

ALASKA STATE LEGISLATURE
SENATE RESOURCES STANDING COMMITTEE

May 3, 2023

3:34 p.m.

MEMBERS PRESENT

Senator Click Bishop, Co-Chair
Senator Cathy Giessel, Co-Chair
Senator Bill Wielechowski, Vice Chair
Senator Scott Kawasaki
Senator James Kaufman
Senator Forrest Dunbar
Senator Matt Claman

MEMBERS ABSENT

All members present

COMMITTEE CALENDAR

SENATE BILL NO. 48

"An Act authorizing the Department of Natural Resources to lease land for carbon management purposes; establishing a carbon offset program for state land; authorizing the sale of carbon offset credits; and providing for an effective date."

- MOVED CSSB 48(RES) OUT OF COMMITTEE

SENATE BILL NO. 139

"An Act relating to trapping cabins on state land; and relating to trapping cabin permit fees."

- BILL HEARING CANCELED

PREVIOUS COMMITTEE ACTION

BILL: SB 48

SHORT TITLE: CARBON OFFSET PROGRAM ON STATE LAND

SPONSOR(S): RULES BY REQUEST OF THE GOVERNOR

| | | |
|----------|-----|---------------------------------|
| 01/27/23 | (S) | READ THE FIRST TIME - REFERRALS |
| 01/27/23 | (S) | RES, FIN |
| 02/24/23 | (S) | RES AT 3:30 PM BUTROVICH 205 |
| 02/24/23 | (S) | Heard & Held |
| 02/24/23 | (S) | MINUTE(RES) |

04/21/23 (S) RES AT 3:30 PM BUTROVICH 205
04/21/23 (S) Heard & Held
04/21/23 (S) MINUTE (RES)
04/26/23 (S) RES AT 3:30 PM BUTROVICH 205
04/26/23 (S) -- MEETING CANCELED --
04/28/23 (S) RES AT 3:30 PM BUTROVICH 205
04/28/23 (S) Heard & Held
04/28/23 (S) MINUTE (RES)
05/03/23 (S) RES AT 3:30 PM BUTROVICH 205

WITNESS REGISTER

RENA MILLER, Special Assistant to the Commissioner
Department of Natural Resources
Anchorage, Alaska

POSITION STATEMENT: Provided the department's perspective of amendments to SB 48.

HELGE ENG, State Forester and Director
Division of Forestry and Fire Protection
Department of Natural Resources (DNR)
Anchorage, Alaska

POSITION STATEMENT: Answered questions during the amendment process for SB 48.

JEANNE PIGORS, Northern Regional Lands Manager
Division of Mining, Land and Water
Department of Natural Resources (DNR)
Fairbanks, Alaska

POSITION STATEMENT: Provided information during the amendment process for SB 48.

CHRIS ORMAN, Assistant Attorney General
Civil Division
Natural Resources Section
Department of Law
Juneau, Alaska

POSITION STATEMENT: Provided information and answered questions during the amendment process for SB 48.

ACTION NARRATIVE

[3:34:43 PM](#)

CO-CHAIR GIESSEL called the Senate Resources Standing Committee meeting to order at 3:34 p.m. Present at the call to order were

Senators Dunbar, Kawasaki, Claman, Kaufman, Wielechowski, Co-Chair Giessel, and Co-Chair Bishop.

SB 48-CARBON OFFSET PROGRAM ON STATE LAND

[3:35:13 PM](#)

CO-CHAIR GIESSEL announced the consideration of SENATE BILL NO. 48 "An Act authorizing the Department of Natural Resources to lease land for carbon management purposes; establishing a carbon offset program for state land; authorizing the sale of carbon offset credits; and providing for an effective date."

She stated that the intention was to continue the consideration of amendments. Amendment 1 was adopted during the 4/28/23 meeting.

[3:36:39 PM](#)

SENATOR CLAMAN moved to adopt Amendment 2, work order 33-GS1372\B.23, to SB 48.

33-GS1372\B.23
Dunmire
4/27/23

AMENDMENT 2

OFFERED IN THE SENATE BY SENATOR CLAMAN
TO: CSSB 48 (RES), Draft Version "B"

Page 4, line 22:

Delete "contracts"

Insert "a contract"

Delete "third parties"

Insert "a third party"

Page 4, line 23, following "38.95.499.":

Insert "Under a contract in which a third party sells, markets, or otherwise facilitates a carbon offset project, the cost to the state of the contract may not exceed 30 percent of the revenue generated by the carbon offset"

project."

CO-CHAIR GIESSEL objected for purposes of discussion.

[3:36:47 PM](#)

SENATOR CLAMAN explained that Amendment 2 was based on discussions primarily with Sealaska about the structure of their carbon credit programs and what percentage the vendor charged to package the entire sale. Amendment 2 proposes a 30 percent limit. This provides flexibility for the department to negotiate fair commissions on these kinds of sales but does not give the department carte blanche to sell the carbon credits at any price.

[3:40:07 PM](#)

CO-CHAIR GIESSEL noted that he spoke about the commission the broker would receive but the amendment talks about a contract. She wondered whether the amendment should also include the term "commission."

SENATOR CLAMAN responded that the goal is to ensure that the department has a realistic picture of the revenue that might be generated. If the Department of Natural Resources (DNR) is doing business on a commission basis, 30 percent is the limit, but if it's a fee for service the department would still need to show that the expected revenue was 70 percent compared to the cost of generating the sale for the carbon credits. The contract is meant to cover all those circumstances.

CO-CHAIR GIESSEL asked Ms. Miller to comment.

[3:42:14 PM](#)

RENA MILLER, Special Assistant to the Commissioner, Department of Natural Resources (DNR), Anchorage, Alaska, stated that the administration opposes Amendment 1. On a policy level the concern is about legislating contractual terms for commercial agreements. On a practical level, the concern is that the 30 percent limit could reduce the ability to pursue smaller niche projects that may require a higher commission from a turnkey developer. The 30 percent cap is also technically unworkable because it's not possible to know the revenue in advance. She said the administration expects to negotiate for a fair commission and for the best interests of the state, but would like the flexibility to do so without statutorily required contractual terms.

