

ALASKA STATE LEGISLATURE
SENATE RESOURCES STANDING COMMITTEE

February 2, 2018

3:30 p.m.

MEMBERS PRESENT

Senator Cathy Giessel, Chair
Senator Natasha von Imhof
Senator Bert Stedman
Senator Kevin Meyer
Senator Bill Wielechowski
Senator Click Bishop

MEMBERS ABSENT

Senator John Coghill, Vice Chair

COMMITTEE CALENDAR

OVERVIEW: Alaska's State Managed Game Refuges, Sanctuaries & Critical Habitat Areas

- HEARD

HOUSE BILL NO. 130

"An Act relating to the Izembek State Game Refuge, Cape Newenham State Game Refuge, Palmer Hay Flats State Game Refuge, Port Moller Critical Habitat Area, Egegik Critical Habitat Area, Pilot Point Critical Habitat Area, Fox River Flats Critical Habitat Area, Kachemak Bay Critical Habitat Area, and Dude Creek Critical Habitat Area; and providing for an effective date."

- HEARD & HELD

SENATE BILL NO. 158

"An Act relating to oil and hazardous substances and waiver of cost recovery for containment and cleanup of certain releases; and providing for an effective date."

- HEARD & HELD

PREVIOUS COMMITTEE ACTION

BILL: HB 130

SHORT TITLE: GAME REFUGE/CRIT HABITAT AREA BOUNDARIES
SPONSOR(s): RULES BY REQUEST OF THE GOVERNOR

02/15/17 (H) READ THE FIRST TIME - REFERRALS
02/15/17 (H) RES
04/05/17 (H) RES AT 1:00 PM BARNES 124
04/05/17 (H) Heard & Held
04/05/17 (H) MINUTE(RES)
04/07/17 (H) RES AT 1:00 PM BARNES 124
04/07/17 (H) Moved HB 130 Out of Committee
04/07/17 (H) MINUTE(RES)
04/08/17 (H) RES RPT 7DP 2NR
04/08/17 (H) DP: BIRCH, PARISH, WESTLAKE, JOHNSON,
DRUMMOND, JOSEPHSON, TARR
04/08/17 (H) NR: TALERICO, RAUSCHER
04/28/17 (H) TRANSMITTED TO (S)
04/28/17 (H) VERSION: HB 130
05/03/17 (S) READ THE FIRST TIME - REFERRALS
05/03/17 (S) RES
02/02/18 (S) RES AT 3:30 PM BUTROVICH 205

BILL: SB 158

SHORT TITLE: OIL/HAZARDOUS SUB.:CLEANUP/REIMBURSEMENT
SPONSOR(s): RULES BY REQUEST OF THE GOVERNOR

01/24/18 (S) READ THE FIRST TIME - REFERRALS
01/24/18 (S) RES, FIN
02/02/18 (S) RES AT 3:30 PM BUTROVICH 205

WITNESS REGISTER

MORGAN FOSS, Special Assistant to the Commissioner
Alaska Department of Fish and Game (ADF&G)
Juneau, Alaska

POSITION STATEMENT: Provided overview on Alaska's state managed game refuges, sanctuaries & critical habitat areas and presented HB 130.

BRUCE DALE, Director
Division of Wildlife Conservation
Alaska Department of Fish and Game (ADF&G)
Anchorage, Alaska

POSITION STATEMENT: Answered questions about Alaska's state managed game refuges, sanctuaries & critical habitat areas.

RON BENKERT, Fish and Game Coordinator
Habitat Division

Alaska Department of Fish and Game (ADF&G)
Anchorage, Alaska

POSITION STATEMENT: Answered questions about Alaska's state managed game refuges, sanctuaries & critical habitat areas.

WAYNE HALL, representing himself
Anchorage, Alaska

POSITION STATEMENT: Supported HB 130.

MARILYN HOUSER, representing herself
Anchorage, Alaska

POSITION STATEMENT: Supported HB 130.

ROBERT ARCHIBALD
Friends of Kachemak Bay State Park
Homer, Alaska

POSITION STATEMENT: Supported HB 130.

NICOLE AREVALO, representing herself
Homer, Alaska

POSITION STATEMENT: Supported HB 130.

TOM ROTHE, representing himself
Eagle River, Alaska

POSITION STATEMENT: Supported HB 130.

