

**ALASKA STATE LEGISLATURE
HOUSE RESOURCES STANDING COMMITTEE**

March 1, 2002

1:10 p.m.

MEMBERS PRESENT

Representative Beverly Masek, Co-Chair
Representative Drew Scalzi, Co-Chair
Representative Hugh Fate, Vice Chair
Representative Joe Green
Representative Mike Chenault
Representative Lesil McGuire
Representative Gary Stevens
Representative Mary Kapsner
Representative Beth Kerttula

MEMBERS ABSENT

All members present

COMMITTEE CALENDAR

HOUSE BILL NO. 368

"An Act authorizing the commissioner of community and economic development to refinance and extend the term of a fishery enhancement loan."

- MOVED CSHB 368(FSH) OUT OF COMMITTEE

HOUSE BILL NO. 376

"An Act relating to management of fish and game in and on the navigable waters and submerged lands of Alaska."

- HEARD AND HELD

HOUSE BILL NO. 382

"An Act relating to the evaluation and cleanup of sites where certain controlled substances may have been manufactured or stored."

- MOVED CSHB 382(RES) OUT OF COMMITTEE

CONFIRMATION HEARING

Board of Game

- CONFIRMATION HEARING POSTPONED

PREVIOUS ACTION

BILL: HB 368

SHORT TITLE:FISHERY ENHANCEMENT LOANS

SPONSOR(S): REPRESENTATIVE(S)HARRIS

Jrn-Date	Jrn-Page		Action
02/01/02	2116	(H)	READ THE FIRST TIME - REFERRALS
02/01/02	2116	(H)	FSH, RES
02/08/02	2192	(H)	COSPONSOR(S): WILSON
02/13/02	2257	(H)	COSPONSOR(S): MCGUIRE
02/15/02	2292	(H)	COSPONSOR(S): KERTTULA
02/25/02		(H)	FSH AT 3:30 PM CAPITOL 124
02/25/02		(H)	Moved CSHB 368(FSH) Out of Committee
02/25/02		(H)	MINUTE(FSH)
02/27/02	2404	(H)	FSH RPT CS(FSH) 5DP 1NR
02/27/02	2405	(H)	DP: DYSON, SCALZI, KERTTULA, STEVENS,
02/27/02	2405	(H)	WILSON; NR: COGHILL
02/27/02	2405	(H)	FN1: (CED)
02/27/02	2418	(H)	COSPONSOR(S): LANCASTER
03/01/02		(H)	RES AT 1:00 PM CAPITOL 124

BILL: HB 376

SHORT TITLE:FISH & GAME IN NAVIGABLE WATERS

SPONSOR(S): REPRESENTATIVE(S)OGAN

Jrn-Date	Jrn-Page		Action
02/01/02	2121	(H)	READ THE FIRST TIME - REFERRALS
02/01/02	2121	(H)	RES, JUD
03/01/02		(H)	RES AT 1:00 PM CAPITOL 124

BILL: HB 382

SHORT TITLE:CLEANUP OF ILLEGAL DRUG SITES

SPONSOR(S): REPRESENTATIVE(S)GUESS

Jrn-Date	Jrn-Page		Action
02/04/02	2144	(H)	READ THE FIRST TIME - REFERRALS
02/04/02	2144	(H)	RES, FIN
03/01/02		(H)	RES AT 1:00 PM CAPITOL 124

WITNESS REGISTER

JOHN MANLY, Staff
to Representative John Harris
Alaska State Legislature
Capitol Building, Room 513
Juneau, Alaska 99801
POSITION STATEMENT: Presented HB 368 on behalf of
Representative Harris, sponsor.

GREG WINEGAR, Director
Division of Investments
Department of Community and Economic Development (DCED)
P.O. Box 34159
Juneau, Alaska 99803-4159
POSITION STATEMENT: Testified that DEC is neutral on HB 368,
which would allow aquaculture associations to refinance existing
loans to take advantage of lower interest rates.

JOHN CARTER, Director
Douglas Island Pink & Chum, Inc. (DIPAC)
2697 Channel Drive
Juneau, Alaska 99801
POSITION STATEMENT: Testified in support of HB 368; indicated
refinancing is a good business practice.

DAVE COBB, Business Manager
Valdez Fisheries Development Association (VFDA)
P.O. Box 125
Valdez, Alaska 99686
POSITION STATEMENT: Testified in support of HB 368; indicated
the bill is needed by the commercial fishing industry and the
hatchery system to remain competitive in today's global
fisheries environment.

REPRESENTATIVE SCOTT OGAN
Alaska State Legislature
Capitol Building, Room 108
Juneau, Alaska 99801-1182
POSITION STATEMENT: Spoke as sponsor of HB 376.

DICK BISHOP
Alaska Outdoor Council (AOC)
1555 Gus's Grind
Fairbanks, Alaska 99709

POSITION STATEMENT: Testified that AOC supports HB 376 and believes it is important to reemphasize the Alaska Supreme Court's finding.

REPRESENTATIVE GRETCHEN GUESS

Alaska State Legislature
Capitol Building, Room 112
Juneau, Alaska 99801-1182

POSITION STATEMENT: Testified as sponsor of HB 382.

NATHAN JOHNSON, Staff
to Representative Gretchen Guess
Alaska State Legislature
716 West 4th, Suite 200
Anchorage, Alaska 99501

POSITION STATEMENT: Testified on HB 382.

JULIA GRIMES, Lieutenant
Alaska State Troopers
Department of Public Safety
5700 East Tudor Road
Anchorage, Alaska 99507

POSITION STATEMENT: Testified in support of HB 382; indicated the state has an obligation to be aggressive in evaluating harmfulness of sites and protecting public health.

TIM ROGERS, Legislative Program Coordinator
Municipality of Anchorage
P.O. Box 196650
Anchorage, Alaska 99519

POSITION STATEMENT: Testified in support of HB 382; indicated the bill sets up a very good process to ensure that properties are made safe for future tenants.

KURT KORNBHUCK, Detective
Anchorage Police Department
1630 East Tudor Road
Anchorage, Alaska 99507

POSITION STATEMENT: Testified in support of HB 382; indicated illegal drug labs are a very big problem and that the bill provides a tremendous benefit for people with children who unknowingly rent these sites.

JANICE ADAIR, Director
Division of Environmental Health
Department of Environmental Conservation
555 Cordova Street

Anchorage, Alaska 99501

POSITION STATEMENT: Testified on HB 382; answered technical questions regarding testing of substances.