[3:44:42 PM](#)

SENATOR KAUFMAN asked if she could speculate on the smaller projects the amendment might preclude.

MS. MILLER described a turnkey developer who assumes the upfront and development costs and is paid through a commission or revenue-sharing agreement based on a percentage of credit sales. The standard is from 20-30 percent and the commissions are on the higher end for the smaller projects. She also pointed out that the amendment doesn't restrict the value to the commission. No contract associated with the project can exceed 30 percent of the revenue generated.

[3:46:38 PM](#)

CO-CHAIR BISHOP asked if she said that if the amendment were to pass, the state could inadvertently lose more revenue on a larger project.

MS. MILLER said she was talking about smaller projects that might have higher development costs relative to the revenue generated. The amendment limits what the state could invest to get a project to happen and that could preclude some smaller projects.

CO-CHAIR BISHOP noted that the bill goes to the Finance Committee next and another amendment that will be offered today might address this matter.

CO-CHAIR GIESSEL commented that the amendment could be written more specifically. She offered language.

MS. MILLER asked if she was saying that if there's a commission-based contract, the commission could not exceed 30 percent.

CO-CHAIR GIESSEL said her concern was that some commissions could be significantly high.

MS. MILLER said that would reduce the technical concerns, but the department still doesn't support putting commercial terms in statute because it limits flexibility.

CO-CHAIR GIESSEL said she understands but shares the concern that the state could be ripe for snake oil salesmen.

[3:49:14 PM](#)

SENATOR KAWASAKI commented on the indeterminate fiscal note and asked why the 30 percent of revenue cap was so off scale.

MS. MILLER said 30 percent might not be completely off scale. The industry standard is 20-30 percent of the revenue generated, but the department hopes to negotiate that down. She added that it's an evolving market and the standard in two or five years is unknown.

SENATOR KAWASAKI said he wanted the people listening from home to know that this legislation potentially will cost because the program has to cover its own costs.

MS. MILLER responded that the potential returns on potential projects are depicted in the crediting tables featured in the Anew report. The fiscal note asks for general fund revenue to cover the cost of standing up the carbon offset program. A turnkey project developer would cover those upfront costs and receive a fee from the revenue that's generated from credit sales, as would the state. In that scenario the project expenses are covered. The cost to the state would be in the program costs that are reflected in the fiscal notes. The fiscal notes reflect indeterminant revenue to the state because there is no certainty when a project will be up and running and generating credits. She noted that the bill includes a fund for the revenue that is expected to eventually supplant the general fund revenue needed for the new positions.

[3:52:23 PM](#)

SENATOR CLAMAN offered his understanding that the department expects to select turnkey project developers in the early years, as opposed to using state resources to stand up a project.

MS. MILLER confirmed that the department expected to rely on the expertise of a turnkey developer for the initial project. This would not require capital from the state.

SENATOR CLAMAN asked if the initial project is expected to be one small project or one that's got the potential to bring \$10-20 million to the state.

MS. MILLER said the size of the initial project remains to be seen. The revenue the project could return to the state will vary depending on the project that's selected.

SENATOR CLAMAN asked how many projects the administration is likely to undertake using the turnkey approach.

MS. MILLER replied that remains to be seen, but one fiscal note asks for capital for legal and commercial expertise to help with that decision.

[3:55:34 PM](#)

SENATOR CLAMAN noted the reference to boreal forest that will have both carbon offset projects and timber sales. He asked what evidence she had anywhere in the world where that had been done.

MS. MILLER deferred to Dr. Eng.

[3:56:32 PM](#)

HELGE ENG, State Forester and Director, Division of Forestry and Fire Protection, Department of Natural Resources (DNR), Anchorage, Alaska, introduced himself.

SENATOR CLAMAN asked if there were any examples in boreal forests where both timber harvest and a carbon credit project were successful in the same forest.

DR. ENG said he believes either Ontario or Quebec or both have such projects and there are also examples of ongoing projects in Scandinavian countries. He offered to follow up with specific information.

SENATOR CLAMAN asked how the forests in those areas compare to State of Alaska forestlands.

DR. ENG said he thinks they're quite similar in terms of ecological makeup and productivity.

[3:58:13 PM](#)

SENATOR KAUFMAN asked Ms. Miller to summarize the processes that would be in place to ensure a good return on investment (ROI) for these projects.

MS. MILLER replied that there's a broad umbrella over the processes and program that starts with the commissioner's oath to act in the state's best interests. Once there's a project concept, there is a feasibility analysis that looks at whether the project complies with existing laws and regulations of the state. A commercial analysis will be run to ensure that project costs are reasonable compared to the anticipated revenue. The department will also put the contracts through a best interest finding (BIF) that is an extensive review of factors including potential impacts to the state and local economy. The preliminary BIF has to be publicized and given time for public

comments. She said that preliminary finding can be revised in accordance with those comments and concerns. There will also be a regular dialog with the legislature throughout the entire process.

CO-CHAIR GIESSEL asked Senator Claman to clarify his thoughts on Amendment 1. She reiterated that she would be more receptive if the amendment directly addressed the commission that the contractor would levy.

[4:02:08 PM](#)

SENATOR CLAMAN said he would be receptive to modifying the amendment to apply only on commission-based contracts.

CO-CHAIR GIESSEL asked if he had language to suggest. Upon request, she restated the language she previously suggested.

Under a contract with a third party who facilitates a carbon offset project, the commission levied by the contractor may not exceed 30 percent of the revenue generated by the carbon offset project.

CO-CHAIR BISHOP asked Senator Claman if he would consider withdrawing the amendment so it could be reworded and offered in the Finance Committee.

[4:04:06 PM](#)

SENATOR CLAMAN said he'd like to roll the amendment to the bottom of the amendments.

[4:04:20 PM](#)

CO-CHAIR GIESSEL set Amendment 2 aside.

[4:04:28 PM](#)

CO-CHAIR GIESSEL requested a motion for Amendment 3.

[4:04:30 PM](#)

SENATOR WIELECHOWSKI moved to adopt Amendment 3, work order 33-GS1372\B.11, to SB 48.

