

SENATE FINANCE COMMITTEE
March 14, 2022
9:03 a.m.

[9:03:43 AM](#)

CALL TO ORDER

Co-Chair Bishop called the Senate Finance Committee meeting to order at 9:03 a.m.

MEMBERS PRESENT

Senator Click Bishop, Co-Chair
Senator Bert Stedman, Co-Chair
Senator Lyman Hoffman
Senator Donny Olson
Senator Natasha von Imhof
Senator Bill Wielechowski
Senator David Wilson

MEMBERS ABSENT

None

ALSO PRESENT

Senator Elvi Gray-Jackson, Sponsor; Senator Robert Myers, Sponsor; Christina Carpenter, Director, Division of Environmental Health, Department of Environmental Conservation; Randy Bates, Director, Division of Water, Department of Environmental Conservation.

SUMMARY

SB 80 PUBLIC SCHOOLS: MENTAL HEALTH EDUCATION

SB 80 was REPORTED out of committee with five "do pass" recommendations and with one new fiscal impact note from the Department of Environmental Conservation.

SB 168 DONATIONS/GIFTS FOR DOTandPF SIGNAGE

SB 168 was REPORTED out of committee with three "do pass" recommendations, and two "no

recommendation" recommendations and with one previously published fiscal impact note: FN 1: DOT.

PRESENTATION: DEPARTMENT OF ENVIRONMENTAL CONSERVATION

#sb80

SENATE BILL NO. 80

"An Act relating to mental health education."

[9:04:50 AM](#)

SENATOR ELVI GRAY-JACKSON, SPONSOR, spoke to a brief reintroduction of the legislation. The bill would amend existing health curriculum to include mental health curriculum in all K-12 health classrooms to adequately educate students on vital information pertaining to mental health, symptoms resources, and treatment. She noted that the Senate Health and Social Services committee had amended the bill to include parental consent to teach the curriculum to students.

[9:05:42 AM](#)

Senator von Imhof wondered how the curriculum would be developed and incorporated into the school districts.

[9:06:15 AM](#)

Senator Gray-Jackson cited page 2 of the legislation:

Guidelines for developmentally appropriate instruction in mental health shall be developed in consultation with the Department of Health and Social Services, regional tribal health organizations, and representatives of national and state mental health organizations.

[9:06:44 AM](#)

Senator von Imhof remarked that the fiscal note was \$71,000 for development of the curriculum.

[9:06:53 AM](#)

Senator Gray-Jackson replied in the affirmative.

[9:07:03 AM](#)

Senator Wielechowski addressed the fiscal note from the Department of Education and Early Development (DEED), OMB component 2796. He read from the analysis:

This fiscal note contains three one-time, multi-year expenses: 1) \$30.0 for \$1.5 stipends for 20 parents and qualified stake holders for their year long participation in the research and authoring of the standards, 2) \$35.0 contract for a national Mental Health Education expert to facilitate the standards process and professional development materials, and 3) \$6.0 for legal fees to implement the necessary regulation changes.

[9:08:08 AM](#)

Senator Wielechowski MOVED to REPORT CS SB 80 (HSS) from committee with individual recommendations and attached fiscal note. There being NO OBJECTION, it was so ordered.

SB 80 was REPORTED out of committee with five "do pass" recommendations and with one new fiscal impact note from the Department of Education and Early Development.

[9:08:40 AM](#)

AT EASE

[9:10:21 AM](#)

RECONVENED

#sb168

SENATE BILL NO. 168

"An Act relating to program receipts; and relating to the acceptance of gifts, donations, and grants for the purpose of providing signage for assets under the control of the Department of Transportation and Public Facilities."

[9:10:26 AM](#)

SENATOR ROBERT MYERS, SPONSOR, gave a brief reintroduction of the legislation. He remarked that the bill was in response to a bill in the previous legislative session. He explained the limitations that the Department of

Transportation and Public Facilities (DOT&PF) face when excepting donations for signage. He explained that the bill was about process and timing. He spoke to previous concerns raised about the naming of trails and said trails were not included due to differences in statutory authority between DOT&PF and the Department of Natural Resources (DNR).

[9:13:36 AM](#)

Co-Chair Bishop addressed the zero fiscal note 1, OMB Component number 530. He read from the analysis:

This proposal would codify a process in statute for third-parties to provide donations, grants, and gifts to provide signage for assets under the Department of Transportation & Public Facilities (DOTPF) control, notably infrastructure signage passed by other legislature under AS 35.40 such as roads and bridges.

[9:14:00 AM](#)

Senator von Imhof felt that the comments clarified the intent of the bill and appreciated the flexibility from DOT&PF.

[9:14:31 AM](#)

Senator von Imhof MOVED to REPORT SB 168 from committee with individual recommendations and attached zero fiscal note. There being NO OBJECTION, it was so ordered.