ACTION NARRATIVE

TAPE 02-12, SIDE A
Number 0001

CO-CHAIR DREW SCALZI called the House Resources Standing Committee meeting to order at 1:10 p.m. Representatives Scalzi, Masek, Fate, Kapsner, Chenault, and Stevens were present at the call to order. Representatives McGuire, Green, and Kerttula arrived as the meeting was in progress.

HB 368-FISHERY ENHANCEMENT LOANS

Number 0010

CO-CHAIR DREW SCALZI announced the first order of business, HOUSE BILL NO. 368, "An Act authorizing the commissioner of community and economic development to refinance and extend the term of a fishery enhancement loan." [Before the committee was CSHB 368(FSH).]

Number 0089

JOHN MANLY, Staff to Representative John Harris, Alaska State Legislature, presented HB 368 on behalf of Representative Harris, sponsor. Mr. Manly told the committee the bill would allow the commissioner to reduce interest rates and perhaps extend the term on the fisheries enhancement loan to ensure that the hatcheries are more viable.

Number 0275

GREG WINEGAR, Director, Division of Investments, Department of Community and Economic Development (DCED), explained that [HB 368] would allow aquaculture associations to refinance existing loans and thereby take advantage of lower interest rates [presently] in effect; the process is similar to that for a homeowner refinancing a home loan. He said [DCED] has the ability under the commercial fishing revolving loan fund. Mr. Winegar mentioned that similar legislation was passed a few years ago. He said a number of commercial fishermen are also refinancing their loans at this time

MR. WINEGAR indicated although there will be an impact on the [revenue], as shown in the fiscal note, this won't adversely impact the fund, which is very strong; furthermore, the fund is completely revolving and doesn't get any money from the general fund, so it won't impact the integrity of that fund. He pointed out that lowering the interest rate on these loans will improve the financial picture of [aquaculture] associations, so it will increase their ability to service existing debt. Finally, [HB 368] will not have a negative impact from an administrative standpoint. There is a very streamlined process in place to handle these kinds of requests and it won't create any difficulties, he said. In response to a question from Co-Chair Scalzi, he said DCED has no difficulties with [HB 368]; the official position is neutral.

CO-CHAIR SCALZI asked Mr. Winegar if he had contacted the Department of Revenue and [determined] that the fiscal impact would be minimal to the fund itself.

MR. WINEGAR answered in the affirmative.

Number 0516

JOHN CARTER, Director, Douglas Island Pink & Chum, Inc. (DIPAC), testified before the committee. He reported that during a presentation of the fish caucus, the McDowell Group had demonstrated that the enhancement program across the state has become a serious economic engine for Alaska. He said, "In the last ten years, the economic output - the first wholesale value - was something on the order of \$1.4 billion." Given the troubled times occurring now, he said those kinds of numbers are very important. In 2000, it was over \$200 million, and approximately \$7 million to \$10 million in sport-fish revenue through charters and so forth.

MR. CARTER told members the McDowell Group's presentation was interesting because [it highlighted] how many areas of the state are impacted. He said the situation is "use or pay." It used to be that the state, through the Alaska Department of Fish and Game (ADF&G), paid for the enhancement program in Alaska with annual appropriations. He explained that fishermen pay a percentage to their regional [aquaculture association] for the enhancement and cost-recovery, so the state doesn't really have to pay out anything.

MR. CARTER referred to questions about the general fund. He offered his thinking that there's a positive impact because the

raw fish tax adds up to between \$1 million and \$2 million annually, which goes into the general fund. A similar amount goes to communities where the money was raised or where the fish were caught. He said he thinks it's good business to allow refinancing; in private industry, it's going on across the country. It would help hatcheries become more financially sound and, in many cases, would allow more fish to get to the fishermen. In the case of DIPAC, for example, he said a lot of what "we" do is for the sport fish community; it's one more chance to allow "us" to do that work. He told the committee that he would appreciate support of [HB 368].

CO-CHAIR SCALZI remarked that it was a very good presentation at the fish caucus; moreover, the hatcheries did a great job showing the financial impact to the state. He referred to an information sheet and said about 11 hatcheries will be affected by [HB 368]. He said if the loans are received today, they could be as low as 6 percent, compared to 9 percent. He pointed out that the savings on the interest the hatcheries [realize] goes directly to the common property; moreover, it would offset the expenses of running a hatchery, so there is more available for the harvesters. He remarked that any savings to the hatchery is, in turn, put back into the economy.

Number 0871

DAVE COBB, Business Manager, Valdez Fisheries Development Association (VFDA), testified via teleconference. Mr. Cobb told the committee [HB 368] is one of the "tools" needed by the commercial fishing industry and the hatchery system to remain competitive in today's global fisheries environment. The refinancing of hatchery loans at the prevailing interest rate will allow most hatcheries to reduce their annual loan payments and cost of operations significantly, he said. Any reduction in the overall operation budget of VFDA will mean more fish to the commercial fishermen in the area.

MR. COBB said VFDA believes although this bill is important to the state hatchery system, it is only one of many changes that must occur if the Alaskan fishing industry is to survive. The hatchery system established by the legislature in 1974 has met or exceeded expectations, he suggested. The commercial common property harvest [of] hatchery salmon exceeds 1 billion pounds; there has been an ex-vessel value of more than \$340 million over the last ten years. Every opportunity the hatchery system has to become more cost-effective and cost-efficient only makes good business sense, he added.

MR. COBB told members, "We have been good stewards of the public funds entrusted to us to raise fish; this bill allows us to manage those funds more effectively and efficiently." He suggested the competitive playing field has changed for Alaska from a strong market presence to massive global competition in dumping fisheries products on the market at less than the cost of production. Alaska, VFDA, and all industry players must change in order to survive in this competitive global marketplace, he said. He reiterated that [HB 368] makes good business sense and will have no impact on the general fund dollars.

Number 1034

REPRESENTATIVE FATE remarked that [HB 368] is a good bill. He referred to [page 3, paragraph (11)] and suggested adding, "or a condition which jeopardizes the fishery or the hatchery," after the word "borrower". He indicated this would give the commissioner a better tool in ascertaining the condition of that fishery and possibly allowing a blanket reduction of term, if applied for. He indicated that [the suggested change] would create fairness and extend the bill to do a better job.

MR. WINEGAR said he didn't have any difficulty with adding that language, which would [result in] broader abilities. He added that the current wording also works well.

CO-CHAIR SCALZI expressed concern about an unforeseen consequence.

REPRESENTATIVE KERTTULA asked Mr. Winegar if there is a risk of having a problem with his fiduciary duty in the trust.

MR. WINEGAR explained that each [borrower] would be looked at on an individual basis, which is how [the department] handles this.

REPRESENTATIVE KERTTULA asked Mr. Winegar how a fishery is looked at, and whether the [suggested language change] is unnecessary and runs the risk of "opening you up somehow."

