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407

SENATE RESOURCES COMMITTEE
LEGISLATION CHECKLIST

IDENTIFICATION:

BILL NUMBER: *SB 407*

BILL NAME: *Prevention and abatement of water pollution*

SPONSOR(S): *Jakubowski*

RELATED BILLS PENDING:

DATE INTRODUCED: *2-6-84*

*HB 580 - Ringstad
Resources 2/6/84*

REFERRALS: *Resources*

INITIAL RESEARCH:

BILL SUMMARY COMPLETED:

SUMMARY BY LEGAL DIVISION:

SPONSOR CONTACTED FOR
BACKUP MATERIALS:

DEPT. OF LAW SUMMARY:

FISCAL NOTE:

AGENCY RESPONSE:

OTHER INTERESTED SENATORS OR
REPS. NOTIFIED:

BACKGROUND RESEARCH:

SIMILAR BILLS INTRODUCED IN PREVIOUS LEGISLATURES:

RESPONSES FROM INTERESTED PERSONS/GROUPS:

OTHER STATE OR FEDERAL PRECEDENTS, REGULATIONS, LAWS:

HEARING PREPARATION:

CHAIRMAN BRIEFED:

DATE AND PLACE SET:

STAFF MEMO TO COMMITTEE:

TELECONFERENCE:

BACKGROUND MATERIAL DISTRIBUTED:

PSA/PRESS RELEASE:

LIST OF WITNESSES:

SUGGESTED AMENDMENTS/COMMITTEE
SUBSTITUTES DRAFTED:

Alaska State Legislature

BETTYE FAHRENKAMP, Chairman
ROBERT H. ZIEGLER, SR., Vice Chairman
DICK ELIASON
PAUL FISCHER
VIC FISCHER
BOB MULCAHY
ARLISS STURGULEWSKI



407

POUCH V
STATE CAPITAL
JUNEAU, ALASKA 99811
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Senate

Committee on Resources

Early 70's

SB 407 "AN ACT RELATING TO THE PREVENTION AND ABATEMENT OF WATER POLLUTION"

REASON FOR LEGISLATION: TO ADDRESS THE LONG-STANDING PROBLEM IN THE STATE OF THE INCORRECT CLASSIFICATION OF THE STATE'S STREAMS. IN THE EARLY 1970'S, THE DEPARTMENT OF ENVIRONMENTAL CONSERVATION CLASSIFIED ALL OF THE STATE'S WATERS AS SUITABLE FOR DRINKING WATER WITH THE IDEA THAT AT A LATER TIME WHEN ADEQUATE INFORMATION WAS GATHERED, THE STREAMS WOULD BE RECLASSIFIED INTO MORE APPROPRIATE CLASSIFICATIONS. SENATE BILL 407 WOULD GIVE MORE DIRECTION TO DEC FOR CLASSIFICATION CRITERIA. (REMEMBER, EPA HAS MADE IT NEARLY IMPOSSIBLE TO RECLASSIFY STREAMS).

(1) The bill lists criteria which the Department must consider in classifying streams. These criteria include mineral potential, fish, recreation, drinking water, agriculture, etc.

(2) The bill establishes a special placer mining classification. This means that a stream which is suitable for placer mining use cannot be degraded so that placer ^{minerals} mining cannot use the water.

*** (3) The most promising aspects of SB 407 lie with management plans for basins or mining districts to resolve conflicts and maximize uses. This approach would organize piecemeal efforts and map out mining, recreational and other use plans for an identifiable area.

Bob Warren - Environmental Center - Requires diligence
THE RESOURCES COMMITTEE SUBSTITUTE MUST BE ADOPTED. THERE IS A LETTER OF INTENT.

BETTYE: ALSO PLEASE NOTE THAT THE BILL DOES NOT HAVE A FISCAL NOTE BECAUSE THE LEGISLATION WILL HAVE NO FISCAL IMPACT. THE NECESSARY MONEY HAS BEEN INCLUDED IN THE OPERATING BUDGET ^{BY} ~~IN~~ THE SENATE FINANCE COMMITTEE. NO ADDITIONAL MONEY IS NECESSARY.

YOU MIGHT GET A QUESTION ON THE "IDENTIFYING OF STATE WATER SUITABLE FOR PLACER MINING WITHIN 60 DAYS." THE KEY WORD IN THIS SECTION IS "SUITABLE". THERE IS NO WAY IN WHICH THE DEPARTMENT COULD "RECLASSIFY STATE WATERS" WITHIN 60 DAYS. IT IS PHYSICALLY IMPOSSIBLE, IN ADDITION TO BEING EXPENSIVE. (ESTIMATES RUN AS HIGH AS 50 MILLION DOLLARS). WHAT IS REQUIRED IN THIS SECTION IS FOR THE DEPARTMENT TO NAME STREAMS THAT ARE SUITABLE FOR RECLASSIFICATION. THE DEPARTMENT HAS STATED TO THE COMMITTEE THAT THIS IS BOTH POSSIBLE AND CAN BE DONE WITHIN THE TIME LIMIT.

