

**ALASKA STATE LEGISLATURE
SENATE RESOURCES STANDING COMMITTEE**

April 8, 2019

3:31 p.m.

MEMBERS PRESENT

Senator Chris Birch, Chair
Senator John Coghill, Vice Chair
Senator Cathy Giessel
Senator Lora Reinbold
Senator Click Bishop
Senator Scott Kawasaki
Senator Jesse Kiehl

MEMBERS ABSENT

All members present

COMMITTEE CALENDAR

SENATE BILL NO. 51

"An Act requiring the designation of state water as outstanding national resource water to occur by law; relating to the authority of the Department of Environmental Conservation, the Department of Fish and Game, and the Department of Natural Resources to nominate water for designation as outstanding national resource water; relating to management of outstanding national resource water by the Department of Environmental Conservation; and providing for an effective date."

- HEARD & HELD

PREVIOUS COMMITTEE ACTION

BILL: SB 51

SHORT TITLE: NATL. RES. WATER NOMINATION/DESIGNATION

SPONSOR(s): RESOURCES

02/11/19	(S)	READ THE FIRST TIME - REFERRALS
02/11/19	(S)	RES, FIN
03/15/19	(S)	RES AT 3:30 PM BUTROVICH 205
03/15/19	(S)	Heard & Held
03/15/19	(S)	MINUTE (RES)
03/20/19	(S)	RES AT 3:30 PM BUTROVICH 205
03/20/19	(S)	Heard & Held

03/20/19 (S) MINUTE (RES)
03/27/19 (S) RES AT 3:30 PM BUTROVICH 205
03/27/19 (S) Heard & Held
03/27/19 (S) MINUTE (RES)
04/03/19 (S) RES AT 3:30 PM BUTROVICH 205
04/03/19 (S) <Bill Hearing Canceled>
04/08/19 (S) RES AT 3:30 PM BUTROVICH 205

WITNESS REGISTER

JENNIFER CURRIE, Senior Assistant Attorney General
Civil Division
Environmental Section
Alaska Department of Law
Juneau, Alaska

POSITION STATEMENT: Offered to answer questions regarding her opinion letter for SB 51.

EMILY NAUMAN, Deputy Director
Legal Services
Legislative Affairs Agency
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Offered to answer questions regarding her memo that addressed committee questions related to SB 51.

ACTION NARRATIVE

[3:31:59 PM](#)

CHAIR CHRIS BIRCH called the Senate Resources Standing Committee meeting to order at 3:31 p.m. Present at the call to order were Senators Giessel, Kiehl, Reinbold, Bishop, Kawasaki, Coghill, and Chair Birch.

SB 51-NATL. RES. WATER NOMINATION/DESIGNATION

[3:32:23 PM](#)

CHAIR BIRCH announced the consideration of Senate Bill 51 (SB 51).

[3:32:39 PM](#)

SENATOR COGHILL moved to adopt the committee substitute (CS) for SB 51, version 31-LS0375\R, as the working document.

CHAIR BIRCH announced that without objection the CS for SB 51 is the working document.

He detailed that the committee is hearing SB 51 for the fourth time and his intention is to take amendments and hold SB 51 in committee.

He noted that during the previous hearing on SB 51 there were requests for legal analysis from the Department of Law and Legislative Legal Services.

[3:33:42 PM](#)

JENNIFER CURRIE, Senior Assistant Attorney General, Civil Division, Environmental Section, Alaska Department of Law, Anchorage, Alaska, said she was available to answer questions regarding her April 5, 2019 opinion letter for SB 51 that reads as follows:

This letter sets out information regarding Tier 3 waters and the regulatory effect of a Tier 3 designation. It also sets out current Alaska Supreme Court law regarding how to evaluate whether a citizen's initiative constitutes an appropriation of state assets.

CHAIR BIRCH announced that Emily Nauman from Legal Services was available to answer questions regarding her memo to the Senate Resources Committee.

[3:34:22 PM](#)

EMILY NAUMAN, Deputy Director, Legal Services, Division of Legal and Research Services, Legislative Affairs Agency, Alaska State Legislature, Juneau, Alaska, said she is available to answer questions regarding her March 29, 2019 memo related to SB 51.

CHAIR BIRCH noted that the Department of Environmental Conservation (DEC) presented committee members with a document related to an email conversation DEC had with the Environmental Protection Agency (EPA) about the ability to rescind Tier 3 water designation. He announced that DEC is online and available to provide additional information.

He announced that the committee will take amendments on SB 51.

[3:35:26 PM](#)

SENATOR GIESSEL moved to adopt Amendment 1, labeled 31-LS0375\R.8.

AMENDMENT 1

OFFERED IN THE SENATE BY SENATOR GIESSEL
TO: CSSB 51(RES), Draft Version "R"

Page 1, line 11:

Delete "law"

Insert "statute"

[3:35:34 PM](#)

SENATOR KAWASAKI objected for discussion purposes.

SENATOR GIESSEL explained that Amendment 1 addresses the word "law" on page 1, line 11. It says, "regulation, only by law." The amendment would change that to state, "regulation, only by statute."

She noted that originally, she had suggested that the word, "by the legislature" be substituted; however, Ms. Nauman's memo dated March 29, 2019 said:

3. Could changing "by law" to "by the legislature" preclude a waterbody from being designated as outstanding national resource water by initiative?
Whether or not an outstanding national resource water could be designated by initiative is discussed in part one of this memorandum. However, use of the phrase "by the legislature" is problematic. It does not seem to acknowledge that the governor has veto authority over bills. Also, it creates an ambiguity about whether or not an outstanding national resource water could be designated by resolution.