MR. WINEGAR reiterated that each would be looked at on an individual basis, to ensure that the particular aquaculture association is in good standing. He said he didn't think the [suggested language change] would preclude [the department] from doing so. He said there is a streamlined process, but the [borrower] would need to apply for the refinancing.

Number 1336

REPRESENTATIVE STEVENS requested clarification of the "conditions" in the [suggested language change].

REPRESENTATIVE FATE offered the example of a borrower that is a fleet [belonging to a company]. He remarked, "If that fleet were to go under because you didn't extend the term, it would affect the fishery, and that has to be taken into consideration." He said he was thinking beyond just the individual borrower and of the effect it might have on a fishery under certain circumstances. He said he wanted to expand [the language] so the department wasn't "hand-tied." The perception would be that there would be an even playing field. This goes beyond the perception, he said - it goes to the actual world of finance where things can happen. He mentioned the recent Enron [financial collapse] and how it affected the entire financial world.

CO-CHAIR SCALZI expressed concerns that the present fisheries and the state of the loan programs are very "touchy." He said he can appreciate the concern and the broadening of the term, but without having a lot of discussion about what [the suggested language change] would mean from a legal standpoint, it might be [better] to leave it as it is. In regard to hardship on the borrower, the department has a good latitude of how far [a borrower] can go, he said. He said he would be nervous about tying the fishery in, because the fisheries are in jeopardy now. Moreover, he said he wouldn't want to put undue pressure on the department to extend a loan that was bad.

REPRESENTATIVE FATE agreed it warranted discussion. He recounted a personal experience that made him familiar with what can happen when these loans occur.

CO-CHAIR MASEK referred to backup in the bill packet. Currently, she said, DCED is unable to refinance loans from the Fisheries Enhancement Revolving Loan Fund for the hatchery system; similarly, prior to 1993, loans from the other fund - the Commercial Fisheries Revolving Loan Fund - could not be refinanced. This change [provides] that the hatcheries would be asking for comparable changes for their industry, resulting in more fish to commercial and sports fishermen, she read. She indicated that if HB 368 is enacted, she would like more equality in the expenditure for sport-catch species for king and

coho salmon because currently pink and chum salmon are primarily targeted. She remarked that she'd like it [applied equally].

CO-CHAIR MASEK continued to read, "Currently, approximately 40 percent of Alaska's entire salmon harvest is enhanced fish." She continued, "Salmon are also produced that are taken by resident and nonresident sports fishermen and utilized in the personal use fisheries." From that perspective, she said, favorable financing rates would be a normal business practice. She indicated she is a cosponsor of HB 368. She mentioned that she would like to move HB 368 out of committee because the bill could help in all parameters of fishing.

CO-CHAIR SCALZI said the amount of fish that goes to sport and personal use is in excess of a substantial amount that is paid for through the "commercial fisheries enhancement pact." He said it's very beneficial to both sport and personal use, as well as commercial use, even though it's paid for out of the revenue through the enhancement pact.

Number 1745

REPRESENTATIVE McGUIRE moved to report CSHB 368(FSH) out of committee with individual recommendations and the accompanying zero fiscal note. There being no objection, CSHB 368(FSH) was moved out of the House Resources Standing Committee.

CO-CHAIR SCALZI called a brief at-ease at 1:34 p.m., which lasted until 1:36 p.m. [He turned the gavel over to Co-Chair Masek.]

HB 376-FISH & GAME IN NAVIGABLE WATERS

Number 1800

CO-CHAIR MASEK announced the next order of business, HOUSE BILL NO. 376, "An Act relating to management of fish and game in and on the navigable waters and submerged lands of Alaska."

Number 1815

REPRESENTATIVE SCOTT OGAN, Alaska State Legislature, testified via teleconference as sponsor of HB 376. He referred to AS 16.020.010 and explained that the state had not assented to federal control of the Alaska Department of Fish and Game (ADF&G) and those areas set apart as national bird and wildlife refuges when Alaska was a U.S. territory. He said legislation

was enacted when Alaska became a state. He said apparently there was a dispute over control of ADF&G and those areas: the state wanted to say unequivocally that it didn't assent to control of those areas. He indicated it was his [prior] change to have [AS 16.20.010(a) read, as found on page 2, Section 2, subparagraph (B), of the current bill]: "Glacier Bay National Park and Preserve or the navigable waters within or adjoining the park and preserve".

REPRESENTATIVE OGAN noted that a point of contention is still in the courts; moreover, it's a case the governor has not dropped, asserting state control of the submerged lands and the resources in Glacier Bay National Park and Preserve. He recalled that there was a buyout program in place after the [National] Park Service (NPS) decided commercial fishing boats were an eyesore to the cruise ships there, although he suggested it was probably the opposite: people on cruise ships look outward and don't realize how obtrusive [their ships] are. Commercial fishing was deemed an inappropriate activity in Glacier Bay, he noted. He mentioned that the bill was passed at that time and was widely supported.

Number 1992

REPRESENTATIVE OGAN remarked that the situation is interesting because the governor didn't pursue the lawsuit in John v. United States [known as the Katie John case] to the U.S. Supreme Court, even though he'd previously said no governor of any state should ever voluntarily relinquish authority back to the federal government, and that he believed it was his "clear responsibility, even in the face of a difficult political battle, to vigorously defend this important aspect of state sovereignty."

REPRESENTATIVE OGAN said the federal government, through the reserved water rights doctrine, has taken over management of subsistence fishing in state sovereign waters. He referred to the Totemoff case and said the state supreme court unanimously ruled that submerged land gives ownership of title to and management powers over lands beneath navigable waters of Alaska, navigable waters themselves, and fish and other marine life located in Alaska's navigable waters. Moreover, navigable waters are generally not public lands under the Alaska National Interest Lands Conservation Act (ANILCA).

Number 2188

REPRESENTATIVE OGAN said the [federal] Submerged Lands Act of 1953 specifically gives the state authority over fish and animals in navigable waters and precludes [navigational] servitude or reserved rights from being used to erode that authority. He said [navigational] servitude and reserved water rights are not interests to which title can be held. He offered his understanding that both servitude and reserved water rights are limited interests, and do not give the federal government power over navigable reserved waters unrelated to those areas.

REPRESENTATIVE OGAN offered his understanding that the Alaska Supreme Court is not bound by decisions of federal courts other than the U.S. Supreme Court on questions of federal law. He said [the state] has the right to manage its resources. He said the Submerged Lands Act was mentioned in the Statehood Act, and it was mentioned that Alaska was admitted to [statehood] on an equal footing with the rest of the states; this included the 1953 Submerged Lands Act, which gave to the states fee-simple title [to] submerged lands and the right to control the resources within those submerged lands. Referring to a Submerged Lands Act handout he'd provided, Representative Ogan read from a portion that said, "... the U.S. releases and relinquishes to the states all rights, title and interest it may have, unless otherwise reserved, in lands, improvements and natural resources beneath or within the navigable waters".

