

SENATE FINANCE COMMITTEE  
March 17, 2023  
9:02 a.m.

9:02:20 AM

CALL TO ORDER

Co-Chair Olson called the Senate Finance Committee meeting to order at 9:02 a.m.

MEMBERS PRESENT

Senator Lyman Hoffman, Co-Chair  
Senator Donny Olson, Co-Chair  
Senator Bert Stedman, Co-Chair  
Senator Click Bishop  
Senator Jesse Kiehl  
Senator Kelly Merrick  
Senator David Wilson

MEMBERS ABSENT

None

ALSO PRESENT

Randall Bates, Director, Division of Water, Department of Fish and Game; Ken Alper, Staff, Senator Donny Olson.

SUMMARY

SB 25 REPEALING FUNDS, ACCOUNTS, AND PROGRAMS

CSSB 25(FIN) was REPORTED out of committee with two "no recommendations" and five "do pass" recommendations and with one new zero fiscal note from the Legislature.

SB 81 OFFICE OF VICTIMS' RIGHTS: COMPENSATION

SB 81 was REPORTED out of committee with two "no recommendations" and five "do pass" recommendations and with one new fiscal note from the Legislature.

PRESENTATION: CLEAN WATER PERMITTING

^PRESENTATION: CLEAN WATER PERMITTING

9:03:08 AM

RANDALL BATES, DIRECTOR, DIVISION OF WATER, DEPARTMENT OF FISH AND GAME, discussed the presentation, "Department of Environmental Conservation (DEC) Clean Water Act, Section 404 Dredge and Fill Senate Finance Committee" (copy on file). Mr. Bates looked at slide 2, " SB 27 - 28th Legislature, Regulation Of Dredge And Fill Activities":

- In 2013, the Legislature passed SB 27, which mandated: "The Department of Environmental Conservation . . . shall . . . take reasonable steps to assume primacy of the [404] program."
- Passed 15-2 in the Senate and 25-13 in the House

9:05:18 AM

Mr. Bates highlighted slide 3, "Clean Water Act Section 404":

- Regulates the discharge of dredged or fill material into Waters of the United States (WOTUS)

Mr. Bates pointed to slide 4, "Examples of Activities Requiring 404 Permits":

- Site improvement fill for residential, commercial, or recreational development
- Construction of revetments, breakwaters, levees, dams, dikes, and weirs
- Placement of riprap and fill material for roads, airports, or buildings
- Resource development projects

Mr. Bates highlighted slide 5, "Alaska's Landscape":

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

- May include tundra, permafrost, marshes, and bogs
- Most construction and resource and community development projects require Section 404 permits

Mr. Bates pointed to slide 6, which showed a map of the state. The map showed the wetlands that were subject to core federal agency oversight.

Mr. Bates addressed slide 7, "Steps Toward Assumption":

- FY 2023 - Alaska Legislature provided DEC with \$1 million to draft the feasibility report.

"It is the Intent of the Legislature that \$1 million is appropriated for the purpose of the Department of Environmental Conservation to complete a feasibility study on the assumption of primacy of Section 404 of the Clean Water Act. The report will be submitted to the four cochairs of the Finance Committees and Division of Legislative Finance by February 1, 2023."

Mr. Bates pointed to slide 8, which displayed the website for the Feasibility Report.

Mr. Bates discussed slide 9, "Feasibility Study Recommendation - Page 46":

"Given the state's rights under cooperative federalism, the importance of the natural environment and natural resources to the people and economy of Alaska, the importance of wetland permitting in Alaska, and the potential for influencing resource protection and development policies, the recommended course of action is for the State of Alaska to assume the 404 program over assumable WOTUS."

Senator Wilson remarked that the report was different than the study. He wondered whether the study was available to the committee.

Mr. Bates replied that the words "study" and "report" were used interchangeably.

[9:10:50 AM](#)

Mr. Bates looked at slide 10, "Cost Analysis":

- Program development (two years)
  - FY2024:
    - \$4,964.0
    - 28 FT Positions in FY 24
    - Training, equipment, and travel
    - Legal consultation, regulations development
    - Coordination with agencies
    - Assumption application development
  - FY2025
    - Approx. \$4,700.0 in FY 25 and beyond
    - Anticipates four additional positions

Co-Chair Stedman noted that there was an anticipation of a reduction to the state's revenue forecast, which would pose a greater challenge to the FY 24 budget than previously anticipated. He asked about how many other states had similar primacy, and queried the specific cost to Florida because of their wetlands.