GEORGE PIERCE, representing himself
Kasilof, Alaska

POSITION STATEMENT: Opposed HB 130.

KRISTIN RYAN, Director
Division of Spill Prevention and Response (SPAR)
Department of Environmental Conservation (DEC)
Anchorage, Alaska

POSITION STATEMENT: Commented on SB 158.

FABBIENNE PETER CONTESSE, representing herself
Juneau, Alaska

POSITION STATEMENT: Supported SB 158.

ACTION NARRATIVE

[3:30:11 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 Stedman, Von Imhof, Meyer, Bishop, Wielechowski, and Chair Giessel. Senator Coghill was excused.

Overview: Alaska's State Managed Game Refuges, Sanctuaries & Critical Habitat Areas

[3:30:41 PM](#)

CHAIR GIESSEL said the first order of business today would be the overview of Alaska's state managed game refuges, sanctuaries, and critical habitat areas. She said special use areas are created by the legislature and are a part of Alaska that is unique in terms of habitat, wildlife, and recreational opportunities. Discussions about access and use of these lands are frequent, and understanding how the state manages these areas is critical to building the public's literacy on management policy. She invited the Alaska Department of Fish and Game (ADF&G) to present the overview.

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MORGAN FOSS, Special Assistant to the Commissioner, Alaska Department of Fish and Game (ADF&G), said Alaska's three different types of special use areas are outlined in the Constitution as special purpose sites and they are designated by the legislature for their natural beauty and their historical, cultural, recreational, or scientific value. Statute has definitions for all three kinds of areas. Their management is, in turn, dictated by statute and the management plans and regulation are developed through a collaborative process with the public. The state has 32 special areas across the state mostly in Cook Inlet and Bristol Bay to protect water fowl. Most of these areas were designated in an era prior to geographic information system (GIS), digital mapping, and satellite imagery and when many of the legal descriptions and cartography descriptions were performed by hand.

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CHAIR GIESSEL asked how many state special areas adjoin with federal special areas.

MS. FOSS answered that she didn't have that figure off the top of her head, but ADF&G staff could address that. She continued that Alaska has 12 wildlife game refuges, 17 critical habitat areas (CHA), and 3 wildlife game sanctuaries that were established for three principal reasons: to protect unique or exceptional habitat supporting a broad range of species including species of conservation and economic concern, for the conservation of fish and wildlife populations if there is a

population concern, and for the public use and enjoyment of high quality environments.

They support an array of recreational uses from hunting and fishing to trapping, camping, boating, subsistence activities, commercial activities such as guiding, livestock grazing, and commercial fishing. They have provisions for industrial uses, as well, including oil and gas extraction, communications, utilities, material extraction, airports and harbors.

MS. FOSS said ADF&G estimates an excess of 2 million recreational users, both residents and visitors, access these areas annually. Many of them use local commercial facilities and operations when they do. The 32 special areas span 3 million acres, 4,600 square miles, or .7 percent of Alaska's total land mass.

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CHAIR GIESSEL asked the difference between wildlife and game.

MS. FOSS answered that the definition is somewhat interchangeable, but game is taken for hunting purposes and wildlife is a more general term.

SENATOR BISHOP asked if one can hunt in sanctuaries or refuges.

MR. FOSS replied those allowances are different for each type of special area. Sanctuaries are more restrictive on which species can be taken and even within these categories there may be differences outlined in statute by the legislature for the uses. She would describe those later.

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CHAIR GIESSEL reiterated her earlier question, and wondered how many of the 32 special areas also adjoin to federally managed areas and if the management is similar.

BRUCE DALE, Director, Division of Wildlife Conservation, Alaska Department of Fish and Game (ADF&G), Anchorage, Alaska, answered that he would have to get back to her to make sure this is correct, because there is a variety of different answers based on which area they are talking about.

MS. FOSS described the division of labor within the department. The Habitat Division is the planning and permitting lead and assists with management. It is responsible for developing the management plans for these legislatively designated areas. The

Wildlife Conservation Division is the co-lead for planning and provides support for permitting and day-to-day operations and management of the refuges and sanctuaries and provides the lead in critical habitat areas. Both divisions work closely with the Sport fish, Commercial Fisheries, and Subsistence Divisions, as well, to defer to their management authorities, particularly in the development of management plans.

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CHAIR GIESSEL asked for a description of wildlife conservation description. Is hunting prohibited in those areas?

