

**ALASKA STATE LEGISLATURE
SENATE RESOURCES STANDING COMMITTEE**

May 8, 2023

4:02 p.m.

MEMBERS PRESENT

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

MEMBERS ABSENT

Senator James Kaufman

COMMITTEE CALENDAR

SENATE BILL NO. 137

"An Act relating to the refined fuel surcharge; and providing for an effective date."

- HEARD & HELD

COMMITTEE SUBSTITUTE FOR HOUSE BILL NO. 104 (RES) AM

"An Act relating to salvage sales of timber, negotiated timber sales for local manufacture of wood products, and expedited timber sales; and providing for an effective date."

- HEARD & HELD

PREVIOUS COMMITTEE ACTION

BILL: SB 137

SHORT TITLE: REFINED FUEL SURCHARGE

SPONSOR(S): SENATOR(S) GIESSEL

04/24/23	(S)	READ THE FIRST TIME - REFERRALS
04/24/23	(S)	RES, FIN
05/05/23	(S)	RES AT 3:30 PM BUTROVICH 205
05/05/23	(S)	Heard & Held
05/05/23	(S)	MINUTE (RES)
05/08/23	(S)	RES AT 3:30 PM BUTROVICH 205

BILL: HB 104

SHORT TITLE: TIMBER SALE: EXPEDITED/SALVAGE/NEGOTIATED

SPONSOR(S): REPRESENTATIVE(S) CRONK

03/08/23 (H) READ THE FIRST TIME - REFERRALS
03/08/23 (H) RES
03/20/23 (H) RES AT 1:00 PM BARNES 124
03/20/23 (H) Heard & Held
03/20/23 (H) MINUTE(RES)
03/24/23 (H) RES AT 1:00 PM BARNES 124
03/24/23 (H) Heard & Held
03/24/23 (H) MINUTE(RES)
04/03/23 (H) RES AT 1:00 PM BARNES 124
04/03/23 (H) -- MEETING CANCELED --
04/14/23 (H) RES AT 1:00 PM BARNES 124
04/14/23 (H) Moved CSHB 104(RES) Out of Committee
04/14/23 (H) MINUTE(RES)
04/17/23 (H) RES RPT CS(RES) NEW TITLE 4DP 2NR
04/17/23 (H) DP: RAUSCHER, MCCABE, SADDLER, MCKAY
04/17/23 (H) NR: ARMSTRONG, PATKOTAK
04/20/23 (H) TRANSMITTED TO (S)
04/20/23 (H) VERSION: CSHB 104(RES) AM
04/21/23 (S) READ THE FIRST TIME - REFERRALS
04/21/23 (S) RES
04/24/23 (S) RES AT 3:30 PM BUTROVICH 205
04/24/23 (S) Heard & Held
04/24/23 (S) MINUTE(RES)
05/05/23 (S) RES AT 3:30 PM BUTROVICH 205
05/05/23 (S) **Streamed live on AKL.tv**
05/08/23 (S) RES AT 3:30 PM BUTROVICH 205

WITNESS REGISTER

BRANDON SPANOS, Deputy Director

Tax Division

Department of Revenue

Anchorage, Alaska

POSITION STATEMENT: Responded to a question relating to Amendment 1 for SB 137.

REPRESENTATIVE MIKE CRONK, District 36

Alaska State Legislature

Juneau, Alaska

POSITION STATEMENT: Sponsor of HB 104.

DAVE STANCLIFF, Staff

Representative Mike Cronk

Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Provided information and answered questions during the hearing on HB 104.

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

POSITION STATEMENT: Responded to questions during the hearing on HB 104.

ALPHEUS BULLARD, Legislative Counsel
Legal Services
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Responded to questions during the hearing on HB 104.

ACTION NARRATIVE

[4:02:21 PM](#)

CO-CHAIR CLICK BISHOP called the Senate Resources Standing Committee meeting to order at 4:02 p.m. Present at the call to order were Senators Dunbar, Wielechowski, Claman, Co-Chair Giessel, and Co-Chair Bishop. Senator Kawasaki arrived thereafter.

