

ALASKA STATE LEGISLATURE
SENATE RESOURCES STANDING COMMITTEE

March 21, 2016

3:30 p.m.

MEMBERS PRESENT

Senator Cathy Giessel, Chair
Senator Mia Costello, Vice Chair
Senator John Coghill
Senator Peter Micciche
Senator Bill Stoltze
Senator Bill Wielechowski

MEMBERS ABSENT

Senator Bert Stedman

OTHER MEMBERS PRESENT

REPRESENTATIVE TARR

COMMITTEE CALENDAR

CONFIRMATION HEARING

Board of Fisheries
Israel Payton

- CONFIRMATION ADVANCED

CS FOR HOUSE BILL NO. 100(FIN)

"An Act establishing a credit against the net income tax for an in-state processing facility that manufactures urea, ammonia, or gas-to-liquid products; relating to establishing the value of the state's royalty share of gas production based on contracts with certain in-state processing facilities that manufacture urea, ammonia, or gas-to- liquid products; and providing for an effective date."

- MOVED CSHB 100(FIN) OUT OF COMMITTEE

PREVIOUS COMMITTEE ACTION

BILL: HB 100

SHORT TITLE: UREA/AMMONIA/GAS-LIQ FACILITY; TAX CREDIT

SPONSOR(s): REPRESENTATIVE(s) CHENAULT

02/09/15 (H) READ THE FIRST TIME - REFERRALS
02/09/15 (H) RES, FIN
03/11/15 (H) RES AT 1:00 PM BARNES 124
03/11/15 (H) Heard & Held
03/11/15 (H) MINUTE(RES)
03/25/15 (H) RES AT 1:00 PM BARNES 124
03/25/15 (H) Moved CSHB 100(RES) Out of Committee
03/25/15 (H) MINUTE(RES)
03/27/15 (H) RES RPT CS(RES) NT 7DP 1NR
03/27/15 (H) DP: OLSON, TARR, SEATON, JOHNSON,
HERRON, NAGEAK, TALERICO

03/27/15 (H) NR: JOSEPHSON
04/02/15 (H) FIN AT 1:30 PM HOUSE FINANCE 519
04/02/15 (H) -- MEETING CANCELED --
04/03/15 (H) FIN AT 1:30 PM HOUSE FINANCE 519
04/03/15 (H) Heard & Held
04/03/15 (H) MINUTE(FIN)
04/09/15 (H) FIN AT 1:30 PM HOUSE FINANCE 519
04/09/15 (H) Moved CSHB 100(FIN) Out of Committee
04/09/15 (H) MINUTE(FIN)
04/10/15 (H) FIN RPT CS(FIN) NT 6DP 3DNP
04/10/15 (H) DP: SADDLER, GATTIS, EDGMON, WILSON,
NEUMAN, THOMPSON

04/10/15 (H) DNP: KAWASAKI, GUTTENBERG, GARA
04/13/15 (H) TRANSMITTED TO (S)
04/13/15 (H) VERSION: CSHB 100(FIN)
04/13/15 (S) RES AT 3:30 PM BUTROVICH 205
04/13/15 (S) Scheduled but Not Heard
04/14/15 (S) READ THE FIRST TIME - REFERRALS
04/14/15 (S) L&C, RES, FIN
04/15/15 (S) L&C REFERRAL REMOVED
03/02/16 (S) RES AT 3:30 PM BUTROVICH 205
03/02/16 (S) Heard & Held
03/02/16 (S) MINUTE(RES)
03/21/16 (S) RES AT 3:30 PM BUTROVICH 205

WITNESS REGISTER

ISRAEL PAYTON

Wasilla, Alaska

POSITION STATEMENT: Board of Fisheries Nominee.

BIRCH YUKNIS, representing himself

Mat-Su, Alaska

POSITION STATEMENT: Supported Mr. Payton's appointment to the Board of Fisheries.