Alaska State Legislature

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ROBERT H. ZIEGLER, SR., Vice Chairman
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STATE CAPITAL
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Senate

Committee on Resources

MINUTES

April 4, 1984
3:06 pm

Beltz Room
Room 211, Capitol

MEMBERS PRESENT

Senator Fahrenkamp, Chairman
Senator Ziegler, Vice Chairman
Senator Eliason
Senator Paul Fischer
Senator Vic Fischer
Senator Mulcahy
Senator Sturgulewski

CALENDAR

CSHB 575 (Res), An Act relating to a grant of state land to the City of Whittier.

SB 407, An Act relating to the prevention and abatement of water pollution.
TELECONFERENCE

CSHB 576 (Res)

Senator Sturgulewski moved CSHB 576 (Res) from Committee with individual recommendations. There was no objection.

SB 407

Randy Bayliss, Department of Environmental Conservation, stressed that reclassification of streams is one part of a comprehensive approach to solving the problems of placer miners.

John Reeves, Environmental Field Officer, Department of Environmental Conservation, Fairbanks, provided a detailed historical perspective on placer mining in Alaska.

Del Ackels, Placer Miner from Circle, urged that all uses of water in the state be addressed.

Pedro Denton, Director, Division of Mining, Department of Natural Resources, supported the goals of the bill, recommending the State achieve more realistic stream classification standards.

Joe Vogler, Fairbanks, urged the State to take more control over its air, land, and water management.

Jim Fuksa, Fairbanks, spoke in support of the bill.

Forrest Charlton, Patcher Mining, Anchorage, spoke in support of the bill as one way of providing relief for placer miners.

Bob Warren, Northern Environmental Center, Fairbanks, stated that he did not object to a "placer mining" classification, and recommended that modification procedures be spelled out in the bill.

Henry Warner, President, Placer Miners of Alaska, spoke in support of the Committee Substitute, stating that classification of streams by uses would follow the intent of the Clean Water Act.

Bob Aumiller, Miner's Advocacy Council, Fairbanks, spoke in support of the bill.

Barb Truitt, Koyukuk Mining District, spoke in support of the bill.

Jeff Eustis, Trustees for Alaska, Anchorage, stated that SB 407 does not follow the mandate of the Clean Water Act, which puts health considerations before economic considerations.

Roger Burgraff, Fairbanks, spoke in support of SB 407.

Ken Manning, Miners Rights Action Group, Fairbanks, spoke in support of the bill, and addressed how water quality affects industries other than placer mining.

George Seuffert, Yukon Mining Co. of Alaska, Fairbanks, spoke in support of the bill and outlined some of the problems facing small placer mining operations.

Phil Holdsworth, Alaska Miners Association, Juneau, spoke in support of the bill, which would require the State to initiate stream reclassification.

Rose Rybachek, Livengood/Tolvana Mining District, spoke in support of the bill.

Paul Barelka, Fairbanks, spoke of the burden that regulations place on small miners.

Don Stein, Alaska Miners Association, spoke in support of the bill.

Ron Sheardown, Greatland Exploration, Ltd., explained that water samples have been taken at most of Alaska's lakes and streams and urged that this data be used in the stream reclassification process.

Helen Warner, AU Limited Mining, Fairbanks, spoke in support of the bill.

Del Ackels, Circle Mining District, reiterated his support of the bill and discussed the status of the discharge permits issued by the Environmental Protection Agency.

The meeting adjourned at 4:46 pm.

LETTER OF INTENT TO ACCOMPANY SENATE BILL 407

It is the intent of the legislature that the Department of Environmental Conservation make a conscientious and diligent effort to implement section 5 of this bill. The Department should utilize all available information on past and present uses, existing water quality and in-stream data in determining which streams are suitable for a placer mining classification.

Alaska State Legislature

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ROBERT H. ZIEGLER, SR., Vice Chairman
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Senate

Committee on Resources

MINUTES

April 25, 1984
3:12 pm

Beltz Room
Room 211, Capitol

MEMBERS PRESENT

Senator Fahrenkamp, Chairman
Senator Ziegler, Vice Chairman
Senator Paul Fischer
Senator Vic Fischer
Senator Mulcahy
Senator Sturgulewski

CALENDAR

HCSSB 269 (2d Finance), An Act relating to the sale of royalty oil by the State of Alaska to Chevron, U.S.A., Inc.

