MINUTES
SENATE FINANCE COMMITTEE
April 15, 2002
9:29 AM

TAPES

SFC-02 # 56, Side A
SFC 02 # 56, Side B
SFC 02 # 57, Side A

CALL TO ORDER

Co-Chair Pete Kelly convened the meeting at approximately 9:29 AM.

PRESENT

Senator Pete Kelly, Co-Chair
Senator Dave Donley, Co-Chair
Senator Jerry Ward, Vice Chair
Senator Gary Wilken
Senator Alan Austerman
Senator Lyman Hoffman
Senator Donald Olson
Senator Lyda Green
Senator Loren Leman

Also Attending: ZACH WARWICK, Staff to Senator Gene Therriault; DAVID STEWART, Personnel Manager, Division of Personnel, Department of Administration; DEBRA GERRISH, Wife of Warrant Officer in National Guard; KIM OGNISTY, Staff to Senator John Torgerson; RICK KAUZLARICH, Right of Way Chief, Department of Transportation and Public Facilities; WILLIAM CUMMINGS, Assistant Attorney General, Transportation Section, Civil Division, Department of Law; JON TILLINGHAST, Attorney, Sealaska Corporation; RON WOLFE, Representative, Sealaska Corporation

Attending via Teleconference: From Anchorage: TOM CHAPPLE, Director, Division of Air and Water Quality, Department of Environmental Conservation; From Fairbanks: BILL JEFFERS, Manager, Environmental Services, Fairbanks Goldmining Inc, and Vice President, Council of Alaska Producers; CHARLIE BODDY, Vice President, Governmental Relations, Usibelli Coal Mines; From Offnet Sites: JOHN SUND, Vice President, Norquest Seafoods; WILLIAM SATTERBERG; PHIL EVANS

SUMMARY INFORMATION

SB 326-WASTEWATER DISCHARGE PROGRAM

The Committee heard testimony from the sponsor, the Department of Environmental Conservation, and took public testimony. One amendment was adopted, the Committee revised the bill's fiscal note, and the bill reported from Committee.

SB 239-STATE EMPLOYEES CALLED TO MILITARY DUTY

The Committee heard testimony from the Department of Labor and Workforce Development and took public testimony. The bill was held in Committee.

SB 278-TAKING PROPERTY BY EMINENT DOMAIN

The Committee heard testimony from the Department of Transportation and Public Facilities, the Department of Law, and took public testimony. A committee substitute was adopted and the bill was held in Committee.

#sb326

CS FOR SENATE BILL NO. 326(RES)
"An Act relating to evaluating state assumption of the wastewater discharge program under the federal Clean Water Act; and providing for an effective date."

This was the first hearing for this bill in the Senate Finance Committee.

ZACH WARWICK, Staff to Senator Gene Therriault, explained that this bill directs the Department of Environmental Conservation to evaluate the benefits and consequences that would result from the State assuming primacy for the National Pollutant Discharge Elimination System (NPDES) currently managed by the federal Environmental Protection Agency (EPA) Seattle, Washington office. He explained that the federal Clean Water Act, enacted in 1972, contains provisions allowing states, rather than the federal government, to administer the NPDES permitting program, and noted that 44 states currently do so. He continued that other states are considering this option because it would allow each state to tailor regulations to their specific environmental issues and determine permit issuance timelines. He stated that, in addition to

evaluating the administration of the program, the Department would determine associated costs and identify funding sources.

Senator Austerman, noting that this legislation involves environmental issues, asked what “potential problems” might result by this change.

Mr. Warwick commented that some people support continuing federal management of the NPDES program, arguing that the federal government does a better job than the State could; however, he could not provide specific concerns.

Senator Austerman asked whether the intent of this legislation is to conduct an evaluation of the benefits and consequences of this proposal to present to the Legislature or whether enactment of this legislation would be the actual evaluation. He pointed out that Section 2 of the bill identifies the statutory and regulatory changes, permitting procedures, and associated costs that would be incurred by this transfer.