SB 137-REFINED FUEL SURCHARGE

[4:03:11 PM](#)

CO-CHAIR BISHOP announced the consideration of SENATE BILL NO. 137 "An Act relating to the refined fuel surcharge; and providing for an effective date."

He noted that there was an amendment for the committee to consider.

[4:03:26 PM](#)

CO-CHAIR GIESSEL moved to adopt Amendment 1, work order 33-LS0768\B.2, for SB 137.

33-LS0768\B.2
Dunmire
4/26/23

AMENDMENT 1

OFFERED IN THE SENATE

BY SENATOR BISHOP

TO: SB 137

Page 1, line 3:

Delete "AS 43.40.005(a) "

Insert "AS 43.40.005"

Page 1, following line 5:

Insert a new subsection to read:

"(b) The following refined fuels are exempt from the surcharge imposed under

this section:

(1) fuel sold to a federal or state government agency for official use;

(2) fuel consigned to a foreign country [REFINED AND USED

OUTSIDE THE UNITED STATES];

(3) liquefied petroleum gas;

(4) aviation fuel;

(5) fuel sold or transferred between qualified dealers."

CO-CHAIR BISHOP objected for purposes of discussion.

CO-CHAIR GIESSEL explained the genesis for Amendment 1. A US flagged tug and barge company transports fuel to Skagway where it is loaded onto a truck that is owned and operated by a US firm and trucked to the Yukon Territory. The amendment proposes exempting that company from paying the refined fuel surcharge because the fuel is not used in the US.

[4:04:22 PM](#)

CO-CHAIR BISHOP removed his objection. He noted that Brandon Spanos was available to answer questions.

CO-CHAIR GIESSEL asked Mr. Spanos to articulate the potential financial impact of the amendment.

[4:04:57 PM](#)

BRANDON SPANOS, Deputy Director, Tax Division, Department of Revenue, Anchorage, Alaska, stated that he was unable to answer the question because too few taxpayers are affected to be able to aggregate the information. The only available information was confidential.

[4:05:31 PM](#)

SENATOR DUNBAR asked if that means that the fiscal note that the Finance Committee considers won't reflect the impact of the proposed amendment.

MR. SPANOS responded that the division will amend the fiscal note if the amendment passes. It will state that there will be a negative impact on revenue but the amount is indeterminate due to taxpayer confidentiality.

CO-CHAIR BISHOP said the members will see the fiscal note before the bill leaves the committee.

[4:06:15 PM](#)

SENATOR WIELECHOWSKI asked at what level the tax is paid.

MR. SPANOS replied that the tax is assessed on the distributor when the fuel is sold to the retailer.

[4:06:47 PM](#)

CO-CHAIR BISHOP found no further objection and Amendment 1 was adopted.

[4:06:56 PM](#)

CO-CHAIR BISHOP held SB 137 in committee.

HB 104-TIMBER SALE: EXPEDITED/SALVAGE/NEGOTIATED

[4:07:00 PM](#)

CO-CHAIR BISHOP announced the consideration of CS FOR HOUSE BILL NO. 104(RES) am "An Act relating to salvage sales of timber, negotiated timber sales for local manufacture of wood products, and expedited timber sales; and providing for an effective date."

[4:07:25 PM](#)

At ease

[4:07:44 PM](#)

CO-CHAIR BISHOP reconvened the meeting.

[4:07:53 PM](#)

REPRESENTATIVE MIKE CRONK, District 36, Alaska State Legislature, Juneau, Alaska, sponsor of HB 104, introduced himself.

CO-CHAIR BISHOP stated that this was the second hearing of the bill and public was open. After discerning that nobody wished to testify, he closed public testimony on HB 104.

[4:08:14 PM](#)

CO-CHAIR BISHOP closed public testimony on HB 104.

He asked for a brief summary of the section on expedited sales.

[4:08:44 PM](#)

DAVE STANCLIFF, Staff, Representative Mike Cronk, Alaska State Legislature, Juneau, Alaska, responded by articulating the following questions that have been asked with some frequency.