SB 168 was REPORTED out of committee with three "do pass" recommendations, and two "no recommendation" recommendations and with one previously published fiscal impact note: FN 1: DOT.

[9:15:04 AM](#)

AT EASE

[9:16:41 AM](#)

RECONVENED

Co-Chair Bishop handed the gavel to Co-Chair Stedman.

^PRESENTATION: DEPARTMENT OF ENVIRONMENTAL CONSERVATION

[9:17:05 AM](#)

Co-Chair Stedman discussed housekeeping for the remainder of the meeting.

[9:17:38 AM](#)

CHRISTINA CARPENTER, DIRECTOR, DIVISION OF ENVIRONMENTAL HEALTH, DEPARTMENT OF ENVIRONMENTAL CONSERVATION, introduced herself.

[9:17:57 AM](#)

Co-Chair Stedman requested that the presenter avoid the use of acronyms.

[9:18:12 AM](#)

Ms. Carpenter discussed the presentation, "Department of Environmental Conservation Senate Finance Committee" (copy on file). She looked at slide 2, "DEC Primacy Programs":

Primacy refers to the state assuming authority to implement a federal program

Federal laws for which DEC assumed primacy:

Clean Air Act: Alaska assumed in 1972
Safe Drinking Water Act: Alaska assumed in 1978
Clean Water Act National Pollutant Discharge Elimination System: Alaska assumed in 2012

Federal laws for which DEC has statutory authority, granted by the legislature, to assume primacy but has not yet done so:

Resource Conservation and Recovery Act (RCRA):
Legislature authorized in 1981-AS46.03.299 (c)
Clean Water Act Section 404: Legislature authorized in 2013 -AS 46.03.020 (14)

[9:20:45 AM](#)

Senator von Imhof surmised that Ms. Carpenter would describe the process for the state beyond the statute.

Ms. Carpenter replied in the affirmative.

Senator Wielechowski wondered why the state had not yet assumed primacy under the Clean Water Act.

RANDY BATES, DIRECTOR, DIVISION OF WATER, DEPARTMENT OF ENVIRONMENTAL CONSERVATION, replied that the statute was passed in 2013 and the department had full authority to develop and implement a 404 program, which would be the Dredge and Fill program. He added that in 2014 the legislature removed funding for the program and the department now hoped to pick the program back up and continue with the progress that had been previously made.

[9:21:56 AM](#)

Senator Hoffman queried the fiscal impact of the program in 2013.

Mr. Bates replied that he did not have the exact number but thought it was similar to the current request. He added that there was a proposal of 32 staff as a baseline funding allocation, with a \$5.3 million ask going forward.

[9:22:40 AM](#)

Senator Hoffman thought that the past request had been the reason that the legislature had not funded the program in the past.

[9:23:08 AM](#)

Co-Chair Stedman announced that the previous fiscal note would be located for committee reference.

[9:23:26 AM](#)

Ms. Carpenter explained that DEC had retained primacy of the Safe Drinking Water Act and the Clean Air Act since 1971.

[9:23:56 AM](#)

Ms. Carpenter addressed slide 3, "Resource Conservation and Recovery Act (RCRA)":

Management of Solid Waste

DEC has approval for oversight of non-hazardous waste under Subtitle D

Subtitle C covers management of hazardous waste

DEC is one of two states that does not have primacy over Subtitle C

[9:26:57 AM](#)

Co-Chair Bishop understood that the state did not have a designated hazardous waste depository, and therefore shipped the waste out of state. He asked whether this would continue to be the practice under Subtitle C.

Ms. Carpenter replied in the affirmative.

[9:27:17 AM](#)

Co-Chair Bishop asked whether the department planned to develop a storage facility in-state.

Ms. Carpenter replied that the question would be addressed in future slides. She added that there were 4 storage facilities in the state but not treatment or disposal facilities. She said that if there was interest in establishing a hazardous waste landfill, that was something that DEC could permit under the primacy program. Currently a project of that nature would need to be permitted by the Environmental Protection Agency (EPA).

[9:27:54 AM](#)

Senator von Imhof relayed that she had recently met with the owner and operator of a "dirty dirt" machine in Fairbanks. She asked whether DEC would fully control the program, or would they outsource to private companies that handled PFAS dirt, spilled diesel, and the like.

[9:28:56 AM](#)

Ms. Carpenter replied that PFAS was not considered a hazardous waste and would not fall under RCRA Subtitle C.

[9:29:16 AM](#)

Senator von Imhof wondered whether it would be economically sensible for the state to outsource to private companies rather than fund 30 new positions within the department.

[9:29:47 AM](#)

Ms. Carpenter replied that the position increment under RCRA would be 6 positions and not 30.