Mr. Warwick responded that the evaluation process involves a series of steps, including regulatory and statutory changes that would be considered in making a determination that the transfer would be beneficial to the State.

Senator Austerman requested further information of the Department.

TOM CHAPPLE, Director, Division of Air and Water Quality, Department of Environmental Conservation testified via teleconference from Anchorage to respond to Senator Austerman’s question about “how in-depth” the Departments’ evaluation would be. He disclosed that this issue has been discussed for approximately fifteen years, and the question is whether “it would be in the State’s best interest to take on this permitting program.” He stated that without an in-depth analysis, the determination would not be possible; therefore, he continued, the inclusion of draft regulations, permitting procedures and proposed corresponding statutes is required to thoroughly evaluate the benefits and consequences of the transfer.

Mr. Chapple surmised that if it becomes obvious, early in the process, that the transfer would not be beneficial to the State; it would be likely that the effort would be curtailed; however, he reiterated, the complexity of the issue requires the State to evaluate regulation and statute changes to determine what would be required to thoroughly answer the question.

Senator Ward, referring to information provided on page 25 of the

May 15, 1998 Easton Environmental Consulting Engineering and Sciences report titled “The State Role in NPDES Wastewater Discharge Permitting in Alaska, Options for Improvement” [copy on file], asked which industries have been granted administrative NPDES extensions by the EPA.

Mr. Chapple commented that the Easton Report is not available at the teleconferencing site.

JOHN SUND, Vice President, Norquest Seafoods, testified from an offnet site and spoke in favor of the bill. He informed the Committee that his seafood processing company holds NPDES permits for each of its processing plants in Ketchikan, Petersburg, Cordova, and Chignon as well as for two floating vessels that process crab, herring, and salmon. He stated that this legislation would streamline the process explaining that currently the DEC and the EPA jointly administer the program, and the permit holder is required to file joint, duplicate reports to each entity. He furthered that whenever a discharge issue arises, the permit holder is required to contact both the DEC and the EPA.

Mr. Sund asserted that this legislation does not alter the terms or conditions of the permit; however, a single program administrator would allow for a more uniform interpretation and enforcement of the standards. He informed the Committee that at meetings where representatives of the seafood industry, the EPA, and the DEC have met to discuss and resolve discrepancies regarding the current permit, it has been noted that some of the EPA personnel administering the program have never been to Alaska and “do not know much about the State or the seafood industry.”

Mr. Sund informed the Committee that although the quality of the water in mixing zones locations as well as the sizes of the mixing zones are federal issues; the allowable quantity of seafood waste deposits on the ocean floor is a State issue. He continued that when a situation involves both jurisdictions, the permit applicant gets “caught in the middle”. He expressed that this situation would be avoided if a single entity were responsible for the entire process.

Mr. Sund summarized that this legislation would provide the opportunity to explore whether this transfer would be beneficial to both the State and the affected industries, and stressed that inclusion of the statutory and regulatory details are paramount in the determination. He noted that the question of how the program would be funded is a significant issue, and he qualified that, currently; the federal government funds its operation.

BILL JEFFERS, Manager, Environmental Services, Fairbanks Goldmining Inc, and Vice-President, Council of Alaska Producers, testified via teleconference from Fairbanks in favor of the bill. He voiced that Mr. Chapple's testimony fairly represents Alaskan industries' discussions and concerns regarding steps that should be taken to address the issue, and that Mr. Sund adequately expressed the concerns and problems that have been encountered under the current system.

CHARLIE BODDY, Vice-President Governmental Relations, Usibelli Coal Mines, testified via teleconference from Fairbanks in favor of the bill as he stated that this legislation would provide the State the ability to determine whether this transfer would be in the State's and the industry's best interest. He stated that the mining community, which is "dynamic" rather than "static" in its mining endeavors, factors water discharge permit applications into its timelines, and he attested that the continuous permitting delays of "the ever-changing" EPA office staff in Seattle has been detrimental to operations.

Senator Austerman asked if the EPA charges a permit fee.