Number 2269

REPRESENTATIVE OGAN mentioned a case in which [U.S. Supreme Court] Justice Sandra Day O'Connor wrote that the state has a right to control fishing. He explained that Section 1 [of HB 376] has a [number] of legislative findings; Section 2, in addition to the other areas, says [the state] doesn't assent to federal control and lists the navigable waters and submerged lands; and Section 3 talks about various findings and recognizes that the state hasn't assented to federal control and that the federal government cannot commandeer the lawmaking processes of the state to compel the state to enact and enforce a federal regulatory program. Indicating there is case law from the U.S. Supreme Court, he said this section also mentions that it doesn't prohibit the agency or an agent from taking an action necessary to protect life or property, commenting on federal statutes or regulations, or participating and cooperating with the established programs.

REPRESENTATIVE OGAN, in response to Representative McGuire, clarified that the bill adds a new subsection in Section 3;

however, it doesn't change Title 16 on those other four [paragraphs in AS 16.20.010(b)]. Aside from Section 2, nothing eliminates existing statute.

Number 2491

REPRESENTATIVE KAPSNER mentioned the constitutional mandate to manage for sustained yield. She asked Representative Ogan if he thought it irresponsible to prohibit state managers from working with federal managers.

REPRESENTATIVE OGAN said the problem is that the [state] doesn't have the ability to manage those resources for subsistence use because the [federal government] has taken over. He said the federal government doesn't have an obligation to manage on a sustained yield [basis], and prior to statehood the federal government didn't manage for sustained yield. He indicated the federal government would be prohibited from compelling the state to enact and enforce a federal regulatory program. He mentioned that he thought ADF&G had a clear responsibility to [monitor the federal government's management of resources]. He suggested ADF&G can comment on proposed federal statutes and regulations. He added, "It just is saying that we don't assent to their control; it's a matter of fundamental state sovereignty."

REPRESENTATIVE KAPSNER offered her understanding that federal law preempts any state law, across the board.

REPRESENTATIVE OGAN replied that federal law didn't preempt state law; furthermore, it gave the state the right to manage its resources. Moreover, he said the Alaska Supreme Court unanimously agreed to that position in the Totemoff case, and there is a mandate from the [Alaska] Supreme Court that the state, not the federal government, manage its resources. Representative Ogan said the [Alaska] Supreme Court has [ruled] that the state is not obligated to follow any court ruling on the issue other than [from] the United States Supreme Court. He said when the governor decided to "cede sovereign authority" to the federal government [by not pursuing the lawsuit], he ignored the constitution, the state's sovereignty, and the [Alaska] Supreme Court.

Number 2666

REPRESENTATIVE KERTTULA asked if the goal is to regain state management.

REPRESENTATIVE OGAN said, "Sure." He mentioned the governor's statements about not voluntarily relinquishing authority and why he had to appeal the case.

REPRESENTATIVE KERTTULA suggested the state should be monitoring and participating [with the federal government's management of resources] to get as much information as possible. She expressed concern that the bill might limit that ability.

REPRESENTATIVE OGAN said he didn't believe that was the intention of HB 376. The bill would allow the state to have its biologists [monitor] the federal [government], comment on proposed federal statutes and regulations, and still fund the positions. Representative Ogan acknowledged that HB 376 is basically posturing until the matter is settled in court. He pointed out that this had been done [regarding] Glacier Bay.

REPRESENTATIVE KERTTULA reiterated her concern about the language of HB 376.

REPRESENTATIVE KAPSNER pointed out that Representative Ogan's answer to a previous question had made it sound as though the reason the state has federal management is because the governor didn't appeal the Katie John case. Representative Kapsner suggested the reason the state has federal management, however, is because the state has failed to comply with ANILCA. The federal government allowed the state three moratoriums so it could come into compliance, but the legislature refused, she recalled. She mentioned a legislative remedy of putting a vote to the public to change the constitution to come into compliance with ANILCA. She said the court is not the solution to the subsistence [issue].

Number 2836

REPRESENTATIVE OGAN referred to the Totemoff case, which he said [found] that navigable waters are generally not public lands under ANILCA. He said the Submerged Lands Act of 1953 specifically gave state authority over fish and animals in navigable waters; moreover, it mentioned navigational servitude or reserved rights. He mentioned that the federal government has maintained that it has the right to manage fish up to three miles [from the coastline], which the Alaska Supreme Court found to be incorrect. Furthermore, the Alaska Supreme Court is not bound by decisions of federal courts other than the U.S. Supreme Court on questions of federal law, he suggested.

REPRESENTATIVE OGAN offered his belief that HB 376 is consistent with the Alaska Supreme Court's ruling. He offered his opinion that the governor's actions have made Alaska a second-class state, not on equal footing with the other states of the Union. Representative Ogan said 14 other states had filed amicus curiae briefs on [Alaska's] behalf in the John v. United States suit because they worry about their sovereign rights as states to manage their resources. This sets a precedent that goes far beyond the State of Alaska, he said. He mentioned remarks from [U.S.] Senator Murkowski about appealing the John v. United States case. Representative Ogan again suggested that this issue is not about subsistence, but about Alaska's sovereign rights as a state.

TAPE 02-12 SIDE B
Number 2990

REPRESENTATIVE FATE indicated his reason for cosponsoring HB 376 was because there had been no adjudication by the [Alaska] Supreme Court in contract law. He said the Submerged Lands Act of 1953 is incorporated within the Statehood Act and the compact that the people of Alaska signed saying that compact is no longer valid. He agreed that ordinarily congressional laws supersede state law, but not contract law. To get the [issue] adjudicated by a court of the land is probably going to be the only way to settle the issue of the Submerged Lands Act, he suggested. He said the [Submerged Lands Act] was [related] not to subsistence, but rather to the sovereign right to manage navigable waterways. He indicated there hasn't been harmony between the federal government [and the state] as it endeavors to manage a state waterway and [ADF&G].

REPRESENTATIVE OGAN mentioned that he thought the federal government didn't honor the deals made at statehood.