33-GS1372\B.11
Dunmire
4/27/23

AMENDMENT 3

Page 4, following line 6:

Insert a new subsection to read:

"(i) By February 1 of each year, the commissioner shall prepare a report on the lease agreements entered into under this section, transmit the report to the senate secretary and the chief clerk of the house of representatives, and notify the legislature that the report is available. The report must contain the following information:

(1) the number of total leases entered into each fiscal year from the fiscal year ending June 30, 2024, until the present;

(2) a complete list of lease information for each ongoing lease that includes

(A) a general description of the location of the lease;

(B) the date the lease was executed;

(C) the identity of each person on the lease;

(D) a summary of the underlying carbon management purpose;

(E) the current status of the leased land with regard to the carbon management purpose;

(F) the amount of carbon offset credits generated and sold under the lease cumulatively and during the current fiscal year;

(G) a summary of the compensation agreed on for the lease and an explanation of how the amount was determined; and

(H) the identity of each individual having an ownership interest in an entity on the lease;

(3) a complete list of leases that expired or were terminated during the preceding or current fiscal year and the reason the lease expired or was terminated; and

(4) a description of the cumulative revenue received by the state from leases, the revenue received by the state from leases during the preceding fiscal year, and the anticipated revenue the state will receive from leases in the current fiscal year."

Reletter the following subsection accordingly.

Page 6, following line 13:

Insert a new section to read:

"Sec. 38.95.440. Annual report. By February 1 of each year, the commissioner shall prepare a report on the carbon offset program established in AS 38.95.400 - 38.95.499, transmit the report to the senate secretary and the chief clerk of the house of representatives, and notify the legislature that the report is available. The report must contain the following information:

(1) a list of all carbon offset projects that are generating or eligible to generate carbon offset credits, or that are in development, that includes

(A) a general description of each project location;

(B) the date a contract for a project was executed and the duration of the project;

(C) the identity of each person who contracted with the state for a project;

(D) a summary of each carbon offset project;

(E) the status of each carbon offset project;

(F) the amount of carbon offset credits generated and sold cumulatively and anticipated during the current fiscal year for each carbon offset project;

(G) for a project that is in development but is not yet generating carbon offset credits, the anticipated timeline for when the project is expected to generate credits;

(H) a summary of the monetary compensation agreed on for a contract or project and an explanation of how the amount was determined; and

(I) the identity of each individual having an ownership interest in an entity that has contracted with the state for a project;

(2) a complete list of projects that expired or were terminated during the preceding or

current fiscal year and the reason the project expired or was terminated;

(3) a description of revenue generated to the carbon offset revenue fund (AS 38.95.430) cumulatively over the life of the fund, during the preceding fiscal year, and the anticipated revenue that will be generated to the fund in the current fiscal year; and

(4) a list of all other individuals or entities with an ongoing contract with the state under AS 38.95.400 - 38.95.499 that includes, for each contract, the term length of the contract, the compensation agreed on under the contract, and a summary of the service or product provided under the contract."

CO-CHAIR GIESSEL objected for purposes of discussion.

SENATOR WIELECHOWSKI explained that Amendment 3 requires the department to issue annual reports on 1) the state's leasing of land for carbon management purposes and 2) contracted carbon offset projects that are intended to produce carbon credits. Page 1, lines 11-22 of the amendment list what the reports would require. He said this is a transparency amendment and his understanding is that the department supports the language.

[4:05:18 PM](#)

MS. MILLER stated that Amendment 3 will take significant staff time but the department is prepared to comply to have such ongoing accountability and transparency.

[4:05:38 PM](#)

SENATOR KAUFMAN asked, in the interest of efficiency, whether the department could combine the two annual reports since the February 1 report dates are the same.

SENATOR WIELECHOWSKI said he didn't know that it would create less work, but he was willing to work on that idea with the Finance Committee.

SENATOR KAUFMAN stated support for the amendment.

[4:07:11 PM](#)

CO-CHAIR GIESSEL removed her objection; finding no further objection, Amendment 3, B.11, was adopted.

CO-CHAIR GIESSEL asked for a motion to adopt Amendment 4, B.12.

4:07:40 PM

SENATOR WIELECHOWSKI moved to adopt Amendment 4, work order 33-GS1372\B.12, to SB 48.

33-GS1372\B.12
Dunmire
4/27/23

AMENDMENT 4

OFFERED IN THE SENATE BY SENATOR WIELECHOWSKI
TO: CSSB 48 (RES), Draft Version "B"

Page 1, line 5, following "**forest**":

Insert "**relating to oil and gas lease expenditures**;"

Page 9, following line 16:

Insert a new bill section to read:

"* **Sec. 14.** AS 43.55.165(e) is amended to read:

(e) For purposes of this section, lease expenditures do not include

(1) depreciation, depletion, or amortization;

(2) oil or gas royalty payments, production payments, lease profit shares, or other payments or distributions of a share of oil or gas production, profit, or revenue, except that a producer's lease expenditures applicable to oil and gas produced from a lease issued under AS 38.05.180(f)(3)(B), (D), or (E) include the share of net profit paid to the state under that lease;

(3) taxes based on or measured by net income;

(4) interest or other financing charges or costs of raising equity or debt capital;

(5) acquisition costs for a lease or property or exploration license;

(6) costs arising from fraud, willful misconduct, gross negligence, violation of law, or failure to comply with an obligation under a lease, permit, or license issued by the state or federal government;

(7) fines or penalties imposed by law;

(8) costs of arbitration, litigation, or other dispute resolution activities that involve the state or concern the rights or obligations among owners of interests in, or rights to production from, one or more leases or properties or a unit;

(9) costs incurred in organizing a partnership, joint venture, or other business entity or arrangement;

(10) amounts paid to indemnify the state; the exclusion provided by this paragraph does not apply to the costs of obtaining insurance or a surety bond from a third-party insurer or surety;

(11) surcharges levied under AS 43.55.201 or 43.55.300;

(12) an expenditure otherwise deductible under (b) of this section that is a result of an internal transfer, a transaction with an affiliate, or a transaction between related parties, or is otherwise not an arm's length transaction, unless the producer establishes to the satisfaction of the department that the amount of the expenditure does not exceed the fair market value of the expenditure;

(13) an expenditure incurred to purchase an interest in any corporation, partnership, limited liability company, business trust, or any other business entity, whether or not the transaction is treated as an asset sale for federal income tax purposes;

