ALASKA STATE LEGISLATURE
SENATE RESOURCES COMMITTEE
March 21, 2001
3:48 p.m.

MEMBERS PRESENT

Senator John Torgerson, Chair
Senator Rick Halford
Senator Pete Kelly
Senator Robin Taylor
Senator Kim Elton
Senator Georgianna Lincoln

MEMBERS ABSENT

Senator Drue Pearce, Vice Chair

COMMITTEE CALENDAR

SENATE BILL NO. 125
"An Act prescribing a definition of 'damages' that a landowner may claim for injury to or interference with the owner's use of property by a person entering upon the land under the state reservation of oil, gas, mineral, material, or related interests, addressing the determination of the form, amount, and security of the surety bond determined by the director of lands to secure the landowner payment for damages, directing preparation of notice to the landowner for subsurface activities on the land, and setting a limitation on actions against a landowner resulting from entry upon land under the state reservation of interests."
HEARD AND HELD

SENATE BILL NO. 140
"An Act relating to regulation and licensing of certain water-power development projects."
HEARD AND HELD

SENATE BILL NO. 24
"An Act giving notice of and approving the entry into, and the issuance of certificates of participation for, a lease-purchase agreement for a seafood and food safety laboratory facility; and providing for an effective date."
HEARD AND HELD

PREVIOUS COMMITTEE ACTION

SB 125 - See Resources minutes dated 3/16/01.

SB 140 - No previous action to record.

SB 24 - See State Affairs minutes dated 2/13/01.

WITNESS REGISTER

Mr. Alex Kopperud
Staff to Senator Halford
State Capitol Bldg.
Juneau AK 99811
POSITION STATEMENT: Commented on SB 125.

Mr. Mark Meyers, Director
Division of Oil and Gas
Department of Natural Resources
550 W 7th Ave. Ste 800
Anchorage AK 99501
POSITION STATEMENT: Commented on SB 125.

Mr. Bill Van Dyke, Lease Administrator
Division of Oil and Gas
Department of Natural Resources
550 W 7th Ave., Ste 800
Anchorage AK 99501
POSITION STATEMENT: Commented on SB 125.

Mr. Bob Loeffler, Director
Division of Mining, Land, and Water
Department of Natural Resources
550 W 7th Ave., Ste 800
Anchorage AK 99501
POSITION STATEMENT: Supported SB 125.

Mr. John Rodda
No address provided

Mr. Brian Omann
City and Borough of Sitka Electric Department
Sitka AK 99835
POSITION STATEMENT: Supported SB 140.

Mr. Brent Petrie
Alaska Village Electric Cooperative
4831 Eagle Street
Anchorage AK 99503
POSITION STATEMENT: Supported SB 140.

Ms. Nan Thompson, Director
Regulatory Commission of Alaska
Department of Community and Economic Development

1016 W 6th Ave.
Anchorage AK 99501
POSITION STATEMENT: Supported SB 140.

Mr. Eric Yould, Executive Director
Alaska Rural Electric Cooperative Association
703 W. Tudor Rd.
Anchorage AK 99524
POSITION STATEMENT: Supported SB 140.

Ms. Janice Adair, Director
Division of Environmental Health
Department of Environmental Conservation
555 Cordova St.
Anchorage AK 99501
POSITION STATEMENT: Supported SB 24.

Ms. Julie Decker, Executive Director
Southeast Alaska Regional Dive Fisheries Association
Wrangell AK 99929
POSITION STATEMENT: Supported SB 24.

Mr. Tom Livingston, Principal
Livingston Sloan, Inc.
3900 Arctic Blvd.
Anchorage AK 99503
POSITION STATEMENT: Supported SB 24.

Mr. Roger Painter, Vice President
Alaska Shellfish Growers Association
P.O. Box 20704
Juneau AK 99802
POSITION STATEMENT: Supported SB 24.

ACTION NARRATIVE

TAPE 01-23, SIDE A
Number 001
#SB125

SB 125-LAND ENTRY UNDER STATE RESERVATION OF RT.

CHAIRMAN JOHN TORGERSON called the Senate Resources Committee meeting to order at 3:48 p.m. and announced SB 125 to be up for consideration. He explained that it sets up procedures to handle damage to land owners' property.