- I. What are the current types of timber sales?
- II. What does HB 104 do?
- III. What is the current salvage sale process?
- IV. How does this bill propose to change the salvage sale process?
- V. Do these changes to the salvage sale allow the commissioner to give "sweetheart deals"?
- VI. Do these changes to the salvage sale process deny the public the right to object to a salvage sale?
- VII. Are expedited timber sales in current law?
- VIII. How does the bill change expedited timber sales?
- IX. Why is this new process necessary?
- X. Is the authority provided in this bill too broad, as the entire state is at risk of fire or insect infestation?
- XI. Does the phrase "the commissioner is not required to notice an expedited timber sale under this section..." violate the constitution?

[4:10:15 PM](#)

MR. STANCLIFF said he was also asked to research the best interest finding and the constitutionality regarding public notice. What legislators and local assemblies in rural areas have to ask is whether there is sufficient opportunity for the public to weigh in on an expedited sale.

He stated that HB 104 seeks to streamline the process to allow the commissioner to move rapidly, but while following criteria to ensure the public interest is served. He opined that it's a policy question as to whether this will be beneficial to the state. What the sponsor is pointing out is that this bill will provide an opportunity to utilize timber that has been fire damaged or infested with beetles before it has no value.

[4:13:58 PM](#)

CO-CHAIR BISHOP noted that the bill packet includes a memo from Legal Services regarding whether the bill raises constitutional issues, an FAQ sheet from the sponsor, and additional support letters.

[4:14:34 PM](#)

SENATOR KAWASAKI joined the committee.

[4:14:42 PM](#)

SENATOR CLAMAN asked whether there had been problems under the current structure on salvage sales in getting a best interest finding timely, as required under AS 38.05.035(e), so the sale can be held before the timber loses its merchantable value.

CO-CHAIR BISHOP noted who was available to respond to questions.

MR. STANCLIFF deferred the question to the state forester.

[4:15:52 PM](#)

HELGE ENG, State Forester and Director, Division of Forestry and Fire Protection, Department of Natural Resources (DNR), Anchorage, Alaska, said he believes the division is capable of producing a best interest finding fairly quickly for salvage timber sales, get public input, and salvage the timber before it rots on the stump.

SENATOR CLAMAN asked if that's also true for salvage sales of timber that's been killed by beetles and other insects but not subject to fire.

MR. ENG said yes, it applies to salvage sales of timber that's been killed by both fire and insects.

SENATOR CLAMAN asked if it was fair to say that the division is able to work under the current statutory definition of a salvage sale to identify timber that needs to be harvested in a two-year window to maintain value, do the best interest findings, and get

the sale processed in time to sell the timber for the value such timber has.

MR. ENG said that's correct; the limitation typically is not the process but access and other logistical limitations.

SENATOR CLAMAN asked him to elaborate.

MR. ENG responded that access refers to whether the area has roads to haul the timber to a processing facility. He added that there's generally not a lot of demand for salvage timber.

4:18:26 PM

SENATOR KAWASAKI paraphrased the second paragraph on page 2 of the May 8, 2023 Legal Services memo regarding the constitutionality of HB 104 and asked for an explanation of that process for HB 104 if it were to pass. The paragraph read:

If, under the bill, the commissioner elects to hold a salvage sale under AS 30.05.117, the sale will still have to address constitutional notice public interest, and public trust concerns. It will be up to the commissioner to ensure that a salvage sale meets these constitutional requirements. The commissioner has broad authority under AS 30.05.020(b)(1) and (4) to adopt regulations, or ensure by other means, that a salvage sale of timber meets these requirements.

MR. STANCLIFF deferred the question to Alpheus Bullard.

SENATOR KAWASAKI repeated the question.

4:19:31 PM

ALPHEUS BULLARD, Legislative Counsel, Legal Services, Alaska State Legislature, Juneau, Alaska, explained that the process would be that the commissioner could adopt regulations and show constitutional requirements are met in regard to salvage sales under AS 38.05.117.

SENATOR KAWASAKI asked 1) what the safety valve would be or how somebody would protest a salvage sale if the new regulations don't meet those constitutional requirements and 2) what laws govern the adoption of new regulations.

MR. BULLARD responded that if the bill passes and the commissioner of the Department of Natural Resources effects a salvage timber sale, DNR has to comply with applicable

constitutional requirements. If the sale does not comply with the applicable requirements, the safety valve is that litigation will likely commence.