(14) a tax levied under AS 43.55.011 or 43.55.014;

(15) costs incurred for dismantlement, removal, surrender, or abandonment of a facility, pipeline, well pad, platform, or other structure, or for the restoration of a lease, field, unit, area, tract of land, body of water, or right-of-way in conjunction with dismantlement, removal, surrender, or abandonment; a cost is not excluded under this paragraph if the dismantlement, removal, surrender, or abandonment for which the cost is incurred is undertaken for the purpose of replacing, renovating, or improving the facility, pipeline, well pad, platform, or other structure;

(16) costs incurred for containment, control, cleanup, or removal in connection with

any unpermitted release of oil or a hazardous substance and any liability for damages imposed on the producer or explorer for that unpermitted release; this paragraph does not apply to the cost of developing and maintaining an oil discharge prevention and contingency plan under AS 46.04.030;

(17) costs incurred to satisfy a work commitment under an exploration license under AS 38.05.132;

(18) that portion of expenditures, that would otherwise be qualified capital expenditures, as defined in AS 43.55.023, incurred during a calendar year that are less than the product of \$0.30 multiplied by the total taxable production from each lease or property, in BTU equivalent barrels, during that calendar year, except that, when a portion of a calendar year is subject to this provision, the expenditures and volumes shall be prorated within that calendar year;

(19) costs incurred for repair, replacement, or deferred maintenance of a facility, a pipeline, a structure, or equipment, other than a well, that results in or is undertaken in response to a failure, problem, or event that results in an unscheduled interruption of, or reduction in the rate of, oil or gas production; or costs incurred for repair, replacement, or deferred maintenance of a facility, a pipeline, a structure, or equipment, other than a well, that is undertaken in response to, or is otherwise associated with, an unpermitted release of a hazardous substance or of gas; however, costs under this paragraph that would otherwise constitute lease expenditures under (a) and (b) of this section may be treated as lease expenditures if the department determines that the repair or replacement is solely necessitated by an act of war, by an unanticipated grave natural disaster or other natural phenomenon of an exceptional, inevitable, and irresistible character, the effects of which could not have been prevented or avoided by the exercise of due care or foresight, or by an intentional or negligent act or omission of a third party, other than a party or its agents in

privity of contract with, or employed by, the producer or an operator acting for the producer, but only if the producer or operator, as applicable, exercised due care in operating and maintaining the facility, pipeline, structure, or equipment, and took reasonable precautions against the act or omission of the third party and against the consequences of the act or omission; in this paragraph,

(A) "costs incurred for repair, replacement, or deferred maintenance of a facility, a pipeline, a structure, or equipment" includes costs to dismantle and remove the facility, pipeline, structure, or equipment that is being replaced;

(B) "hazardous substance" has the meaning given in AS 46.03.826;

(C) "replacement" includes renovation or improvement;

(20) costs incurred to construct, acquire, or operate a refinery or crude oil topping plant, regardless of whether the products of the refinery or topping plant are used in oil or gas exploration, development, or production operations; however, if a producer owns a refinery or crude oil topping plant that is located on or near the premises of the producer's lease or property in the state and that processes the producer's oil produced from that lease or property into a product that the producer uses in the operation of the lease or property in drilling for or producing oil or gas, the producer's lease expenditures include the amount calculated by subtracting from the fair market value of the product used the prevailing value, as determined under AS 43.55.020(f), of the oil that is processed;

(21) costs of lobbying, public relations, public relations advertising, or policy advocacy;

(22) costs incurred as part of a capital expenditure or other action taken for a carbon management purpose under AS 38.05.081 or a carbon offset project under AS 38.95.400 - 38.95.499."

Renumber the following bill section accordingly.

[4:07:42 PM](#)

CO-CHAIR GIESSEL objected for purposes of discussion.

SENATOR WIELECHOWSKI explained that Amendment 4 addresses carbon management and offset projects that occur on land that is also leased for oil and gas production. If just one company is involved in both projects, the amendment ensures that the activities for carbon management or offset purposes are not counted as lease expenditures and potentially deducted from the company's production tax value, thereby reducing the taxes owed to the state. His understanding is that the department does not oppose Amendment 4.

[4:08:40 PM](#)

MS. MILLER stated that Amendment 4 is a policy call and neither DNR nor the Department of Revenue (DOR) object.

[4:08:51 PM](#)

CO-CHAIR GIESSEL removed her objection; finding no further objection, Amendment 4, B.12, was adopted.

CO-CHAIR GIESSEL solicited a motion for Amendment 5, B.20.

[4:09:15 PM](#)

SENATOR WIELECHOWSKI moved to adopt Amendment 5, work order 33-GS1372\B.20, to SB 48.

33-GS1372\B.20
Dunmire
5/1/23

AMENDMENT 5

OFFERED IN THE SENATE BY SENATOR WIELECHOWSKI
TO: CSSB 48(RES), Draft Version "B"

Page 3, lines 24 - 27:

Delete all material and insert:

"(d) A lease under this section may not exceed a period of 55 years. The lease must contain terms and conditions for work requirements, including benchmarks, and must require the lessee to make progress toward development or continual maintenance of the leased

land sufficient to meet the carbon management purpose of the lease. During the term of the lease, the commissioner shall terminate the lease if

(1) the commissioner determines that the land is not being used for the carbon management purpose approved by the commissioner; or

(2) the lessee fails to meet the requirements of the lease and, after being given a reasonable opportunity by the commissioner to comply with the lease, the commissioner determines that the lessee has still failed to comply with the lease."

[4:09:18 PM](#)

CO-CHAIR GIESSEL objected for purposes of discussion.

SENATOR WIELECHOWSKI explained that Amendment 5 tightens an existing provision in the bill. It ensures that a lessee for a proposed carbon management project will not sit on the lease but rather will utilize the land timely as prescribed in the lease. The amendment provides benchmarks that must be met or the lease may be terminated. His understanding is that the department would like a one-word change in the amendment.

[4:10:18 PM](#)

MS. MILLER stated that the department had no objection to Amendment 5, but would appreciate one small change. On page 1, line 4 replace the term "work" with the term "performance" to reflect that the benchmarks would be performance requirements rather than work requirements. She noted that staff in the Division of Mining, Land, and Water suggested the change.