WES HUMBYRD, representing himself
Homer, Alaska

POSITION STATEMENT: Did not support Mr. Payton's appointment to the Board of Fisheries or not.

CHRIS GORDON, representing himself
Homer, Alaska

POSITION STATEMENT: Supported Mr. Payton's appointment to the Board of Fisheries.

STEPHEN BARTELLI, representing himself
Wasilla, Alaska

POSITION STATEMENT: Supported Mr. Payton's nomination to the Board of Fisheries.

KEN ALPER, Director
Tax Division
Department of Revenue (DOR)
Juneau, Alaska

POSITION STATEMENT: Stated that the administration has no position on CSHB 100(FIN), but added his comments.

STEVE WENDT, Manager
Kenai Nitrogen Operations Facility
Kenai Peninsula, Alaska

POSITION STATEMENT: Commented on CSHB 100(FIN).

ADAM DIAMOND, Manager
Government Relations
Agrium

POSITION STATEMENT: Commented on CSHB 100(FIN).

ACTION NARRATIVE

[3:30:08 PM](#)

CHAIR CATHY GIESSEL called the Senate Resources Standing Committee meeting to order at 3:30 p.m. Present at the call to order were Senators Coghill, Wielechowski, Costello, Stoltze, and Chair Giessel.

Confirmation Hearing **Board of Fisheries**

[3:30:53 PM](#)

CHAIR GIESSEL announced the confirmation hearing for Israel Payton to the Board of Fisheries. She noted the Boards and Commissions fact sheet in their packets. She invited Mr. Payton to tell the committee why he wants to serve on the board.

SENATOR MICCICHE joined the committee.

[3:31:19 PM](#)

ISRAEL PAYTON, Wasilla, Alaska, Board of Fisheries appointee said he is 37 years old and was born and raised in Alaska. He was raised in the remote community of Swentna where his family lived a subsistence way of life. He was taught to take only what he needed and to never waste anything. Until recently he was a member of the Mat-Su Fish and Game Advisory Committee and had been an active participant in the Board of Fisheries, Board of Game, the Joint Board, the North Pacific Fisheries Management Council, the Dall Sheep Working Group, and many various other fish and game meetings. He has good relationships with other advisory committees, the Alaska Department of Fish and Game (ADF&G) staff and managers and other board members.

MR. PAYTON said he actively participated in many different fisheries and regions of Alaska including guided, sport, personal use, and subsistence. He has familiarity in Southcentral, in Kenai and Mat-Su, Bristol Bay and the Alaska Peninsula areas. He has worked as a sport fishing guide in the past, but it has been 11 years since he made any money related to any type of fisheries resource. "It does not define who I am or how I will vote," he said.

His familiarity with commercial fisheries is not as strong, and he is very aware of that and will make an effort to become familiar with them and reach out to all users of that industry. He doesn't have perceived ideas or conflicts between different commercial users or fisheries. He definitely understands the commercial economic value of the nearly \$6 billion a year industry and what it means to the state, its communities and its families. He believes Alaska should always be the leader in sustainable wild fisheries.

[3:34:13 PM](#)

MR. PAYTON said he wants to serve on the board, because growing up in a remote community, he was brought up to believe it is part of his civic duty and to give back to the community. He has served for years on an advisory committee to the Boards of Fisheries and Game and it has been a very rewarding experience.

He believes in the fish and game regulation process, which is very unique and special to Alaska in allowing any individual to submit a proposed regulation, for it to be vetted in a public process and ultimately be put into a regulation book. Basically, he said, the people of Alaska make their own regulations and he wants to see that continue for generations.

He believes a good board member should:

- be fair and impartial,
- be an active participant on the board with a good understanding of the issues at hand,
- try to get boots on the ground on the different areas in the state and see the fisheries,
- get a first-hand knowledge of people and the fisheries,
- reach out to all users and build strong relationships while being careful to not be perceived as any one user's advocate. He said building trust with all users is key, and being open and accessible is very important to the process.
- use all available resources like the ADF&G, science, testimony, local knowledge, etc., to make the best decision at the time,
- be an advocate of the process and encourage others to be involved as well.