[4:22:18 PM](#)

SENATOR DUNBAR observed that the fact that salvage timber will lose economic value is important in the legal memo. He said he didn't think it would be very controversial to have burned or beetle killed timber removed quickly in a salvage sale within two years. He likes the retrospective nature to the salvage, but it's a concern that these sales also seem to have a prospective nature. He directed attention to Section 8 of the bill and paraphrased paragraphs (1)-(3) in subsection (b). He said paragraphs (1) and (2) aren't a concern but paragraph (3) says that a salvage sale may include timber cleared as part of a fire prevention or suppression activity, and that is a concern.

He asked Mr. Eng how large a swath of land could be justified under the salvage timber provision. The worry is that if it's subjective, a creeping economic interest may start to color the fire suppression interest, and the swaths could get wider. He asked Mr. Eng if that was possible.

[4:25:07 PM](#)

MR. ENG responded that there is a meaningful distinction between fire prevention, which includes proactively making fuel breaks around communities, and fire suppression, which is what is done when a fire is actively moving across the landscape and you're trying to put it out.

In the first case where there is no fire, he said Tok has 300 foot wide fuel breaks around parts of the town, which are fairly sizeable fuel breaks. He continued that the department prefers to sell such trees as timber sales rather than using public funds to pay people to remove them. He said it's a win-win and he didn't think DNR would ever be a situation where monetary considerations would result in a wider fuel break.

In the case of fire suppression, he said the existing statutes allow the division to remove fuel between an advancing fire and a community. So the question is really one of getting the equipment to the location at the right time.

SENATOR DUNBAR asked what the bill changes in regard to fire prevention activities when the division already puts in firebreaks and sells the timber when it makes a community safer.

MR. ENG deferred the question to the sponsor.

SENATOR DUNBAR emphasized that he wanted to hear from the state forester and the people who do the fire work in order to understand how the bill will change their activities.

CO-CHAIR BISHOP asked Mr. Eng if he wanted to think about it and provide an answer when the bill is heard next.

MR. ENG said he'd appreciate some time to consider his response.

[4:28:38 PM](#)

SENATOR CLAMAN asked Mr. Eng to expand on the response he gave earlier about access and distance because it goes to Senator Dunbar's question about how this legislation would change what the division is doing today. He asked whether the division was prevented from doing these sales today as opposed to sales that might be interesting but because of access and distance, the reality is that nobody will bid on them.

[4:30:15 PM](#)

CO-CHAIR BISHOP dovetailed onto Senator Claman's question, which gets into stumpage value. He posited that in some instances there may be no stumpage value but the bill would encourage someone to harvest the timber and hopefully pass the savings along to a homeowner for the saw logs.

MR. ENG responded that the division already does salvage sales under existing statute. To the question about access and distance, he said the triple curse of Alaska forestry is 1) finding high quality, green saw timber, 2) finding timber within an economical hauling distance to a sawmilling facility, and 3) finding access to the timber in the first place. He said Alaska has by far the largest timberland base in the nation, but access to the timber is difficult. It's also a broader issue than HB 104 because it gets to the governor's effort to grow the timber sector in Alaska. It's not something that's done overnight, but a combination of strategic investment and opportunities will probably pay off over time by turning unmanaged remote forests into managed forests with road access.

[4:32:46 PM](#)

SENATOR WIELECHOWSKI referenced the last paragraph on page 1 that says that a disposal of state resources must be noticed, and paragraphs (d)(1) and (2) on the last page of the bill that say that the commissioner is not required to notice an expedited timber sale. He asked how that provision comports with the memo

that says notice is required for the disposal of state resources.

MR. BULLARD replied that AS 38.05.113(d)(1) qualifies the exemption from the notice requirements. The provision provides for certain notice of regular timber sales every two years on a five-year schedule.

SENATOR WIELECHOWSKI asked what sort of notice would be required in an expedited timber sale.

MR. BULLARD opined that every circumstance is different and the bill leaves the details of the notice to the commissioner to decide.