Mr. Boddy responded that while there is no fee for the federal NPDES permit, the State charges a certification fee.

Co-Chair Kelly asked whether this legislation is time critical.

Mr. Boddy responded that it is not.

Mr. Jeffers concurred.

Senator Leman voiced that, in his professional perspective, State management of the NPDES permit process would be preferred; however, he questioned why the evaluation process would take approximately a year and a half to complete and require the hiring of additional staff. He opined that the study could be conducted in less time at a lower cost.

Senator Ward re-visited his question concerning which category of industries received EPA administrative permit extensions as specified in the Easton Report. He stated that this information would be helpful in developing program receipt funding mechanisms similar to those developed by other states to fund up to 96 percent of program administration costs. He additionally asked for further information about the permit extension process.

Mr. Chapple explained that NPDES permits are issued for five years, and due to limited resources, it has been common for the EPA office

in Seattle to administratively extend seafood and mining permits another five years. He exampled that the Municipality of Anchorage sewage treatment plant permit was administratively extended for more than ten years. He informed the Committee that a few years ago, Congress notified the EPA that too many permitting delays were occurring, and that the Seattle Region 10 office was among the offices with the most delays. He communicated that the Seattle EPA office is now current on the majority of its permits.

Senator Ward asked the testifier which industry holds the bulk of the NPDES permits.

Mr. Chapple responded that NPDES permits are applicable to any discharge affecting surface water. He stated that EPA characterizes these discharges as “minor source” or “major source.” He exampled that major source discharges include such things as a sewage treatment plant for medium to large communities and regulated industries such as seafood processing plants, mining, and oil and gas activities. He continued that all of the oil platforms operating in Cook Inlet are permitted under a general permit issued by the EPA whereas the North Slope activities have both general and individual permits.

Senator Ward asked how much revenue the NPDES permits fees generate toward the cost of administering the program. He informed the Committee that a pulp mill in the State is currently charged $80,000 for its permit.

Senator Leman voiced the understanding that the fees would need to be increased to support the program.

Mr. Chapple stated that program funding is one of the major components in the determination of whether the State should solely administer the NPDES program. He shared that program receipts or a combination of program receipts and state general funds or federal funds are used to fund other states’ programs.

Co-Chair Kelly reiterated that while no fee is currently charged for the federal NPDES Permit, the State charges a certification fee. He continued that were the process to transfer entirely to the State, DEC would assess a fee for the issuance of the permit, and, he surmised, the certification procedure would no longer be necessary.

Mr. Chapple confirmed that only one fee would be assessed if the State were the sole manager of the NPDES permitting process. He stated that the fee levels would be determined during the evaluation process as funding options are reviewed.

Senator Austerman stated that page 54 of the Easton Report specifies that the NPDES permitting process could require up to twenty-three, full-time EPA employees, and he asked whether the DEC would need to staff at approximately this level, as this would increase the cost of managing the program.

Senator Austerman voiced the understanding that the evaluation would identify available federal funding in addition to industry permit fees that would support the program; however, he expressed concern regarding the level of the fees the industry might be required to pay.

Senator Leman voiced that “some efficiency should be realized” by the State assuming primacy of the process because of “the reduced interaction with the EPA” and the benefit of absorbing the certification process within the permitting process. He opined that having Alaskans administer the program would produce additional benefits, and he asserted that the “major goal” of this endeavor should be to realize “substantial efficiencies.”

AT EASE 10:01 AM / 10:03 AM

Senator Austerman agreed that the State’s assumption of the permitting process should result in more efficiencies and that the Easton Report indicates that the State’s management of the program would result in a more accessible and predictable process; however, he voiced, the report additionally specifies that, “the industry shall be requested to contribute financially” by way of a permit fee. He stated that historically, the amounts levied for State permit fees have increased dramatically, and he continued to voice concern about the costs incurred to the industry.

Senator Austerman opined that if the Department of Environmental Conservation desires this process to be entirely assumed by the State, they would produce a favorable report, and he expressed the hope that the State’s $315,000 investment in generating this report would provide the necessary information to evaluate this endeavor.