MR. PAYTON said all the board members have unique perspectives, but they represent all Alaskans equally. The main goal is to conserve and develop the fisheries and resources for the state. He is nervous about serving on the board and doesn't know all the issues in all the fisheries across the state, but he is very excited to be appointed and is a fast learner.

[3:37:55 PM](#)

CHAIR GIESSEL opened public comment.

BIRCH YUKNIS, representing himself, Mat-Su Valley, Alaska, supported Mr. Payton's appointment to the Board of Fisheries. Mr. Yuknis said he is a life-long Alaskan and currently on the Mat-Su Fish and Game Advisory Committee where he has worked with Mr. Payton. He is always willing to listen to all user groups; he is very knowledgeable; he does his homework and works hard.

[3:39:41 PM](#)

WES HUMBYRD, representing himself, Homer, Alaska, wasn't prepared to support Mr. Payton appointment to the Board of Fisheries or not. He said people who take the oath of office swear to uphold the constitution and the statutes. The statutes don't mention anything about designated seats, but calls for appointees that have knowledge, integrity, and a sense of duty.

Section 16.05.221 said appointed members shall be residents of the state and shall be appointed without regard to political affiliation or geographic location of their residence. He wished someone would ask Mr. Payton what his feelings are about the allocation corridor, which some people call the conservation corridor, in the middle of Cook Inlet.

CHRIS GORDON, representing himself, Homer, Alaska, supported Mr. Payton's appointment to the Board of Fisheries. Mr. Gordon said he is a guide and commercial fisherman and had known Mr. Payton for a number of years. He is a thoughtful, intelligent, and fair-minded person.

[3:41:52 PM](#)

STEPHEN BARTELLI, representing himself, Wasilla, Alaska, supported Mr. Payton's nomination to the Board of Fisheries. He has known Mr. Payton for seven years; they were elected at the same time to the Mat-Su Valley Fish and Game Advisory Committee and had served together since then and became good friends in the process.

He would include four important traits for Board of Fisheries candidates to have:

- have knowledge of the proposal process,
- have knowledge of the resource,
- have a balanced approach of protecting the resource and managing that resource for maximum sustained yield for all user groups,
- use this expertise to become intuitive to the unintended consequences of some proposals.

MR. BARTELLI said it became obvious to himself and others on the advisory committee that Mr. Payton is even-handed, articulate, and not too proud to change his mind if he sees compelling evidence to do so. Mr. Payton is the perfect candidate for this position.

CHAIR GIESSEL, finding no further comments, closed the public hearing.

SENATOR MICCICHE thanked Mr. Payton for allowing himself to be appointed. He really liked a couple of things that he wrote; one of them is recognition that in no other state can a single individual have so much impact on passing fish and game regulations. Obviously he understands the responsibility. He also likes that he is constantly trying to recruit other young Alaskans in the process. Because one of the keys to Board of

Fisheries success is getting many other people involved in understanding that process.

SENATOR MICCICHE said he knows the pressure that comes with closing harvest opportunities for any of the four user groups in order to meet the maximum sustained yield (MSY) requirement and asked Mr. Payton if he has any hesitation in doing that.

MR. PAYTON answered if there is a biological concern and there is a resource in crisis or it's not meeting MSY, it's time to act accordingly based on the available information. The board must follow the mandate.

SENATOR MICCICHE remarked that they are in a world of preconceived notions about people, and everyone that had a concern about Mr. Payton that bothered to pick up the telephone and call him has been very impressed with his balanced approach.

CHAIR GIESSEL said in accordance with AS 39.05.080 the Resources Committee reviewed the following and recommends the appointment be forwarded to a joint session for consideration: Board of Fisheries: Israel Payton, Wasilla, appointed 7/1/2016, term expires 6/30/2019. This does not reflect an intent by any of the members to vote for or against the confirmation of the individual during any further sessions.