She explained that Ms. Nauman's recommendation suggested that the use of the word "statute" is clearer, adding that Ms. Nauman articulated her reasoning on page 2, item 2.

[3:37:11 PM](#)

SENATOR KAWASAKI withdrew his objection to Amendment 1.

[3:37:18 PM](#)

CHAIR BIRCH announced that without objection Amendment 1 passed.

[3:37:29 PM](#)

SENATOR GIESSEL moved to adopt Amendment 2, labeled 31-LS0375\R.10.

31-LS0375\R.10
Nauman
4/5/19

AMENDMENT 2

OFFERED IN THE SENATE BY SENATOR GIESSEL
TO: CSSB 51(RES), Draft Version "R"

Page 1, lines 2 - 6:

Delete "relating to the authority of the Department of Environmental Conservation, the Department of Fish and Game, and the Department of Natural Resources to nominate water for designation as outstanding national resource water; relating to management of outstanding national resource water by the Department of Environmental Conservation;"

Page 1, line 9:

Delete "(a)"

Page 1, line 12, through page 2, line 13:

Delete all material.

[3:37:34 PM](#)

SENATOR KAWASAKI objected for discussion purposes.

SENATOR GIESSEL explained that the proposed changes will reduce the bill to two sections. There are no subsections in Section 1 because the language gets into defining the waters designation process. She emphasized that the purpose of the bill was to define the authority for designating the waters and the amendment simply refines and targets to that subject.

[3:39:38 PM](#)

SENATOR KAWASAKI summarized that the amendment removes everything in the bill except for the process in statute. He asked her to explain how the department will be implementing the statute.

SENATOR GIESSEL answered that the purpose of the bill is to fulfill the EPA requirement that the state have in place a mechanism to declare the waters. She pointed out that there is nothing in the bill that precludes DEC from receiving nominations, something that is already part of the process.

CHAIR BIRCH asked if Senator Kawasaki maintained his objection.

SENATOR KAWASAKI replied that he will withdraw his objection. He opined that the bill would be better if what the legislature would clarify what it wanted to do.

[3:41:34 PM](#)

SENATOR KIEHL objected to Amendment 2.

He explained that the original version of the bill sets an authority and process where the department gets an application from citizens, tribes, whomever. The department looks at an application and makes a recommendation, but the authority clearly lies with the legislature.

He said with the amendment he questioned who would ever go to DEC or the Alaska Department of Fish and Game about the waters designation issue because there is no established framework for agencies to provide their expertise to make a recommendation, whether yes or no. He asserted that the bill should set agency guidelines, but to take agencies out entirely takes the state in a different direction.

He said he will maintain his objection.

CHAIR BIRCH explained that the amendment clarifies the waters designation approval process where the majority of the legislature is required to do so. Designation would be incumbent upon the legislature to require additional information, engagement, or public comment if required.

[3:43:18 PM](#)

A roll call vote was taken. Senators Birch, Bishop, Coghill, Giessel, and Reinbold voted in favor of Amendment 2 and Senators Kawasaki and Kiehl voted against it. Therefore, Amendment 2 passed by a 5:2 vote.

[3:43:54 PM](#)

SENATOR GIESSEL moved Amendment 3, labeled 31-LS0375\R.9.

31-LS0375\R.9

AMENDMENT 3

OFFERED IN THE SENATE BY SENATOR GIESSEL
TO: CSSB 51 (RES), Draft Version "R"

Page 1, following line 7:

Insert a new bill section to read:

"* **Section 1.** The uncodified law of the State of Alaska is amended by adding a new section to read:

LEGISLATIVE INTENT. (a) It is the intent of the legislature to continue to contest the authority of the United States Environmental Protection Agency to

(1) preempt a decision of the legislature related to the development of state land or water, including by designating water as outstanding national resource water;

(2) control the authority of the legislature to decide which land or water should be off limits to development; and

(3) determine whether to remove an outstanding national resource water designation.

(b) The legislature encourages the attorney general to defend the state's sovereign interests in matters related to designation of water as outstanding national resource water, especially designations that limit development of land selected by the state under sec. 6 of the Alaska Statehood Act of 1958 (P.L. 85-508; 72 Stat. 339), as amended."

Page 1, line 8:

Delete "**Section 1**"

Insert "**Sec. 2**"

Renumber the following bill section accordingly.

[3:44:01 PM](#)

SENATOR COGHILL objected for discussion purposes.

SENATOR GIESSEL explained that Amendment 3 is uncodified law that is essentially calling out the State of Alaska's 10th Amendment right. Amendment 3 is intent language which pushes back against federal commandeering. She defined "commandeering" as follows:

Commandeering refers to a federal requirement that state officials enact, administer, or enforce a federal regulatory program.

She opined that the 10th Amendment is quite clear that there is a separation of powers and that separation preserved state sovereignty when the 10th Amendment was written. The intent language in the amendment is calling out that the State of Alaska continues to question the authority of the federal government to force the state into a federally-mandated program.

SENATOR REINBOLD thanked Senator Giessel for offering the amendment. She said she is a big believer in state's rights.

[3:45:34 PM](#)

SENATOR COGHILL removed his objection.

[3:45:41 PM](#)

CHAIR BIRCH announced that without objection, Amendment 3 passed.

He noted that the committee has three additional amendments by Senator Kawasaki, all of which relate to subsection (b) of the bill, which were removed by Amendment 2. He asked Senator Kawasaki if he wished to offer his amendments.

SENATOR KAWASAKI answered no.

[3:46:00 PM](#)

CHAIR BIRCH held SB 51 in committee.

[3:46:21 PM](#)

There being no further business to come before the committee,
Chair Birch adjourned the Senate Resources Standing Committee
meeting at 3:46 p.m.