SENATOR HALFORD said that his intern, Alex Kopperud, has long-term roots in the Mat-Su Valley and came up with this situation, which concerns the way the state deals with subsurface values as they

apply to surface values. He explained, "It is clear the subsurface estate is paramount in the mineral values that are leased and developed, but when you get to major activities and you find that the surface estate is much more developed, as it is in the Mat Valley now and as it is in the Kenai Peninsula, you start to get potential conflicts. The preference for subsurface values isn't without limitation."

He noted this bill tries to put those limitations on the table. It deals with the questions of damage to the surface estate, of what the legal authorities are between surface and subsurface owners, of notice and how it's provided, of how damages are assessed, and of / how bonds are dealt with.

SENATOR HALFORD said, "It has raised quite a bit of objection from some of our friends in the subsurface industry…. I think some of those objections are reasonable." The surface estate, in some cases, has been substantially abused by the owners of the subsurface estate. He thought the issue would get bigger in the future.

MR. ALEX KOPPERUD, staff to Senator Halford, explained that Section 1 makes stylistic changes to AS 38.05.130. Section 2 prescribes a definition of damages, which comes from the model Surface Use and Mineral Development Accommodation Act from the National Conference of Commissioners on Uniform State Laws in 1990.

MR. KOPPERUD explained that there are two primary areas in the definition of damage: (1) loss of or injury to the value of the owner's property, improvements or personality; or (2) interference with or interruption of the owner's access to or use of the property or improvements. The bill provides the means to measure those two definitions of damages in (d), which attempts to provide a meaningful remedy for subsurface lessee and surface owner, by trying to provide a reasonable deterrent that says before you enter surface estate, you should really comply with AS 38.05.130, settle the damages up front with the owner and, if you can't do that, post a surety bond.

MR. KOPPERUD explained that the damages in Mat-Su were laid out by the Alaska Supreme Court in a similar case regarding this issue in Hays vs. AG Associates. Subsection (2)(a) and (b) gives the surface owner the option of pursuing the lessee for punitive damages. Subsection (e) provides recognition that the surface owner and a subsurface lessee are allowed to come to a different measure of damages and agree on it by themselves. Subsection (f) describes the bond to be either the assessed value of the entire parcel or $100,000. Currently, DNR takes the assessed value of the property,

identifies the areas that will be impacted and uses the value of that. The assumption is that all portions of the property are worth the same. There is a problem with that rationale in the Mat-Su Valley where it's not uncommon to have a 10-acre parcel of record and find that only one or two acres are really developable. If, for some reason, the subsurface lessee chooses to enter onto those one or two acres, those are the most valuable acres in the entire parcel.

The lessee needs some kind of reasonable assurance that they are going to have enough room to take on the matter and cover the costs that may go as far as the Superior Court. MR. KOPPERUD said that typically, you don't get bond money just by asking for it. $100,000 is what they determined to be the minimum [bond amount] necessary to take the issue seriously. Some areas don't have an assessed value and those are determined on page 4, line 6. Some boroughs have cycles for assessed values and a property owner has the room to get an appraisal done. The basic liability provision in (g) says that a surface owner should not be liable for the actions of a subsurface lessee.

MR. KOPPERUD said that Section 3, page 4, contains the notice provisions. He explained that he has found that not every one understands the law in Alaska and many people don't know that they are even entitled to discuss damages with a subsurface lessee. As a surface owner, one needs to know what kind of damages to expect and that is covered in this section.

Number 1000

SENATOR ELTON said he was concerned that the words "immediately preceding the entry" on page 2, lines 29 and 30, may not cover the situation of a summer cabin or Boy Scout camp use.

MR. KOPPERUD agreed and said he thought that language could be delineated further.

MR. MARK MEYERS, Director, Division of Oil and Gas, DNR, said that oil and gas and mining activities are increasing in areas with significant private surface ownership. This is particularly true in the Mat-Su Valley. DNR estimates that about 75 percent of the approximately 300 outstanding shallow gas leases have privately held surface estates. He said that Mr. Bill Van Dyke, as hearing officer, has dealt directly with these issues. He turned the discussion over to him.