[3:47:33 PM](#)

At ease

HB 100-UREA/AMMONIA/GAS-LIQ FACILITY; TAX CREDIT

[3:48:00 PM](#)

CHAIR GIESSEL announced consideration of HB 100. [CSHB 100(FIN), version 29-LS0423\S, was before the committee]. She noted that public testimony was left open on March 2. Finding no one to testify, she closed public testimony. She invited Mr. Alper to the table and asked if the administration supports the bill.

[3:48:55 PM](#)

KEN ALPER, Director, Tax Division, Department of Revenue (DOR), Juneau, Alaska, said the administration has no position on HB 100, but it does have a lot of things going for it that might help with their efforts in trying to fix some things going on in Cook Inlet. One of the pros in the bill is that there is no cost to the state unless the project moves forward. Unlike many of the other tax credits it is not tied to the expenditure; it's tied to the completion of the project and then the project

itself purchasing gas that is produced from an Alaska lease. That producer then would pay royalties to the state and the amount of that royalty would be what determines the tax credit that the owner of the facility (most likely Agrium) would be eligible for.

MR. ALPER related that in previous hearings they heard one of the big problems in Cook Inlet is supply. People who want to produce gas don't have secure markets, and a project like this would provide a tremendous new market for gas production in Cook Inlet, which might resolve some of those concerns over whether to make the investment in expanding production capacity.

SENATOR STOLTZE asked Mr. Alper if he is offering his own opinions today since the administration didn't have a position on HB 247.

MR. ALPER replied that he had not spoken to the Governor about this bill that is known informally as the Agrium Bill, but in his opinion, passing this bill could provide some certainty for the Cook Inlet market. And frankly, as they look through HB 247, if there was more certainty over having the ability to sell gas, the state might not need to provide the same level of credit support for some of the marginal projects, because they know that they could make the investment in the platforms and so forth, because they know they would have a market through the Agrium facility to buy the gas.

SENATOR WIELECHOWSKI said he asked Agrium if they opposed taking away tax credits in Cook Inlet and their answer was that the tax credits are critical for this project to go forward. He asked Mr. Alper if he disagreed with that.

MR. ALPER answered that he was trying, on the fly, to link the two. If Agrium testified that this is a \$250 million capital project, that's an investment they will make and then they will need to buy a large amount of gas, about 24 bcf/year. For the people that would be producing that gas - if what Janak Mayer testified to in the HB 247 hearing is accurate - the biggest uncertainty is building something new and big and not being able drill all the wells needed as fast as possible to pay for it, and that's where the economics of the project start turning upside down. If you can drill as many wells as you need to make the project pencil out, the underlying economics (the cost of gas in Cook Inlet) should support the project on its own merits. So, he would not agree that the current tax credit regime would

be needed, but he didn't see where it is necessarily relevant to this bill (HB 100).

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SENATOR MICCICHE said Mr. Alper had stated that this measure was at no cost to the state, but asked if this tax credit is put into place that it only potentially brings significant earnings to the state.

MR. ALPER replied that as he understands the bill's construction, the credit would be against the corporate income tax for the owner of the facility once it's in operation. So, it would mean that the investment would have to have been made and they would have to be buying gas from an Alaska lease (some of it is paying royalty to the gas). The absolute upside of the tax credit would be the amount of royalty the state was receiving from the gas that was being credited against. So, the consultant brought in by Agrium has estimated that the total amount of gas, given certain assumptions about the price of gas, would amount to about \$15 million a year in royalty payments to the state. Therefore the tax credit for this project couldn't exceed roughly that \$15 million a year, and then based on some modeling of Agrium's corporate income tax liability, it's estimated to be in the \$3 million to \$4 million range. So, the state would not be cashing them out at \$15 million; they would simply be crediting back the entire \$4 million. The way the bill is written, this credit can't be cashed or rolled forward; all it can do is reduce one's corporate income tax liability in the current year to zero and not beyond that.