[9:14:23 AM](#)

Mr. Bates replied that some of the specific details of the other states were within the report, and agreed to provide that information. He shared that Florida was the most recent state to assume 404 primacy in 2020. He addressed slide 11, "Workload and Staffing Analysis":

- Corps completed 775 actions/year
- Over a 5-year period (2017-2022)
- 48 FTE = 16 actions/FTE/year
- Alaska could assume approximately 75 percent of the Corps' permitting responsibilities
- Approximately 581 actions per year
- 32 FTE = 18 actions/FTE/year

Mr. Bates pointed to slide 12, "Staff Structure - as included in the Feasibility Report." He stated that the intention was to hire specific 404 permitting staff.

[9:20:06 AM](#)

Co-Chair Hoffman queried how much land and how many applicants in Alaska had to go through the 404 primacy permitting process in the last five years; and the anticipated workload for the upcoming five years.

Mr. Bates agreed to provide that information.

Senator Wilson wondered whether there would be an increase to the Department of Law (LAW), due to the litigation anticipation.

Mr. Bates replied with slide 13, "Budget Breakdown- as proposed in the Governor's amended FY 2024 budget." He stated that the slide showed exactly how the money would be spent. He stated that one of the line items under "Contracts" showed that there was a need for LAW to assist in developing the program. He stated that, going forward, the money that was needed from LAW to develop the program would also be needed for litigation or appeals on a 404 primacy project.

Co-Chair Stedman expressed concern that the state may be embarking on a program that it could not "get out of." He understood that Florida had a substantial number of employees in their 404 primacy program with a significant backlog. He wanted to ensure that Alaska did not get into a financial bind to the state with no real net benefit.

[9:25:13 AM](#)

Co-Chair Olson wondered whether it was a "one way door."

Mr. Bates replied that "the answer is no." He shared a story about how other states want to enter into their own 404 primacy programs. He shared that funding was a concern, but that he was working to find other sources of funding other than general funding. He remarked that a fee-based structure would be important in continuing the program.

Co-Chair Olson surmised that the current numbers in the presentation, may not be the full cost of the program.

Mr. Bates believed that the numbers were accurate.

[9:31:31 AM](#)

Senator Kiehl reiterated that the chart did not have the future lawsuit costs. He wondered how many federal full-time employees (FTEs) were designated for Alaska permits. He also asked about more information about anticipated legal expenses.

Mr. Bates replied that the Corps of Engineers had 48 permitted staff, which was the equivalent of what the state had anticipated in the chart. He shared that looking at the permit world, was about 775 actions a year. He remarked that Alaska would get about 75 percent of those actions. He felt that the state's proposal was equivalent to the federal program. He shared that there was built in support for the legal costs.

[9:36:40 AM](#)

Senator Merrick queried the cost of the 404 permit application, and whether it was the same for an individual and a large company doing resource development.

Mr. Bates replied that the Corps of Engineers currently charged \$10 for a residential permit, and \$100 for a commercial permit. He shared that in the Alaska Department of Environmental Conservation (DEC) there was then a 401 certification process associated with the permit, which had a charge for the review of the permit.

[9:38:36 AM](#)

Co-Chair Stedman asked about the issue of hatcheries, and "mission creep."

Mr. Bates responded there were always issues with various permits. He remarked that the Alaska DEC had knowledge of hatcheries, so he felt that was a good case for assuming the 404 permitting.

[9:44:55 AM](#)

Co-Chair Hoffman wondered why DEC was taking standards that the federal government had, but had a higher standard for the state. He felt that the additional requirements were costing millions of dollars for the hatcheries.

Mr. Bates replied that the Environmental Protection Agency (EPA), under the Clean Water Act, set standards for water quality. The state either adopts those standards, or the state could adopt its own water quality standards. He shared that the state was active on the endeavor. He stated that sometimes there was a standard that was specific to

the state. He stressed that it was necessary to protect the water in the state.

Co-Chair Stedman felt that determining dozens of people should result in watching the employment across all agencies. He did not know whether the assumption of the program was the best use of funds in the current financial climate of the state.

[9:49:57 AM](#)

Co-Chair Hoffman stated that he had not heard concerns about the water quality issue that Mr. Bates had alluded to, from either the processing plants or the hatcheries. He stressed that he had heard from the industry that the state was implementing policies that were much stricter than the federal requirements, which could cause additional financial burdens that could result in decreasing Alaskan jobs.

Mr. Bates replied that the department could do no more or less than the legislature provided authority. He stated that the implementation was created with the spirit and intent of the "sideboards" that had been set up for water quality, and felt that those standards were absolutely legal. He remarked that the hatchery permit was currently on administrative extension because the issues had not seen a resolution. He did not anticipate that those issues would be resolved in the short term. He remarked that a path forward was needed that was as noninvasive and non-impactful as possible.