Number 2842

DICK BISHOP, Alaska Outdoor Council (AOC), testified via teleconference, informing the committee that AOC supports HB 376. Moreover, he said AOC believes it is important to reemphasize what the Alaska Supreme Court has already enunciated: the state's authority over navigable waters and submerged lands, and the management of resources found there. He said AOC appreciates the recognition of the state's public-trust responsibility for renewable resources. However, it's also important to ensure that the state, in its efforts to be a good neighbor and to ensure sound conservation of resources,

does not contribute to the perception of federal authority where none exists, he said. This bill addresses that potential problem while also citing federal laws that authorize legitimate federal authority. Therefore, AOC urges the passage of HB 376 to ensure the authorities are clear and that the state's authority and responsibility is clear and is followed, he said.

MR. BISHOP told members he doesn't believe federal law supersedes state law in all cases. There are limitations that vary from federal law to federal law; for example, it has often been cited that the federal government has management authority for fish and game on public lands through the property clause, but that's not necessarily the case unless Congress has specifically said that should be the case. Another example is that nowhere in ANILCA was that specific authority given to the federal government by Congress; consequently, that's still an open question, even though it has not been adequately pursued in court, he told members.

Number 2703

REPRESENTATIVE OGAN asked Mr. Bishop if he was aware of the case of New York v. United States. He read from the case [original text provided]:

This case instead concerns the circumstances under which Congress may use the States as implements of regulation; that is, whether Congress may direct or otherwise motivate the States to regulate in a particular field or a particular way. Our cases have established a few principles that guide our resolution of the issue. As an initial matter, Congress may not simply "commandeer[r] the legislative processes of the States by directly compelling them to enact and enforce a federal regulatory program." Hodel v. Virginia Surface Mining & Reclamation Assn., Inc., 452 U.S. 264, 288 (1981).

MR. BISHOP indicated he wasn't familiar with the aforementioned case. He said it's very reassuring that there are limitations on the reach of the federal government in compelling states to do things they might not otherwise be willing to do. He said it is a good example that the federal government does not, in all cases, have the option of preempting the state's authority. He mentioned that ownership, authority, and responsibility for management of navigable waters have been granted to the states and upheld until the circumstances in Alaska. Mr. Bishop spoke

about limitations and lack of clarity on the relative authorities of federal and state governments in the management of fish and wildlife and renewable resources in the state.

Number 2565

CO-CHAIR MASEK mentioned the Submerged Lands Act. She spoke about the intent of Congress, the appeal to the Ninth Circuit Court, and the impact on the state. She asked if [HB 376] would clear up [the issue].

MR. BISHOP said he thought it would clear it up by laying out the matters of law and the relative authorities; however, it won't clear up what authority the state will be able to retain and what authority the federal government will attempt to assume. What the federal government assumes and what it chooses to do under the [John v. United States] ruling will be consistent with the ruling, he said. He indicated that the federal government is not going to subside in its position because of the passage of HB 376. It is an important expression of a recognition of the state's sovereignty with regard to the ownership, authority, and responsibility over navigable waters and submerged lands, he concluded.

Number 2463

CO-CHAIR MASEK referred to a set of documents in the committee packet, the first page of which was headed, "Alaska Digest Email News; September 3-9, 2001; Murkowski Laments State Decision Not To Appeal 9th Circuit Case." She offered an excerpt attributed to U.S. Senator Murkowski, which read:

"Even if we succeed in passing a constitutional amendment to protect subsistence and solve the subsistence problem, which I have supported and will continue to work for, Alaskans will not be afforded the chance to recover control over state waters, which the Governor has chosen to give away."

MR. BISHOP offered his belief that if the state were to adopt a rural subsistence-priority amendment in its constitution, it wouldn't solve the dilemma relating to state sovereignty in navigable waters. Moreover, it would address the ability of the state to assume the responsibility for administering the federal law, but wouldn't return management to the State of Alaska, he said. The state would be obligated to implement the terms of federal law, and the federal court would enforce them. He said

that was the situation that existed from 1986 to 1989, when the state was in conformity with the federal law. If the state were to come into conformity with the federal subsistence law [now], then the same terms would dictate the state's operation [regarding] the state's implementation of that federal law. It leaves the issue of authority of the state over navigable waters unresolved, he added.

Number 2314

REPRESENTATIVE KERTTULA referred to John v. United States and offered her understanding that the court had said if the state followed ANILCA and changed the state constitution, then the state would regain jurisdiction over navigable waters.

MR. BISHOP said he didn't recall that particular passage. However, if that was [the case], then perhaps the issue is that the state would be able to implement the federal law with regard to the regulation of subsistence uses. It wouldn't necessarily affect the state's options or autonomy in deciding other questions with regard to the use of navigable waters, he said. He asked how it would relate to timber harvests, tourism, or mining, for example. Mr. Bishop said if those are federal reserved waters and the authority of the federal government remains unchallenged, then the federal policies would prevail on what can and cannot be done, regardless of what the state thinks. If the rural priority [were] in the constitution, then the state would be compelled to administer subsistence regulations consistent with federal law, he said.

Number 2212

CO-CHAIR MASEK mentioned the issue of judicial oversight extending toward the navigable waters.

REPRESENTATIVE KERTTULA referred to page 704 of John v. United States. She reiterated her point that the court said [the state] could resume management of subsistence uses on public lands including navigable waters. She added [referring to the Katie John case]:

It never reached any of the other issues, and ... I think that this is segueing over into some kind of an argument that just doesn't exist anymore. ... This was a subsistence case; it's a subsistence argument. The court may have reached somewhat to get there, but that's what it concerns. So, just from my standpoint,

I am not as concerned, as we seem to be building this concern up about other issues.

Number 2161

MR. BISHOP said he couldn't disagree more. He offered his belief that clearly the federal jurisdiction on reserved waters under the John v. United States decision goes far beyond the issue of the provision for subsistence uses. Furthermore, he suggested, the court failed to recognize that in making that statement, and doesn't have a clue about what is or isn't state management. When [the court] said fish and game [management] would return to the state, that is simply not the case; it's not atypical of the Ninth Circuit Court to make that kind of leap in logic, he contended.

REPRESENTATIVE OGAN said the Ninth Circuit Court can say what it wants, but the [Alaska] Supreme Court said [Alaska] is not bound by those decisions. He mentioned that reserved water rights are precluded from being used to erode that authority, and that the [Alaska] Supreme Court cannot be ignored. He added, "We have this authority, and that's all this bill does."

Number 1999

CO-CHAIR MASEK indicated HB 376 would be held for further consideration.

HB 382-CLEANUP OF ILLEGAL DRUG SITES

Number 1982

CO-CHAIR MASEK announced the next order of business, HOUSE BILL NO. 382, "An Act relating to the evaluation and cleanup of sites where certain controlled substances may have been manufactured or stored."

