOLF deferred to the Department of Law.

[4:00:15 PM](#)

ASHLEY BROWN, Attorney, Civil Division, Oil, Gas & Mining Section, Department of Law (DOL), Anchorage, Alaska, Attorney, Civil Division, Oil, Gas & Mining Section, Department of Law (DOL), Anchorage, Alaska, stated that currently there is no statutory or regulatory requirement to notice an individual plan of operations and this bill does not change that.

SENATOR MICCICHE pointed out a statement at the beginning of section 4 in the letter that demonstrated "a little emotion." It says the way things are going Alaska is going to be forced to rely on federal and permitting processes to have their say on oil and gas activities that impact their communities. And SB 59 doesn't change how Alaskans have their say.

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MR. BALASH highlighted that in exercising the discretion outlined in the bill and looking at these geographic areas for decision making, some common sense has to be applied to the scope of a given area that gets set and the communities involved. In reality this tool would be applied when considering

onshore exploration in the winter time on the North Slope, Nuksut being the community most impacted. Specific care and thought will need to be given to the community needs and activities that are undertaken there. Shifting gears to exploration in the Cook Inlet area will have to take into account a whole different set of things and that's going to be true onshore and offshore, southern Kenai Peninsula, northern Kenai Peninsula, west side Cook Inlet, east side Cook Inlet; those are all things that they rely on the professionals in the division to take into account and consider in making good decisions.

SENATOR MICCICHE said he didn't remember why there is a fiscal note, since they are delivering efficiency. Was it for the initial efforts that are required to revise the program?

[4:04:47 PM](#)

MR. BALASH said yes; there is one-time funding for a position and contractual services to outline the regulations that will govern this process.

SENATOR MICCICHE said ultimately the goal is to streamline the process and save money for the department and the applicants.

MR. BALASH said they absolutely believe that. If a resource play presents itself and proves to be viable economically in Alaska - the shale resource - that will require an intensity of development that has not been seen before in Alaska and it will be done on a lease by lease basis. Shale resources don't lend themselves to unitization. So, this kind of tool will be very helpful if that kind of an opportunity is in fact economic and part of our future.

CHAIR GIESSEL found no further questions.

[4:06:32 PM](#)

SENATOR DYSON moved to report SB 59 from committee with attached fiscal notes and individual recommendations.

CHAIR GIESSEL announced that, without objection, SB 59 moved from the Senate Resources Standing Committee.

Finding no further business to come before the committee Chair Giessel adjourned the Senate Resources Standing Committee meeting at 4:06 p.m.