Senator Olson characterized his professional experiences with the Department of Environmental Conservation as positive encounters. He stated that the current permitting process is cumbersome to applicants, who are often working within critical timelines, for it requires them to jointly coordinate the permit and any subsequent events with the State and the EPA. He voiced that it can be “very aggravating” to not have any one entity take responsibility, and he asserted that the State should endeavor to make this process as efficient as possible.

Amendment #1: This amendment changes the effective date of the legislation to January 1, 2003.

Co-Chair Kelly moved to adopt Amendment #1.

There being no objection, Amendment #1 was adopted.

AT EASE 10:10 AM /10:11 AM

Co-Chair Kelly recommended that the Department of Environmental Conservation FY 03 fiscal note amount be reduced by half to align with the legislation's new effective date.

The Committee concurred and the fiscal note was revised.

Senator Leman stated, "I move to report the Finance version of the bill with individual recommendations and the accompanying revised fiscal note."

Senator Ward objected and stated that his concerns about the effects of this legislation prevent him from supporting the expenditure of $100,000 in general funds to conduct the study.

A roll call was taken on the motion.

IN FAVOR: Senator Austerman, Senator Olson, Senator Hoffman, Senator Wilken, Senator Leman, Co-Chair Kelly

OPPOSED: Senator Ward

ABSENT: Senator Green, Co-Chair Donley

The motion PASSED (6-1-2)

CS SB 326 (FIN) was REPORTED from Committee with a $109,100 fiscal note, dated April 16, 2002, from the Department of Environmental Conservation.

#sb239

SENATE BILL NO. 239
"An Act relating to state employees who are called to active duty as reserve or auxiliary members of the armed forces of the United States; and providing for an effective date."

This was the first hearing for this bill in the Senate Finance Committee.

DAVID STEWART, Personnel Manager, Division of Personnel, Department of Administration, explained that the State personnel policy allows for up to sixteen days of paid leave to State employees undergoing Army or Air National Guard or Militia training; however, in times of emergency, State law limits paid leave to five days for State employees called to active duty by the Governor. He continued that the balance of that active duty time is considered leave without pay or as arranged with the employing agency.

Mr. Stewart continued “that individuals who are called to active duty by the federal government are protected by federal legislation that provides for return to employment with essentially no loss of benefits accrued by time;” however, there is no allowance for a supplementation of wage or continuation of benefits.

Mr. Stewart explained that most State employees who are activated for more than five days for Army or Air National Guard service, receive a military wage that might be “more than or less than their State wage.” He commented that this legislation would allow for an administrative order to be issued by the Governor, under specified circumstances, to require the State to pay the difference if the military wage is less than the State wage for a specified period of time. He noted that this legislation additionally provides that the State be responsible for health care or retirement contribution coverage, again for a specified period of time, if the military does not provide military benefits or if the employee would be activated for an extended period of time.

Mr. Stewart informed the Committee that other states have passed similar legislation in response to the terrorism attacks of September 11, 2001. He referenced a Department of Administration handout titled “Implementation of Uniformed Services Employee Return and Reemployment Act (USERRA)” [copy on file] that details the benefits other states provide. He exampled that Colorado allows its governor to authorize supplemental military wages for ninety days and that the District of Columbia specifies that employers provide health insurance benefits for the first year.

Mr. Stewart disclosed that the Department of Administration has ascertained that since September 11, 2001, 41 of the 189 State employees in the Air or National Guard Reserve have been called to active duty, and, of that number, eight would qualify for the supplemental wage condition. He noted that depending on whether the Governor or the federal government activated the employee’s service, the employee might receive military health insurance

coverage, however, their dependents might not be eligible. He reminded the Committee that State employee dependents could be covered through COBRA insurance plan provisions; however, he noted that this coverage is expensive.

Senator Ward asked whether the Governor or the federal government called to active duty the eight State employees who would qualify for the supplemental wage.

Mr. Stewart responded that the Governor, on behalf of the federal government, activated these individuals.