[9:30:12 AM](#)

Senator von Imhof wondered whether the DEC would entertain outsourcing some of the work to the private sector.

[9:30:20 AM](#)

Ms. Carpenter queried the definition of "outsourcing."

[9:30:43 AM](#)

Senator Hoffman noted that Subtitle C covered the management of hazardous waste. He asked for a description of the management in rural areas of the state. He wondered who currently paid for the shipping of hazardous waste out of state and who would assume that liability under RCRA.

[9:31:37 AM](#)

Ms. Carpenter replied that current DEC activity in rural Alaska landfills was for non-hazardous wastes. She said that the EPA and the Solid Waste Alaska Taskforce had been working on a program called Backhaul Alaska, which would get household hazardous waste out of communities. She said that DEC had several staff participating in the effort.

[9:32:15 AM](#)

Senator Hoffman understood that DEC was assisting the pilot program to manage hazardous waste and wondered how DEC was assisting communities presently, how that would change under the proposed program, and how the hazardous waste removal would be paid for.

[9:32:55 AM](#)

Co-Chair Stedman interjected that a clearer definition of "potential costs to local governments" would be helpful to the conversation. He specified that the committee was curious to know the difference in costs to rural local governments versus urban.

[9:33:20 AM](#)

Ms. Carpenter replied that under a state primacy program technical support and assistance would be provided to communities for properly managing hazardous waste. She stated that the fiscal note did not include money to help communities with the removal of hazardous waste. She said that DEC could assist with the management of hazardous waste and potentially help coordinate across communities.

[9:34:34 AM](#)

Senator Hoffman pointed out that DEC could currently aid with hazardous waste management in rural communities. He failed to understand how the state assuming primacy of the program would help with the removal of hazardous waste in rural Alaska. He felt that he could not support the expense to the state reflected on the fiscal note if the program would only benefit the removal of hazardous waste in urban parts of the state.

[9:35:22 AM](#)

Co-Chair Stedman inquired about how the department handled the removal of fuel contaminated soil and creosote impregnated timber and pilings from communities.

[9:36:27 AM](#)

Ms. Carpenter agreed to provide that information.

[9:36:35 AM](#)

Co-Chair Stedman thought that some of the hazardous gravel could be treated and not removed entirely. He expressed concern that shipping would be expensive.

[9:36:52 AM](#)

Co-Chair Bishop asked for the current price of shipping a full 55-gallon drum from Alaska to Washington State.

[9:37:19 AM](#)

Co-Chair Stedman interjected that the prices should reflect shipping from Bethel, Nome, Kodiak, and other communities in Southeast Alaska.

Ms. Carpenter agreed to provide that information.

[9:37:55 AM](#)

Senator Wielechowski asked whether PFAS was considered a hazardous waste on other states or countries.

[9:38:00 AM](#)

Ms. Carpenter did not know about the consideration in other states. She noted that PFAS was not considered a hazardous waste on the federal level.

[9:38:20 AM](#)

Co-Chair Stedman interjected that he would not drink PFAS contaminated water. He believed that the substance was "pretty hazardous."

[9:38:31 AM](#)

Senator Wielechowski wondered whether the state considered PFAS in drinking water a problem for the population.

[9:38:41 AM](#)

Ms. Carpenter responded that DEC and DOT&PF had been working to assess various communities water sources and had taken action to provide alternative waster sources when community water sources exceeded Lifetime Health Advisory amounts established by the EPA.

[9:39:19 AM](#)

Senator Wielechowski was curious how PFAS was not a hazardous substance but could exceed Lifetime Health Advisory amounts. He understood that the EPA had not technically declared PFAS a hazardous substance but did set limits on allowable amounts in drinking water. He wondered whether Alaskans should be concerned if PFAS was present in their drinking water.

[9:39:49 AM](#)

Ms. Carpenter reiterated that PFAS was not federally defined as a hazardous substance under RCRA. She asserted that the state was taking action to test drinking water systems and provide alternative water sources when PFAS was found in water systems.

[9:40:19 AM](#)

Co-Chair Bishop asked for a brief background of the presenter's professional qualifications.

[9:40:45 AM](#)

Ms. Carpenter replied that she had worked with DEC since 2012 and currently oversaw the Environmental Health Division. She felt that some of the committee's questions could be better answered by the directors of Spill Prevention and Response or Air Quality Division. She said that she was not the primary lead on the PFAS response.

[9:41:48 AM](#)

Co-Chair Stedman suggested that if a question was asked that was out of Ms. Carpenter's per view, she should defer to the appropriate channel. He requested further detail of her professional background.

[9:42:31 AM](#)

Ms. Carpenter replied that she had a bachelor's and a master's degree in Business Administration and had been the Environmental Health Division Director since 2016.