CO-CHAIR GIESSEL asked her to distinguish the terms.

MS. MILLER answered that the term "performance requirements" is used in other leasing contracts, whereas "work requirements" has the connotation of a hands-on activity that produces an immediate result. She described planting a tree or building a road as examples of work requirements. She said performance encompasses a broader range of activities that don't have a tangible relationship to work.

[4:11:29 PM](#)

SENATOR KAUFMAN mentioned that key performance indicator (KPI) is an industry standard for measuring the value produced by work.

[4:11:50 PM](#)

SENATOR WIELECHOWSKI support the suggestion to replace the term "work" with "performance."

[4:12:18 PM](#)

SENATOR WIELECHOWSKI stated support for the suggested change.

SENATOR WIELECHOWSKI moved conceptual amendment 1 to Amendment 5, B.20. Replace the term "work" with the term "performance" on page 1, line 4.

[4:12:33 PM](#)

CO-CHAIR GIESSEL found no objection and the amendment to Amendment 5 was adopted. Amendment 5, as amended, was before the committee.

CO-CHAIR GIESSEL removed her objection; finding no further objection, Amendment 5, B.20 as amended, was adopted.

CO-CHAIR GIESSEL solicited a motion to adopt Amendment 6, B.19.

[4:13:17 PM](#)

SENATOR WIELECHOWSKI moved to adopt Amendment 6, work order 33-GS1372\B.19, to SB 48.

33-GS1372\B.19
Dunmire
5/1/23

AMENDMENT 6

OFFERED IN THE SENATE BY SENATOR WIELECHOWSKI
TO: CSSB 48(RES), Draft Version "B"

Page 1, line 10, following "38.95.499":

Insert ", unless the Department of Natural Resources elects to use this chapter and announces at the time it solicits a contract that this chapter will apply to the contract"

CO-CHAIR GIESSEL objected for purposes of discussion.

SENATOR WIELECHOWSKI stated that the bill largely exempts DNR from the state procurement code and he's always reticent to do that. This and the next several amendments address the concerns that the bill provides little notice to the public, little notice and opportunity for public comment, and little transparency which allows the potential for sole source contracts that are worth a lot of money. The amendments will address the concerns to protect the people while recognizing that the department needs some flexibility.

Amendment 6 gives DNR the option to announce that it is using the procurement code when it solicits a contract. His understanding is that the department does not object to the amendment.

[4:15:30 PM](#)

MS. MILLER stated that the department believes Amendment 6 is technically unnecessary, but has no objection.

[4:15:49 PM](#)

CO-CHAIR GIESSEL removed her objection; finding no further objection, Amendment 6, B.19, was adopted.

CO-CHAIR GIESSEL solicited a motion for Amendment 7, B.22.

[4:16:11 PM](#)

SENATOR WIELECHOWSKI moved to adopt Amendment 7, work order 33-GS1372\B.22, to SB 48.

33-GS1372\B.22
Dunmire
5/2/23

AMENDMENT 7

OFFERED IN THE SENATE BY SENATOR WIELECHOWSKI
TO: CSSB 48(RES), Draft Version "B"

Page 3, following line 12:

Insert a new subsection to read:

"(c) Before awarding a lease for land under this section, the director shall issue a preliminary written finding that a proposed lease is in the state's best interests. The department

shall then provide at least 30 days' public notice for public comment and to allow other interested parties an opportunity to submit an application to lease the same land. The notice must contain sufficient information in commonly understood terms to inform the public of the nature of the action and the opportunity for the public to comment on it."

Reletter the following subsections accordingly.

[4:16:13 PM](#)

CO-CHAIR GIESSEL objected for purposes of discussion.

SENATOR WIELECHOWSKI stated that Amendment 7 addresses the concern that the bill exempts DNR from the public notice requirement and the opportunity to source competitors for a project even though current law for leases has those requirements. He said he would be gravely concerned if the bill were to pass without reining this in. He understands that the department does not support the amendment, but has committed to work on alternative language to address this issue. He requested Ms. Miller articulate the department's position on the record.

[4:17:26 PM](#)

MS. MILLER stated that the department opposes Amendment 7 as drafted but would like to work on the concept of requiring notice on receipt of an application to lease state land for a carbon purpose. She clarified that the bill provides a process for evaluating competing lease applications and it has the requirement for an interest finding in awarding a lease. While it's not explicitly stated in the bill, she said it's in the statutes. She deferred to Jeanne Pigors to discuss that further.

CO-CHAIR GIESSEL called on Jeanne Pigors.

[4:18:42 PM](#)

JEANNE PIGORS, Regional Land Section Chief, Northern Region Office, Division of Mining Land and Water, Department of Natural Resources (DNR), Fairbanks, Alaska, clarified that the committee wanted to hear about the best interest finding and the processes used that provide public notice prior to the issuance of a lease.

MS. PIGORS stated that the best interest finding process currently used for leases is what would be used for carbon projects the bill envisions. The process before a proposed lease

is issued involves an initial review of an application, close coordination with the applicant, and outreach to fellow agencies to identify and consider other uses or resources. Consideration is also given to other multiple uses of the area, other potential resources that might be developed, and potential compensation methods while working through a lease. These considerations are pulled together into the preliminary best interest finding. The preliminary decision lines out the area plan information, the land use, the pros and cons of the project, the potential impacts, and any alternatives that were considered. This decision is published for the public to comment. The existing statute provides guidance on how public notice is conducted to ensure it is comprehensive and reaches the right audience. A minimum of 30 days public notice is required for a best interest finding. The department uses those comments to reevaluate and reconsider aspects of the project. The final finding and decision incorporates the comments and responses from the department. Thereafter the department's final administrative decision is made before the lease is issued. She clarified that once a final finding is issued, there is a statutorily required and regulation driven process for appeal that is available to anybody who disagrees with the final results of a final finding.

MS. PIGORS deferred to Ms. Miller to discuss the language the department was working on. She noted that the current lease statute also provides a process prior to the preliminary decision to solicit interest from competitors, which could result in an auction bid.

