

**ALASKA STATE LEGISLATURE
HOUSE RESOURCES STANDING COMMITTEE**

March 16, 2016

1:03 p.m.

MEMBERS PRESENT

Representative Benjamin Nageak, Co-Chair
Representative David Talerico, Co-Chair
Representative Bob Herron
Representative Craig Johnson
Representative Kurt Olson
Representative Paul Seaton
Representative Andy Josephson
Representative Geran Tarr
Representative Mike Chenault, Alternate

MEMBERS ABSENT

Representative Mike Hawker, Vice Chair

COMMITTEE CALENDAR

HOUSE BILL NO. 216

"An Act relating to obstruction or interference with a person's free passage on or use of navigable water; and amending the definition of 'navigable water' under the Alaska Land Act."

- HEARD & HELD

HOUSE BILL NO. 246

"An Act creating the oil and gas infrastructure development program and the oil and gas infrastructure development fund in the Alaska Industrial Development and Export Authority; relating to the interest rates of the Alaska Industrial Development and Export Authority; relating to the sustainable energy transmission and supply development and Arctic infrastructure development programs of the Alaska Industrial Development and Export Authority; relating to dividends from the Alaska Industrial Development and Export Authority; and adding definitions for 'oil and gas development infrastructure' and 'proven reserves.'"

- HEARD & HELD

HOUSE BILL NO. 247

"An Act relating to confidential information status and public record status of information in the possession of the Department of Revenue; relating to interest applicable to delinquent tax; relating to disclosure of oil and gas production tax credit information; relating to refunds for the gas storage facility tax credit, the liquefied natural gas storage facility tax credit, and the qualified in-state oil refinery infrastructure expenditures tax credit; relating to the minimum tax for certain oil and gas production; relating to the minimum tax calculation for monthly installment payments of estimated tax; relating to interest on monthly installment payments of estimated tax; relating to limitations for the application of tax credits; relating to oil and gas production tax credits for certain losses and expenditures; relating to limitations for nontransferable oil and gas production tax credits based on oil production and the alternative tax credit for oil and gas exploration; relating to purchase of tax credit certificates from the oil and gas tax credit fund; relating to a minimum for gross value at the point of production; relating to lease expenditures and tax credits for municipal entities; adding a definition for "qualified capital expenditure"; adding a definition for "outstanding liability to the state"; repealing oil and gas exploration incentive credits; repealing the limitation on the application of credits against tax liability for lease expenditures incurred before January 1, 2011; repealing provisions related to the monthly installment payments for estimated tax for oil and gas produced before January 1, 2014; repealing the oil and gas production tax credit for qualified capital expenditures and certain well expenditures; repealing the calculation for certain lease expenditures applicable before January 1, 2011; making conforming amendments; and providing for an effective date."

- SCHEDULED BUT NOT HEARD

PREVIOUS COMMITTEE ACTION

BILL: HB 216

SHORT TITLE: NAVIGABLE WATER; INTERFERENCE, DEFINITION

SPONSOR(S): REPRESENTATIVE(S) TALERICO

01/19/16	(H)	PREFILE RELEASED 1/8/16
01/19/16	(H)	READ THE FIRST TIME - REFERRALS
01/19/16	(H)	RES
03/16/16	(H)	RES AT 1:00 PM BARNES 124

BILL: HB 246

SHORT TITLE: AIDEA: FUNDS; LOANS; PROGRAMS; DIVIDEND

SPONSOR(S): RULES BY REQUEST OF THE GOVERNOR

01/19/16	(H)	READ THE FIRST TIME - REFERRALS
01/19/16	(H)	RES, FIN
02/12/16	(H)	RES AT 1:00 PM BARNES 124
02/12/16	(H)	<Bill Hearing Canceled>
03/10/16	(H)	RES AT 1:00 PM BARNES 124
03/10/16	(H)	-- MEETING CANCELED --
03/16/16	(H)	RES AT 1:00 PM BARNES 124

WITNESS REGISTER

JOSHUA BANKS, Staff
Representative David Talerico
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Assisted in presenting HB 216 on behalf of Representative Talerico, sponsor.

MELVIN GROVE
Alaska Outdoor Access Alliance
Wasilla, Alaska

POSITION STATEMENT: Testified in support of HB 216.

SCOTT OGAN
Wasilla, Alaska

POSITION STATEMENT: Testified in support of HB 216.

WARREN OLSON
Anchorage, Alaska

POSITION STATEMENT: Testified in support of HB 216 and suggested some changes.

GARY STEVENS
Chugiak, Alaska

POSITION STATEMENT: Testified in support of HB 216.

STEVE STRAIGHT
Anchorage, Alaska

POSITION STATEMENT: Testified in support of HB 216.

CEEZAR MARTINSON
Anchorage, Alaska

POSITION STATEMENT: Testified in support of HB 216.

CHARLES LEAN
Nome, Alaska

POSITION STATEMENT: Testified in support of HB 216.

THOMAS VADEN
Nome, Alaska

POSITION STATEMENT: Testified in support of HB 216.

STEVEN FLORY
Anchorage, Alaska

POSITION STATEMENT: Testified in support of HB 216.

CRAIG COMPEAU
Fairbanks, Alaska

POSITION STATEMENT: Testified in support of HB 216.

KAREN GORDON
Fairbanks, Alaska

POSITION STATEMENT: Testified in support of HB 216.

RICHARD BISHOP
Fairbanks, Alaska

POSITION STATEMENT: Testified in support of HB 216 and suggested some amendments.

JOHN STURGEON
Anchorage, Alaska

POSITION STATEMENT: Testified in support of HB 216.

KENNY BARBER
Palmer, Alaska

POSITION STATEMENT: Testified in support of HB 216.

FRED PARADY, Deputy Commissioner
Office of the Commissioner
Department of Commerce, Community & Economic Development (DCCED)
Juneau, Alaska

POSITION STATEMENT: On behalf of the governor and as a board member of the Alaska Industrial Development and Export Authority (AIDEA), introduced HB 246 by way of a PowerPoint presentation, "AIDEA Oil and Gas Infrastructure Development Fund, HB 246."

GENE THERRIAULT, Energy Policy and Outreach Director
Alaska Energy Authority (AEA)
Alaska Industrial Development and Export Authority (AIDEA)
Department of Commerce, Community & Economic Development (DCCED)
Anchorage, Alaska

POSITION STATEMENT: On behalf of the governor, provided a sectional analysis of HB 246.

JOHN SPRINGSTEEN, Executive Director
Alaska Industrial Development and Export Authority (AIDEA)
Department of Commerce, Community & Economic Development (DCCED)
Anchorage, Alaska

POSITION STATEMENT: On behalf of the governor, answered questions related to HB 246.

ACTION NARRATIVE

[1:03:17 PM](#)

CO-CHAIR BENJAMIN NAGEAK called the House Resources Standing Committee meeting to order at 1:03 p.m. Representatives Herron, Chenault (alternate), Johnson, Olson, Seaton, Josephson, Talerico, and Nageak were present at the call to order. Representative Tarr arrived as the meeting was in progress.

HB 216-NAVIGABLE WATER; INTERFERENCE, DEFINITION

[1:03:58 PM](#)

CO-CHAIR NAGEAK announced that the first order of business is HOUSE BILL NO. 216, "An Act relating to obstruction or interference with a person's free passage on or use of navigable water; and amending the definition of 'navigable water' under the Alaska Land Act."

[1:04:41 PM](#)

CO-CHAIR TALERICO, as the sponsor, introduced HB 216. He said the bill relates to the obstruction or interference with a person's free passage on or use of navigable water and it would amend the definition of "navigable water" under the Alaska Land Act. He paraphrased from the following sponsor statement [original punctuation provided]:

The "Submerged Lands Act of 1953" recognized each state as holding the title for any submerged land under a navigable waterway within the boundaries of each state. Under Alaska law, this term is defined in AC 38.05.965(14) and specifies a number of activities that can be conducted in a body of water in order to deem the body as navigable. While the list of

activities in statute is lengthy, there are a few omissions that House Bill 216 will address.