[9:55:25 AM](#)

Senator Bishop surmised that this was one of the few federal programs where the state had primacy where federal dollars did not follow.

Mr. Bates agreed.

Senator Bishop wondered whether federal dollars offset the cost of 401 and 402 permitting.

Mr. Bates replied that the state received 402 funding support.

Senator Bishop wondered whether there was an active seeking of federal dollars for the 404 permitting.

Mr. Bates replied in the affirmative.

Senator Bishop felt that there was a way to "unwind" primacy if the state were to assume primacy.

Mr. Bates replied in the affirmative.

Senator Kiehl queried the safeguard if the program were to be vetoed in the budget.

Mr. Bates replied that DEC would continue to fund the program as needed, and remarked that there were other avenues of funding that could offset the need for general fund.

[10:02:28 AM](#)

Mr. Bates discussed slide 12 again.

Co-Chair Hoffman queried the outcome of the Pebble Mine if the state had assumed 404 primacy.

Mr. Bates replied that the authority the EPA used for the Pebble Mine, which was 404 C, was unaffected by the state's assumption of the program.

[10:07:17 AM](#)

AT EASE

[10:07:58 AM](#)

RECONVENED

[10:08:04 AM](#)

Senator Bishop queried the audit schedule, and whether the federal government had to follow up on a permit for authorization.

Mr. Bates deferred to Ms. Pack, but explained that EPA retained oversight authority on Alaska's permitting.

Senator Bishop stated he is satisfied with the response.

[10:11:40 AM](#)

Mr. Bates looked at slide 14, "Next Steps to Assumption":

1. Obtain funding and hire staff
2. Prepare application to EPA, submit early 2025
3. Program approval mid-late 2025

Senator Kiehl asked for clarification of the compensatory mitigation.

Mr. Bates replied that compensatory mitigation was a concept that was imbedded in the Clean Water Act, so actions had to go through a sequencing process. He stated that the federal government was choosing to take an easier path.

[10:16:19 AM](#)

AT EASE

[10:16:54 AM](#)

RECONVENED

#sb25

SENATE BILL NO. 25

"An Act relating to inactive state accounts and funds; relating to the curriculum improvement and best practices fund; relating to the fuel emergency fund and fuel emergency grants; relating to the special Alaska Historical Commission receipts account; relating to the rural electrification revolving loan fund and loans from the fund; relating to the Southeast energy fund and grants from the fund; and relating to the Exxon Valdez oil spill unincorporated rural community grant fund and grants from the fund."

[10:17:33 AM](#)

Co-Chair Stedman MOVED to ADOPT the committee substitute for SB 25, Work Draft 33-LS0237\B (Marx, 3/16/23).

Co-Chair Olson OBJECTED for discussion.

[10:17:47 AM](#)

KEN ALPER, STAFF, SENATOR DONNY OLSON, explained the committee substitute.

Co-Chair Olson REMOVED his objection. There being NO OBJECTION, the proposed committee substitute was ADOPTED.

Co-Chair Olson noted the zero fiscal note.

Co-Chair Stedman MOVED to REPORT SB 25 out of committee with individual recommendations and attached fiscal note. There being NO OBJECTION, it was so ordered.

CSSB 25(FIN) was REPORTED out of committee with two "no recommendations" and five "do pass" recommendations and with one new zero fiscal note from the Legislature.

[10:19:38 AM](#)

AT EASE

[10:20:00 AM](#)

RECONVENED

#sb81

SENATE BILL NO. 81

"An Act relating to the office of victims' rights; and providing for an effective date."

[10:20:43 AM](#)

KEN ALPER, STAFF, SENATOR DONNY OLSON, explained the fiscal note. He stated that the attorneys in the office of victims' rights would receive the same 20 percent raise of all other state attorneys. He stated that there should be a rejection of the increment in the budget, so there was not duplicate funding.

Co-Chair Stedman MOVED to REPORT SB 81 out of committee with individual recommendations and attached fiscal impact note. There being NO OBJECTION, it was so ordered.

SB 81 was REPORTED out of committee with two "no recommendations" and five "do pass" recommendations and with one new fiscal note from the Legislature.

[10:21:34 AM](#)

AT EASE

[10:22:06 AM](#)

RECONVENED

Co-Chair Olson discussed committee business.

#

ADJOURNMENT

The meeting was adjourned at 10:22 a.m.