SENATOR WIELECHOWSKI asked him to discuss the seeming disparity between the language at the end of the first paragraph in the legal memo that says that the sale will serve the best interests of the state, and the language in the first sentence of bill Section 7 that says, "the commissioner may, without making a written finding that the disposal will serve the best interests of the state, offer for salvage sale timber...".

MR. BULLARD replied that the lines in the memo were selected from bill Section 2 that amends AS 38.05.035(e), which removes the written best interest finding. That section of the statute has procedural rules for the disposal of state resources and the bill exempts these sales from that procedural process.

SENATOR WIELECHOWSKI said he needed a better explanation.

MR. BULLARD responded that, in this instance, nothing that is or is not put in statute relieves the commissioner of the constitutional obligation to notice these sales, make sure they are in the best interest of the state, and ensure they are consistent with the public trust doctrine. He continued that he believes that the constitutional notice provision will be met even if the written best interest finding process provided by AS 38.05.035(e) isn't used.

[4:38:13 PM](#)

CO-CHAIR BISHOP agreed with an earlier statement that nothing precludes somebody from filing a lawsuit if they think such a sale is unconstitutional.

SENATOR KAWASAKI asked what the notice process would be for people who have a trapping cabin or undeveloped land in an area close to a proposed salvage sale.

MR. BULLARD replied that the bill provides a process to notify people by a written best interest finding, but it doesn't provide a specific process for that type of notice. Those decisions are left to the commissioner to determine how it should occur. He reiterated that the final agency decision is subject to a challenge in superior court.

SENATOR KAWASAKI commented that it's this sort of decision that falls under the broad authority that the bill gives to the commissioner.

MR. BULLARD said yes, but it's important to remember that these timber sales are bounded by AS 38.05.035(e) and the commissioner's discretion to hold these sales is limited to fire and insect killed wood that needs to be harvested within two years if it's to maintain its economic value. That's the legislative discretion the bill provides.

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SENATOR DUNBAR asked if the sponsor's vision was that the commissioner would make a best interest finding but not put it in writing or that the commissioner would not make a best interest finding at all.

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MR. STANCLIFF responded that the commissioner has indicated that he will make a best interest finding in writing.

CO-CHAIR BISHOP added that this doesn't preclude the commissioner from putting the finding in a regulation package as well.

MR. STANCLIFF agreed.

[4:43:03 PM](#)

SENATOR WIELECHOWSKI questioned the reason for the provision saying the commissioner doesn't have to make a best interest finding if this commissioner plans to do so. He asked if it wouldn't solve a lot of concerns to leave the statute as is.

MR. STANCLIFF said the obligation is in the constitution and that's not escapable.

SENATOR WIELECHOWSKI asked why the statute should be changed to say the commissioner doesn't have to make a written notice if it's a constitutional obligation.

MR. STANCLIFF responded that the salvage sale process provides that the commissioner will look at the dead timber, timber that will lose economic value, and timber that is cleared for conversion the same way as under current law, but the weight of public notice isn't the same.

SENATOR DUNBAR asked if there was a way to amend the statute, without being too prescriptive, to make sure there is a written best interest finding.

MR. STANCLIFF deferred the question to Mr. Bullard.

CO-CHAIR BISHOP asked Senator Dunbar whether he wanted Mr. Bullard to comment or if he wanted to pose the question in an email.

SENATOR DUNBAR asked Mr. Bullard if the statute was prescriptive with respect to what a best interest finding has to look like.

[4:46:31 PM](#)

MR. BULLARD replied that the existing written best interest finding process is detailed in AS 38.05.035(e). It discusses process, timing, and has links to public notice requirements. To the question about whether the statute could be amended, he said the Legal Services attorneys would be happy to draft whatever the committee members would like.

SENATOR DUNBAR commented that the committee was getting somewhere now.

[4:47:21 PM](#)

CO-CHAIR GIESSEL commented that the committee should be crafting policy regardless of who is commissioner, and if the feeling is that it should be written down then it should be written down.

SENATOR WIELECHOWSKI said he'd like to associate himself with those remarks.

[4:48:13 PM](#)

SENATOR DUNBAR asked for more description about the way the expedited timber sales differ from the salvage timber sales when they both talk about an area that is creating or will create a

public safety issue. He asked how the commissioner would decide which of the two processes to use.