The first change that HB 216 will make is to insert additional activities to the definition of "navigable water" in order to ensure that there is no ambiguity. The bill includes the activities of harvesting of ice, military training, and operation of watercraft, hovercraft, snow machines and other vehicles, and hunting of any type of game. The second change is to allow all activities under this definition to be conducted "in any season" to ensure that these activities may be conducted whether the navigable body of water is thawed or frozen.

The final change in HB 216 is to combine AS 38.05.128(a)(1) and (2), to eliminate redundancy in this section regarding a government official blocking access to navigable waters.

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CO-CHAIR TALERICO stated he would like to offer a committee substitute (CS) that would eliminate the repeal of AS 38.05. It would instead combine AS 38.05.128(a)(1) and (2) and delete paragraph (2). This change would have the same effect as the repeal of (a)(1) by eliminating redundancy regarding obstructing the free passage on navigable waters. It would also add activities that are allowed to be conducted on navigable water in Alaska and would include the operation of all-terrain vehicles, the storage of vehicles, and the hunting of any form of game rather than just waterfowl and aquatic animals.

CO-CHAIR TALERICO added that waterways are the highways for the people who live in his district, particularly in the northeast part of his district. He further noted he is thinking about the mining activities in Central and Chicken and how often those waterways are used during the winter to transport goods and get materials and equipment back and forth to the communities. A friend of his began using the Porcupine River as a transportation corridor with his great grandfather and he still lives there today, uses the river routinely, and utilizes the river more in the winter than in the summer. It is incredibly important to all of the folks in the outlying areas of his district to be able to utilize those river corridors all of the time. It is also important to him that the federal government continue to uphold those things that it passed many years ago

that give Alaskans the right to utilize those navigable waterways on a year round basis.

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JOSHUA BANKS, Staff, Representative David Talerico, Alaska State Legislature, brought the sponsor's proposed committee substitute to the attention of the committee.

REPRESENTATIVE JOHNSON moved to adopt the proposed committee substitute (CS) for HB 216, Version 29-LS0995\E, Bullard, 3/14/16, as the working document.

CO-CHAIR NAGEAK objected for discussion purposes.

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REPRESENTATIVE JOSEPHSON asked what the state's modifying of the definition of "navigability" would mean relative to the federal government's preeminent role on that question. He further asked whether he is correct in understanding that the federal government has the final say over the definition.

CO-CHAIR TALERICO replied that HB 216 would clarify, expand, and define the definition within Alaska statute. It would assert the state's right under the Submerged Lands Act, as well as the Statehood Compact, to have the ability to control and use those waterways as navigable for transportation.

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CO-CHAIR NAGEAK removed his objection to adopting the proposed CS. There being no further objection, Version E was before the committee.

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MR. BANKS provided a sectional analysis of the proposed CS. He explained that Section 1 of Version E would combine paragraphs (1) and (2) in AS 38.05.128(a). This change would serve the purpose of eliminating redundancy in regard to when a person can obstruct the free passage of another person on navigable water. The definition of navigable water in regard to Section 1 is the definition that is being changed in Section 2. The offense of obstructing the free passage of navigable water is a Class B misdemeanor under AS 38.05.128(f). The original version of the bill repealed (a)(1), but the sponsor feels that this change

could have had the potential for misinterpretation and taken away the state's power. So instead of repealing (a)(1), Version E combines (a)(1) and (2), which basically has the same effect of eliminating the redundancy of this section. Section 2 would clarify the definition of navigable waters in two ways. First, Section 2 would make it so that any activity that is allowed on navigable waters can be done in any season. The changes in are to make clear what can be done on navigable waters. In regard to the language, "useful public purpose", on page 2, line 8, of Version E, the sponsor believes that all these activities would be allowed even if they were not listed, but the sponsor wants to make the law very clear with very specific activities that are allowed as a way to reduce the ambiguity of the law. Second, Section 2 would add new activities that can be conducted on navigable waters and those activities are harvesting of ice, state or federal military training, operation of boats or other watercraft, hovercraft, snow machines, all-terrain vehicles, other motorized or nonmotorized vehicles, storage of vehicles, and the hunting of any type of wild game. Currently, the law only specifies that a person may hunt for "waterfowl and aquatic animals"; this language would be deleted to allow for any type of hunting.

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REPRESENTATIVE HERRON drew attention to the analysis by the Department of Natural Resources (DNR) for the fiscal note dated 3/14/16 [page 2, fourth and fifth sentences], which states, "Removing the open ended language and instead providing additional definitions of useful public purposes may create ambiguity about navigability" He noted the sponsor is saying there will not be ambiguity, but the fiscal note is saying there will. He requested an explanation.

MR. BANKS replied he is aware of this and has clarified it with Legislative Legal and Research Services. He said the deletion of the language "but not limited to" is a drafting preference that Legislative Legal and Research Services is trying to move to. The language "including but not limited to" has the same effect as the language "including" and use of "including" does not limit the number of activities to just the activities that are stated in statute. It is just a drafting preference.

REPRESENTATIVE HERRON noted there is a very high profile Alaska case "in front of the supremes" and said they are going to decide on it. For purposes of this bill, he asked what is navigable and who owns the land under the navigable waters.

CO-CHAIR TALERICO responded the State of Alaska recently won a case for navigability and the ownership of the land underneath Moose Creek in the Fortymile Mining District on the Taylor Highway. That case was high profile although not as high profile as the case mentioned by Representative Herron. He offered his belief that it was the Bureau of Land Management that determined the state does not own the land underneath the waterways, but the courts decided the state does own the land underneath the waterways. That was a significant decision for the State of Alaska and was an inspiration behind HB 216.

1:18:09 PM

REPRESENTATIVE SEATON asked whether the language in Section 2 regarding any season and useful purpose year round means that the waterways, spawning beds, and so forth would no longer be protected. Many waterways are only used during one season, he pointed out, such as when the waterway is frozen.

CO-CHAIR TALERICO answered, "The intention of the bill is to be able to use those vehicles that you cannot traditionally use when the water is thawed when it's frozen." So, the intention was to be able to use other vehicles once the water is frozen. A prime example is trips between Fort Yukon and Central. Normally trips are done with snow machine and they have been done with highway vehicles when the river is frozen. That is the closest connection to a road for those folks and so they utilize that on a regular basis. Also, there is the new road going to Tanana and those folks are thinking they will have the potential for rubber tired vehicular access in winter when the river is frozen. The idea was to be able to use those vehicles when the season changes. Obviously, it is easy to use a motor boat on the upper Yukon and in the Porcupine usually from about the last week in May until the second week in September. The rest of the time requires a change in vehicles. So, the intention is to be able to utilize those vehicles that are available to those folks for transportation. Just because these are listed does not mean that dog sleds, skijoring, or other traditional uses are eliminated.

REPRESENTATIVE SEATON urged the sponsor to investigate refining the bill to ensure it would not unintentionally specifically allow all-terrain vehicles to be used in these areas at times when it would not be appropriate, when it is not frozen, and therefore causing impact to other resources.

CO-CHAIR TALERICO agreed to do so. He believed there are some areas in the state where the Alaska Department of Fish & Game (ADF&G) has the authority and ability to ban the use of any type of vehicle on a stream. Some areas have horsepower restrictions on boats and some areas prevent people from entering the streambed even on foot. He offered his belief that ADF&G will continue to monitor that very closely.

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REPRESENTATIVE JOSEPHSON said the bill seems to expand the state's definition of navigable water. He asked whether the federal government might use this to its benefit and say that the state has a more expanded definition and use the doctrine of Choice of Law to piggyback on that definition in this statute and as a consequence have a broader definition of navigability.

CO-CHAIR TALERICO replied he cannot speak for the federal government, but allowed it is a possibility. He said navigability is not an issue to him at all, rather the lack of the ability to be able to navigate on these waterways is his biggest fear. Whether the federal government would choose to do that he does not know, but by the federal government's most recent actions and attitude he would seriously doubt that the federal government would expand any definition of navigability.

[1:23:22 PM](#)

CO-CHAIR NAGEAK opened public testimony on HB 216.

