

HB

144

SENATE FINANCE
COMMITTEE

Amendment Number: #3
Bill Number: HB 144 (CONVERSION)
Sponsor: J. Morgan Date: 5/1/98
Logged In By: Mindy

AMENDMENT
CSHB 144 (FIN) Version 'C'

Offered in the Senate

Senator Torgerson

New Section:

"Notwithstanding other provisions of this section, the department may adopt regulations that prescribe reasonable hourly rates, and establish procedures for collection of the fees, for reapplication consultative services provided to an applicant at the request of the applicant, for any permit or approval required by the department."

pre application

- provides for DEC to consult before application for a permit.
- provides for reimbursement of DEC personnel time.
- TORGERSON was not part of a signed agreement.
- MICHELLE BROWN - HM - 790 - 7245
- CL - 723 - 8797
would still like to see agreement prevail.

THYS SCHaub
KENT DAWSON
PAUL RICHARDS

May 8, 1998

Senator John Torgerson
State Capitol
Juneau, Alaska

RE: SCSCSHB144 - (FIN) Amendment #3


Honorable Senator Torgerson:

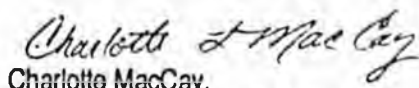
Yesterday representatives of the Alaska Miners Association, Council of Alaska Producers, Cominco Alaska Incorporated, Sealaska, and Usibelli Coal Mine, Inc. met with Janice Adair of ADEC to discuss amendments to SCCSSHB 144. At this time, we all agreed to modifications to HB 144 that addressed domestic wastewater fees differentiating between municipalities and other community based systems, and systems that serve only a discrete industrial operations. The agreement to these modifications was signed by the parties present, with a verbal understanding that the parties present would not consider any further amendments to this bill.

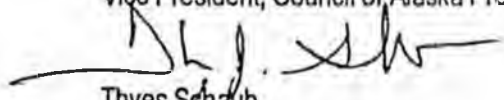
Therefore, we are extremely disappointed and alarmed to hear of an additional amendment being added to the bill regarding pre-application fees. A similar amendment had been proposed by ADEC a few days ago, in which Ms Adair had been clearly told that industry strongly opposed any type of pre-application fees. If this last amendment has been characterized as a modification that industry representatives agreed to, as you stated in the hearing, then the amendment has been seriously misrepresented to you.

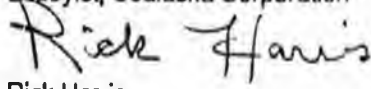
We appreciate your ongoing efforts in addressing HB 144, and hope that this letter serves to clarify the resource industry's stance on this bill.

Sincerely,


Steve Borell,
Executive Director, Alaska Miners Association


Charlotte MacCay,
Vice President, Council of Alaska Producers


Thyas Schaub,
Lobbyist, Sealaska Corporation


Rick Harris,
Senior Vice President Natural Resources, Sealaska Corporation


Charlie Boddy,
Vice President of Governmental Relations, Usibelli Coal Mine, Inc.

Amendments to work Draft 0-LS0573VZ of SCSCSHB144 (FIN)

Pg. 2, l. 6. After "(3)," insert the words "except as provided in paragraph (e)(4) of this section,"

Pg. 2, l. 8. Delete the words "if the systems are located within a municipality"

Pg. 3, l. 1. After the word "municipality," insert the phrase "and the system serves only a discrete industrial operation"

Pg. 3, l. 2. After "(a)," insert "(e)."

Pg. 3, l. 3. After the word "under", insert the phrase "(a)(3) or"

agree

AMIA

SBS/fehm

Types Study

Charlton & McLaughlin / Council of Malacca

* Janice Adams

Frank Harris

Chew Hee Seng

Analysis of Senate Finance Committee Amendment to SCSCSHB 144

The Senate Finance Committee amended HB 144 to broadly authorize ADEC to impose "reasonable hourly rates" for providing "pre-application consultative services." These new fees would be in addition to the permit fees that had heretofore been the subject of the legislation.

The amendment would considerably subvert the purpose of the legislation. HB 144 was intended to: (a) provide predictability in the cost of environmental permitting by requiring ADEC to establish fixed fees for various classes of permits; and (b) limit the amount of those fees to the "actual direct costs" of dealing with the applicant.