SB 288, An Act relating to the Board of Fisheries,

SB 289, An Act relating to discharge of firearms, and hunting and fishing in state park and recreation areas.

CSSB 407 (Resources), An Act relating to the prevention and abatement of water pollution.

HB 479, An Act relating to the issuance of citations for the violation of certain offenses within state park and recreational facilities.

SB 289

Skip Harding, Deputy Director, Division of Parks and Recreation, Department of Natural Resources, reviewed the status of current regulations governing the discharge of firearms in state parks, specifically those for Denali State Park. Draft regulations that reflect a restructuring of all park regulations, including provisions for allowing lawful discharge of firearms in most areas, will be out for public review within three weeks. He testified that the Department did not support this bill.

Ron Sommerville, Alaska Outdoor Council, spoke in support of CSSB 289.

Senator Mulcahy moved to adopt the committee substitute for SB 289 and report it out of committee with individual recommendations. There was no objection.

HB 479

Skip Harding, Deputy Director, Division of Parks and Recreation, Department of Natural Resources, explained that HB 479 would save the Department of Law, the Department of Natural Resources, and the public a significant amount of time and money by allowing the Supreme Court to establish a bail schedule for park violations.

Lisa Nelson, Criminal Division, Department of Law, spoke in support of the bill.

Senator Mulcahy requested a list of those park violations that would have a bail schedule set.

HCS SB 269 (2d Finance)

Kay Brown, Director, Division of Oil and Gas, Department of Natural Resources, reviewed the changes in the royalty oil contracts that had been negotiated over the interim. The major change in the Chevron contract is a 2-year price reopener.

George Day, Public Affairs Officer, Chevron, U.S.A., Inc., spoke in support of the bill.

Senator Fahrenkamp moved that the committee recommend that the Senate concur with the House amendments to the bill. There was no objection.

SB 288

Senator Vic Fischer moved an amendment to SB 288 that would require that at least two members of the Board be participants in sport fisheries.

Senator Bettye Fahrenkamp moved to adopt CSSB 288 and report it from committee with individual recommendations. There was no objection.

CSSB 407

Randy Bayliss, Department of Environmental Conservation, spoke in support of the committee substitute, explaining that it would direct the Department to inventory significant streams, set standards for a "placer mining use" classification, and plan for resource use in basin-wide areas.

Senator Vic Fischer proposed amending Section 1, Subsection 1, to read "...adequately inventoried and properly classified..."

Phil Holdsworth, Alaska Miners Association, proposed two amendments and a letter of intent to CSSB 407. They would urge the commissioner to utilize all information and the expertise of other agencies in stream classification.

Senator Mulcahy moved to adopt CSSB 407 and the letter of intent for CSSB 407 and report it from committee with individual recommendations. There was no objection.

The meeting adjourned at 4:25 pm.

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WATER, ETC., CONSERVATION

§ 46.03.080

pollution of well, cistern, or spring. 19
ALR2d 769.

Liability for pollution of stream by oil,
water, or the like flowing from well. 19
ALR2d 1033.

Liability for pollution of subterranean
waters. 38 ALR2d 1265.

Validity, construction, and effect of stat-
ute, ordinance, or other measure involving
chemical treatment of public water supply.
43 ALR2d 453.

Measure and elements of damages for
pollution of stream. 49 ALR2d 253.

Validity of prohibition of regulation of

bathing, swimming, boating, fishing, or
the like, to protect public water supply. 56
ALR2d 790.

Validity and construction of anti-water
pollution statutes and ordinances. 32
ALR3d 215.

Landowner's right to relief against pol-
lution of his water supply by industrial or
commercial waste. 39 ALR3d 910.

Validity and construction of statutes,
ordinances, or regulations controlling dis-
charge of industrial wastes into sewer sys-
tem. 47 ALR3d 1224.

Sec. 46.03.050. Authority. The department has jurisdiction to prevent and abate the pollution of the waters of the state. (§ 3 ch 120 SLA 1971)

Sec. 46.03.060. Water pollution control plan. The department shall develop comprehensive plans for water pollution control in the state and conduct investigations it considers advisable and necessary for the discharge of its duties. (§ 3 ch 120 SLA 1971)

Collateral references. — Health board's power to prescribe methods of keeping water free from impurities, 23 ALR 228.

Constitutionality and construction of statutes for protection of municipal water supply, 72 ALR 673.

Validity of prohibition or regulation of bathing, swimming, boating, fishing, etc., to protect public water supply, 56 ALR2d 790.