MS. FOSS answered that some special areas have hunting restrictions. "Wildlife conservation" is a general term used by the department for the management of species, game species, in particular.

SENATOR WIELECHOWSKI asked how the uses of a management area are determined.

MS. FOSS replied the legislature sets the primary purpose for each special area in statute and then the department works with the public, users and interest groups to interpret that intent. Sometimes the legislature will explain specifically which species are protected or describe that the intent is to protect the habitat and a species in that habitat. Then the department would provide information on which species would be covered under that habitat.

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MS. FOSS said their management goals are:

- to meet statutory responsibilities
- to maintain and enhance public access (primary consideration)
- to permit and manage multiple uses

In the management plan development process, they engage local communities and for each of the divisions this is part of their primary core mission.

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In management plan development they try to be as comprehensive as possible and engage all public, commercial users, industrial interests, governmental entities. They consider the statutory purpose and the primary goal, which is to protect public access to those resources.

She said the Boards of Fisheries and Game maintain their allocative authority within these refuges, sanctuaries, and critical habitat areas. The department issues permits to try to align user activity with the uses that are outlined in the management plan. Over the past five years, they have received almost 700 applications for use permits; roughly 23 of those were determined to not require a permit; in 9 instances the applications were withdrawn; and permits were denied in two or three instances. One of those (construction of a tree stand) was overturned by the commissioner. In most cases, denial is because of an incompatible use.

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SENATOR WIELECHOWSKI said he wanted a synopsis of the three that were denied.

CHAIR GIESSEL asked if the management plans designate the uses in that area.

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RON BENKERT, Fish and Game Coordinator, Habitat Division, Alaska Department of Fish and Game (ADF&G), Anchorage, Alaska, answered that the Boards of Fisheries and Game retain their ability to set hunting regulations within special areas. In fact, one of the primary objectives of the management plan is to provide public access for hunting, fishing, and recreational activities.

MS. FOSS said the management plan development process includes a public comment period and the public will often provide feedback after a management plan has been established. Some management plans are updated frequently based on new developments and user interests within that area.

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Management issues in special use areas: The State Game Refuge Manager, Joe Meehan (online), is one of the primary individuals responsible for management issues that come up in special areas. These activities may include maintaining trail access and upgrades, boundary marking, providing mapping and marking trails, updating website information for user access, facility upkeep (vandalism and waste disposal), mitigating use impacts (including dumping), permitting/lease activity monitoring and field inspections, and basic resource monitoring to ensure the user activity is indeed compatible with statutory intent.

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Special area use activities are not consistent for every special area. Some special areas are much more remote and see less user access. The slides provide examples of special areas - a sanctuary, a critical habitat area, and a refuge - to demonstrate how they might be different in statute. Even within those categories there can be differences in the uses.

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MR. DALE described the world-famous McNeil River State Game Refuge and Sanctuary, established in 1967. The refuge area around the sanctuary was added in 1993. The big attraction is brown bears that are attracted to the abundant salmon. The legislature specifically excluded hunting of bears there, because it is such a special resource.

The Palmer Hay Flats State Game Refuge was established in 1975. Being close to population centers, it is used for a lot of things, but it is a big staging area for migratory waterfowl, nesting birds, overwintering moose, small furbearers, and salmon. It is popular for hunting and good salmon fishing.

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CHAIR GIESSEL said it is close to a transportation corridor and asked if there are a lot of user conflicts.

MR. DALE answered no. It has some garbage issues, but it is supported by user group works with the state to make sure it is kept clean and provides the kind facilities and access that the public wants.

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MR. DALE said the Susitna Flats State Game Refuge was established in 1976. It is a big waterfowl nesting area and a feeding and staging area during migration, it's good moose habitat, and because of the salmon resource there is bear hunting and viewing. The refuge has important spawning and rearing habitats, so fishing is good, too. It's notable, because there is oil and gas development offshore. However, waterfowl hunting is one of the main uses besides fishing.

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SENATOR BISHOP asked if duck camps are allowed there.

MR. DALE replied yes. Some cabins are leased for the life of the permittee, but the department is struggling to figure out how to make them available to users when the owner dies.

SENATOR VON IMHOF recounted that some of her constituents have duck shacks there and understand at the end of their life, no one knows what is going to happen to those shacks. Can they sell the rights to a friend or a family member?