MELVIN GROVE, Alaska Outdoor Access Alliance, testified in support of HB 216, saying it is critical that the state define what is navigable and expand the definition. Alaska's rivers and lakes are much easier to use in the winter than in the summer, he said, especially by snow machine or track vehicle. Anything that can be done to protect the access of Alaskans to their resources is critical because the federal government is more and more trying to limit that access or taking it away or making it more difficult.

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SCOTT OGAN stated he is a former legislator and formerly worked for the Department of Natural Resources where he made determinations of navigability on state waters. He said he supports HB 216 and what the sponsor is trying to do, but has an issue with eliminating the words "but not limited to". He

suggested an attorney's opinion be sought. He recounted that he was asked all the time whether a water was navigable. He had the delegated authority to make that determination and the determination for navigability that he made was for state ownership. Under the Submerged Lands Act and the Equal Footing Doctrine the state received the title to all the submerged lands at statehood. However, government did not define which ones were which, so the state has been in a 50-year battle since then, and, he added, his team successfully led an action to quiet title on the Mosquito Fork of the Fortymile. He said the other portion is navigability for Public Trust Doctrine access, and the changes in HB 216 address specifically Public Trust Doctrine navigability. Access to navigable waters is a State of Alaska constitutional right. Alaska's constitution is the only one in the U.S. with that protection; the founding fathers knew that these waters are the highways in undeveloped areas.

MR. OGAN posited that it is important to state for the record that these proposed changes will not change what rivers and waterways are owned by the State of Alaska; that is determined by federal case law. The most recent case, PPL Montana, LLC v. Montana, 132 S.Ct. 1215 (2012), goes back to a case called "Daniel Ball," which is a Civil War era case where if a watercraft is used for commercial activities on a river that determines that it is navigable; it does not actually have to be tied to actual use, it could be susceptible to use for navigability. He recounted that his team tried to lower the bar - what is the smallest river in the state that was proved in court as being navigable. That was the Nation River, the river on which Mr. [John] Sturgeon was threatened with citations for using his watercraft, a craft that was banned by the National Park Service Code of Federal Regulations (CFRs). That issue is more of an issue of whether lands designated under the Alaska National Interest Lands Conservation Act (ANILCA) are affected by state sovereign waters. Mr. Ogan held that those are state sovereign because the state owned them before they were transferred to the National Park Service under ANILCA. He added that the National Park Service owns the uplands and clarified that that is the dispute, not whether the river is navigable.

MR. OGAN suggested that the bill make it a Class A misdemeanor, rather than Class B, to block access to somebody's right to access a navigable water, because troopers are not as excited about prosecuting a Class B misdemeanor as they are a Class A, and he thinks it is a pretty serious violation. Also, he said, private landowners do not have the right to block someone who is using the waterbody on their land. He recounted that many of

the disputes he got involved in were when the water was not navigable for title purposes but was navigable for public trust purposes under the statute, and the private property owner was saying the public could not go on the river and fish there because the property owner owned the submerged land. He said [DNR] concurred the private property owner owned the submerged land, but could not prevent the public from going on the river because under the delegated authority in the constitution to the legislature, the legislature has determined that water to be navigable in this definition of the statute and therefore the public has a right to access it. That is what is being dealt with under HB 246.

[1:32:05 PM](#)

REPRESENTATIVE JOSEPHSON drew attention to the language "in any season" on page 2, line 7, of Version E. He noted there have been two main federal decisions in the last decade that have looked at navigability, Solid Waste Agency of Northern Cook County v. United States Army Corps of Engineers, 531 U.S. 159 (2001), and Rapanos v. United States, 547 U.S. 715 (2006). The state's rights argument was that [the federal government] was classifying too many things as navigable so the pushback on the federal government was that that is not navigable here, it does not have a physical nexus or attachment to some truly navigable water body. Here, at least as to seasons, it is being said that the state wants to grow the definition of navigability and, as far as he can tell, that does not line up with the arguments of the states in those two cases. He requested Mr. Ogan's thoughts.

MR. OGAN replied that in his opinion and direct experience, the bill will not expand the ability to assert title navigability in federal court. Statute may say a water is navigable, but it is driven by federal case law because the federal government did convey the waters that were navigable and the test is the federal case law. The most recent case law that DNR hung its hat on when he was there was the PPL Montana, LLC. In that case the river was broken up into segments, with some segments of the river that were not navigable and some that were. It was ruled that the non-navigable segments do not belong to the state. That dispute was over a dam for generating power that was put in the river and the state argued that it was a state river so the company owed the state back rent for use of that dam. He said he does not know how that case worked out because his interest was in what sections were navigable and what were not. He related that on the morning of a summary judgement motion on

DNR's Mosquito Fork case, the federal government came in and disclaimed 100 percent of the river that DNR was litigating.

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WARREN OLSON said he has lived in Alaska for 55 years, is a member of the Citizens' Advisory Commission on Federal Areas (CACFA), and has been involved in water issues for 35 years. He cut his teeth on the "Gulkana case" that was extremely important to Alaska in regard to navigable waters in the state. He advised that the term "navigable waters" is a legal term. Each individual state determines its navigable waters standards and how wide the law is going to be in each state, how much influence it causes. So it is a total sovereign issue of each state to determine navigable waters within the state, so there are 50 different navigable water laws across the nation. In regard to Representative Josephson's remarks, he said the federal government really revolves around navigational servitude and reserve water rights. Navigational servitude has to do with someone putting a cable or some other obstruction across the waterway within the state. No matter how large or how small the obstruction, that will result in talking with the federal government because it will be restricting commerce and/or personal use of the waterway. Reserved water rights have to do with establishing refuges and/or inholdings of the federal government and those are determined at the time of establishing the inholdings or reserves.

MR. OLSON addressed HB 216. He related that when attending CACFA meetings the departments would describe their work in regard to navigable water in Alaska and the presentations usually would be involved with summertime use. This particular case brought a question to his mind about the five or six months a year of wintertime use. Alaskans travel tens of thousands of miles on all waterways during the winter with all different types of modes of transportation. Additionally, personal use of those waterways in the wintertime is necessary to move equipment and so forth to lodges and/or mineral developments for springtime work. The purpose of [HB 216] is to elevate that particular portion of the year, when it is frozen, that has not been shown as an example of use of water for users in Alaska.

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MR. OLSON offered several suggestions. He said there is a question of whether float planes are considered a navigable use. Regarding the language "landing and takeoff of aircraft"

[original bill version, page 1, line 12, he urged it be specific and include "wheels, floats, and skis". He suggested that "four wheelers" be added [to page 1, line 13, in the original bill], because throughout the Interior and the highway system it is common in wintertime to see the utility work of four wheelers. He also urged that the words "but not limited to" remain in the bill to prevent the exclusion of any particular use. He said the strength of HB 216 is that each navigable water law throughout the country is unique to each state and he is a firm believer in naming specific uses so that when these convocations go between the federal government and the State of Alaska that Alaska's law stands right up and Alaska as a sovereign state has declared that these particular uses are a priority; there may be others that are practical as well.

MR. OLSON said there are other areas that the state should take advantage of, such as basin-wide adjudication. This would assist the state in determining navigable water status, possibly in more urgent and quicker methods than are being used today. When referring to navigable water laws, a look must be taken at each state supreme court in respect to the state that decisions have come from. The state supreme court is the ultimate authority on navigable water across the United States. He thanked the sponsor for introducing the bill.

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REPRESENTATIVE SEATON pointed out that Version E, Section 2, page 2, line 11, specifies all-terrain vehicles and this section also specifies in any season for any public purpose. He further noted that Section 2 applies to ponds and estuaries and he knows of people who have very large tired all-terrain vehicles that are great going through the mud and those people enjoy that recreation. He asked whether having this in statute would override regulations that are effect by ADF&G and whether there needs to be clarification in this regard.

MR. OLSON answered that in the areas of conservation safety it would seem to him that the department that has authority in control and can establish restrictions against particular users. Today there are four wheel drives and street vehicles out on the ice, for example they are crossing the ice on Big Lake in Southcentral Alaska.