Number 1971

REPRESENTATIVE GRETCHEN GUESS, Alaska State Legislature, sponsor of HB 382, told the committee that when an illegal [drug manufacturing] laboratory is raided in Alaska, law enforcement sends the residential property owner notice [of the raid] and removes major contaminants [from the site]. However, there are no guidelines or any direction for the [property] owner on how to clean up the site before [another tenant] moves in or the [property] is sold. There is no penalty if the [property owner]

decides to repaint the walls and rent the property rather than clean it up. She said there are responsible [property] owners who want to clean up the sites, but the state doesn't have guidelines set forth. However, other [property] owners aren't so responsible and rent the site, even though there could still be [drug residue] on the walls and in the carpet, which could pose a health hazard to [an occupant].

Number 1798

REPRESENTATIVE GUESS turned attention to Section 2 and said it would provide direction regarding the cleanup of an [illegal drug] site. The law enforcement agency would notify the property owner and the department, and the owner would be provided with guidelines for cleaning up the site.

REPRESENTATIVE GUESS pointed out that the [cleanup] would be the responsibility of the property owner, and the state wouldn't pay any part of that. The bill stipulates that if the site is to be used for residential purposes, then it must be cleaned up. She said the [property] owner has the choice not to clean up, but the site cannot be occupied or sold until it is done.

REPRESENTATIVE GUESS turned attention to [proposed AS 46.03.510] and said the property has to be determined fit for use before it can be transferred, sold, leased, or rented. Also, it makes any current contracts on the property voidable, but it doesn't make any past contracts voidable, so a mortgage would still be valid, for example. Property can be sold if written disclosure is made to the prospective transferee or purchaser that the property has been determined to be an illegal drug manufacturing site and hasn't been determined to be fit for use. Furthermore, [under subsection (c)] a person who knowingly uses, transfers, sells, leases, rents, or occupies property of [in violation of the section] is guilty of a class A misdemeanor.

REPRESENTATIVE KERTTULA referred to page 3, lines 21-23, and asked why the disclosure doesn't accompany the transfer of a sale document.

REPRESENTATIVE GUESS deferred to Nathan Johnson.

Number 1650

NATHAN JOHNSON, Staff to Representative Gretchen Guess, Alaska State Legislature, answered that the reason for the aforementioned provision is because of concern in the real-

estate community about having the disclosure recorded. That would create a [permanent] record, which some people find objectionable. He said that was an effort to appease that concern.

CO-CHAIR MASEK remarked that if the property owner complied, then it wouldn't be necessary [to record the disclosure].

REPRESENTATIVE GUESS offered that if [the disclosure] was recorded, it would be a [permanent] record.

REPRESENTATIVE KERTTULA asked if sale of the property would be permitted if the property wasn't cleaned up. She also inquired whether there would still be protection for the buyer.

REPRESENTATIVE GUESS answered in the affirmative. She turned attention to [proposed AS 45.03.520] and said the Department of Environmental Conservation (DEC) would establish procedures for testing the property and establish a list of laboratories in the state that have the capacity to perform the testing procedures. This is to ensure that the property owner uses a laboratory that can perform the appropriate testing of the property.

Number 1455

REPRESENTATIVE GUESS brought attention to [proposed AS 46.03.530] and mentioned the four substances [lead, mercury, methamphetamines, and volatile organic compounds] that are known to cause health hazards, and that the department would set forth in regulation the levels required to be met for [determining] fitness. She said this was put into regulation, rather than into statute, because science constantly changes regarding what levels are appropriate. She mentioned concerns that there are many more chemicals which are harmful, and that there's not an easy way for those to be [included] in regulation or statute.

REPRESENTATIVE GUESS highlighted [proposed AS 46.03.540]. She told members it is important that the guidelines are followed, not only so the [site] is safely cleaned up, but also so that the hazardous material is disposed of correctly. She mentioned that disposal has been more of a problem than anything else.

Number 1358

REPRESENTATIVE GUESS turned attention to [proposed AS 46.03.550] and indicated the determination would be made by the department regarding whether a property would be fit for use if the owner

had submitted satisfactory evidence to the department that the property was cleaned up according to the guidelines, that testing had been performed, and that it had been determined that the chemical levels meet the requirements.

REPRESENTATIVE GUESS brought attention to [proposed AS 46.03.560] and indicated the section sets forth the number of days from the time the property owner receives notice that the owner has to comply. Regarding [proposed AS 46.03.570], she indicated the section sets forth the duties of the department and regulations.

REPRESENTATIVE GUESS mentioned an outline that highlights the general impacts of the illegal [manufacturing] labs and the health [risks] involved, especially in regard to lead and mercury. She addressed questions that she'd received regarding HB 382. The first question asked was why the [property owner] isn't [required] to clean up the [site] if the owner isn't going to [rent or sell] it. Her response was that the levels of [hazardous chemicals] are harmful if there is an occupant [living in the site], but not if it is vacant. She added that it seemed "overreaching" to tell the [property owner] that he/she had to [clean up the site if it was vacant]. She added that there is no disclosure [required] at this time.

Number 1281

REPRESENTATIVE GUESS said there were lots of questions on why DEC [would be the administering department]. She explained that in states with similar statutes, the responsible department is usually health and social services. However, it would be more expensive to have [a department other than DEC administer the provision] because DEC already has the equipment and the procedures in place. The fiscal note reflects a cost of \$10,000 to [initiate the program] and \$2,000 a year [in expenses] thereafter. She added that putting the responsibility with [the Department of Health and Social Services (DHSS)] "would have been a whole new position and department, which didn't seem very responsible."

REPRESENTATIVE GUESS reported that Oregon and Washington State have [addressed this issue]. Washington [State] is finding that it should have [addressed] this at a state level [rather than] a local level. Alaska has many small communities, she noted, and [it doesn't make sense] to force the local government to have the expertise; it is more efficiently done at a state level.

REPRESENTATIVE GUESS highlighted letters of support from the Anchorage Police Department, the Alaska State Troopers, and [municipalities]. She mentioned that Alaska State Troopers have been put in the position of telling a property owner there has been an illegal [manufacturing] site, but they haven't been able to direct the owner anywhere to ensure the site is cleaned up.

Number 1130

REPRESENTATIVE McGUIRE asked if there is any recourse for a [property owner] to civilly recover the [cost] of cleaning up the site.

REPRESENTATIVE GUESS answered that she hadn't addressed that issue. She said her intent was that the option should be open. She said she doesn't think it is the government's responsibility; it's the [owner's] responsibility because it is that person's property. She said it is costly to test and clean up, and that she has no problem with [recovering those] costs. She mentioned that she is unsure whether [a method for recovering costs] should be included in the bill, but said she is willing to look into it and ensure that the option is available.