MR. DALE replied that he recently learned about a management model in Southeast where the Territorial Sportsmen's organization builds cabins on state lands and they are managed by the Division of State Parks. He said this issue needs to be dealt with and they are looking into it.

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MR. DALE said the Fox River Flats Critical Habitat Area was established in Kachemak Bay in 1972. It's an important area for migratory shorebirds, waterfowl, other water birds, moose and other terrestrial animals. It is a rich zone where river meets a bay, and the legislature chose to designate that as a critical area. That concluded his presentation.

CHAIR GIESSEL, finding no questions, thanked Mr. Dale and Ms. Foss for the presentation.

HB 130-GAME REFUGE/CRIT HABITAT AREA BOUNDARIES

[3:57:57 PM](#)

CHAIR GIESSEL announced consideration of HB 130 that aims to correct old errors that were made in documenting the parcels of land within various state managed special areas. These errors result in some parcels being excluded from the special management areas, contrary to the intent of the law. She said HB 130 was introduced in February 2017 and passed the other body in April. It came to this committee at the end of the 2017 regular session. She invited Ms. Foss to present it to the committee.

MORGAN FOSS, Special Assistant to the Commissioner, Alaska Department of Fish and Game (ADF&G), said the department has been considering this issue for a long time. Some of these errors have existed since the mapping was done as early as 1913.

She said each special area is defined in statute, so those boundary descriptions may be by township or based on maps that were drawn up by the United States Geological Survey (USGS) in the 1960/70s. The first one is the Izembek State Game Refuge on the Alaska Peninsula near Cold Bay and it was established by the legislature in 1972. The lagoon area includes tidal and submerged land and is delineated by the mean high-water line onshore. The red areas were not including in statute as

containing mean high-water line and that is why they want them added to meet the statutory intent. They were omitted because of errors in the USGS maps or lack of information when these were established. The intent of the statute is to incorporate these water bodies within the National Wildlife Refuge Watershed and adding the entire water body fully protects the waterfowl and shorebird habitat of the bay and the lagoon.

CHAIR GIESSEL asked if the red areas had not been claimed as private property.

MS. FOSS answered no.

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SENATOR BISHOP said these survey changes will have to be advertised in the public record and asked if that had been done.

MS. FOSS replied that they had performed surveys on certain areas that are included within the refuge boundaries. Others will be done upon inclusion into the sanctuary. A large part of their work is outreach to the public. So, if this were to pass the legislature, they would certainly reach out to affected users within each of the refuges to inform them of the changes. In many instances, because they are following the intent of the statute to the best of their ability, there will not be significant impacts to users by cleaning up the statutory language.

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MS. FOSS said the next slide described Cape Newenham State Game Refuge that is similar to the situation in Izembek. It was also established in 1972 and includes tidal and submerged land. A segment of Chagvan Bay was not described in its entirety in statute and this would be clean up language to describe where the mean high-water line is. They would conduct surveys to describe that in the management plan, as well.

The Palmer Hay Flats State Game Refuge was designated in 1975 and contains watersheds fed from the Matanuska and the Knik Rivers. The affected areas relate to riverbeds that are owned by the public in the state. Currently these waterways have motorized boat access and so incorporating them into their authority would not impact users from bringing boats up into these areas. They also have general permits for winter overland travel (ATV access) on frozen waterways. In almost all cases, these are anadromous streams supporting salmon spawning and rearing activity. That is why they would like them included to

meet the intent of the statute. She explained that these plats were surveyed in 1913 with a fixed river channel description and since that time these waterways have shifted and now meander in and out of that fixed plat description. So, this language is a clean up and will allow them to apply their land management plan to areas that were previously excluded.

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MS. FOSS said the Port Moller Critical Habitat Area (CHA) was designated in 1972 and the legal description was a misprint and shifted the range six miles west of where it was intended to be. It was supposed to exclude the community of Nelson Lagoon but was placed within a critical habitat area. Since then, the department, knowing that was an error, has not pursued any habitat permitting for the community.

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The Egegik Critical Habitat Area boundary had two typos in the original legislation from 1972. In both instances the characters in the description were replaced with a 1 instead of a 2 and north instead of south. So, a non-contiguous block is affected. The same goes for Pilot Point. Ms. Foss explained that only state lands are affected by these corrections and the locations are not near any infrastructure or villages.