MR. BILL VAN DYKE, Petroleum Manager, Division of Oil and Gas, DNR, said his home is subject to a mineral reservation similar to what's

described in SB 125, so he is aware of the potential conflicts that can arise. He noted that Mr. Meyers and Mr. Loeffler [wrote] memos with comments on the issue and proposed amendments, which would reduce the cost of implementing the bill. The fiscal note reflects the costs that would occur if the bill is enacted as currently written. He said DNR does not have to issue a lease or license for someone to shoot seismic operations. He explained that once an agreement has been reached or a bond has been set, the mineral developer can enter onto the private surface.

Under existing law, DNR is not the body that ultimately determines damages; that would be done in court. DNR believes that is where the authority should stay. The owner of the subsurface estate has the right, with some limitations, to enter onto some privately held surface to explore and develop the underlying minerals. This concept is pretty foreign to people in the Mat-Su Valley, although it is common practice in the Lower 48. He stated, "All the mineral reservations are in the people's deeds and they really do mean something." The surface owner is entitled to damages, if damages do occur, but defining those damages through legislation or regulation will start DNR "down a slippery slope."

MR. VAN DYKE said he didn't think that any state had actually adopted the model act that Mr. Kopperud had talked about. They have found that just occupying unimproved land with a drill rig usually does not constitute damages. He noted, "It's not what a surface owner wants to hear, but it's the law and it's the practice in other jurisdictions." He said that one has to proceed with caution when giving either the surface owner or the mineral owner more rights, because you can't give one party rights without taking some rights away from the other. He advised, "In this case they are discussing the state's mineral estate and we do derive substantial value from that mineral estate." He thought expanding the definition of damages to be too inflexible would impose an additional burden upon the subsurface owner or their agents.

MR. VAN DYKE highlighted three points in his memo.

- A $100,000 [bond] is too high because it uses a one-size-fits-all approach. He proposed a tiered approach that also reflects the differences between mining and drilling for oil and gas.
- This bill would cover seismic operations so a $100,000 [bond] to walk on someone’s property is too high. There are hundreds of properties in a given seismic survey. They don't think that certain activities require a bond at all, like surveying activities.
- They also believe the lessee should be required to notify

surface owners.

He said their proposal takes more of a "meat cleaver" approach to the defining damages section. This is the point at which the surface owner can't be compensated without taking something from the subsurface owner or vice versa. He didn't think either one of those actions were justified. He gave an example of a lessee who is not supposed to work between the hours of 10 p.m. and 6 a.m., but gets in the middle of cementing casings and can't get it done by 10 p.m. The lessee would then be subject to punitive damage claims. DNR does not think that should happen. It's a perceived value question. He maintained:

> Entry by a mineral developer on to any privately held surface estate is going to be a traumatic experience for the surface owner. We try to make that experience understandable and trouble-free. The surface owner regardless of whether you follow existing law or the law that would be in place if this bill is enacted, the owner is still not going to be happy. That issue we have to work through. Mineral reservations are real and they're binding and the state derives substantial revenue from those mineral reservations. We hope to be able to work with Senator Halford and the committee to craft solutions that will work for all parties involved.

Number 1700

SENATOR TAYLOR said it seemed to him that Alaskans are in a very difficult position with the reservation of subsurface rights as compared to the citizens of Oklahoma, Louisiana, Georgia and Texas or any citizens of this state who may have received patented title to their lands prior to statehood, who may very well own their subsurface rights. He noted, "Apparently, if you go on a person's property in Texas and want to drill for oil under his land, you enter into an agreement with him on how much you're going to give him as far as a royalty coming out of his land." He bet there isn’t much of a problem with surface owners in Texas, because they get a piece of the same action. However, in the Mat-Su Valley, a developer can run roughshod over the owner; the developer doesn't have to tell the owner a thing about what is taken out of the ground underneath his house or his property. He maintained, "He gets no interest in it. So his only concern then is the impact and effect upon his surface estate. I can certainly understand how that conflict is not only continued, but as we sell more state land and as we expand and ask the industries to expand both in mineral and oil and gas development, we're going to be setting up those additional conflicts and the state is going to be the person

sitting at the table getting a piece of the action while the home owner gets run off the property." He didn't think an oil company would be encountering these problems if it was talking to the landowner about giving them 10 percent.