Number 0959

MR. JOHNSON suggested that almost every existing housing lease would cover that situation and give the [property owner] civil recourse.

REPRESENTATIVE McGUIRE agreed that most leases would [provide an avenue] for civil recourse. She said, however, she would like to have a specific right of action in the bill for the property owner to recover those actual fees and costs that incur.

REPRESENTATIVE GUESS indicated she would address the [cost-recovery] issue.

Number 0860

CO-CHAIR SCALZI asked if the bill was in the current committee - rather than the House Health, Education and Social Services Standing Committee - because DEC would be the [administering entity].

REPRESENTATIVE GUESS answered in the affirmative.

Number 0800

REPRESENTATIVE KAPSNER requested an estimate of the number of [illegal manufacturing] labs located in rural Alaska.

REPRESENTATIVE GUESS referred the question to the Alaska State Troopers. She mentioned that the [illegal manufacturing labs] are a problem in Anchorage; because of aggressive law enforcement efforts in that area, the labs are moving toward the Matanuska-Susitna area and Kenai. She said according to the Alaska State Troopers, there are some labs in Ketchikan. She referred to the chemicals involved in illegal labs and the transportation needed. Fortunately, she said, there have not been [illegal labs] found in rural Alaska. She also mentioned that there would be additional costs for the testing to be done in rural areas.

CO-CHAIR MASEK referred to an article from the Frontiersman in Wasilla, dated February 15, 2002, which said Palmer's district attorney office has received 54 new "meth" [methamphetamine] cases to prosecute this quarter, compared to Anchorage's 57 new cases for the same period. She indicated the problem is growing in that region.

REPRESENTATIVE KAPSNER mentioned a case involving a [methamphetamine] lab found in Juneau in a duplex. She said the neighboring tenants' infant had experienced [increased] sickness [during that time]. She asked what the recourse was for the parent of a young child who has sustained health problems because of a methamphetamine lab.

REPRESENTATIVE GUESS offered her understanding that there wouldn't be recourse under HB 382 because it only addresses cleanup of the site. She asked [Mr. Johnson]: If there were an illegal manufacturing lab in a duplex, could the other side still be rented out?

Number 0583

MR. JOHNSON answered that it would be at the discretion of the police officers involved, depending on the heating system; if there was a forced air system, for example, the chemicals could be spread throughout the entire duplex. Mr. Johnson also said that in terms of recourse, HB 382 does address it. He mentioned that other states have worked on legislation specifically to address [illegal manufacturing labs'] effects on children and to

increase penalties, which could be considered in future legislation.

Number 0534

REPRESENTATIVE FATE referred to AS 46.03.530 and asked why asbestos wasn't included in the [bill].

REPRESENTATIVE GUESS indicated asbestos isn't a chemical used in manufacturing illegal drugs.

REPRESENTATIVE FATE said asbestos is used when there is a large amount of heat in a specific area; although asbestos hasn't been used in quite some time, it is readily available. Moreover, asbestos used in those labs is usually secondhand, which is more dangerous, he suggested.

REPRESENTATIVE GUESS deferred to Mr. Johnson.

MR. JOHNSON said none of the other states [HB 382 was modeled after] had a problem with asbestos at methamphetamine lab sites. He added that although it might exist at some sites, this [issue addressed in the bill] relates to specific things used in methamphetamine labs only, because "we don't want people ... to feel as though, as we come for a drug lab, that we're looking to address other shortcomings of their property."

REPRESENTATIVE GUESS referred back to Representative Fate's question. She said the [specific language] referring to the four substances [was included] because those are the known four [substances used in drug labs]. She indicated her two proposed solutions [for later changes as more information becomes available] were these: to simply give DEC the authority to add in regulation other substances known to be harmful; or to have the legislature, after a year, evaluate whether there should be a change [in statute reflecting such regulations implemented by the DEC]. She said she had amendments drawn up for both scenarios. She told Representative Fate the problem is that there could be other things that are used but which aren't specified in the bill, "and we need to grapple with that."

REPRESENTATIVE FATE said asbestos is not general and is illegal to have in a public facility. It is not cumulative like lead, [which is included in the bill], he said. He offered his view that asbestos is much more dangerous than lead. He indicated he would like asbestos to be added to the statute.

REPRESENTATIVE GUESS indicated she wouldn't object to amending HB 382 to include asbestos.

Number 0201

REPRESENTATIVE STEVENS mentioned that [HB 382] is not intended to correct conditions in homes that haven't had illegal drug manufacturing. He offered his view that there are probably rules elsewhere which require that homes be safe.

REPRESENTATIVE FATE offered his belief that usually asbestos isn't found in the home; it is brought in for protection against the high [temperature] necessary to manufacture [drugs].

Number 0077

REPRESENTATIVE CHENAULT mentioned that older-style linoleum found in some homes is laced with asbestos. He also said he has concerns that some of the aforementioned chemicals are potentially more dangerous than the four [substances listed in the statute]. He suggested that the scope of the bill be kept to a methamphetamine [lab] scenario.

CO-CHAIR MASEK remarked that she thought the [bill's scope was being broadened] too much.

TAPE 02-13, SIDE A

Number 0001

REPRESENTATIVE FATE proposed a conceptual amendment, to have the language read, "any harmful chemical or substance associated with methamphetamine production".

MR. JOHNSON suggested "clandestine" lab, because although this legislation largely addresses meth labs, other [drug labs need to be included]. He said the two amendments [mentioned by Representative Guess] would open up the issue for DEC to consider and add chemicals and substances in the future.

CO-CHAIR MASEK referred to page 4 [lines 14-21], standard for determining fitness, and said it was spelled out clearly and didn't require more items to be added. What is already listed should deal with the bill's intent, to ensure that these chemicals are going to be cleaned up and taken away, so that whether it's a house or an apartment, it would be cleaned up, ready, and safe for someone to rent. She asked that Representative [Fate] withdraw his [conceptual amendment].

Number 0275

REPRESENTATIVE FATE indicated the conceptual amendment was withdrawn.

Number 0304

JULIA GRIMES, Lieutenant, Alaska State Troopers, testified via teleconference in support of HB 382. She said clandestine methamphetamine labs are a dangerous problem all over the United States and, as with every drug trend, have reached Alaska. Law enforcement in Alaska has heeded the experiences of states in the Northwest and Midwest, taking an aggressive stance toward detection and eradication of meth labs, and prosecuting suspects found to be associated with them. She explained that because of that aggressive stance, the number in the state dropped from 50 labs in year 2000 to 21 labs in year 2001, based on statistics from the annual drug report.