[9:42:51 AM](#)

Senator Hoffman asked about Subtitle C and wondered whether the state would address existing hazardous waste sites, or would those sites fall under the per view of the federal government. He cited specifically the numerous sites on the North Slope.

[9:43:25 AM](#)

Ms. Carpenter said no decision had been made concerning those sites. She said she would provide further information to the committee.

[9:43:55 AM](#)

Ms. Carpenter pointed to slide 4, "RCRA Primacy Costs (in thousands)":

Increment Request

- \$830.0 UGF
- 6 FT Positions
- Training, equipment, and travel
- Develop regulations and documentation

Two-year application process

Federal funds are available after primacy assumed which would replace \$400.0 of G

[9:44:49 AM](#)

Senator von Imhof asked about the equipment needed for the program.

[9:45:00 AM](#)

Ms. Carpenter replied that it would be for new employee start up and would include computers, furniture, and the like.

[9:45:10 AM](#)

Senator von Imhof asked for a scenario detailing what the RCRA program DEC employees would do in the event of a hazardous waste spill.

[9:45:57 AM](#)

Ms. Carpenter replied deferred to Spill Prevention and Response group. She said that the Solid Waste Program under Environmental Health would be regulating the generation, transports, and disposal of hazardous waste that might be generated. She said those things included old computers or batteries, which had to be documented through the transportation and disposal process before ground storage.

[9:46:50 AM](#)

Senator von Imhof assumed old computer tracking and disposal was currently paid for by the federal government and under the program the 6 full-time positions would assume those responsibilities for the state.

[9:47:07 AM](#)

Ms. Carpenter replied in the affirmative.

[9:47:14 AM](#)

Senator von Imhof noted that the process whether it be cleaning dirty dirt or spills - these 6 state positions would track and chart where the hazardous waste would ultimately end up.

[9:47:38 AM](#)

Ms. Carpenter replied that DEC would be providing technical support and compliance assistance through the issuance of permits and performing inspections.

[9:47:48 AM](#)

Senator von Imhof surmised that the process remained the same as to how contaminated dirt would be cleaned or computers disposed of.

[9:47:56 AM](#)

Ms. Carpenter replied in the affirmative.

[9:48:05 AM](#)

Co-Chair Stedman wondered the difference between who was shouldering the cost now and who would be liable if the state assumed primacy under RCRA.

[9:48:12 AM](#)

Ms. Carpenter replied that she would address that further in the presentation.

[9:48:25 AM](#)

Co-Chair Bishop shared that he had taught Hazardous Waste and Emergency Response for 20 years and thought that if the state was going to assume the duties under RCRA the cost was going to be more than the current UGF request for training.

[9:49:11 AM](#)

Co-Chair Stedman noted that Senator Olson had joined the meeting. He asked what that benefit was to the state in assuming primacy.

[9:49:21 AM](#)

Ms. Carpenter replied that she would address the issue further in the presentation.

[9:49:24 AM](#)

Co-Chair Stedman remarked that the 6 requested positions would add \$830,000 in UGF. He thought that the current administration request was for 220 employees, some of which were not currently funded in the budget. He asked whether the 6 positions were included in the 220 employees and whether those 6 positions were funded in the current budget request.

[9:50:09 AM](#)

Ms. Carpenter replied that she could not speak to the overall budget. She believed that the 6 positions had been identified as being funded by UGF.

[9:50:20 AM](#)

Co-Chair Stedman posed to the question to Mr. Bates.

[9:50:34 AM](#)

Mr. Bates replied that he positions were included in the budget.

Co-Chair Stedman asked whether they were funded in the governor's proposed FY 23 budget.

Mr. Bates said that the positions for both programs were in the proposed budget to be funded strictly be general funds.

[9:51:16 AM](#)

Senator von Imhof understood the positions were in the current budget under UGF and had not been included in amendments released since the budget was release on December 15, 2021.

Mr. Bates said that there had been an FY 22 supplemental submitted in addition for three positions for the 404 program. He said that the issue would be addressed in the presentation.

[9:52:29 AM](#)

Co-Chair Stedman requested moving on to slide 5.

[9:52:39 AM](#)

Ms. Carpenter addressed slide 5, "Regulated Activities Under RCRA Subtitle C":

Generators

- Military
- AK DOT
- Seafood Facilities
- Mining
- Oil and Gas Facilities

Transporters

- Trucking
- Barge Lines

Treatment, Storage, and Disposal Facilities (TSDF)

Ms. Carpenter said that the slide was meant to show facilities that transported hazardous waste in the state. She said that when generators created solid waste a record was created that traveled with the waste through to disposal.

[9:54:38 AM](#)

Co-Chair Stedman noted that Senator Wilson had joined the meeting.