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Fox River Flats Critical Habitat Area was created in Kachemak Bay in 1972 and partially overlaps the Kachemak Bay Critical Habitat Area. Four of the seven sections in the northeast corner excluded tidal and submerged lands. The exclusion was not applied consistently across either the upland or tideland (purple line on the map) in the submerged area. The only land added within the boundary to that CHA is areas where the purple line intersects with the blue hatched areas which includes the Bradley River on the east side, as well. She noted that Kachemak Bay is simultaneously sinking, and the land is rebounding. This impacts the channels where the purple lines intersect with tidal lands. These channels contain coho rearing habitat and the department wants to consistently apply their management plan across those areas.

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MS. FOSS said the Kachemak Bay CHA boundary description resulted from one township being omitted from the list that was submitted to create this area, an oversight. Kachemak Bay CHA was established in 1974 and it was described within a list of townships and ranges. Shifting the boundary will add around 200

acres to this CHA (without having surveyed it). It will not impact current property owners or user access.

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Finally, the one addition to a critical habitat area is the addition of 1400 acres in Dude Creek CHA (created in 1988) near the City of Gustavus. The proposed addition was purchased by the Nature Conservancy in 2004 and transferred to the state for management. The intended purpose was to include it in the Dude Creek Critical Habitat Area. DNR is the custodian now. In order to incorporate this into the CHA, as the community has asked, its description would need to be included in statute and a management plan would have to be developed. In 2016, the City of Gustavus passed a resolution urging the legislature to make these changes so they could work with the departments on the management plan. The significance of this area is that it is a stop-over area for migratory sand hill cranes and other migratory birds. Motorized vehicle use is still allowed as is hunting and trapping. User access across Icy Strait will not be impacted.

Language in HB 130 says the management plan should preserve access to non-critical habitat area land (private land, a school trust parcel, and the Native allotment).

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CHAIR GIESSEL opened public testimony on HB 130.

WAYNE HALL, representing himself, Anchorage, Alaska, supported HB 130. He is a big supporter of special areas in Alaska and the boundary changes and additions, especially in the Dude Creek area, because they benefit fish and wildlife.

MARILYN HOUSER, representing herself, Anchorage, Alaska, supported HB 130. It's extremely important to preserve habitat, and she wished to see these areas managed for the preservation and protection of fish and wildlife habitat.

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ROBERT ARCHIBALD, Friends of Kachemak Bay State Park, Homer, Alaska, supported HB 130. He also was speaking on behalf of the Kachemak Bay Water Trail. The management plan for the critical habitat is being updated at this time for both Kachemak Bay and Fox River Flats and it would be beneficial for the two areas to coincide with the new management plans.

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NICOLE AREVALO, representing herself, Homer, Alaska, supported HB 130. She sees making these changes a bit like re-editing the grammar on a second draft of an essay. Since 1970, ADF&G has had time to manage these areas; mapping has improved, and the boundary mistakes have been caught over the years. Now is a good time to correct them.

ADF&G has determined there would be no additional costs associated with the proposed changes. In fact, these minor alterations will save them time. The changes make sensible concise legal boundaries freeing up some lands that are not right for habitat protection including the Nelson Lagoon. The wetlands in the CHA have already been purchased and donated to the state for the express purpose of being included in that management area in cooperation with Department of Natural Resources (DNR), and they have been being managed by ADF&G similarly to the rest of the CHA. Their official inclusion into that boundary is simply the final step in the legal process the state agencies have been following.

TOM ROTHE, representing himself, Eagle River, Alaska, supported HB 130. He is a retired ADF&G waterfowl biologist and is very familiar with the special areas. He said the state public lands are increasingly important because access is becoming limited, even in Alaska, especially around urban areas. He emphasized that over the years ADF&G has done a very competent and transparent job of management planning for every one of these areas, dealing with "some really thorny issues" on a couple of them. These management plans are very thorough and represent the best solutions bearing in mind all the values of these areas.

He also pointed out that the management of state game refuges, in particular, and CHAs is substantially different than on the National Wildlife Refuges and federal conservation units. Everyone agrees that the best sensible regulation comes from those closest to home and who use the resources. He also said it would be embarrassing for the government to not correct boundary lines for 40 years. No one would want the government to come in and pencil the property line in over their land, and one doesn't know whether the private landowner has to comply or not. The mistakes should be corrected, especially where Nelson Lagoon got accidentally included in a loop they weren't aware of. In closing, he emphasized that none of the actions in this bill will substantially change a management plan or increase restrictions. It will not call for policy changes that affect how people use these areas.