[4:48:59 PM](#)

MR. STANCLIFF responded that one difference is that the bill brings all dead timber into the salvage sale category. If the timber no longer has value as a standing tree and arguably has negative value as a fire hazard, receiving any compensation is in the state's best interest. For this reason the bill proposes to exempt salvage sales from the prescriptive finding in AS 38.05.

He said the rationale is that the timber is a threat and a negative economic value to the state, so the question is whether the whole timber sale process have to be followed before the timber can be harvested. HB 104 attempts to say that in certain instances and at the commissioner's discretion, the full process would not need to be followed. He continued to talk about the time that could be saved if expedited sales were allowed in specific circumstances and when it's in the state's best interest.

CO-CHAIR BISHOP summarized that the goal of the bill is to harvest timber in half the usual time to get value from the damaged and dead timber.

MR. STANCLIFF added that another important aspect is that the timeframe for the entire sale is increased from three to five years.

[4:53:21 PM](#)

REPRESENTATIVE CRONK pointed out that there's also an opportunity to manage those forests. He cited the example of the 300 foot buffer around part of the community of Tok as an example of removing the timber preemptively when it still had full value. He also spoke about how Sweden's managed forestland had doubled in the last 100 years. Last year the country exported timber valued at \$17.4 billion. He opined that in 30 years Alaska could replace oil with timber exports. HB 104 is the first step.

[4:55:22 PM](#)

SENATOR WIELECHOWSKI commented that nobody on the committee is necessarily opposed to what the sponsor is saying, but the concern with the expedited timber sales is the broad discretion the bill gives the commissioner and with limited notice to the public. He said he was trying to find a balance.

REPRESENTATIVE CRONK acknowledged the validity of the concerns, and posited that the lack of managing forests has brought about this situation. He cited the Tok fire and the fire potential in the Hillside district in Anchorage as examples. He emphasized the importance of refocusing efforts to manage state forests for fire and to use those resources to generate revenue.

CO-CHAIR BISHOP commented on the efforts in 1991 to keep the community of Tok from burning to the ground.

SENATOR GIESSEL said she agreed that the committee wasn't against the concept of HB 104; it meshes with the carbon offset bill and it addresses public safety. However, it needs some adjustments.

[4:58:20 PM](#)

SENATOR DUNBAR commented that any effort to harvest a lot of timber from the Anchorage Hillside district would elicit a very interesting reaction from the public. He asked 1) whether the division manages the Interior forests and the boreal forests in appreciably different ways, 2) if different portions of the bill were more applicable to one region than another, and 3) if it was the case that the entire state is either high fire danger, high beetle kill, or both.

MR. ENG responded that there was no chance of a 100-acre clear-cut on the Anchorage Hillside, but it's an example of needing to address the problem because it's areas where the wild and urban interface that will bear the brunt of the damage from a wildfire. He continued that the Division of Forestry and Fire Protection works closely with the Anchorage Fire Department to reestablish and maintain the firebreaks that were put in that area years ago.

To the question about different management styles for different forest types, he confirmed that the fire regimes were different depending on the area. He cited the example of the 200-acre fuel break around Tok but not Ketchikan. Nevertheless, he said the principles of forest management are fairly universal throughout the state.

[5:01:36 PM](#)

SENATOR KAWASAKI asked why the forest land use plan (FLUP) for a state forest couldn't include salvage and expedited sales.

CO-CHAIR BISHOP added to the question by asking whether an expedited or salvage sale could already be inside a FLUP.

MR. ENG responded that the FLUP is the step following the best interest finding. It specifically describes how to implement a particular timber sale. He asked Co-Chair Bishop to repeat the second question.

CO-CHAIR BISHOP asked about the hypothetical possibility of having a salvage sale on a section of land that already had a best interest finding and a FLUP.

MR. ENG said he'd follow up with a response.

[5:04:35 PM](#)

CO-CHAIR BISHOP held HB 104 in committee.

[5:04:57 PM](#)

There being no further business to come before the committee, Co-Chair Bishop adjourned the Senate Resources Standing Committee meeting at 5:04 p.m.