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GARY STEVENS offered his strong support for HB 216. He said he is a member of the Alaska Outdoor Council, but is speaking on behalf of himself. The biggest issue for him is specifying that snow machines can be ridden in wintertime on frozen navigable waterways. He said he does not think the committee should be too concerned about federal law and what the federal government is going to decide as far as what is navigable. This is more about the allowed uses - what is being used on that waterway and when it is being used on that waterway. In regard to Representative Seaton's concerns, he said he is sure that laws currently on the books will cover anadromous species.

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STEVE STRAIGHT urged the passage of HB 216. As a longtime Alaskan he said he finds it crazy that there needs to be discussion about the idea that there is a difference between summer use of rivers and winter use of rivers because it seems so logical. He said the reason he urges the bill be passed, whether in its original form or the CS, is that if the bill is not passed the legislature is leaving it to a judge to make this decision, which is not always the wisest place to develop or make law. He requested the committee put it in writing and get it right, because if the bill is not passed a judge could then rule that the legislature did not intend for there to be winter access on navigable waters.

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CEEZAR MARTINSON testified in support of HB 216, saying it is a critical bill to pass for several reasons. First are the reasons stated by Mr. Straight and the other is that it is important for the State of Alaska to expand the definition of what is navigable waters and what can be used on navigable waters. In particular, the federal overreach that has been seen in Alaska with regard to the Sturgeon case and other cases where the National Park Service has denied Alaskans the ability to use equipment that is necessary to them to harvest resources. This bill is a first step for the legislature to assert state sovereignty and say navigable waters are a state issue and it is not the place of the federal government to come in and attack Alaska citizens with unnecessary and burdensome regulations that impact their ability to feed themselves and their families.

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CHARLES LEAN stated he is speaking for himself. He said he is a member of CACFA and was a fisheries biologist for 40 years, so he has a great deal of experience in both winter and summer in Northwest Alaska. He said he is in favor of the bill and likes many facets of it. The uses that transferred navigability to the state, although they have changed somewhat, show that the rivers and navigable waters have not really changed much in that timespan and they still represent oftentimes the best route or the best means of transportation. Saying he is particularly interested in winter transportation, he pointed out that large rivers like the Yukon are highways in the winter. It is the side sloughs, straight shots, and what is shallow water in the summer that is frozen to the bottom in winter and that is what provides the most stable roadbed. Nome is in the thick of it with the Iditarod, Iron Dog, and other races. All of these things occur on the historic Iditarod Trail and the Iditarod Trail is a network of trails, not a single line, and it is the historic transportation route that the mail traveled in the winter. It goes all the way to Eagle and Bethel and north to Kotzebue; all those trails exist as a network and they are still in use. [Another example is that] many of the visitors in Nome for today's basketball game came via snow machine on those trails. Those trails transit park lands, fish and wildlife lands, and state lands and they make use of tidewater. The state owns out to three miles and it also owns internal waters; those are all part of the Navigable Waters Act and those trails make high use of the coastal waters of Alaska in the winter when they are frozen. He said he could speak in great detail about fisheries management and how to remediate any impacts that members are concerned about. There are villages in his region, such as Shishmaref, that still get their water from rivers and families travel on a weekly basis ten miles from town upriver to find good clean water in the form of ice that they bring back to subsist on for the rest of the week. Reiterating his support for the bill, he said it has a number of things he is grateful to see acknowledged.

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THOMAS VADEN testified he is a lifelong Alaskan and is speaking to the trail system and roads in Eastern Alaska where he has a guiding operation. Right now between Nabesna and the White River he is freighting about 60,000 pounds with snow machines using several rivers and over very small navigable rivers that are frozen solid in the winter. That is the only way to get around, he said. It is a big help to his operation hauling in horse feed and the like. The village of Shushanna uses the

Sushana River coming upstream from Northway or Tetlin Junction to supply people with fuel. The bill is very critical to any kind of operations in rural Alaska. Some of the trails go over glaciers and they are historic trails from the gold rush in the 1920s and 1930s, but most of those are harder now to navigate because the glaciers are receding. He said he still gets ice from rivers to support his operations, as do the residents of Shushanna, because there are no wells. He closed his testimony by stating his support for the bill.

[1:56:23 PM](#)

STEVEN FLORY spoke in favor of the bill. He pointed out that many cabins and homes are located on tributaries. These waterways have been historical highways for generations of Alaskans, he said, long before all-terrain vehicles and snow machines. It is not a new issue, it is just the first time it is being addressed in state law. The bill is a simple and overdue solution to an oversight. He said he cannot speak enough in favor of HB 216.

REPRESENTATIVE TARR inquired whether Mr. Flory has had any circumstances where he was prevented from travel on any navigable waters.

MR. FLORY replied that the Knik Public Use Area was recently established by the legislature and there is a push by a small segment of people to limit the use in the wintertime. He came to Alaska 26 years ago and trapped in that area, getting around on the ice. Ice fishing and other activities go on in that area and certain groups have tried to limit that access. Another example has to do with a lake that he was trapping nearby and on which he was using permission from one of the property owners that abutted the lake. The submerged lands underneath the lake and to the high water mark belong to the state and he was trapping those areas. A person who did not want any trappers out there literally interfered and took his traps and the state prosecuted her for that.

[1:59:16 PM](#)

CRAIG COMPEAU said he is a 55 year resident of Fairbanks and is testifying on behalf of himself and his family business. He held that the definition of navigable waters is that they provide a channel for commerce and transportation of people and goods. The definition does not say anything about the water condition, whether it is frozen, thawed, or muddy. Since the

late 1950s his family has sold almost 20,000 snow machines, most of them to rural villages where they are used for hauling wood and water and dragging trees along the water. If those definitions are not commerce and transportation for the people of Alaska, then he does not know what is. He offered his strong support for the bill, saying these definitions need to be firmed up so people can use these waters as was intended, whether or not they are frozen.

[2:01:01 PM](#)

KAREN GORDON thanked Representative Talerico for closing a loophole in this language by including winter use as well. She said there are those who would suggest that because it says water that it would not include winter use, but in Alaska there is significant wintertime use of navigable waters that are solid. She urged the bill be passed.

[2:02:04 PM](#)

RICHARD BISHOP noted he lives in the Goldstream Valley area where trails and other access are an important part of people's daily lives. He said he supports HB 216 and while he has not seen the proposed committee substitute he thinks it is on the right track. Alaska's waterways are essential for access by Alaskans to the vast areas of the state - hiking trails, roads, or air fields - whether they are open water or frozen. He said he had mistakenly assumed that Alaskan waterways were considered navigable or legal public access when frozen, so he was surprised to learn otherwise. He also recently learned that federal agencies do not consider frozen waterways navigable, making the assurances that state waters are navigable all the more important. He said he supports the bill as the means to ensure that Alaska's waters are considered navigable and legal public access year around.

MR. BISHOP recommended several amendments to clear up some of the text. Referring to the original version before him, he suggested that "or ice" be added on page 1, line 10, after "water" to make the intent more clear. On page 1, line 13, after the word ["vehicles"], he recommended adding "dog teams, pedestrian uses". He proposed that page 1, line 14, be rephrased to state "trapping, hunting, fishing, or other lawful public purposes and activities". Regarding the words "trapping" and "hunting", he held that those adequately cover the terms "waterfowl and aquatic animals" as well as other practices, such as moose hunting, for example, which is very common on the

waterways. He urged the bill be passed to make it clear in statute that Alaska's frozen waters are considered navigable for public access. As to potential impacts to salmon spawning areas or other anadromous fish, he pointed out that there is already a statute regarding the protection of anadromous streams that is rigorously enforced.

[2:05:41 PM](#)

JOHN STURGEON testified in support of HB 216, saying it should have been done long ago. He noted that in 2011 he filed a lawsuit against the federal government on navigability and on 1/20/16 it was heard by the U.S. Supreme Court. During the lawsuit the issue of uses of navigable water has come up in a form of whether dog sleds are allowed. Another issue was in regard to places like the Yukon River that have very large gravel bars that run for miles. The definition of navigable waters is ordinary high water to ordinary high water, so it does include the gravel bars in places like the Yukon and Susitna rivers. Four wheelers and other things used for moose hunting are allowed. The National Park Service has chased four wheelers off those gravel bars on the Yukon, so if his lawsuit is successful and the state retains its rightful title to the navigable waters, he wants to ensure that those uses are very clearly defined.