[9:54:42 AM](#)

Ms. Carpenter pointed to slide 6, "Benefits of RCRA Primacy". The slide showed a chart that listed the focus, location, and regulatory flexibility that would result from state primacy. The EPA would focus on enforcement, would be

in Seattle, and would have little to no regulatory flexibility. The DEC would focus on technical and compliance assistance, would be in Alaska, and would have much greater regulatory flexibility under the state managed program.

[9:56:12 AM](#)

Senator von Imhof asked whether an hourly rate would be charged by DEC for an inspection.

Ms. Carpenter said that there was no charge for inspections. She added that the compliance and technical support assistance would be covered under the budget request.

[9:56:50 AM](#)

Senator Wielechowski asked how many staff the EPA had devoted to Alaska.

Ms. Carpenter did not know. She knew there was one dedicated person located in Anchorage. She said that the department had 10 inspectors overseeing non-hazardous waste facilities in the state.

Senator Wielechowski asked whether DEC would still be doing enforcement under the legislation.

Ms. Carpenter replied in the affirmative.

Senator Wielechowski asked whether the EPA provided technical and compliance support.

Ms. Carpenter replied in the negative. She added that the EPA did not have the technical staff to support DEC and that their focus was on detection and enforcement.

[9:58:52 AM](#)

Senator von Imhof had questions about the technical staff. She wondered where they would be located and how they would communicate with companies.

Ms. Carpenter replied that the technical staff would consist of local people who could be reached with a phone call. She said that DEC already had relationships with

waste generators in the state. She said that part of the two-year timeline was to hire and train support staff for those generators.

[10:00:01 AM](#)

Co-Chair Bishop asked for an example of "much greater" regulatory flexibility noted on slide 6. He understood that the EPA was looking to lower the threshold for particulate matter from PM2.5 and wondered how the assumption of primacy would affect air quality for residents of Fairbanks.

[10:00:48 AM](#)

Co-Chair Bishop explained particulate matter was an issue for all areas of the state. He shared that on cold days in Fairbanks the particulate matter hung in the air.

Co-Chair Stedman understood that the threshold was going to be lowered on the federal level.

Ms. Carpenter replied that she was not prepared to speak on the matter.

Co-Chair Bishop requested that the department get back to the committee on the matter.

[10:02:06 AM](#)

Senator Hoffman asked about assistance for technical compliance and the disposal of car batteries in rural Alaska.

Ms. Carpenter said that the issue would be addressed in a future slide.

Senator Hoffman wanted the cost related to shipping and disposal in rural versus urban areas of the state.

[10:03:09 AM](#)

Senator Wielechowski asked for examples where the department thought it needed greater regulatory flexibility.

Ms. Carpenter said that the issue would be addressed on a future slide.

[10:03:45 AM](#)

Ms. Carpenter addressed slide 7, "Recent RCRA Activity in Alaska by EPA":

Education and compliance support from DEC will prevent violations, proactively protecting Alaska's environment instead of just levying punitive fines

The slide listed the inspections, number of fines, and monies collected from the fines from 2018 through 2021.

[10:04:46 AM](#)

Senator Wielechowski asked for examples of fines.

Ms. Carpenter said that some of the fines were implemented to certain state agencies for various violations.

Co-Chair Stedman required further information.

Ms. Carpenter said she would follow up with the committee.

[10:05:22 AM](#)

Co-Chair Bishop asked about education outreach and whether DEC planned to set up program where Alaskans could volunteer their property to be assessed for compliance.

Ms. Carpenter responded in the affirmative.

[10:06:35 AM](#)

Senator Wielechowski spoke to the conclusory statement on the slide. He noted \$45,000 in total fines for 2021. He did not feel that the number was "punitive".

Ms. Carpenter said that the department would like to engage with hazardous waste generator before the point of levying a fine.

Senator Wielechowski continued his line of questioning. He wondered what would have been done differently in the instances in 2021 that would have resulted in a lower fine figure.

[10:07:57 AM](#)

Senator von Imhof asked for the background requirements for technical employees.

Co-Chair Stedman wanted to know whether current employees could be trained to provide the technical support, which could negate the need for new positions.

Ms. Carpenter offered to provide the committee with specific employment requirements. She said that the staff was already at capacity with non-hazardous waste landfills, which necessitated the 6 additional positions.

Senator von Imhof queried the solid waste disposal caseload.

Ms. Carpenter replied that existing staff oversaw 27 complex facilities that required annual inspections and routine monitoring. She said that 14 facilities would be considered complex under the Subtitle C program.

[10:11:04 AM](#)

Ms. Carpenter said that current employees were engaging with communities and were constantly dealing with helping facilities in a way that was beyond annual inspections.

[10:11:40 AM](#)

Senator Wielechowski wondered which fines on slide 7 would be considered punitive.