Senator Ward asked the nature of the duties assigned to these eight individuals.

Mr. Stewart responded that the duty information is not available; however, he noted that one individual was activated for 365 days and others were activated in October or December 2001 for a period of twelve months.

Senator Ward asked the Department to investigate these individuals' active duty assignments and provide the information to the Committee.

Mr. Stewart responded that the Department would attempt to gather this information.

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DEBRA GERRISH, identifying herself as the wife of a Warrant Officer in the National Guard, informed the Committee that the military does not generally disclose duty assignments. She clarified that the actual number of State employees called to active service is 189, and she confirmed that of that number, eight would have qualified for the supplemental wage, as their military wage was less than their State wage. She stated that most of the people called to active duty are serving as airport and pipeline security.

Ms. Gerrish shared with the Committee that her family's health benefits would be negatively affected in the event that her husband were called to active duty. She explained that in the military, a call to active duty for less than 180 days disqualifies dependents from receiving benefits, and that the Army's benefits seldom provide coverage for pre-existing conditions. She stressed that this situation could result in families being required to make decisions whether or not to seek medical care because of the

expense. She noted that, because her husband is an officer, her family would have sufficient income to cover house payments, utilities, and basic living needs; however, families of privates or sergeants would not. She stated that the expense of the COBRA insurance plan is cost-prohibitive, and she asserted that “if an officer’s wife doesn’t have money for COBRA, the private and the sergeant’s wife is certainly not going to have the money to cover COBRA.”

Senator Wilken voiced general support for this legislation, and he asked how a person qualifies for the Alaska Naval Militia.

Mr. Stewart responded that the Naval Militia is a component of the Department of Military and Veterans Affairs.

Senator Wilken asked how this program compares to the federal National Guard program.

Mr. Stewart responded that it is a State program similar to the National Guard.

Senator Wilken asked that further information be provided to the Committee regarding the Naval Militia.

Senator Wilken stated that the fiscal note analysis implies that replacements would not be hired to fill the positions of State employees called to active duty, but rather that the Department would absorb the workloads. He asked whether this is the intent of the legislation.

Mr. Stewart explained that it is not the intent of the bill to specify that no replacements be hired, but rather it was the intent of the fiscal note to indicate that, given the event of September 11 and its affect on the State’s National Guard, it is not possible to determine the impact or the duration of the activation.

Senator Wilken reiterated his question as whether the intent of the legislation is not to hire people to replace those individuals called to active duty.

Mr. Stewart replied that it is not.

Senator Wilken suggested that the fiscal note be revisited. He further advised that the “trigger mechanism,” or rather, what constitutes an emergency that would result in the Governor calling people to active duty, should be “clearly defined.”

Senator Austerman asked if specific timeframes have been

established for the components of the bill.

Mr. Stewart responded that timelines have not been established for the bill. He stated that the aforementioned report regarding other states' legislation would be provided to the Committee, along with current information pertaining to the individuals who have been activated and their wage schedule.

Senator Austerman asked Ms. Gerrish if providing health benefits for the initial 180-days of active service would be beneficial to those State employees called to active duty.

Ms. Gerrish responded that this would address the health insurance problem. She furthered that this would also benefit the situation where people are asked to volunteer for such things as airport security to fill those positions as people are rotated in and out of service.

Ms. Gerrish urged the Committee to act on this legislation.

Senator Wilken asked for clarification that the wage supplemental component of this bill applies to eight rather than all of the State employees called to active service.

Mr. Stewart replied that is correct.

The bill was ordered HELD in Committee.

#sb278

CS FOR SENATE BILL NO. 278(JUD)
"An Act requiring a good faith effort to purchase property before that property is taken through eminent domain; and providing for an effective date."

This was the first hearing for this bill in the Senate Finance Committee.