[2:07:23 PM](#)

KENNY BARBER stated his 100 percent support of HB 216, explaining he is a trapper who uses these waterways. For almost 30 years he trapped using an M37, a rubber tired military vehicle. He added that he has never had a problem trapping on rivers. Another reason he supports the bill is that he thinks there is a lot of overreach by the federal government that is trying to stop people from using these waterways and he would like to see the state get the jump on the federal government.

[2:08:37 PM](#)

CO-CHAIR TALERICO closed public testimony on HB 216 and opened committee discussion on the bill.

REPRESENTATIVE HERRON suggested careful consideration be given to Representative Seaton's concern about having certain vehicles in salmon streams. For example, a vehicle being able to go through some streams at any time could cause damage. He said he

would appreciate it if the committee could figure out some sort of an accommodation to the concern.

REPRESENTATIVE SEATON said his reason for bringing this up is that subsequent law can override previous law, so there needs to be some recognition of that interplay. He stated he has not heard from the department as to how that interplay would go and whether the specification of all-terrain vehicles in HB 216 would have priority over previous law. He drew attention to [page 1, line 6, of Version E] which states that a person may not obstruct or interfere unless that obstruction or interference falls under the [four] conditions listed in the bill, the last condition being "authorized by the commissioner after reasonable public notice." He asked whether that is for a specific waterway or in general; for example whether it would cover estuaries in general or each specific [estuary].

[2:10:52 PM](#)

REPRESENTATIVE JOSEPHSON suggested the topic is more complicated than may be thought. For example, one witness, a CACFA board member, said that the only time the federal government intervenes is when there is some physical obstruction that interferes with interstate commerce or that sort of thing. He recounted an [1824] decision that he used to teach called Gibbons v. Ogden, 22 U.S. 1 (1824), where the U.S. Supreme Court, John Marshall, first said navigability is a federal area and there was not really any discussion of obstruction, although it did involve a dispute between New Jersey and New York over who controlled New York Harbor. So, there was not anything interfering with traffic other than some sort of fee, which he supposed could be the obstruction.

REPRESENTATIVE JOSEPHSON, regarding Representative Seaton's concern, said the definition as he reads it seems to liberalize hunting. There are prohibitions on hunting when game is present in the water, he noted, but because there are exceptions to that he does not know whether the bill would impede on that. Regarding the access issue, he recalled that when he lived in the Bush the sloughs and rivers were unimpeded highways for vehicles of all sorts. He presumed that would not be changed and would be left alone; for example, no one was obstructing any through traffic between Aniak and Bethel that he saw. He remarked he has a lot more to learn.

[2:13:23 PM](#)

CO-CHAIR TALERICO said HB 216 will be held over while his office obtains answers to the questions raised by the committee.

[2:13:45 PM](#)

The committee took an at-ease from 2:13 p.m. to 2:15 p.m.

HB 246-AIDEA: FUNDS; LOANS; PROGRAMS; DIVIDEND

[2:15:28 PM](#)

CO-CHAIR NAGEAK announced that the next order of business is HOUSE BILL NO. 246, "An Act creating the oil and gas infrastructure development program and the oil and gas infrastructure development fund in the Alaska Industrial Development and Export Authority; relating to the interest rates of the Alaska Industrial Development and Export Authority; relating to the sustainable energy transmission and supply development and Arctic infrastructure development programs of the Alaska Industrial Development and Export Authority; relating to dividends from the Alaska Industrial Development and Export Authority; and adding definitions for 'oil and gas development infrastructure' and 'proven reserves.'"

[2:15:47 PM](#)

FRED PARADY, Deputy Commissioner, Office of the Commissioner, Department of Commerce, Community & Economic Development (DCCED), noted he is before the committee as a board member of the Alaska Industrial Development and Export Authority (AIDEA). On behalf of the governor, he introduced HB 246 by way of a PowerPoint presentation entitled, "AIDEA Oil and Gas Infrastructure Development Fund, HB 246." He said the bill's purpose is to create an oil and gas infrastructure development program and fund within AIDEA. Through AIDEA's work with small- and medium-sized oil and gas developers, AIDEA identified a need for additional tools to support those developers. The bill would create an oil and gas infrastructure development program and fund to make investments in supporting infrastructure, including roads, pads, gathering systems, camps, and other facilities. The bill does not propose to make investments in well and reservoir development. The infrastructures that AIDEA would support would increase oil and gas production, help bring new fields on line, attract new investment, increase future state revenues, and support energy security.

[2:17:25 PM](#)

MR. PARADY addressed slide 2, "Current AIDEA Financing Tools," stating that AIDEA has 735,000 shareholders, the population of Alaska, and they are represented by the Alaska State Legislature. The governor is AIDEA's institutional shareholder who appoints AIDEA's seven-member board. The staff of AIDEA manages the day-to-day business. Currently, AIDEA has three funds [revolving fund, sustainable energy transmission and supply (SETS) fund, Arctic infrastructure fund] and two special appropriations projects [Interior energy project, Ambler mining district industrial access project]. Today, the majority of AIDEA's core day-to-day business of providing capital and partnering with industry to help drive the state's economic engines is done through its revolving fund.

MR. PARADY moved to slide 3, "Geographic Project Diversity," and pointed out that the revolving fund has investments across the state, which are relatively aligned with the commerce and industry across the state. Turning to slide 4, "Industry Diversification," he noted the revolving fund has a diversified portfolio of investments in Alaska businesses that operate under the Prudent Investor Rule. The revolving fund has historically made select investments that support oil and gas development in the state. However, he said, AIDEA's opinion is that additional investments by the revolving fund in projects that support oil and gas development would overweight what is a currently diversified portfolio. He specified that the 20 percent of the revolving fund invested in mining is essentially the DeLong Mountain Transportation System, Red Dog, but the risk in that project is actually in the past because the project is successful. Oil and gas represent about 14 percent of the revolving fund.

MR. PARADY displayed slide 5, "AIDEA Financing Tools after HB 246," and explained that the concern addressed by HB 246 is to develop an AIDEA financing tool because the oil and gas industry sector continues to be a crucial contributor to the state. For AIDEA to continue to support the industry, AIDEA's executive director John Springsteen and board believe it would be beneficial for AIDEA to have a separate tool and fund solely focused on supporting oil and gas development by making investments in infrastructure.

[2:19:46 PM](#)

MR. PARADY showed slide 6, "Intent of HB 246," and reiterated that the bill's intent is to continue to support small- and

medium-sized oil and gas developers statewide with a separate program and fund within the AIDEA family of investments. These investments would be in infrastructure to: support small- and medium-sized firms; increase production and help bring new fields on line; attract new investment; increase future revenues; and support energy security.

MR. PARADY drew attention to slide 7, "Eligible Oil and Gas Infrastructure Projects," and defined oil and gas infrastructure as roads, pads, camps, processing facilities, gathering systems, and similar above the ground assets. He reiterated that wells, reservoirs, or other below ground assets are not being talked about. Amongst the criteria AIDEA would use to qualify projects for these loan programs would be that the infrastructure investment must be for a field with proven reserves. The bill uses the Society of Petroleum Engineers' definition of proven reserves, but, he allowed, it is possible that that definition could come under debate before the committee.

MR. PARADY reviewed slide 8, "Financing and Tax Credits," explaining that the bill proposes an opt-in/opt-out provision. If a borrower opts in to using AIDEA financing, then the borrower is opting out of using the exploration and development tax credit found in AS 43.20.043.

REPRESENTATIVE OLSON noted that AS 43.20 is now closed to new participants. He asked whether there is any money left for someone who was in before the cutoff.

MR. PARADY believed the answer to be yes, but said he will get back to the committee.

REPRESENTATIVE OLSON understood a participant would have several years to use that.

MR. PARADY replied yes, but added that he will get back to the committee with a confirmed answer.