[4:24:38 PM](#)

SENATOR KAWASAKI mentioned trapping cabins and asked her to discuss the length of typical state leases and how the department arrived at a 55-year lease for carbon projects.

MS. PIGORS said many of the division's leases are issued for 25-30 years, although 55-years is consistent with current leases. Examples of the longer term leases include industrial site leases, a staging area in Dead Horse, or a shop lease. Leases that are 25-30 years may be based on the anticipated life of the infrastructure. Carbon management leases fall within the parameters of other leases.

[4:27:16 PM](#)

SENATOR WIELECHOWSKI said he appreciates the testimony on the record. He stated that he was withdrawing Amendment 7 because he believes he can arrive at a compromise with the department.

[4:27:42 PM](#)

CO-CHAIR GIESSEL stated that Amendment 7, B.22, has been withdrawn.

She solicited a motion for Amendment 8, B.21.

[4:27:52 PM](#)

SENATOR WIELECHOWSKI moved to adopt Amendment 8, work order 33-GS1372\B.21, to SB 48.

33-GS1372\B.21
Dunmire
5/1/23

AMENDMENT 8

OFFERED IN THE SENATE BY SENATOR WIELECHOWSKI
TO: CSSB 48(RES), Draft Version "B"

Page 1, line 10, following "38.95.499":

Insert ", except contracts for
(A) goods or supplies; or
(B) services where the value of the
contract exceeds \$500,000"

CO-CHAIR GIESSEL objected for purposes of discussion.

SENATOR WIELECHOWSKI stated his intention to withdraw Amendment 8. He continued that he wanted the record to reflect his concern about exempting the department from the procurement code. The amendment seeks to clarify that a procurement code exemption is not needed for goods and supplies or services when the value of the contract is more than \$0.5 million. His understanding was that the department intended to continue to work with his office to tighten the language.

[4:29:00 PM](#)

MS. MILLER confirmed that the department was happy to continue to work with Senator Wielechowski on the concept of requiring procurement code processes for goods and supplies.

[4:29:16 PM](#)

SENATOR WIELECHOWSKI withdrew Amendment 8.

[4:29:27 PM](#)

CO-CHAIR GIESSEL stated that Amendment 8, B.21, has been withdrawn.

CO-CHAIR GIESSEL solicited a motion for Amendment 9, B.16.

[4:29:31 PM](#)

SENATOR WIELECHOWSKI moved to adopt Amendment 9, work order 33-GS1372\B.16, to SB 48.

33-GS1372\B.16
Dunmire
5/1/23

AMENDMENT 9

OFFERED IN THE SENATE BY SENATOR WIELECHOWSKI
TO: CSSB 48 (RES), Draft Version "B"

Page 6, following line 13:

Insert a new section to read:

"Sec. 38.95.440. Notice, solicitation, and findings. (a) Before the department enters into the first contract for a carbon offset project, the department shall publish a broad solicitation of interest requesting proposals to undertake carbon offset projects on state land. The department shall publish a similar announcement periodically when the department determines that market conditions or other factors suggest that a new solicitation would be in the best interest of the state.

(b) Before contracting with a third party for a carbon offset project or in anticipation of a carbon offset project, the department shall make a preliminary written finding that the contract is in the best interest of the state and provide not less than 30 days' public notice

(1) for public comment; and

(2) to allow other interested parties an opportunity to submit competing proposals.

(c) Public notice under (b) of this section must include a description of the land area proposed to be explored or developed for a carbon offset project.

(d) The department shall review all competing proposals received under this section and provide written findings explaining which proposal, if any, will be awarded the contract.

(e) The written findings required under (d) of this section must, for each proposal, address the factors listed in AS 38.95.410, the costs to the state, the revenue that the proposal is expected to generate for the state, and an analysis of proposed consideration or other negotiated financial terms made for the contract.

(f) If the department determines that more than one proposal is in the best interest of the state, the department may accept more than one proposal.

(g) Written findings made by the department under this section are public records.

(h) When the department decides to accept a proposal, the department shall issue a public notice of intent to award the contract and make available for public inspection all submitted proposals and written findings made by the department. A person whose proposal was rejected may appeal to the commissioner within 30 days after receiving notice that the department rejected the proposal."

[4:29:32 PM](#)

CO-CHAIR GIESSEL objected for purposes of discussion.

SENATOR WIELECHOWSKI explained that Amendment 9 is an attempt to ensure that the public receives notice of a potential carbon offset project contract and that there is an opportunity for competing bids. The amendment proposes a requirement for DNR to present preliminary written findings that a proposed contract is in the best interest of the state. There would be public notice and other interested parties would have the opportunity to make an offer. Subsection (e) lists things the finding must include. Multiple contracts could be entered into if that was in the state's best interest. This amendment, too, recognizes the problems associated with sole source contracts. He said he knows the department does not support Amendment 9, but he believes it should be included in the bill. He acknowledged that modifications could be made in the Finance Committee.

[4:31:27 PM](#)

MS. MILLER stated that the department acknowledges that certain attributes of the procurement code are important, but they don't support the amendment because of due process concerns.

[4:33:34 PM](#)

SENATOR KAUFMAN read subsection (f) on page 2, lines 2-3 of the amendment. He asked how accepting more than one proposal would work and why that provision was included.

SENATOR WIELECHOWSKI said the idea is to rein in sole-source contracting and generate competition and transparency. He posed a hypothetical example of several companies having contracts in the Haines State Forest. His understanding was the department didn't oppose that part of the amendment.

[4:35:37 PM](#)

MS. MILLER agreed that the department didn't object to subsection (f) regarding more than one proposal in a particular area.

[4:36:02 PM](#)

SENATOR DUNBAR asked whether the bid process could be iterative such that the company who submits the first bid would be given the opportunity to adjust their bid based on the competition.

MS. MILLER asked if he was talking about the process under the amendment or the bill as drafted.

SENATOR DUNBAR said both.

MS. MILLER said she didn't see the opportunity to adjust the bid, but she'd defer to Chris Orman.

[4:38:00 PM](#)

CHRIS ORMAN, Assistant Attorney General, Civil Division, Natural Resources Section, Department of Law, Juneau, Alaska, agreed with Ms. Miller that the current language didn't allow a second bite at the apple. He said something similar regarding the solicitation process is in AS 38.05.070(d). The concern is that as currently drafted, a proposal that somebody presented becomes public and there is competition based on that one proposal.