SENATOR ELTON asked how the lessee is supposed to notify the surface landowner and whether that is part of the lease or license agreement with the lessee. He questioned whether they are compelled to notify by some other means or method.

MR. VAN DYKE answered that AS 38.05.130 and provisions in the leases require notification. He said,"We won't issue a permit until we know those notifications have been made."

SENATOR TAYLOR asked about the form of notification: how many days prior to the issuance of the permit it is required; whether notification must be sent via certified mail or whether a notice is placed in the newspaper.

MR. VAN DYKE answered, "Right now it is the responsibility of the person who is going to do the seismic operations or the drilling activity to notify the owners. We would require some sort of certification or notice that all those notifications have been made. If a surface agreement has been entered into, we could have a hearing to post a bond, if they don't have a damages agreement or surface use agreement."

SENATOR TAYLOR asked what a state agency does when someone doesn't comply.

MR. VAN DYKE replied that in the Valley they had an instance where two people had the same name and the wrong person got notified. A second instance was a surface agreement that was entered into, but there was a disagreement about what that surface agreement meant and in that case, they don't bond after the fact.

SENATOR TAYLOR said the department said it is the responsibility of the permit applicant to provide notice to the landowner. He asked if DNR requires that it receive a copy of a particular form.

MR. VAN DYKE replied, "No. The proof would be either a surface entry agreement or having a bond hearing. The notice has to get done one way or the other in order to get to the next step, but we don't have a specific procedure right now on notice."

Number 1900

SENATOR HALFORD said he thought an exemption for seismic or

diminimous activity makes sense.

MR. LOEFLER, Director, Division of Mining, Land and Water, DNR, told members the division has experience working with mineral values on shales and subsurface and surface. In most cases, the division expects to work with a borough, although in some cases it is a private developer. He thought the bill worked quite well, but his memo laid out his three significant comments.

MR. LOEFFLER said if the legislature decides to require notice for diminimous activities, DNR had an instance in which a surface owner got notice that a subsurface owner was going to do exploration. The surface owner either went or threatened to go stake it himself, which would deprive the subsurface owner access to the minerals. He thought a $100,000 bond would be too much for any realistic placer operator. He also thought the Division of Land and Water had a regulation procedure that works reasonably well for split estate situations. He said for the most part, the bill is consistent with that, but the Division does require the developer to make the contact.

SENATOR LINCOLN said that Mr. Loeffler and Mr. Meyer's memo made sense to her and asked if the sponsor was going to work with the different divisions to address some of their concerns.

SENATOR HALFORD responded that the criticisms were well taken. He suggested, with regard to prospecting and mineral activities, they might want to simply require a notice provision and no bonding provision. He stated, "This is a case where one side of the equation is traditionally a giant and the other side of the equation is a very small property owner. So you've got to try and balance that as best you can. Yes, I intend to work with the departments, because most of their criticism is pretty well taken."

SENATOR TAYLOR asked, under conveyances with land claims, if the subsurface fell within a category where they had to be shared with the other corporations. He asked if the subsurface is conveyed then.

MR. HALFORD responded that the profits of the subsurface are shared between regional corporations, but the regional corporations own subsurface under land owned by the village corporations. So they also have a split ownership and may have a split in terms of what they want to do with it.

SENATOR TAYLOR said he understood the dispute as to the utilization of the land, but he asked if that landownership got its mineral rights. He asked, “So if you're going to drill for gas underneath a

certain village's property, do they have the rights to that and it's just a dispute as to how that was going to be divvied up?”

SENATOR HALFORD responded, "That 44 million acres included mineral rights, as did federal transfers before statehood."

SENATOR LINCON added, "To the regional corporations."

SENATOR TAYLOR said that wouldn't be a problem on their land, because they were going to negotiate it probably.

SENATOR HALFORD responded, "Probably."