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GEORGE PIERCE, representing himself, Kasilof, Alaska, opposed HB 130. He said it's a terrible idea. Once everyone starts driving on the new road, "there goes the wildlife and it won't come back." He urged them to protect fish and wildlife.

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CHAIR GIESSEL, finding no further comments, closed public testimony and finding no questions, she set HB 130 aside.

SB 158-OIL/HAZARDOUS SUB.:CLEANUP/REIMBURSEMENT

[4:26:37 PM](#)

CHAIR GIESSEL announced consideration of SB 158. She said when homeowners discover an oil spill on their property, usually a heating oil tank that spills, the Department of Environmental Conservation (DEC) has the authority and is tasked with managing that spill. Current law requires the department to pass its clean-up costs to the homeowners without exceptions. This discourages property owners from reporting the spills in the first place. SB 158 aims to make it easier for homeowners to come forward, spills to be identified and cleaned up, and the department to reward those who promptly report a spill.

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KRISTIN RYAN, Director, Division of Spill Prevention and Response (SPAR), Department of Environmental Conservation (DEC), said that people are rarely equipped to address a release on their property. Homeowners are usually unequipped technically and financially to know what to do and insurance companies are unwilling to cover the costs that can go from \$6,000 to \$80,000 for a full tank. Home owners are stuck, and it can be a huge hardship. Knowing that inhibits people from contacting DEC if they know they can't afford to ask for help. DEC's goal is to help them with their problem and reduce the environmental contamination. They can provide that technical service now but must bill the property owner for it. SB 158 will allow DEC to waive their billing. The revenue generated by cost recovery in these situations is minimal and not worth the cost of homeowners not notifying them.

MS. RYAN said this problem is more common in Fairbanks, Juneau, and rural communities because oil is used for home heating primarily.

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She reviewed the steps in a home heating spill, which are controlling the source, recovering the free product before it seeps into the ground, and removing contaminated soil.

MS. RYAN explained that usually the leak is discovered after a tank has been filled, so not only does the homeowner have to deal with the spill, they have to pay for all the fuel they just bought. If it's winter they must get a mobile storage tank, so they can stay warm. It can be overwhelming. Then adding insult to injury, they get a bill from DEC when all DEC wants to do is help them.

She said DEC thought about proposing standards to limit who would get this free service, but the people it usually happens to don't generate much revenue anyhow, and they have found that the cost of getting paid isn't worth the time it takes. Plus, it has the consequence of inhibiting compliance.

CHAIR GIESSEL said SB 158 is a two-page bill and the content is actually in section (e) and asked her to talk through criteria, rationale and implications.

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MS. RYAN said they spent quite a bit of time trying to figure out how to craft this bill to help the people they are most wanting to help and decided on a limitation of four units since those are a small housing complex that are relatively common in Alaska and a large building would be more of a commercial operation. That is why language is restricted to piping, tankage, and equipment used to generate power for the home - not a commercial operation. They tried to capture the residential need.

The department wants the home owners to take measures to contain a release as soon as possible - a bucket to catch the leak, for instance - and address the problem with prevention and early reporting. DEC needs the cooperation of the home owner, too. Sometimes they are refused access, because the owner knows they will get billed. The sooner DEC can respond the better the outcome will be and it's critical to not wait three months to call.

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SENATOR WIELECHOWSKI asked if language- single family homes - on page 2, line 6, applies to trailers. He has a lot of trailers in his district to which, "This happens all the time."

MS. RYAN answered yes.

SENATOR WIELECHOWSKI said that language on page 2, line 2, says the department "may" waive a portion of those costs and asked if that is totally discretionary.

MS. RYAN answered that their process for cost recovery is through an automated timekeeping billing system to which staff charges their time to certain codes. The cost recovery option would be turned off in the situations that meet these criteria. So, there is no discretion.

SENATOR WIELECHOWSKI asked if there is a reason to not use "shall waive" instead of "may waive." The same question for "all or a portion:" how would that be decided?

MR. RYAN answered they wanted some flexibility for unforeseen situations and she prefers to keep the flexibility, because another bill with a capital appropriation would allow them to also provide financial resources to home owners who meet hardship criteria (that is already in regulation) to do some clean up. In one home it might be monitoring vapor that might be going into a child's room and another home might need more extreme measures.