SENATOR DUNBAR said it wasn't hard to imagine some well-connected person in the future submitting a bid and not being subjected to competition. If someone wants to be proactive in bringing a proposal forward, he said it wouldn't be odd for that

to set off a chain of events where others at least explore the idea of bidding.

[4:41:24 PM](#)

MS. MILLER said the department supports the concept of soliciting competitive interest. The concern is that Amendment 9 puts the person with the initial offer or expression of interest at a competitive disadvantage because their offer is the only one on display. The department feels it's important to protect all persons.

[4:42:11 PM](#)

CO-CHAIR BISHOP summarized the department's concern is that the first person did their due diligence and subsequent people can take advantage of that and do little, but potentially submit the winning bid.

MS. MILLER agreed that was an example of the concern. She also restated the other things the department does when it considers a bid.

[4:43:22 PM](#)

CO-CHAIR BISHOP said he understood what Senator Wielechowski was trying to do. He suggested the idea of a firewall where anyone who looks at a bid would have to sign a confidentiality agreement.

[4:43:52 PM](#)

SENATOR WIELECHOWSKI said he appreciated the discussion and would like to continue to work with the department to find language they could agree upon.

[4:44:19 PM](#)

MS. MILLER said the department would appreciate that opportunity.

[4:44:27 PM](#)

SENATOR WIELECHOWSKI withdrew Amendment 9.

CO-CHAIR GIESSEL stated that Amendment 9, B.16, has been withdrawn.

CO-CHAIR GIESSEL solicited a motion for Amendment 10, B.15.

[4:44:38 PM](#)

SENATOR WIELECHOWSKI moved to adopt Amendment 10, work order 33-GS1372\B.15, to SB 48.

AMENDMENT 10

OFFERED IN THE SENATE BY SENATOR WIELECHOWSKI
TO: CSSB 48 (RES), Draft Version "B"

Page 4, line 22:

Delete "The"

Insert "Subject to the provisions of
AS 38.95.440, the"

Page 6, following line 13:

Insert a new section to read:

"Sec. 38.95.440. Legislative approval for contracts over \$1,000,000. (a) If the commissioner intends to enter into a contract under AS 38.95.400(c) that has the potential to exceed \$1,000,000 in costs to one of the parties over the life of the contract, the commissioner shall submit the contract to the legislature for approval. The commissioner shall provide a legislative committee any information that the committee requests during its review of the contract.

(b) A contract submitted under this section

(1) during a regular session may be executed only if the legislature approves the contract by law within 45 days after submission;

(2) when the legislature is not in a regular session may be executed only if the legislature approves the contract by law during the first 45 days of the next regular session or during a special session convened to address the contract, whichever occurs first.

(c) The cost to a party over the life of a contract includes the

(1) value of option provisions;

(2) value of known or reasonably foreseeable contract addenda or additional durational terms or time extensions; and

(3) combined value of two or more contracts that are reasonably related to one another based on contractor, subject matter, or locale."

[4:44:44 PM](#)

CO-CHAIR GIESSEL objected for purposes of discussion.

[4:44:53 PM](#)

SENATOR WIELECHOWSKI stated that Amendment 10 addresses the concern about the lack of oversight and the potential for large no-bid, sole-source contracts. The amendment requires legislative approval for contracts with values in excess of \$1 million.

CO-CHAIR GIESSEL noted that a legal opinion said this amendment would conflict with the separation of powers, but her observation was that it was analogous to the royalty-in-kind contracts that the legislature approves.

[4:46:32 PM](#)

MS. MILLER stated that the department opposes Amendment 10 based on separation of powers and the legislature having authority over contracts the administration enters into. There is an additional concern with the structure of the legislative approval and the potential for the legislature to renegotiate the terms of a contract. It inserts a political process in a commercial arrangement.

[4:47:42 PM](#)

SENATOR DUNBAR commented that the \$1 million threshold would capture many of these contracts. He asked, setting aside the separation of powers concern, if the department might agree to a number higher than \$1 million, which would capture the higher end contracts.

[4:48:51 PM](#)

MS. MILLER said she didn't know that there was a more acceptable number given the department's concerns. She noted that the amendment talks about option provisions and the department was unfamiliar with that term in this context.

[4:49:58 PM](#)

SENATOR KAUFMAN referenced subsection (c)(1) on page 1, line 20-21 and asked if that would be comprehensive to fulfil the purpose.

MS. MILLER responded that there's a question about the meaning of "the cost" when the state isn't expending money for turnkey projects. She also questioned the feasibility of knowing the

monetary values of contract addenda or time extensions in subsection (c)(2).

[4:51:28 PM](#)

SENATOR WIELECHOWSKI stated that he didn't think the amendment violated the separation of powers doctrine because the legislature isn't inserting itself into a contract. The legislature is giving approval of a contract before it's agreed to which is within its purview.

SENATOR WIELECHOWSKI moved conceptual amendment 1 to Amendment 10. On page 1, lines 7 and 9, increase the amount needed for legislative approval of contracts from "over \$1 million" to "over \$10 million."

CO-CHAIR GIESSEL found no objection and conceptual amendment 1 to Amendment 10 was adopted. She asked if there was further discussion on Amendment 10, as amended.

[4:53:10 PM](#)

CO-CHAIR BISHOP said he agrees with Senator Wielechowski that this wasn't a separation of powers issue and he supports Amendment 10, as amended.

SENATOR CLAMAN opined that the increase to \$10 million was reasonable.

[4:54:46 PM](#)

CO-CHAIR GIESSEL removed her objection; finding no further objection, Amendment 10, B.15 as amended, was adopted.

[4:55:08 PM](#)

SENATOR WIELECHOWSKI stated that he was not offering Amendment 11, B.14.

CO-CHAIR GIESSEL stated that Amendment 11, B.14, would not be offered.

CO-CHAIR GIESSEL solicited a motion for Amendment 12, B.1.

[4:55:24 PM](#)

SENATOR WIELECHOWSKI moved to adopt Amendment 12, work order 33-GS1372\B.1, to SB 48.