KIM OGNISTY, staff to Senator John Torgerson, informed the Committee that this legislation "introduces a reasonable and diligent effort clause that attempts to place a comdemnor of land and a private landowner in an equal negotiating position." She asserted that the bill would not reduce the ability of the State to acquire land by eminent domain or complicate existing proceedings; but would rather require the State to apply reasonable and diligent

efforts to negotiations with private landowners and encourage "reasonable offers," and that "striving to initiate communications from a more equitable bargaining position would promote more productive negotiations" and "facilitate dialogue over reasonable concerns and encourage suggestions from all parties involved."

Ms. Ognisty stated that approximately twenty-three states have adopted similar measures and the intent of this language is "to reduce the amount of litigation by encouraging more cases to be settled up front." She noted that a zero fiscal note accompanies the current version of the bill; however, she informed the Committee that an indeterminate fiscal note accompanied previous versions.

RICK KAUZLARICH, Right of Way Chief, Department of Transportation and Public Facilities, testified that the Department is not in favor of the bill, and he voiced "exception to the inclusion within the bill about the reasonable and diligent effort." He opined that given his 22-years of employment as a right-of-way agent with the Department, he could attest to the fact that the Department "does act in good faith to purchase property before it" is condemned. He stated that this bill would further complicate "an already complex process."

Mr. Kauzlarich reminded the Committee that the Alaska Constitution specifies that no property shall be taken without just compensation, and he elaborated that the Department has established procedures to support that objective. He stated that the process involves "the uniform act" which mandates that each acquisition file include documentation of ownership, initial contact information, appraisals, and community and individual meetings. He stated that appraisers hired by the Department are required to provide documentation to demonstrate that effort is taken to contact and provide information to the property owner regarding the appraisal process.

Mr. Kauzlarich stressed that throughout the negotiations, the Department's right-of-way agents maintain contact with property owners to address and resolve issues that the property owner might have about such things as the "configuration of the project," the affect the project might have on the property, questions about valuation of the property, and relocation of the property owner if need be. He reiterated that every effort is made to reach a consensus in order to avoid condemnation of property.

Mr. Kauzlarich reiterated that the entire process is a matter of record and is included in Departmental files to create "a decisional document" that identifies negotiation steps taken with

the property owner. He asserted that this process provides the documentation to prove that the Department "does make a diligent and reasonable effort to ensure that people that are affected by a project get all the benefits that are due to them."

WILLIAM CUMMINGS, Assistant Attorney General, Transportation Section, Civil Division, Department of Law, commented that "extensive statutory authority" exists that identifies the State's negotiation practices to assure that individuals whom the State acquires land from are treated fairly. He continued that the State is "pretty successful" in its acquisition endeavors, and he specified that condemnation of property only occurs in two to five percent of the right-of-way acquisitions. He attested that this supports the position that the State works well with landowners.

Mr. Cummings continued that this bill would amend AS 09.55.430 to require a statement be included in each file specifying that the State has conducted the acquisition process diligently and in good faith. He stressed that this statement "could become a point of litigation in the case where opposing council could stand up and pound on the table and say the State hasn't been fair, the State hasn't been reasonable, look how pitifully low the offer is." He voiced that this could result in elevating the valuation of the property, and as the State has experienced with similar situations, could cause the delay of a project for as long as a year while further analysis of the valuation is conducted. He summarized that the State "already is" diligent and operates in good faith in these matters, and that these statute amendments would result in delaying a project "while this relatively complex litigation proceeds forward."

Senator Austerman summarized that the Department's position is that it already conducts the negotiation process in a reasonable and diligent manner before the eminent domain step is reached.

Mr. Kauzlarich responded that is correct as "quite extensive negotiations" are conducted.

Senator Austerman asked why the Department opposes the legislation since it already conducts business in this manner.

Mr. Kauzlarich stressed that the Department's concern is that the legislation would result in "additional delays to an already complex process, and allow in statute, allow a reason for further delay in a project." He explained that delays in right-of-way projects generate substantial cost increases, and "that the more litigation, the more time that the attorneys get involved in this type of situation, the more delay that we can have." He invited

Committee members to examine any regional file and see the effort that has been exerted “to reach negotiations amicably with property owners.”