MR. JOHN RODDA said he is the son of a property owner in the Big Lake area. He told members, "Something has to be done to protect us. We homesteaded on this property 45 years ago. Our intent from the beginning was that our property held our family’s future…" He thought the issue boiled down to lack of interest in a surface owner's rights beginning with a lack of notice when a subsurface lease is offered. He asked if a subsurface lease is offered to the surface owner or whether it is only offered to oil, gas and mineral developers.

MR. RODDA said he had been dealing with two separate operations for 10 years: an ARCO oil exploration process (the lease has expired); and with Ocean Energy that has a gas exploration operation. He pointed out, "Once there has been an approved plan, the plans do not always get adhered to." He noted a buried waste reserve pit on his property about 100 ft from Big Lake Road is about 1/3 the size of a soccer field and six to eight feet thick mixed with concrete. He said DEC permitted that without his family’s knowledge.

MR. RODDA said the owner needs to have the opportunity to object before a full and complete plan is approved. Modifications need to be disclosed and the opportunity to concur or object to those modifications should be provided.

TAPE 01-23, SIDE B

MR. RODDA said a solution to specifically address the damages that can’t be seen needs to be found. He noted that complaints and letters need to be addressed in a timely manner. He noted he hadn't received any decision from Mr. Van Dyke on a bond hearing that had been held 10 months ago. Also, Mr. Rodda said he has to appear at his own cost to defend his position. He said he also paid for 68 pages of transcription and monitoring of the site since it is not secured. When the gate protecting the entrance to his property was torn down, it took a phone call from him to Matt Raider, who works

for Mr. Van Dyke, to get Ocean Energy to fix it. He remarked, "That repair constituted taking a piece of cable and wrapping it around the poles and leaving it hanging there in another dangerous situation."

He said that Mr. Van Dyke knows about the gate, the problems with the waste, the unevenness on the land and the unsafe condition. His family has spent hundreds of hours to protect the property that has been theirs for 45 years.

CHAIRMAN TORGERSON said he thought the Division of Oil and Gas should give Mr. Rodda a call and, "get some of this stuff worked out." He announced that they would hold the bill so Senator Halford could work on it.
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#SB140

SB 140-SMALL WATER-POWER DEVELOPMENT PROJECTS

CHAIRMAN TORGERSON announced SB 140 to be up for consideration.

MR. DARWIN PETERSON, staff to Senator Torgerson, said in November 2000, Congress approved legislation extending programs under the Federal Energy Policy and Conservation Act. Title V of this Act, Public Law 106-469, was proposed by Senator Murkowski and transfers licensing and regulatory authority over small hydroelectric projects to the state in Alaska only. The enabling federal legislation applies to hydro-projects of 5,000 kilowatts or less. Before Alaska can acquire jurisdiction from the Federal Energy Regulatory Commission (FERC), the legislature must adopt this legislation and the Governor must submit a program to FERC. As the bill is currently drafted, RCA would be the state agency responsible for regulating these small hydro-projects. All the current environmental, cultural and resource protections required under federal law must be contained in the state program. This legislation will not preempt those protections in any way. The small hydro-projects that would not be eligible for state jurisdiction are those located on Indian reservations, such as Metlakatla, conservation units as identified in ANILCA, and rivers designated as wild and scenic.

SENATOR TAYLOR asked if the state must require something similar to what the federal law requires.

MR. PETERSON answered that is correct.

SENATOR TAYLOR asked who has primacy in making the ultimate decision on recommendations.

MR. PETERSON answered that FERC has veto power. RCA would take over the role that FERC plays right now.

SENATOR ELTON said he thought another logical place for these decisions would be in the Alaska Power Authority (APA) in the Alaska Industrial Development and Export Authority (AIDEA).

MR. BRIAN OMANN, Sitka Electric Department, said that Sitka doesn't have any power projects of 5 megawatts or less, but is in support of SB 140.

MR. BRENT PETRIE, Alaska Village Electric Cooperative (AVEC), said AVEC supports the bill and has one project that is less than 5 megawatts. That project is on federal land, so this bill wouldn't apply to it. He suggested the committee consider the Department of Natural Resources Water Use Act be the relevant place for this purpose.

CHAIRMAN TORGERSON explained that the reason he decided to put the authority with the RCA is because that is Alaska's equivalency to FERC.