MS. GRIMES said detecting, eradicating, and prosecution are only a part of the [solution]; she feels [Alaska] has an obligation to be equally aggressive in evaluating how harmful the sites are once they are vacated by law enforcement officers and to protect the health of innocent [people] seeking [a residence]. She said, "We would just support this bill, and see it as being another aggressive and progressive way to keep from getting behind the eight ball, if you will, in a problem that can easily overrun an area, and a dangerous problem."

Number 0526

TIM ROGERS, Legislative Program Coordinator, Municipality of Anchorage, testified via teleconference. He told the committee [illegal manufacturing laboratories] are an increasing problem throughout Alaska that needs to be addressed. He said the belief is that [HB 382] sets up a very good process to ensure that properties are made safe for future tenants. Despite added cost to rental property owners, he said the belief is that the safety of the future definitely outweighs the added cost. He concluded, "We commend this bill to you for passage."

Number 0597

REPRESENTATIVE FATE asked if lead and mercury are part of the manufacturing process of these [types of] drugs.

Number 0605

KURT KORNCHUCK, Detective, Anchorage Police Department (APD), via teleconference, answered that mercuric chloride and lead acetate are essential ingredients in a process for manufacturing methamphetamine. He mentioned that asbestos is used in large-scale drug manufacturing labs, but hasn't been seen in Alaska since 1996. Most of the heating is done on small, portable electric burners with glassware, rather than a commercial-type reaction vessel.

REPRESENTATIVE FATE asked if a [property owner] would be forced to strip the walls if lead were found on them.. He also asked whether the background level is taken into consideration with regard t the lead.

MR. KORNCHUCK said the [question] falls beyond [APD's] level of expertise. He added:

We're very thankful for this kind of bill because we're a little frustrated when we go in. Of course, we're wearing all of the protective gear, protective suits, breathing apparatus, rubber boots, and gloves. And when we leave, we simply notify the landlord and post the property.

MR. KORNCHUCK said he didn't know what the testing procedures entail. He mentioned that [illegal drug labs] are a very big problem. He said when he'd worked on [enforcement relating to] clandestine laboratories in California, some local health departments would come out [to the site] and take samples so they could have an idea of the manufacturing process and what they should look for when they went back in, to give a piece of property a clean bill of health.

Number 0810

MR. KORNCHUCK concluded by saying HB 382 is outstanding legislation that he was very surprised and happy to see come forth. He said [HB 382] provides a tremendous benefit for people with children who unknowingly rent [these sites].

CO-CHAIR MASEK asked whether the law enforcement officers who [raid] meth labs are in the [federal Drug Enforcement Agency (DEA)].

MR. KORNCHUCK answered that specialized, trained officers including state troopers, local police officers, and federal investigators go through one-week training in which they learn industrial-hygiene techniques, proper use of equipment, what to look for, and how to be safe. Only those who are certified to enter clandestine drug laboratories are allowed to participate in the raids and the cleanup process. In addition, a highly specialized group of individuals in the state get together for annual certification every year and talk about the new drug trends.

CO-CHAIR MASEK remarked that Section 2 requires testing of property before continued use if a law enforcement officer has determined that the property was an illegal drug manufacturing or storage site.

Number 1021

JANICE ADAIR, Director, Division of Environmental Health, Department of Environmental Conservation, testified via teleconference, relating her understanding that there is a possibility of false positives for lead and mercury. There are guidelines for laboratories to use to recognize that possibility, she said.

Number 1087

REPRESENTATIVE GUESS offered Amendment 1, which read:

Page 4, line 22-24, following "Sec.46.03.540. Decontamination requirements. (a) If"

Delete "testing under AS 46.46.03.520 shows the presence of a substance that exceeds the limits set by regulations adopted under AS 46.03.530 and"

Page 4, line 25, following "property,"

Insert "for which a notice has been issued under AS 46.03.500,"

REPRESENTATIVE GUESS explained that if property is found to be the site of an illegal manufacturing lab, and if the property owner knows he/she wants to clean up the property, Amendment 1 would allow the property owner to skip initial testing of the property, clean up the property in accordance with the guidelines, and then have the property tested to ensure that the standards have been met. This would save the owner the expense of testing the property twice.

Number 1220

REPRESENTATIVE FATE moved that the committee adopt the foregoing as Amendment 1. There being no objection, Amendment 1 was adopted.

Number 1248

REPRESENTATIVE GUESS again addressed the subject of new substances that might be used in illegal drug manufacturing. She offered two slightly different amendments [discussed previously] that would broaden the language in [AS 46.03.530] and allow the department to [periodically] review information related to illegal drug manufacturing, identify hazardous substances used in the manufacturing, and add [regulations]. Representative Guess mentioned concern among law enforcement officers about limiting the number of substances included in this section.

[There was an at-ease from 3:06 p.m. to 3:08 p.m., during which the two amendments mentioned by Representative Guess were withdrawn.]

CO-CHAIR MASEK explained on the record that she thought the amendments were too broad and shouldn't be included. She said the bill already identifies hazardous chemicals associated with illegal manufacturing laboratories. She therefore had asked that the proposed amendments be recalled.

Number 1492

REPRESENTATIVE KERTTULA began discussion of conceptual Amendment 2. Referring to page 3, lines 4-7, she asked what the property owner's recourse would be when a lease is voided because of illegal drug manufacturing. Representative Kerttula suggested amending paragraph 1, line 8, to include "or lease" after "promissory note".

MR. JOHNSON said it would be beneficial because if the renter has a clandestine lab, then the lease [can be voided]; moreover, it would provide the property owner recourse for the voided lease.

Number 1650

REPRESENTATIVE GREEN asked why only the renter would be excluded and not the user or lessee.

REPRESENTATIVE KERTTULA pointed out that subsection (b) covers the transfer and sale. She said including the word "lease" would probably cover [Representative Green's concern]. She indicated the amendment should be conceptual so the correct language can be used to provide protection for the landlord.

Number 1759

REPRESENTATIVE KERTTULA moved to adopt the foregoing as conceptual Amendment 2. There being no objection, conceptual Amendment 2 was adopted.

Number 1772

CO-CHAIR MASEK turned attention to the fiscal note for DEC. She gave a brief synopsis of the fiscal note expenditures. She indicated operating costs would be \$12,000 for FY 2003 and \$2,000 per year thereafter.

Number 1917

REPRESENTATIVE McGUIRE moved to report CSHB 382 [HB 382, as amended] out of committee with individual recommendations and the accompanying fiscal note. There being no objection, CSHB 382(RES) was moved out of the House Resources Standing Committee.

ADJOURNMENT

There being no further business before the committee, the House Resources Standing Committee meeting was adjourned at 3:20 p.m.