[10:11:54 AM](#)

Ms. Carpenter agreed to provide that information.

[10:12:06 AM](#)

Senator Hoffman asked which sections of the bill would be implemented to proactively protect Alaskans.

[10:12:47 AM](#)

Co-Chair Stedman asked that the department add Senator Hoffman's question to the list of forthcoming responses.

[10:12:53 AM](#)

Senator Wielechowski looked at slide 6 and remarked that a former employee of the EPA had called his office and had revealed that the EPA did, in fact, provide technical and compliance support.

[10:13:10 AM](#)

Ms. Carpenter believed that DEC could provide better support with local staff and local knowledge.

[10:13:28 AM](#)

Senator Wielechowski surmised that the EPA did not have employees working within the state.

[10:13:35 AM](#)

Ms. Carpenter reiterated that the EPA had one employee in in the state dedicated to RCRA.

[10:13:55 AM](#)

Co-Chair Stedman recalled that in previous primacy discussions, state primacy did not alleviate the state from following federal rules. He said that the thought at that time was that Dec would be able to respond more quickly and on a personal level.

[10:14:39 AM](#)

Senator Wielechowski asked for specific examples of when the EPA failed to provide adequate technical and compliance assistance.

[10:14:59 AM](#)

Senator Olson wondered what had happened in 2019 that resulted in the \$219,019 in fines. The number of fines had been the same as the two previous years yet the fine was more than double.

[10:15:30 AM](#)

Ms. Carpenter replied that it was referring to the fines implemented by the EPA. She said she would get back to the committee with the information.

[10:15:48 AM](#)

Senator Olson wondered whether the fine was levied on a state entity.

[10:15:59 AM](#)

Co-Chair Stedman said that the committee would determine whether the fine was levied on a state entity and whether the fine was paid through Settlements and Judgments or absorbed into the entities budget.

[10:16:16 AM](#)

Senator Hoffman wondered whether any of the fines were for exploration specifically related to Pebble Mine.

[10:16:39 AM](#)

Ms. Carpenter discussed slide 8, "DEC's Regulatory Approach":

EPA's rules were drafted to meet the needs of all states. DEC will be able to draft regulations that meet the needs of Alaska.

Opportunity to develop a "universal waste" classification.

Small and Very Small Generators overlooked by EPA.

41 large, 1028 small/very small generators in Alaska

Pre pandemic example of 2018 and 2019 -a combined total of only 6 inspections were conducted

DEC focus on outreach, education, and technical assistance

Ms. Carpenter relayed that one of the ways DEC would be able to draft regulations specific to the state was to develop a "universal waste" classification. She explained that universal waste was waste commonly generated by households or commercial entities and included non-hazardous waste such as spend batteries or old electronics.

The state would have the ability to develop regulation to deal with the specific waste streams. She said she would follow up with transportation costs for all communities in the state. She said that DEC efforts would focus more closely on small and very small generators overlooked by the EPA.

[10:20:12 AM](#)

Senator Hoffman queried the changes in battery disposal under the EPA versus DEC assuming primacy. Additionally, he asked about waste oil disposal from small generators in rural Alaska.

[10:20:40 AM](#)

Ms. Carpenter replied that the question would be explored under a state program. She said that those issues could be pursued.

[10:21:07 AM](#)

Senator Hoffman stressed that the need must be evaluated soon. He wondered why the state would go forward with the program without details of the benefits to the state. He expressed disappointment that the presentation did not offer concrete solutions or benefits to the support the expense of assuming primacy.

[10:22:29 AM](#)

Senator Wielechowski spoke of the EPA only inspecting 6 small generators between 2018 and 2019. He wondered how many inspections the department believed should have been conducted during that timeframe.

[10:22:51 AM](#)

Ms. Carpenter replied that she did not have the numbers offhand. She asserted that assuming primacy would allow for more local assistance to communities and for the performance of more regular inspections.

[10:23:21 AM](#)

Senator Wielechowski asked for a rough estimate of what would be an appropriate number of inspections per year.

Ms. Carpenter thought that the number of inspections should be commensurate with facility counts. She thought smaller generators should be inspected as frequently as larger generators.

[10:23:52 AM](#)

Co-Chair Stedman queried the definition of a "small generator" and a "very small generator".

[10:24:16 AM](#)

Ms. Carpenter replied that a large quantity generator would produce more than 2,200lbs of hazardous waste per month. A very small generator would produce less than 220lbs per month. A small quantity generator produced between 220lbs and 2,200lbs per month. She clarified that this was dependent on the type of waste being generated.

[10:25:23 AM](#)

Co-Chair Bishop wondered whether the regulations drafted by DEC would have to be approved by the EPA.

[10:25:32 AM](#)

Ms. Carpenter replied in the affirmative.