MS. NAN THOMPSON, Director, RCA, explained that this bill is supposed to make the processing of licensing hydro-projects simpler and the regulations more applicable to Alaska. She has talked to FERC and she is confident that the process can be streamlined and made more applicable to the State of Alaska. Her agency isn't looking for work, but the RCA can do it if the legislature so desires.

MS. THOMPSON explained that the first task for the agency that gets this authority would be to draft regulations. The RCA has a regulations manager at the agency who could assume responsibility for that project. She thought SB 140 was a good bill in terms of development of alternative energy sources in Alaska, an issue the RCA faces regularly. Any process that would allow for more appropriately sized hydro-projects in small communities and delivers alternate sources of power is a good project in Alaska.

MR. ERIC YOULD, Executive Director, Alaska Rural Electric Cooperative Association (ARECA), stated support for SB 140. He thanked Senator Murkowski for getting this bill through Congress. He said the federal process for licensing even small projects is a very cumbersome one and is generally a one-size-fits-all approach. FERC has tried to streamline its process for small projects, but at the state level it hasn't been helpful.

He explained that recently Alaska Power and Telephone developed the Black Bear Hydropower project in Southeast Alaska. It took them seven years to get permitted and processed through FERC and cost $1.2 million. They built the project in one year at a cost of $10 million. The Skagway Goat Lake project of 4 megawatts, which would also fit under the purview of this program, took five years to get permitted and licensed for $1 million and it took one year to construct the project for $10 million. He stated, "This is what it takes to get projects permitted in this day and age. I can tell you at the federal level it's becoming more cumbersome daily."

MR. YOULD said the RCA does a good job of regulating and providing rate review of utilities, but he didn't think it has the technical staff this would require. He suggested using other agencies like the Department of Transportation and Public Facilities, because it works on permits, has engineers and develops projects such as these. AIDEA was suggested, although it is a developing agency that might actually be developing the hydro projects it would permit. He highly recommended DNR because it is already in the water resource business, allocating water to users across the state. DNR is familiar with water conveyance systems and administers the dam safety programs throughout the state, which means it has certain expertise to look at dam stability. DNR would be knowledgeable about earthquake standards the projects will be designed for and its hydrologists would be able to look at probable maximum floods. RCA would have to hire staff to administer the program.

MR. YOULD said if the State of Alaska takes over permitting, he hoped the development of these small projects would accelerate. Alaska has one-third of the untapped hydropower potential of the United States. It is very expensive to develop on a community-by-community basis.

He mentioned if the permit process is slower under the state's authority, he would like the authority to go back to FERC. He suggested inserting a clause that would make it optional for the utilities to get their projects permitted through the federal government or the state government.

CHAIRMAN TORGERSON asked if he thought an agency should have the power that FERC has to stop a project.

MR. YOULD answered that the agency can't supercede any federal laws that are in place. With issues of judgments the agencies should have the ability to work with the Corps of Engineers to come up with a solution. He didn't think the state would ever have veto power over a federal agency.

CHAIRMAN TORGERSON asked if that was true within FERC.

MR. YOULD replied that they would work within the framework of existing laws and when there are issues of judgment, they have veto power. He presumed our state agency would have the same powers.

SENATOR TAYLOR said it appears to him this commission has the discretion to decide how to protect energy conservation, mitigation of damage to salmon streams and protection of recreational opportunities. He expressed concern that jurisdiction for enforcement of this law falls within our state courts and Alaska courts still provide that if a person files a lawsuit and fails to succeed, damages can be awarded against that person.

CHAIRMAN TORGERSON asked if any projects are underway right now.

MR. YOULD replied Old Harbor is an existing project and a number of projects would be coming along.

CHAIRMAN TORGERSON suggested doing a pilot project and putting a sunset date on the bill. He said he would hold the bill and asked the committee to think about it.
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#SB24

SB 24-LEGIS APPROVAL OF SEAFOOD/FOOD SAFETY LAB

CHAIRMAN TORGERSON announced SB 24 to be up for consideration.