[2:21:53 PM](#)

MR. PARADY resumed his presentation and continued to address slide 8. He noted projects with past tax credits would still be eligible for AIDEA financing.

REPRESENTATIVE JOHNSON asked why a company eligible for tax credits would want AIDEA financing. In other words, why borrow money when credits would basically give the money to a company.

MR. PARADY offered his belief that that decision would rest on the sources of funds available for the project to balance what is available under tax credits versus the overall project's needs for financing it. It would be a calculus that would be performed by the company's accountants or developers.

REPRESENTATIVE JOHNSON said it seems to him like this statement is based upon repealing of the tax credits, which is before the committee. Therefore, he continued, he is uncomfortable with putting it on the record that a company would be eligible for something that the committee has not yet made a decision on.

MR. PARADY replied that his best answer is that of course the legislature holds the decision regarding the oil and gas tax credits bill. Envisioned in HB 246 is that if a company opts into credits then it is opting out of AIDEA financing. The bill is creating a new tool in AIDEA to do project finance.

[2:23:29 PM](#)

REPRESENTATIVE SEATON recalled that the Mustang Project has above ground features financed through AIDEA and tax credits were allowed for other portions. He understood Mr. Parady to have stated that no well expenditures would be financed under HB 246 and asked whether that is also a demarcation. He further understood that a company receiving tax credits would be unable to get financing through AIDEA.

MR. PARADY understood Representative Seaton's question to be regarding whether below ground tax credits would preclude above ground financing. He said he will get back to the committee with an answer.

[2:24:27 PM](#)

REPRESENTATIVE HERRON understood the credits under AS 43.55 to be the net operating loss (NOL) credit statewide, and the qualified capital expenditure (QCE) credit and well lease expenditure (WLE) credit in Cook Inlet. He noted that in HB 247 the governor is proposing to repeal the QCE and WLE. He surmised that Mr. Parady is saying a company will not use any of these credits, including the ability to carry forward an annual loss, if it participates with AIDEA.

MR. PARADY answered yes, depending upon the outcome of HB 247.

[2:25:12 PM](#)

CO-CHAIR NAGEAK inquired whether the Mustang Project on the North Slope has stopped work and, if so, why.

MR. PARADY responded that the Mustang Project has been affected by the price decline. There was a reworking of the collateral structure of the waterfall associated with AIDEA's participation in that project, he said, and he believes it is moving towards warm storage or warm status as the market turns.

CO-CHAIR NAGEAK asked what the implications are for AIDEA's investment in this project.

MR. PARADY replied that AIDEA's investment is secure and AIDEA is continuing to work to keep it so.

CO-CHAIR NAGEAK inquired whether AIDEA's investment is [indisc.]

MR. PARADY responded no, not to his best understanding.

[2:26:12 PM](#)

REPRESENTATIVE JOHNSON asked what AIDEA is using for security for these loans.

MR. PARADY responded that the security involved in each of these loans that comes before the board can vary with the project that is being developed. It can be the equipment, it can be collateral on the underground reserve itself. It depends on how that is structured for each particular deal.

REPRESENTATIVE JOHNSON surmised AIDEA is going to repossess leases if the underground reserve is the collateral and a company defaults.

MR. PARADY replied he will provide a more detailed answer, but under his present understanding he does not know that repossess the lease is the right term and it depends on the structure of the individual deal. He understood that the gas reserves of the Mustang Project are one of the ultimate collaterals, but a waterfall of steps would come before that step.

[2:27:31 PM](#)

CO-CHAIR NAGEAK asked why a new fund is needed if AIDEA is able to support projects like Mustang.

MR. PARADY answered that oil and gas is currently at 14 percent in the balance of the overall AIDEA revolving loan fund. Since the capital demand of this sector of Alaska's economy is substantial, it would overweight the portfolio and overrule the diversification principle that underlies the Prudent Investor Rule.

REPRESENTATIVE JOSEPHSON addressed the inquiry about the Mustang lease being relinquished to the state down the series of waterfall steps. He surmised the leaseholder entered into that contract probably before the fall of oil prices or even before the Walker Administration came into being.

MR. PARADY replied yes.

[2:28:39 PM](#)

MR. PARADY returned to his presentation and addressed slide 9, "Market Based Interest Rates." He said that under the structure of HB 246, AIDEA would base the interest rates based on project risk. Project risk would be evaluated by looking at the operating performance of the field, the size of the field, the projected costs and cash flow, and capabilities of the operation. Borrower creditworthiness would be looked at, as well as owner and financing partner commitments - who is backing the field development, their expectation of financial returns - and the collateral to be made available to AIDEA. The benefits to the state would also be looked at, including tax and royalty revenue and jobs, jobs being a foundation of AIDEA's analysis. The interest rates may be higher for oil and gas infrastructure projects, he noted, due to the inherent risks associated with the industry.

MR. PARADY discussed slide 10, "Other Bill Components." He said the bill would modify the financing limits of the sustainable energy transportation and supply (SETS) fund and Arctic infrastructure development fund. The bill proposes that all three funds be allowed to loan up to 50 percent of an eligible project or offer a loan guarantee of up to \$25 million. As in the existing funds, amounts in excess of these limits would require prior legislative approval. He noted that the current limits are 33 percent, which the bill would move to 50 percent, and \$20 million, which the bill would move to \$25 million. This is essentially a reflection of a stronger role in trying to support these activities.

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REPRESENTATIVE OLSON asked whether the concept of this expansion came from an AIDEA board decision or somewhere else.

MR. PARADY responded that the board has had discussion based on its staff's interaction with the industry and is also based on discussions within the administration.

REPRESENTATIVE CHENAULT observed that Sections 10 and 11 of the bill increase the loan size that AIDEA can make in the SETS fund and in the Arctic infrastructure fund. He asked whether that is really necessary or is an AIDEA wish list component that has nothing to do with HB 246.

MR. PARADY answered he would not describe it as a wish list, he would describe it as an updating of the tools in the AIDEA tool kit, but it is within the judgement of the legislature whether to lengthen that leash a little bit or keep it a little tighter. In the context of the specific fund before the committee, the oil and gas infrastructure fund, the scale of capital needs in the oil and gas industry are such that he believes the move makes clear sense. Also, there was some interest on AIDEA's part in keeping things standard across the state's statutes.

REPRESENTATIVE HERRON said the way he and his staff read the bill is that changes would be made and he would think there would be concern on the legislative side that AIDEA is going to make decisions that go against what the legislature wanted to do. He inquired whether HB 246 would allow AIDEA to transfer earnings from other assets to the oil and gas fund.

MR. PARADY replied correct, but noted that is an authority which AIDEA already has within its tool kit as a corporate entity and it is authority that AIDEA has exercised with discretion. He said AIDEA has not transferred funds between funds and AIDEA has returned a sustainable dividend to the state over decades.

REPRESENTATIVE HERRON remarked that it is a serious concern.

[2:32:34 PM](#)

CO-CHAIR NAGEAK noted that Buccaneer Energy Alaska in Cook Inlet has left the state. He asked whether AIDEA was a partner in that venture.

MR. PARADY responded yes, AIDEA had a loan involved in that and AIDEA recouped its investment from the jack-up rig before it left the state.

CO-CHAIR NAGEAK asked whether AIDEA was left with unpaid loans due to the bankruptcy.

MR. PARADY answered zero, AIDEA did not have a write-off associated with that project and in fact AIDEA earned a return. Responding further, he confirmed that AIDEA got its money back.

[2:33:24 PM](#)

REPRESENTATIVE SEATON recalled that two years ago before the Mustang Project was underway, there was a proposal to look at a \$200 million separate fund or separate bonding authority so that it would be separate from the existing bonding authority that AIDEA is using. He understood the legislature did not end up passing it, but asked whether it would be the bonding authority that would be extended to give AIDEA the money to make these investments or would it be an internal reorganization.

MR. PARADY replied that the current concept of this package, the \$200 million in funding, is associated with HB 247, which is also before the committee. That funding would be to capitalize the initial fund and then there is the question of whether bonding authority would be extended to it, which is not present in HB 246.

REPRESENTATIVE CHENAULT asked approximately how much money is currently in those funds.