The amendment removes both the predictability of the bill, as well as its "actual direct cost" limitation. It arbitrarily divides the work done by ADEC on a project into the period before a formal application is submitted, and the period after that application is filed. Fixed fees, based on direct actual costs (and thus excluding overhead), are still required for the agency's post-application activities. But ADEC is allowed to charge hourly fees for all pre-application functions, and those fees have no meaningful limitation. They need only be "reasonable"--a phrase that ADEC will likely define to include just the kind of overhead and administrative charges that the bill was originally intended to prohibit.

True, the new provision applies only to pre-application work requested by the applicant. But permits, and particularly complex permits, often require considerable pre-application discussions between the applicant and the agency. The applicant, in sum, will have little choice in the matter. Moreover, ADEC will now have an incentive to manipulate the permitting process to encourage more agency effort prior to formal submittal of the application, since it will be able to charge relatively unfettered fees for anything done in advance of formal application submittal.

Before this amendment, this "pre-application phase" would have been rolled into the fixed fees envisioned by the bill (and thus subject to the bill's "actual direct cost" limitations). By breaking out this phase and allowing essentially unlimited hourly fees for that phase, the amendment renders the legislation as a whole of rather limited value.

Prior to its adoption, the amendment had not been shown to the private sector stakeholders who had been involved with the legislation, nor had those stakeholders' views been solicited on the matter. To the contrary, a day previous--on May 7, 1998--representatives of Alaska's forest and mining industries, and municipal government, had jointly signed, with ADEC, a consensus agreement on HB 144 that included nothing dealing with "pre-application consultative services." The amendment thus came very much as a surprise and a disappointment.

**Ketchikan Pulp Company**

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May 8, 1998

Senator John Torgerson
Room 427
State Capitol
Juneau, Alaska 999801-1182

Re: Senate Finance Committee Amendment to HB 144

Dear Senator Torgerson:

Ketchikan Pulp Company and others in the resources development community have been involved in efforts to revamp the Department of Environmental Conservation's permit fees structure. If passed, HB 144 would help restore flexibility, fairness and predictability to the costs of obtaining approvals and authorizations under DEC's various programs. We believe the proposed legislation strikes a reasonable balance between the competing concerns of DEC and the private sector.

We take this opportunity to voice our support of HB 144 and to note our strong opposition to an amendment that would vitiate much of what would be achieved by HB 144.

First, we believe that the amendment arbitrarily distinguishes between pre-application and post-application periods of DEC review. The pre-application period is an important and necessary component of the permitting process. It makes little sense to establish different rules for this period.

Second, the line between implementation of a permit and the process of securing a reissuance or re-authorization of that permit is often unclear, particularly when an entity approaches the "end" of the authorization. Studies and data generated under a permit often serve a dual purpose to: (1) facilitate DEC's ongoing compliance oversight of an operation, and (2) support the reissuance or re-authorization of the underlying permit. The amendment would create confusion by imposing different fee structures for the same period in question (i.e., the end of one permit and the pre-application period for the new permit) or for data which is simultaneously

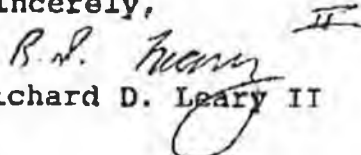
being reviewed to measure a permittee's ongoing compliance and also to support the reissuance of the underlying permit.

Third, the amendment creates an incentive for an entity to prematurely file an application so as to ensure that DEC review is prescribed by the post-application fee guidelines. The pre-application period is oftentimes an extended period during which a potential permittee generates studies and confers with DEC to develop the permit application. By forcing an entity to file an application at the outset of this administrative process, DEC and the permittee will be forced into situations whereby they will have to amend the application to reflect ongoing work, studies, and dialogue that would otherwise have taken place in the pre-application period.

Last, we are concerned with the lack of guidance given to DEC in its rulemaking authority. The "reasonable hourly rates" language will most likely result in the promulgation of DEC regulations that mirror the current fee structure whereby permittees are billed for a percentage of DEC's overhead and other associated expenses. This clearly is at odds with the flat fee/negotiated fee guidelines memorialized in other parts of the bill.

We are hopeful that you will give careful consideration to our comments and those submitted by other stakeholders. Please call me at 228-2287 if you have any questions.

Sincerely,


Richard D. Leary II

EBF:hs

cc via facsimile:

Senator Robin Taylor (907) 465-3922
Senator Tim Kelly (907) 465-3756