MR. ALPER said he noticed an error in the narrative of the fiscal note. It says that the tax credit sunsets after calendar year 2026, and that should say 2023.

SENATOR WIELECHOWSKI said the fiscal note assumed a corporate income tax rate of 9.4 percent and asked if the tax rate, in fact, is 9.4 percent or would they be eligible for any other tax credits or worldwide apportionment.

MR. ALPER answered that 9.4 percent is the nominal tax rate for the top income bracket (something over \$200,000 a year). He didn't have a good sense of Agrium's North American business model, but that modeling work was done by McDowell Group who came up with the estimate of \$3 million to \$4 million, and that seems to be a reasonable estimate.

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SENATOR MICCICHE said the reason he asked the question about the cost to the state is according to the fiscal note, the Agrium Plant utilizes a single production train and consumed approximately 28 bcf/year of gas with 21 bcf coming from a state lease. The fiscal note assumed a wellhead value of \$5.70 and the total royalty payment to the state would be \$14.96 million per year. If you subtract the \$3 million to \$4 million, that works out to \$13 million to \$16 million per year coming in for the first 6.5 years and then this would sunset and they would move to the \$15 million to \$16 million range of revenue to the state.

MR. ALPER said that was correct.

SENATOR WIELECHOWSKI said at the last hearing he asked about the financials - ROR and NPV with and without the credits - and he hadn't seen any of that information yet, and legislators are always trying to figure out whether the company actually needs the tax credits.

MR. ALPER replied that the DOR had not modeled this project at all, but these tax credits are different than a lot of the other existing tax credits simply because they are not cashable at the spend level. The economics would be much larger and the timing would be different if the state was paying 20 to 40 percent of Agrium's expenses as they were incurring them on a yearly basis. The state's cost in this would be nothing until the project was actually completed and operations begun. Frankly, he didn't know if this tax credit would be that significant in terms of determining whether the project pencils out, given its scale.

[3:59:30 PM](#)

ADAM DIAMOND, Manager, Government Relations, Agrium, said he provided the chair with financial information that was distributed today and that there is a competitive advantage to that information, so Agrium doesn't provide it to the public.

SENATOR WIELECHOWSKI repeated his request for rates of return and net present values and that it is challenging to give up \$3 million to \$4 million a year to a company without knowing if it needs the money. Could he sign a confidentiality agreement and look at their books?

STEVE WENDT, Manager, Kenai Nitrogen Operations Facility, Kenai Peninsula, Alaska, answered that he would discuss that with "corporate." He also corrected that there would not be \$15 million in his opinion minus the \$3 or \$4 million. The state would still retain \$15 million, but Agrium would not pay the

additional \$3 or \$4 million. So, once the bill sunsets, the state would then be taking in \$18 or \$19 million, not \$15 million.

4:02:03 PM

MR. DIAMOND added for clarification that under the bill the royalty revenue to the state never goes down. During the entire life of this bill the state always receives the entire royalty revenue it is due. It's only the amount of corporate tax on top of it that is eligible for a limited abatement.

MR. WENDT added that this will be the highest priced gas that Agrium will purchase by, in some cases, more than three times. NYMEX price today is \$1.82, and their estimate of \$5.70 is very conservative. In the commodity market in January, their primary product, urea, hit the lowest point it has been at in over 10 years. So, this project is very challenged, and the return on investment (ROI), generally, is not the 30 percent that oil companies get, but usually 10 to 15 percent. That is why they had originally planned to be up and running this year, but the slow development of gas and the decline in commodity prices has made it that much tougher for them. So, they have had to look at other options and continue to work to make it something that can compete against other internal projects within Agrium that the board would consider. At this point they are not putting it forward to the board and the \$3 or \$4 million they would get is significant in many ways. Not just financially, but also just as an important piece to know that the State of Alaska is behind the project.

4:04:46 PM

SENATOR STOLTZE said the last time an Agrium bill was up about 10 years ago, there was a lot of agricultural testimony and he didn't see any of that now. He asked if they had outreached to the agriculture community.