Sec. 46.03.070. Pollution standards. After public hearing, the department may adopt standards and make them public and determine what qualities and properties of water indicate a polluted condition actually or potentially deleterious, harmful, detrimental or injurious to the public health, safety or welfare, to terrestrial and aquatic life or their growth and propagation, or to the use of waters for domestic, commercial, industrial, agricultural, recreational, or other reasonable purposes. (§ 3 ch 120 SLA 1971)

Sec. 46.03.080. Quality and purity standards. After study and public hearings held upon due notice, the department may establish standards of quality and purity or group the designated waters of the state into classes as to minimum quality and purity, or both. The department shall classify waters in accordance with considerations of best usage in the interest of the public. The department may alter and modify classifications after hearing. (§ 3 ch 120 SLA 1971)

Collateral references. — Statute prescribing standard of purity of water furnished for human consumption, 6 ALR 475.

WATER QUALITY STANDARDS PROGRAM FACT SHEET

PURPOSE:

A water quality standard defines the water quality goals for a particular water body, by deciding what its use will be and by setting criteria necessary to protect that use. States adopt water quality standards to protect public health or welfare, enhance the quality of water and serve the purposes of the Clean Water Act. Water quality standards should, wherever attainable, provide water quality for the protection and propagation of fish, shellfish and wildlife and provide for recreation in and on the water.

Such standards serve the dual purposes of establishing the water quality goals for a specific water body and of serving as the regulatory basis for the establishment of water-quality-based treatment controls and strategies beyond the technology-based levels of treatment required by Sections 301(b) and 306 of the Act.

FEATURES OF THE REVISED REGULATION

- Increases the emphasis in State standards on control of toxic pollutants.
- Provides for mandatory upgrading of uses to the goals of the Act.
- Clarifies downgrading provisions.
- Clarifies State/EPA roles in adopting and approving standards.
- Describes acceptable forms and derivation of criteria.
- Clarifies and expands antidegradation policy.
- Recognizes application of general policies on mixing zones and variances and EPA review of these policies.
- Specifies administrative procedures required of States and EPA.

MINIMUM REQUIREMENTS FOR WATER QUALITY STANDARDS SUBMISSION

- Use designations and water quality criteria sufficient to protect the designated uses.
- A statewide antidegradation policy.
- Certification that standards are duly adopted according to State law.
- Justification to support revisions in standards and information on general policies which may affect their application and implementation.

STATE REVIEW REQUIREMENTS

- At least once every three years a State must:
 - hold public hearings for the purpose of reviewing and revising standards.
 - re-examine the basis of decision for uses not consistent with goals of the Act.
 - reclassify water bodies to include uses that are attainable; adopt or revise criteria.
- Submit the results of the reviews to EPA for approval.

DESIGNATION OF USES

State Must Adopt

- Uses consistent with the goals of the Act, unless other uses are justified by a Use Attainability Analysis.
- Uses and criteria that will protect downstream standards.
- Standards reflecting the uses actually being attained.

(Continued)

States May Adopt:

- Subcategories of a use (such as warmwater, coldwater, or put-and-take aquatic life uses).
- Seasonal uses.

Use Attainability Analysis

- Scientific assessment of physical, chemical, biological and economic factors affecting attainment of a use.
- Must be done when:
 - designating uses inconsistent with "fishable/swimmable" goals of the Clean Water Act.
 - removing designated uses specified in the Act.
 - adopting subcategories of a use that require less stringent criteria.

REMOVING USES

- States may remove a non-existing designated use if the use is unattainable due to:
 - naturally occurring pollution.
 - natural flow conditions.
 - irretrievable human-caused conditions.
 - hydrologic modifications.
 - physical conditions unrelated to water quality for aquatic life protection uses.
 - substantial and widespread economic and social impact.
- States may not remove designated uses if:
 - uses are existing, unless use requiring more stringent criteria are added.
 - uses can be attained through required technology controls or best management practices.

WATER QUALITY CRITERIA

Criteria Must:

- Protect designated uses.
- Use sound scientific rationale.
- Protect the most sensitive use.
- Protect downstream standards.

Criteria Forms:

- Numerical criteria must be based on national guidance, site-specific characteristics or other scientifically defensible methods.
- Narrative criteria or criteria based upon biomonitoring methods where numerical criteria cannot be established or to supplement numerical criteria.

ANTIDegradation Policy

- Existing uses and level of water quality must be maintained and protected.
- There will be special protection for high quality and outstanding national resource waters.

For further information contact David Sabock, (202) 245-3042, Kent Ballentine, (202) 245-3030, or Marjorie Pitts (202) 472-3400.