SENATOR WIELECHOWSKI asked if this should be needs-based, because a millionaire can afford it and if there should be requirements for a homeowner to go through their homeowner's policy or file a negligence case against the prior owner or something like that.

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MS. RYAN replied that current language inherently captures needs-based homeowners and repeated that they are only looking to provide this to small home owners not commercial operators.

MS. RYAN said a lot of costs are associated with these events and she assumed a homeowner would be contacting insurance companies and the responsible party for the release already.

She said a lot of things are actually discovered during sales transactions and that is when previous owners can be pursued through court mechanisms. This proposal in no way hampers a homeowner from doing that. They have found that no homeowners insurance covers the costs associated with this unless the contamination leaves their property and impacts other people's property.

SENATOR WIELECHOWSKI said language on page 2, lines 8-10, requires a written finding that the person did not willfully or negligently fail to comply with spill prevention and he could envision someone who had a spill and sells his property to someone else for a dollar and then the state picks up the cost, because, then, technically the person who owns the property isn't negligent; it's the person before them.

MS. RYAN said that reminded her of their other bill, SB 64, which is a uniform criminal covenants act, so that there is full disclosure when contaminated property is transferred. If a purchaser receives contaminated property and they didn't know it, they would pursue that individual through the judicial system.

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SENATOR VON IMHOF asked if everyone will automatically be granted the waiver initially, at least for a certain threshold amount.

MS. RYAN answered yes; their billing will stop automatically. Staff won't even know when bills are going out.

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SENATOR VON IMHOF noted that this bill is retroactive to January 1, 2018, and a DEC document says in 2017 there were 50 of these types of spills, but there are currently 150 active sites that would be eligible. So, she wanted to know if they are going back earlier or if these are ongoing sites for the last couple years.

MS. RYAN replied they have been ongoing and that these sites usually take quite a long time to resolve. The sites that happened several years will not get reimbursed.

SENATOR VON IMHOF said but starting from now they will not be charged.

MS. RYAN said that was correct.

SENATOR VON IMHOF said the fiscal note says the regulations won't be written until 2020 and asked why so long from now.

MS. RYAN replied that they will be written as soon as the bill becomes law if it becomes law. They needed a window of time, but it won't take that long.

CHAIR GIESSEL noted that regulations will be adopted by 2020 and the process takes a while because of public comment once they are written.

[4:45:25 PM](#)

SENATOR MEYER recalled that their operating budget is small and asked if they can absorb a \$60,000 reduction.

MS. RYAN replied the way their budget works, the revenue collected through cost recovery goes into the fund, and the legislature allocates a certain percentage of that fund every year for the division's operations. It will not impact their annual operating budget, but it will reduce what goes into the overall account they draw from over the years.

SENATOR MEYER said he may be thinking more on the commercial side of things, but typically whoever caused the spill should be paying the cost of cleanup. It could be a half-million-dollar home or a hundred-thousand-dollar home. "We want them to be responsible homeowners and take care of their heating oil tanks, etc." He asked if the bill is taking some of that responsibility away from homeowners by offering this program.

MS. RYAN didn't agree and said homeowners are usually caught off-guard when this occurs. A lot of times it is out of their control; if it's an underground storage tank they may not have even been aware of it. They are still taking the bulk of the burden on by cleaning up the spill. Helping them figure out how to do that is a minimal "give" from the department.

SENATOR MEYER asked how much a typical clean-up costs.

MS. RYAN replied the lowest she has seen is \$6,000 for a cleanup, but it can get up to over \$80,000.

SENATOR MEYER asked if it cost \$80,000 would DEC share that responsibility with the homeowner.

MS. RYAN replied that the homeowner still has to pay all of that. This bill would say that DEC doesn't have to ask the homeowner to reimburse it for their time to just help them figure it out. Her part of that \$80,000 might be \$2,000 or \$4,000 of staff time helping them respond.

She said that several years ago the legislature passed a bill adding a tax for refined fuels and she feels they are now contributing to pay their costs when they purchase that fuel.

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SENATOR MEYER said whenever the legislature starts a new constituency, it tends to grow, and asked if this would apply to septic tanks or water-well contamination. Does DEC garnish the Permanent Fund dividend if people can't pay?