33-GS1372\B.1
Dunmire
5/1/23

AMENDMENT 12

OFFERED IN THE SENATE BY SENATOR WIELECHOWSKI
TO: CSSB 48 (RES), Draft Version "B"

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: TRANSPARENCY. It is the intent of the legislature that the division of elections, in order to increase transparency and ensure trust in the integrity of the state's vote counting and tabulation process and to allow members of the public to verify the accuracy of ranked-choice tabulations,

(1) in accordance with national best practices for reporting results of ranked-choice voting elections, include preliminary ranked-choice tabulations when releasing preliminary election results; and

(2) periodically throughout the vote counting process post updated cast vote record files that include anonymized records indicating the ranking order of each ballot cast."

Page 1, line 8:

Delete "**Section 1**"

Insert "**Sec. 2**"

Renumber the following bill sections accordingly.

Page 12, following line 8:

Insert new bill sections to read:

"* Sec. 23. AS 15.15.370 is amended to read:

Sec. 15.15.370. Completion of ballot count; certificate. When the count of ballots is completed, and in no event later than the day after the election, the election board shall make a certificate in duplicate of the results. The certificate includes the number of votes cast for each candidate, including, for a candidate in a general election, the number of votes at each ranking [ROUND OF THE RANKED-CHOICE TABULATION PROCESS] under AS 15.15.350, the number of

votes for and against each proposition, yes or no on each question, and any additional information prescribed by the director. The election board shall, immediately upon completion of the certificate or as soon thereafter as the local mail service permits, send in one sealed package to the director one copy of the certificate and the register. In addition, all ballots properly cast shall be mailed to the director in a separate, sealed package. Both packages, in addition to an address on the outside, shall clearly indicate the precinct from which they come. Each board shall, immediately upon completion of the certification and as soon thereafter as the local mail service permits, send the duplicate certificate to the respective election supervisor. The director may authorize election boards in precincts in those areas of the state where distance and weather make mail communication unreliable to forward their election results by telephone or radio. The director may authorize the unofficial totaling of votes on a regional basis by election supervisors, tallying the votes as indicated on duplicate certificates. To ensure adequate protection, the director shall prescribe the manner in which the ballots, registers, and all other election records and materials are thereafter preserved, transferred, and destroyed.

* **Sec. 24.** AS 15.15.370 is amended by adding a new subsection to read:

(b) Each day the director releases unofficial totals of election results for a general election, the director shall also release an updated ranked-choice tabulation."

Renumber the following bill sections accordingly.

Page 24, line 1:
Delete "sec. 36"
Insert "sec. 39"

Page 24, line 2:
Delete "sec. 36"
Insert "sec. 39"

Page 24, line 9:
Delete "Section 47"
Insert "Section 50"

Page 24, line 10:
Delete "sec. 48"
Insert "sec. 51"

[4:55:27 PM](#)

CO-CHAIR GIESSEL objected for purposes of discussion.

SENATOR WIELECHOWSKI stated his intention to discuss Amendment 12 and then withdraw it. It addresses the concern that Vera, the largest carbon registry company in the world, has involved itself in a series of significant legislation related to "green washing." Buyers of weak carbon credits have been the subject of consumer lawsuits and administrators of carbon credit programs potentially could be liable to buyers if their program doesn't meet their requirement. The amendment seeks to prevent a situation that is happening with Vera from happening in Alaska. He requested Co-Chair Giessel call on the administration to discuss how it intends to deal with the issue of carbon leakage.

[4:56:33 PM](#)

MS. MILLER agreed with Senator Wielechowski that Vera is a carbon registry that has been criticized about its involvement in large deforestation projects in equatorial countries where a company shifts their activity to other tract of land it owns. Buyers have questioned the integrity of those emission reductions and credits.

She said the registries that the department is primarily focused on operate largely in North America, and in particular with forestry where leakage is more of a concern than in other nature-based projects. They accommodate for this leakage by requiring 30 percent of the credits generated by the project to be withheld by the registry as a hedge against leakage. That action has been sufficient to satisfy buyer concerns that the credits need to be legitimate and protected against that kind of leakage.

MS. MILLER continued that the department appreciates the sensibility and intent of the amendment, but it has confidence that the registries the department will work with on North American projects will accommodate leakage very well.

[4:58:31 PM](#)

SENATOR WIELECHOWSKI withdrew Amendment 12.

CO-CHAIR GIESSEL stated that Amendment 12, B.1, is withdrawn.

[4:58:38 PM](#)

CO-CHAIR GIESSEL returned attention to Amendment 2, B.23, by Senator Claman.

[4:58:43 PM](#)

SENATOR CLAMAN moved conceptual amendment 1 to Amendment 2.

On lines 8 and 9 of Amendment 2, insert "commission" before "contract" and on line 9 after "project" insert "for a percentage of the revenue generated" so the provision would read:

Under a commission contract in which a third party sells, markets, or otherwise facilitates a carbon offset project for a percentage of the revenue generated, the cost to the state of the commission contract may not exceed 30 percent of the revenue generated by the carbon offset project.

He opined that this would make it clear that the 30 percent would only apply to a commission project.

[4:59:58 PM](#)

CO-CHAIR GIESSEL objected to amendment 1 to Amendment 2 for purposes of discussion.

[5:00:07 PM](#)

CO-CHAIR GIESSEL found no discussion and removed her objection; finding no further objection, amendment 1 to Amendment 2 was adopted.

CO-CHAIR GIESSEL found no further objection and Amendment 2, B.23 as amended, was adopted. She noted there were no further amendments.

[5:00:33 PM](#)

CO-CHAIR GIESSEL solicited a motion.

[5:00:41 PM](#)

CO-CHAIR BISHOP moved to report the CS for SB 48, work order 33-GS1372\B as amended, from committee with individual recommendations, forthcoming updated fiscal note(s), and authorization for Legislative Legal to make technical and conforming changes.

[5:01:8 PM](#)

CO-CHAIR GIESSEL found no objection and CSSB 48 (RES) was reported from the Senate Resources Standing Committee.

5:01:47 PM

There being no further business to come before the committee, Co-Chair Giessel adjourned the Senate Resources Standing Committee meeting at 5:01 p.m.