[10:25:40 AM](#)

Senator Hoffman requested information about which communities fell under the definitions of large, small, and very small generators.

[10:26:05 AM](#)

Senator von Imhof spoke of infrastructure legislation on the federal level. She thought the bill would fund alternative energy sources that would require the storage of batteries. She wondered whether DEC was preparing for the increase in generator activity due to alternative energy methods.

[10:27:06 AM](#)

Ms. Carpenter agreed to follow up with the committee.

[10:27:17 AM](#)

Senator Wielechowski returned to the issue of the number of inspections per year. He thought that if the inspections were to be commensurate with the number of small and very small generators there would be several hundred inspections per year. He wondered whether the department was planning for the increased inspections.

[10:28:02 AM](#)

Ms. Carpenter replied in the affirmative.

[10:28:20 AM](#)

Mr. Bates pointed to slide 9, "Overseeing and protecting Alaska's wetlands":

Alaska's wetlands cover approximately 174 million acres, or about 43 percent of Alaska's surface area

May include tundra, permafrost, marshes, and bogs

Contiguous U.S. used to have 200 million acres of wetlands, less than half remain

Co-Chair Stedman assumed that Southeast Alaska was not excluded in the wetland acreage reflected on the slide.

Mr. Bates replied that Southeast Alaska was included in the figure.

[10:31:39 AM](#)

Co-Chair Bishop lamented that the Army Corps of Engineers redefined "wetlands" in 1994 to include tundra and permafrost.

[10:32:26 AM](#)

Mr. Bates discussed slide 10, "Clean Water Act Section 404":

Regulates the discharge of dredged or fill material into waters and wetlands

Activities that require 404 permits include fill for resource and community development projects, construction in waters, and placement of riprap and fill material for roads, airports, or buildings

Three states currently have State 404 Programs - Michigan (1984), New Jersey (1994), and Florida (2020).

Mr. Bates said that most construction and development projects in the state required a Section 404 permit. He listed the various projects that required Section 404 permits from small to large scale projects.

[10:34:23 AM](#)

Senator Hoffman requested a map that showed the 44 percent of the surface of the state that was covered by wetlands.

[10:35:03 AM](#)

Co-Chair Stedman asked about the smaller parcels and private citizen development. He wondered what sort of mitigation might be encountered.

[10:35:25 AM](#)

Mr. Bates agreed to provide the map for Senator Hoffman. In response to Co-Chair Stedman's question, he said that the department would have expedited permitting arrangements via a letter of permission or permit applicable to a routine or smaller type of project. He said a house project would fall under that arena; if the impact would be small to the wetland, then the permitting process could be expedited. He said that permitting for larger projects would depend on location and potential impacts. He said that the Corps of Engineers had been implementing compensatory mitigation for many years. He noted the expansion of the definition of wetlands in the 1990s. He recognized that the Corps of Engineers and others on the federal level had expanded the definition to control the permitting. He wanted the state to take control over that aspect of permitting and have flexibility for applicants that protected wetlands and provided reasonable site-specific mitigation opportunities that would allow for responsible development.

[10:37:51 AM](#)

Co-Chair Stedman added that, under the EPA, when constituents had wanted to develop their lands, the mitigation was generally forfeiture of a percentage of their real-estate to gain permitting. He likened it to a development tax. He shared that the lands went into a mitigation bank, which had prompted concerns about what happened to lands that ended up in the mitigation bank. He understood that under the proposed primacy, the public would contact lawmakers with mitigation problems.

[10:38:45 AM](#)

Mr. Bates relayed that the issue would be addressed later in the presentation. He hoped that if members of the public had issues with the program they would reach out to DEC.

[10:39:19 AM](#)

Co-Chair Stedman interjected that the entirety of Southeast Alaska fell under the current definition of wetlands, which was frustrating to landowners who would experience land charges and did not have full control over their property.

[10:40:09 AM](#)

Senator Hoffman shared that he recently went through the federal permitting process. He remarked that under state management of Section 404, the definition of "wetlands" was fixed and wondered whether the mitigation measures would be the same under DEC as under EPA.

[10:41:00 AM](#)

Mr. Bates said that the state had to meet federal 404B (1) guidelines and had to adhere to Clean Water Act regulations. He believed that the implementation of yet to be developed compensatory mitigation rules would allow for local knowledge and flexibility based on the needs of Alaskan communities. He contended that compensatory regulation in Alaska under the Corps of Engineers had been rigid. He felt that having a state-run program would make DEC accountable to both the legislature and the people of Alaska and would give DEC the opportunity to implement the plan on a local level with local knowledge.

[10:43:09 AM](#)

Co-Chair Bishop asked about the Alaska Gasline Development Corporation (AGDC) and the \$800 million in wetlands mitigation. He wondered whether, under a state-run program, a land swap from one state agency to another could substitute for a cash payment for mitigation.