MR. PARADY responded that the balance sheet of AIDEA has \$1.3 billion spread across the revolving loan fund and the other two funds. He said he will provide the committee with a breakout.

[2:35:14 PM](#)

GENE THERRIAULT, Energy Policy and Outreach Director, Alaska Energy Authority (AEA), Alaska Industrial Development and Export Authority (AIDEA), Department of Commerce, Community & Economic Development (DCCED), on behalf of the governor, provided a sectional analysis of HB 246. He pointed out that most bills have a small part of new statute and then the remaining pages of the legislation make conforming amendments to the existing statute, which is the case with HB 246. The new fund would be created by Section 12 of the bill; it is a policy call of

members as to whether that new fund is created. In addition to that policy call, there are two other distinct policy calls, one being whether the limits on the existing SETS fund and the Arctic infrastructure fund should be made the same as the proposal for the new fund. The other policy call is the request in Section 9 of the bill that AIDEA be given the flexibility to set the interest rate of its different financial tools so that it can reflect the risk and reward that is being proposed in a specific project. He said this is a distinct policy call because that is a new authority that would be given to AIDEA.

MR. THERRIAULT explained that Sections 1-3 of the bill would add the new fund to the existing statutes that require yearly dividend payment from AIDEA to the general fund under the definition of unrestricted net income. At the bottom of page 2 of the bill is the addition of the new oil and gas infrastructure fund to the list of AIDEA's investment tools that pay a dividend should this fund derive revenue.

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MR. THERRIAULT said Sections 4-8 of the bill would add references to the new fund to the existing statutes that detail the level of interest levied on loans from the SETS fund and Arctic infrastructure development fund. Both those funds are relatively new creations of the legislature in AIDEA's investment portfolio and both were established by the legislature. He noted that the mechanics of the existing language would not be altered by the addition of the oil and gas infrastructure development fund to those sections of statute.

MR. THERRIAULT pointed out that Section 9 would enable AIDEA to set the initial interest rate by project that takes into consideration the project risk, creditworthiness, partner commitments, and benefit to the state. It is one of those policy calls, a new requested authority of AIDEA to initiate through regulatory action an interest rate that reflects the risk that is being proposed by an individual project.

REPRESENTATIVE TARR inquired whether authority to set the interest rate means that decision would be made by the AIDEA board or an executive decision by management. For example, she noted, some people do not feel there is fairness in the process used regarding the agriculture revolving loan fund.

JOHN SPRINGSTEEN, Executive Director, Alaska Industrial Development and Export Authority (AIDEA), Department of

Commerce, Community & Economic Development (DCCED), replied that staff would go through the process of negotiations and working out what that interest rate would be. All of this would then be approved by the AIDEA board.

[2:39:36 PM](#)

REPRESENTATIVE CHENAULT asked what factors or criteria would be used for determining who got a loan and at what interest rate.

MR. SPRINGSTEEN responded that the technical due diligence would include reviews of the field, field performance, the owner, the operator, the development plan, and the type of infrastructure being requested for the development. The financial due diligence would include looking at the creditworthiness of the other party, the commitments behind the other party in terms of other financiers and what type of returns that they are requesting, the collateral that is made available for the investment, as well as reviewing the project economics and performing financial stress testing. Equally important when reviewing these factors are the benefits to the state in terms of job creation and revenue from taxes and royalties. All of these would be weighed as AIDEA pursued its negotiation with an interested developer.

REPRESENTATIVE CHENAULT inquired whether that criteria would change as AIDEA went from development to development. For example, of concern to him is a local hire provision where a company would get a lesser interest rate if it hired more Alaskans than if it did not.

MR. SPRINGSTEEN answered that through discussions with folks from the industry, AIDEA is keenly aware of industry's needs for special expertise for certain projects, so AIDEA will note that need. Absent that, if there were a comparable Alaska hire in terms of cost and capability, it is part of AIDEA's role as stewards of the state to work towards a preference for that type of a hire.

[2:42:04 PM](#)

REPRESENTATIVE JOSEPHSON inquired where AIDEA would get the information for field performance criteria. For example, would AIDEA consult with the Department of Natural Resources (DNR) in some privileged way and keep that confidential.

MR. SPRINGSTEEN replied that AIDEA does collaborate with DNR in accessing information, as well as accessing technical expertise that would augment AIDEA's internal team the authority to do a review. He noted AIDEA has a very lean general staff so it needs to tap on special expertise from time to time, and that is the process that AIDEA engages in.

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MR. THERRIAULT continued his sectional analysis, explaining that Sections 10 and 11 propose to make adjustments to the existing participation limits of the SETS and Arctic infrastructure funds so that they would be the same levels as is proposed for the new oil and gas fund. Those two sections are separate, but AIDEA believes there is some benefit if the criteria is level across the different financing tools. However, it is a separate and distinct policy call for the legislature to make.

MR. THERRIAULT said Section 12 is the meat of the bill in that it would create the new fund. The proposed statutory language that creates the oil and gas infrastructure development fund is based on the framework used when the legislature created the SETS and Arctic infrastructure funds. However, the language on page 8, lines 3-4, of the bill is specific to this proposed new fund in that it states the need to investigate the proven reserves. Bringing attention to page 7, line 17, and the language, "establish reserves", he noted that for the SETS and Arctic infrastructure funds, it was very clear that "establish reserves" was referencing the financial reserves of the fund. He related that Representative Hawker is concerned about this language because this fund is involved in oil and gas reserves and tweaking of the language might needed here to make it clear that it is talking about financial reserves. Therefore, that is a bit of a potential difference from the structure that was used for the other two funds.

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REPRESENTATIVE SEATON said he had been of the understanding that under the oil and gas infrastructure fund the proven reserves were talked about as collateral, but now he is understanding that this is financial reserves and not oil and gas reserves.

MR. THERRIAULT explained that the language on page 7 is talking about the operation of the fund itself, and reserves sometimes have to be established within the fund.

MR. SPRINGSTEEN elaborated by posing a scenario of AIDEA issuing a bond that supports a project, for which AIDEA would then need to establish a financial reserve, a general obligation of the authority, to backstop the bond issuance and to secure the project. That is generally what this language relates to - the establishment of financial reserve for a bond issuance.

MR. THERRIAULT said that points out Representative Hawker's concern. Because this fund in particular is involved in development of oil and gas reserves, tweaking the standard language might be necessary to make that clarification. The proven reserves is dealt with later on in the bill.

[2:47:02 PM](#)

MR. THERRIAULT resumed his sectional analysis, drawing attention to page 8, lines 3-4, which would require a process for proving the existence of those proven reserves. He noted that expertise would be brought in, as discussed earlier, so this would be different than the standard language that was used for the SETS and Arctic infrastructure funds.

MR. THERRIAULT explained that page 8, lines 15-22, would require a project developer to choose between securing infrastructure financing from this new fund or applying for oil and gas development credits. This language does not exist in the SETS and Arctic infrastructure development funds, he noted, it would be specific to the proposed oil and gas infrastructure development fund.

REPRESENTATIVE HERRON observed on page 8, lines 23-24, that it could be a 30-year loan. He asked what the difference is between a loan and becoming an actual equity owner.

MR. SPRINGSTEEN read from the language on lines 23-24, which state, "Financing under AS 44.88.880 is limited to the projected life of the oil and gas infrastructure development but may not be more than 30 years." Therefore, he explained, the vehicle could be either a loan or an investment, but when AIDEA makes investments they are generally preferred equity with collateral and they act much like a loan.

REPRESENTATIVE HERRON inquired whether it is reported as an equity or as a long-term debt.

MR. SPRINGSTEEN responded it depends on the nature of the investment.

[2:49:52 PM](#)

REPRESENTATIVE SEATON presumed there would be no liability through this loan or equity for any of the terminal cleanup, removal, and rehabilitation.

MR. SPRINGSTEEN offered his belief that if it were a direct investment as opposed to a loan, AIDEA would still potentially have responsibility for what it does on the top side. He reiterated that it is things above ground, such as roads, pads, camps, and pipe, and not things related to reservoir or field development below ground.