Senator Wilken announced that this bill is one of the bills that he would like to get passed this session. He voiced amazement that the Department is testifying that this process is conducted in a fair and diligent manner, yet it does not support legislation to that effect. He opined that there is a reason for this bill, and he shared that two small business owners in Fairbanks have been “jerked around” by the Department of Transportation and Public Facilities (DOT) and “the heavy hand of the wealth of DOT” concerning the valuation and settlement of their separate pieces of property.

Senator Wilken continued that one of these acquisitions is going to trial, and, he stated that, after looking at the documentation, “this is embarrassing that our State has not settled this and, instead, has gone forward with a very expensive, for both parties, litigation,” involving less than half a million dollars. He stated that the other situation involved an individual who settled out of Court because he did not have the money to fight the State.

Senator Wilken stated that Senator Torgerson, the sponsor of the bill, could relate similar stories regarding experiences of people in the Kenai Peninsula area. Senator Wilken stated that these cases are examples that the Department does not operate in a diligent manner, and these are the reasons why the bill has been presented, and why he considers it a “priority bill.”

Co-Chair Kelly voiced that while he supports language concerning the appraised value of the property, he questions the need to include the diligent effort report as specified in Section 2 (8) of the bill.

Senator Ward quoted the sponsor statement as saying that “by requiring a reasonable and diligent effort that this would create a full disclosure of information.” He asked whether there is any information being withheld from a property owner under the current procedure.

Mr. Kauzlarich asserted that all the information available to the right-of-way staff is available to the property owner. He continued that the goal of the process is to facilitate “an exchange of ideas, and an exchange of information between the property owner and the Department of Transportation and Public Facilities.” He explained that the Division “only litigates over necessity” to acquire a piece of property. He reiterated his concern that this

bill “would require litigation over the reasonableness of the Department’s efforts,” as he understands that people “may not feel that they are getting what they deserve from the Department of Transportation, and that is why the process carries on to the eminent domain situation.” He summarized that the Department’s job “is to make sure that people are justly compensated for the acquisition of the property and also to make sure that projects are built.”

Senator Ward asked for confirmation that all the material upon which the final and best valuation of the property is based is available to the property owner.

Mr. Kauzlarich confirmed that it is.

Senator Ward asked what would happen if this material omits an issue that is important to the property owner.

Mr. Kauzlarich responded that in a situation where the property owner and the right-of-way agent discussed an issue but reached an impasse in the negotiations, the case would go into litigation. He continued that if the property owner prevails, the State would pay the cost of the litigation.

JON TILLINGHAST, Attorney, Sealaska Corporation, voiced support for the bill. He shared that similar legislation has been adopted by at least 23 states and is recommended by recognized authorities on the process of eminent domain. He stressed that the intent of the legislation is to minimize litigation and to reduce acquisition costs. He stated the argument that as a result of this legislation; the State would “treat the private sector as partners in a negotiation rather than as victims.”

RON WOLFE, Representative, Sealaska Corporation, conveyed that the Corporation supports the bill and the Committee’s approach to it.

WILLIAM SATTERBERG testified from an offnet site to advise that rather than this legislation being directed at the Department, this legislation proposes revisions to the State’s eminent domain code that affects the State, other municipalities and governmental organizations as well as the private sector. He cited ten court cases regarding eminent domain that resulted in “massive judgments against” the State. He asserted that many people prefer to settle rather than enter into litigation with the State because it is time consuming and expensive.

Mr. Satterberg suggested that the Committee request an audit be conducted on the last four years of eminent domain cases that would

reflect “the initial deposited amount” offered by the State and the judgment or settlement that was reached. He stated that the disparities in the amounts would “amaze you.” He stated that one of the problems is that the State condemns a piece of property, deposits money into the Court registry and specifies that it be for the benefit of the landowner.