[10:43:41 AM](#)

Mr. Bates said that a 1994 agreement with EPA and the Corps of Engineers had reflected that Alaska had wetlands that differed from those of other areas of the state. He said that at that time all parties involved had agreed on the matter with an MOU. In 2018 those old rules were abandoned. He shared that in 2008 the mitigation banking was established which meant the developers could write a check to offset mitigated lands. He discussed the importance of compensatory mitigation.

[10:45:50 AM](#)

AT EASE

[10:47:10 AM](#)

RECONVENED

[10:47:14 AM](#)

Co-Chair Stedman remarked that Section 404 was of interest to many Alaskans. He announced that Mr. Bates would return to the committee the following day to finish his presentation.

[10:48:06 AM](#)

Senator Wilson spoke of Florida's 404 program and wondered whether they had faced litigation due to implementation of the program.

[10:48:22 AM](#)

Mr. Bates replied that Florida was not involved in litigation, but the EPA had been sued by the Center for Biological Diversity, EarthJustice and other organizations, which contend that the Florida provisions are not as stringent as the Clean Water Act.

[10:49:03 AM](#)

Senator Hoffman requested a map of ownership of private lands in Alaska. He thought that native corporations held over 90 percent of all the private lands in the state. He was curious about how much of the 44 million acres were wetlands and were owned by private entities other than native corporations.

[10:49:50 AM](#)

Co-Chair Stedman surmised that Senator Hoffman wanted to private ownership of lands outside of Native Corporations and what percentage of that was wetlands.

[10:49:59 AM](#)

Senator Hoffman clarified that he would like to see a map of lands that were eligible for development by private entities, also and down by which were wetlands owned by Native corporations versus non-Native ownership.

[10:50:28 AM](#)

Mr. Bates indicated that he would provide that information.

[10:50:40 AM](#)

Mr. Bates noted that SB 27, passed in 2013, established the authority for the state to evaluate and seek primacy for administering the Section 404 program. The legislation provided both authority and funding for the effort. He furthered that the funding was cut in 2014 and the effort was put on hold. He concluded that all the authority was in place and all that was needed was the financing. He offered to distribute the fiscal note from January 18, 2013, which requested 8 staff for the development of the program with a "to be determined" aspect. He said that the current request was for a more robust implementation of the 404 program which necessitated a total increase of 32 positions.

[10:52:24 AM](#)

Co-Chair Stedman instructed Mr. Bates to study the record and history of the issue, particularly the previous cost of implementation.

[10:53:07 AM](#)

Mr. Bates replied that there was a document from 2014-2015 that offered a robust view of what the staffing should look like, and the current ask was based on that document.

[10:53:55 AM](#)

Mr. Bates looked at slide 11, "404 Primacy Costs (in thousands)":

Increment Request

\$4,904.0 UGF
28 FT Positions
Training, equipment, and travel
Contractual support including legal consultation
Coordination with DFG and DNR

Anticipate four additional positions in FY2024

Two-year application process

Mr. Bates related that the plan was to develop the program and establish agreements with EPA, the Army Corps of Engineers, and other agencies. This would include a workplan timeline's responsibilities requirements for the process, both to obtain and implement the program. Within that time a wetlands management program would be developed, including a detailed map of wetlands. He furthered that existing Corps of Engineer permits would be reviewed, and the DEC would explore the development of new general permits. He said that the definition of "assumable waters" would be examined and would be a negotiated item between DEC, EPA, and the Army Corps of Engineers. He said a complete assumption package to be submitted to EPA would be developed by 2024. He reiterated that the total ask was \$4.9 million for FY 22-FY 23. The expectation thereafter was for the full 32 funded positions. Mr. Bates continued his remarks pertaining to the proposed plan and requested funding.

[10:57:02 AM](#)

Co-Chair Stedman stated that the presentation would continue the following day.

[10:57:15 AM](#)

Senator Wielechowski spoke of the interagency receipts in 2013 of \$361,000, up to \$560,000. He assumed that the request was for Department of Natural Resources and was included in the current fiscal note.

[10:57:33 AM](#)

Senator Wilson wondered whether there was a way to stretch the process out over 4 years to assure that all positions could be filled at a lower cost.

[10:58:01 AM](#)

Senator von Imhof looked ahead to slides 15 and 16. She asked for details on how the DEC would be accountable to the legislature and the public. She requested an example of the significant cost saving for large projects in state assumed waters.

[10:58:27 AM](#)

Co-Chair Stedman remarked that Mr. Bates should return with answers to the question the following day and be prepared for further questioning.

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ADJOURNMENT

[10:59:56 AM](#)

The meeting was adjourned at 11:00 a.m.