MS. RYAN answered no. The department doesn't bill for providing technical assistance for other things like septic tanks and well contamination. SPAR is the only division that charges for cost recovery; all other divisions in the department don't bill for providing technical assistance.

[4:51:19 PM](#)

SENATOR BISHOP asked of the 60 annual releases were any caused by the fuel carrier.

MS. RYAN said she didn't know, but that is a potential scenario. She added that they probably don't know about 30 percent of releases.

SENATOR BISHOP asked if they trying to encourage more reporting.

MS. RYAN answered yes.

SENATOR BISHOP said so the department can use its mitigation expertise with the homeowner to properly clean up the oil.

MS. RYAN said yes. She gave him credit for asking the department to focus more on prevention when they talked about the refined fuel tax bill. This is one thing they think would help mitigate the effects when spills occur for these homeowners.

She said they would like to adopt standards for home heating oil tanks, but it is harder than anticipated because of the variation in our climates and communities. However, she would still like to adopt some siting standards for home heating oil tanks, so that banks can use that for home inspections. Right now, one can get an inspection for a drinking water system and a waste water system, but there is no equivalent in the heating oil tank world.

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SENATOR VON IMHOF asked if a homeowner calls DEC about a leak, and decides it's way too costly to do it, does she have an obligation to report them to some authority.

MS. RYAN replied it varies a lot. If there is a serious or imminent threat to the environment they are obligated by statute to fix it, but they use all their powers to get the homeowner to at least stop the release and minimize the impacts to the environment. If they cannot, which is not very often, SPAR will step in to do it using the Response Account which is separate from the prevention account. The department's obligation is to recover its costs, so they will pursue for cost recovery if they know the homeowner has the resources.

CHAIR GIESSEL said the fiscal note is a negative \$60,000, whereas another bill in another committee proposes to raise fees on industrial spills by another \$75,000. She asked if it is coincidental that it would fill this gap.

MS. RYAN answered yes. The other bill is not about fees; it is a penalty for non-compliance.

[4:57:17 PM](#)

FABBIENNE PETER CONTESSE, representing herself, Juneau, Alaska, supported SB 158. She related a personal story about an underground oil tank leak at her home in Juneau. She immediately called DEC and staff came out with the information on what to do in order to move forward. After mitigating the tank, they started cleanup spending tens of thousands of dollars as well as several thousand dollars on soil testing. None of these expenditures are covered by homeowner's insurance. In 2017, they started to receive bills from DEC for reviewing their case and every time they responded to a DEC inquiry or asked for clarity on any guidance they were given, they received a bill for that contact.

MS. CONTESSE said she understands the state's financial situation, but the current statute discourages homeowners from reaching out to DEC. Regarding Senator Wielechowski's comments about needs based, she personally is in a very fortunate situation and can afford to spend thousands of dollars to clean up this oil spill, but being billed by DEC every time they looked at her case kept her from reaching out to get the guidance she needed and to work collaboratively.

She said homeowners already pay a surcharge on heating fuel for this fund and really believe in what DEC does. The people they have worked with have been "top notch." Everyone's goal is the same: to make sure that the environment is cleaned up.

[5:01:43 PM](#)

SENATOR STEDMAN asked how many gallons were involved in her spill.

MS. CONTESSE replied that they had a 1200-gallon underground oil tank and the house was built in 1981. She didn't know how many gallons were spilled, maybe several hundred. Her property is large and steep, and the seepage was moving downhill.

[5:02:37 PM](#)

SENATOR WIELECHOWSKI said he appreciated her testimony and he didn't realize DEC was charging for making calls; that doesn't seem right. He thought it might be related to how "response costs" on page 2, line 2, was defined. He thought DEC was doing the actual cleanup.

MS. CONTESSE responded that DEC came out to the house and advised on the cleanup, which was basically slogging through their property with oil absorbent boom and pads. They also came out to the house and advised them on where to dig test holes after eliminating all "free product." DEC staff came out to the house but weren't doing the cleanup, and when they called or when she sent emails, she was billed for it. But that is in the statute; it wasn't the individuals at DEC deciding to do that. That was frustrating for her, but also of the DEC staff.

[5:04:39 PM](#)

CHAIR GIESSEL thanked her and opened public testimony. Seeing none, she closed it and held SB 158 in committee.

[5:05:11 PM](#)

CHAIR GIESSEL adjourned the Senate Resources Committee meeting at 5:05 p.m.