MR. WENDT answered that they had talked to the Farm Bureau as well as the Salcha Delta Soil and Water Conservation District and both have submitted letters in support of this bill.

SENATOR STOLTZE said this bill seems to give them a break after showing performance and asked if that is an accurate assessment.

MR. WENDT answered that he would agree with that, and also the fact that the company has put a lot of money - more than \$275 million - into keeping this plant in restart-able condition for this long points to hoping for an opportunity.

SENATOR STOLTZE said that was his observation, but he wanted DOR to confirm that.

4:07:58 PM

CHAIR GIESSEL said she looks at three things in making policy decisions:

- how it will affect Alaska families,
- how it will affect Alaska businesses,
- and how it will affect Alaska jobs

The presented information estimates 300-600 jobs during reconstruction of the plant and 140 operational jobs, she said, and the analysis says the average wage at the facility is \$104,000 per year compared to the average wage in the area of only \$42,000 a year. So, it meets all three of her thresholds in her policy decision-making criteria.

SENATOR MICCICHE commented that the folks who supported the credits in the Cook Inlet Recovery Act and removal of production tax were primarily focused on supply, which is a pretty narrow gauge. And while important, it's not just that it doesn't have a cost to the state; there is no potential for it to have a significant net positive to the state aside from the employment and the "trickle-down," and all the other things that happen in his community.

He asked if 28 bcf/year is about 82 mmcf/day, for operations.

MR. WENDT answered yes.

SENATOR MICCICHE asked him to explain how Agrium functions if they invest in refurbishing the plant and decide to fire up, and six months into this contract the commodity price bottoms out, and they cease operation. What happens to the \$3 to 4 million corporate tax exemption?

MR. DIAMOND replied under that scenario and the reason this bill was tied to the royalty payments, as DOR testified earlier, the tax is only eligible up to the amount of royalty revenues. If in six months they have generated \$2 million in royalty revenue to the state, their incentive in that year could never exceed \$2 million regardless of what their income tax is for the year. That is how the bill makes sure it is revenue-positive for the state.

SENATOR MICCICHE said he understood that, but he was just illustrating the difference in tax credits.

[4:11:37 PM](#)

SENATOR STOLTZE said he just wanted some clarification: many of the opponents of previous tax iterations contained the concept of "show us first and then get the tax breaks," and asked Mr. Alper if this meets that test.

MR. ALPER replied that this is an excellent example of that type of tax credit where the state's cost is limited, if not negligible, before seeing the production.

SENATOR WIELECHOWSKI asked if enalytica, the legislative consultants, had done any analysis on this and the potential impact to Cook Inlet gas production.

MR. ALPER answered the problem with Cook Inlet, in some ways is that right now its gas price is among the highest in the country. Projects under normal circumstances should pencil out on their oil, but the real problem is the upfront cost of spending hundreds of millions of dollars on a new platform or something without the certainty of being able to sell that gas. Modeling that sort of stylized project revealed that if all the money was spent up front on the infrastructure but wells could only be drilled at one-quarter speed, it would be a highly stressed project. An Agrium buyer could give them the peace of mind to make that investment and not have the constrained financials that come from not drilling enough wells.

SENATOR WIELECHOWSKI asked if that is what enalytica found.

MR. ALPER answered that enalytica looked at three different scenarios and tried to show how their economics worked before and after the Governor's bill (he was presenting it in the House Resources Committee at the time). Enalytica made the case that Cook Inlet still needs credits to help projects that are constrained on the market side. His corollary to that is if you can fix their market problems, maybe the state wouldn't have to worry about the tax credits problems.

SENATOR COSTELLO moved to report CSHB 100(FIN), version 29-LS0423\S, from committee with individual recommendations and attached fiscal note. There were no objections and it was so ordered.

[4:16:11 PM](#)

CHAIR GIESSEL, finding no further business to come before the committee, adjourned the Senate Resources Committee meeting at 4:17 p.m.