REPRESENTATIVE SEATON posed a scenario of a loan or an equity investment where the life of the field is 30 years. He asked whether the state would have liability for the demobilization and rehabilitation if anything were to happen to the partners. That liability could be more than the cost of the loan, he said.

MR. SPRINGSTEEN answered that is why it is very important for AIDEA to look at the ability of the project partners and the committed backers for the project to provide the collateral and commitment. He said he thinks the preference would be for a loan by AIDEA just because it naturally limits liability.

REPRESENTATIVE SEATON stated he is uncomfortable with that being a negotiated term because he does not think the state wants to get into that liability and that this may need to be excluded in the statute to prevent the state from becoming liable for that at the payoff of the loan.

CO-CHAIR NAGEAK asked whether Representative Seaton has any suggestions for language that would resolve his concern.

REPRESENTATIVE SEATON suggested that the sponsor of the bill provide a proposal to fix that or to limit that liability.

CO-CHAIR NAGEAK requested AIDEA to propose the language.

MR. SPRINGSTEEN agreed to do so.

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MR. THERRIault recommenced his sectional analysis. He brought attention to page 8, lines 11-14, which propose the new project limits. If AIDEA provides financing, he said, the financing

would be limited to up to one-half of the capital cost of the oil and gas infrastructure development and the guarantee of a loan is the \$25 million. Those would be the limits for this new fund, and Sections 8 and 9 propose that it be the same for the SETS and Arctic infrastructure funds. That is a policy call, but AIDEA believes there is some value to having some continuity across those different loan funds.

REPRESENTATIVE TARR, regarding the amount authorized in statute for the other two funds, recalled it being said that raising the amount from \$20 million is in some ways adjusting for inflation. Regarding the provision for up to 50 percent, she posited that this transfers a bigger portion of the liability to the state in terms of providing that guarantee. She inquired whether it is standard in the industry to go that high and explained she is asking this question to better understand the why for going from one-third to 50 percent.

MR. SPRINGSTEEN replied the 50 percent threshold provides an opportunity for a true type of a partnership structure with another entity. In terms of obligations of the state versus obligations of AIDEA, if AIDEA issues a general obligation bond it is an AIDEA general obligation bond against the assets of AIDEA and not of the state. This provides AIDEA with some amount of independence in order to enter into deals with third party developers and other project financiers.

REPRESENTATIVE TARR surmised there should be a monetary value associated with that that should be positive in terms of building AIDEA's asset base. She imagined that would be preferable as well.

MR. SPRINGSTEEN responded yes.

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REPRESENTATIVE HERRON asked why another fund needs to be created if AIDEA is already able to support projects like Mustang.

MR. SPRINGSTEEN answered that as AIDEA's assets, capacity, and need for diversity in the revolving fund were reviewed with the board, it was viewed that additional investments in supporting oil and gas infrastructure would overweight the revolving fund's diverse portfolio and potentially have an impact on its credit rating. But it was also understood that the oil and gas industry continues to come to AIDEA for support for infrastructure, and that was the driver behind the ask for a

separate program within AIDEA to work alongside oil and gas industry developers. Some very important things are done in the revolving fund, such as project development, backstopping bond issuances, and supporting AIDEA's loan participation program, where AIDEA works alongside banks and federal credit unions to provide reasonable cost financing to all manner of business and industry in the state.

REPRESENTATIVE HERRON inquired whether the AIDEA board gave any thought to just staying in the loan guarantee business.

MR. SPRINGSTEEN replied that that is part of the process being engaged here - AIDEA has an idea that it is bringing forward and is looking for input and adjustment that is required.

REPRESENTATIVE HERRON asked whether Mr. Springsteen is saying the AIDEA board thought that a loan program was needed instead of a loan guarantee program.

MR. SPRINGSTEEN responded it is having the ability to either guarantee or to make an investment.

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REPRESENTATIVE JOSEPHSON said he was struck by Mr. Springsteen's statement that in AIDEA's world a 50 percent interest warrants potentially having equity in a project.

MR. SPRINGSTEEN answered he used the term loosely in terms of partnership, not as a strict legal vehicle, but in reference to the nature of a relationship where there is a promising project that has a good and solid committed backer for reservoir development, and AIDEA would provide funding for this type of topside infrastructure development with a partner.

REPRESENTATIVE JOSEPHSON remarked that Mr. Springsteen's use of the word partnership is also interesting because in HB 247 there is, in one sense, absolutely a partnership, but in another sense there is not, it is a grant. But, he continued, AIDEA looks at 50 percent investment as possibly warranting some sort of partnership interest.

MR. SPRINGSTEEN responded that the responsibility of AIDEA staff is as stewards of funds that are provided to AIDEA. The staff views funds as a renewable source to take and deploy for project development, those funds are returned to AIDEA, they provide a

return and also provide a dividend to the state, and the funds are redeployed for additional project development.

REPRESENTATIVE JOSEPHSON recalled the governor's fiscal plan as stating that the loans to the oil industry would be more favorable than commercial rates. He observed that the second paragraph of the sectional analysis says the loans would be consistent with what commercial lenders offer. He inquired why a developer would come to AIDEA if the developer can get a loan through a commercial lender.

MR. SPRINGSTEEN replied that from time to time there are the right types of project developers that are providing a commanding benefit to the state in terms of employment and in generating royalty and tax revenue for the state, which would get considered in terms of rate setting. He said AIDEA starts with the idea of the merits of the project and what type of other financial partners and commitments there are for the project, and determines what a market rate is. Then AIDEA has the ongoing discussion of what additional incremental benefit does the developer provide to the state that would warrant preference in terms of a lower rate.

REPRESENTATIVE JOSEPHSON addressed the liability issue raised by Representative Seaton. He said he is concerned about state liability, but is more concerned about the subject of rehabilitation and demobilization. He asked whether the current system is inadequate to handle issues of after the life of a field rehabilitation and demobilization and whether there is something that is not being done to protect Alaska.

MR. SPRINGSTEEN answered that each deal is different but generally AIDEA's approach is to act in the form of a lender and to have the other party responsible for addressing those types of liabilities mentioned.

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REPRESENTATIVE SEATON said he is uncomfortable with not more than 50 percent because he is unsure how much of the project that is. Whether it is through credits or through loans, it seems like the state is trying to attempt [to make it] so that people do not enter into the normal commercial relationships of having two or three or another partner come in with expanded balance sheets. In some cases what the state is doing is like what happened with Buccaneer - the state actually lessened the need for Buccaneer to have a partner and have a broad balance

sheet due to the state's participation. He said he hopes that when this is discussed again, AIDEA can provide some assurance about the state's participation at a 50 percent rate because it may be leveraging in more financing with the state's 50 percent and getting into the situation where the state is digging itself into a hole.

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REPRESENTATIVE JOHNSON expressed his concern about the zero fiscal note because it was stated several times that AIDEA would have to call in experts from outside or from DNR. Thus, there needs to either be a fiscal note from DNR or something that is going to reflect the [reimbursable services agreement (RSA)]. The fiscal note cannot possibly be zero if AIDEA does not have the expertise in-house, he posited. He requested an updated fiscal note from the departments from which AIDEA would be getting the expertise.

MR. SPRINGSTEEN replied that when working with project developer partners, AIDEA often enters into RSAs with the developer partner. If a developer is seriously considering financing through AIDEA, then many times it is worthwhile for the developer to provide the funds for this type of analysis and the analysis is done at the control of the authority.

REPRESENTATIVE JOHNSON said he thought he clearly heard that AIDEA would need to have resource assessments to be able to find out what is in the ground and DNR is the only one that can do that, so that is where he was going with that. He understood that other people might pay for the other things, but someone from DNR is going to have to step in and there will be a cost and he would like to accurately reflect the cost of this bill.

MR. SPRINGSTEEN responded that AIDEA often engages other departments, but they are under RSAs that are paid for ultimately by the project developer, which is the model that AIDEA contemplates in this.

[HB 246 was held over.]

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ADJOURNMENT

There being no further business before the committee, the House Resources Standing Committee meeting was adjourned at 3:05 p.m.