Mr. Satterberg argued that the money does not benefit a landowner because many people cannot continue to finance their litigation proceedings because the money has to be withdrawn to pay for the deed of trust and obligations such as appraisals that could cost between $10,000 to $40,000 plus attorney fees. He stated that the Committee should support this bill and should additionally recommend language be included to specify that if the State chooses to appeal a “Masters Award,” the State should be required to make another deposit in the Court equal to the amount awarded, as well as pay for the private party’s expenses up to that time. He stated that 95 percent of the State’s cases are funded by federal money, and measures should be undertaken to give a landowner an opportunity to continue litigation proceedings. He suggested that language be included to the effect that the State could not appeal a Masters Award. He urged support of the bill and the addition of financial support for the landowners.

PHIL EVANS testified from an offnet site to detail his recent experience with the State over condemnation of a portion of his property for a road construction project. He stated that during the initial negotiation process, the right-of-way agent was courteous, but misleading in the attempt to convince him “to accept a settlement that was completely unfair.” He stated that the appraiser did not provide him with thorough information and was insistent in her authority to be on his property and utilize office space in a business on the property. He asserted that the “appraiser was deceptively courteous and misleading in her attempt to promote an unfair evaluation of the property,” and he stated that he was not provided with either a complete copy of the appraisal or a market data book. He stated that he could not settle with the State because he considered the appraisal valuation as “totally inadequate and unfair,” and that rather than based “on the highest and best use of the property,” it was based on the property’s current use. He continued that the negative effect of such things as loss of parking, changes in highest and best use, declined market appeal, changes in the business use of the property, and decline in market value were also not considered in the valuation of the remainder of the property.

Mr. Evans stated that when it became apparent that the State was misleading and unfair in the attempt to reach a settlement, he

hired an attorney and an appraiser. He stated that while the State determined that just compensation for the property was $80,229, the appraiser he hired valued it at $676,000, and the Master's Hearing appraiser valued the property at $324,000 for property taken and damages.

Mr. Evans stated that rather than continue the litigation, he decided to settle; however, the State opted to appeal. He noted that this situation has incurred expenses amounting to approximately $60,000, and that the next hearing is not scheduled until 2003; however, he is still incurring expenses because of the State's demands that he provide such things as eight years of profit and loss records, income statements, and correspondence with businesses, attorneys and appraisers. He stated that the co-owner of the property has not been asked for these records.

Mr. Evans stated that while the Department's testimony regarding the process is accurate, he questioned what the bill would accomplish other than suggest that the property owner hire their own appraiser. He elaborated that the State controls the process, condemns the land, hires an appraiser to establish values and upon being challenged, the case goes to a Masters Hearing to decide fair settlement, which the State then appeals. He opined that the State, through a costly intimidation process, causes the property owner "to fold." He summarized that this legislation "needs more teeth," and while he appreciates that the State has a job to do, the landowner needs to be a participant in the process.

Senator Olson asked the testifier whether this bill adequately addresses some of the difficulties associated with the process.

Co-Chair Kelly interjected that the testifier voiced that this bill does not adequately address the process. Co-Chair Kelly pointed out that the original version of the bill includes language that might more adequately address some of the concerns raised.

SFC 02 # 57, Side A 11:08 AM

Senator Ward asked whether a binding valuation determined by a jointly approved appraiser would be a feasible option in resolving a situation where the parties disagreed on the valuation of the property.

Mr. Evans stated that would "be a reasonable approach."

Senator Ward stated that this is the process used in most

commercial transactions.

Co-Chair Kelly commented that while language included in the original bill might be more appropriate than subsequent committee substitutes, further revisions appear to be necessary. He referred the Committee to a new committee substitute in the bill packet in which language from the original bill has been reintroduced.

Senator Wilken moved “to adopt the SB Number 278, original version, for consideration.”

Co-Chair Kelly clarified that this version is SB 278, 22-LS1399\A.

Without objection, the committee substitute was ADOPTED as a working draft.

Co-Chair Kelly stated that this version “contains more extensive language regarding the appraised value of the property and the property owner” being supplied that information.

The bill was HELD in Committee.
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ADJOURNMENT

Co-Chair Pete Kelly adjourned the meeting at 11:12 AM