MS. JANICE ADAIR, Director, Division of Environmental Health, Department of Environmental Conservation (DEC), explained this bill would authorize the sale of certificates of participation to construct a new seafood and food safety laboratory. The lab is in a 30 year-old building and the lease has expired, although DEC is exercising two one-year extensions. The building is also up for sale, but state law prohibits DEC from entering into another long-term lease because it requires either a 10 percent reduction in the lease rate and ADA compliance or a 15 percent rate reduction. The building is ADA compliant, so DEC would have to get a 15 percent reduction. DEC currently pays $1.03 per square ft. and the owner is not interested in a further reduction.

MS. ADAIR explained that this laboratory does all the paralytic shellfish poisoning (PSP) testing and shellfish growing water analysis for shellfish that's commercially grown in the state. It analyzes crab for demolic acid, a marine toxin that causes one to lose short-term memory. It tests smoked seafood that has to meet certain federal requirements before it can be sold out of state. It

evaluates dairy products processed in Alaska so those products can be sold to schools, the military and other facilities that use federal funds to buy dairy products. The lab also certifies commercial laboratories that do drinking water analysis required under the federal Safe Drinking Water Act.

With money that's been previously appropriated by the legislature both in FY 99 and FY 01, MS. ADAIR said, DEC hired a private consultant to find out the most cost effective way to replace the facility. The end result of that work was that the most cost effective approach would be a state-owned facility in a location that is centrally located to the different shellfish and seafood processors who have to use the services of the lab. DEC realizes there is not one good location. She said DEC looked for state-owned land to keep the price as low as possible and for land that was in close proximity to the Anchorage International Airport, since seafood is sent to the lab from all over the state.

MS. ADAIR said DEC has selected a site near Boniface and Tudor, which has already been leveled. She stated, "One way or the other, we have to move out of the facility that we are in and we want to bring forward to you the most cost effective approach we could recommend and I believe that is what this bill would do."

CHAIRMAN TORGERSON asked members if they had questions about financing the lab.

SENATOR TAYLOR asked how far the location is from the new state crime lab.

MS. ADAIR answered it is next door to the new public health lab.

SENATOR TAYLOR asked why the two labs were not built at the same time when DEC was asked about it.

MS. ADAIR answered she wished the answer had been yes when the Department was asked. She personally was not involved in that decision and the person who made it is no longer with the Department.

SENATOR TAYLOR said he heard it didn't happen because of a "turf" battle.

SENATOR ELTON said it seemed if you took a commitment of $20 million to AIDEA and said the state wants the building ASI is in that has an exhaust system that is unparalleled, AIDEA might be able to cut a deal where [DEC] might not have to pay them for 10 years. It is a state-owned building.

MS. ADAIR responded that has been mentioned at every other meeting. A brief conversation with Bob Poe indicated that ASI will succeed and the building will be used for that facility.

SENATOR ELTON asked if they had submitted anything to the Board.

MS. ADAIR answered no, the Board has a commitment to the owners of that facility and to the success of it. At this point there is nothing to indicate that what they are trying to do won't pan out. DEC has a time commitment with this laboratory that doesn't correlate with theirs.

SENATOR ELTON said he wasn't as confident as some members of AIDEA that this is the best thing they can do with the building.

Number 870

SENATOR TAYLOR asked if the public health lab is different than the Alaska Science and Technology lab.

MS. ADIAR replied that she wasn't familiar with the Alaska Science and Technology lab.

SENATOR TAYLOR said he was trying to figure out how many labs the state has. "We have a crime lab, an ASI lab and now we're talking about another lab for DEC."

MS. ADAIR responded that ASI is a privately owned company. There are probably 35 privately owned commercial laboratories that DEC certifies for microbiological testing of drinking water and nine that DEC certifies for chemical testing of drinking water.

Number 566

MS. JULIE DECKER, Executive Director, Southeast Alaska Regional Dive Fisheries Association, said they use the lab that is currently in Palmer for water testing and paralytic shellfish poisoning testing for the geoduck fishery. They are currently working to expand this industry, which will increase their use of the lab. "While I understand that Palmer residents would not like to lose the lab, a more centrally located lab in Anchorage would be beneficial to the users. We have a 30-hour time limit on body samples taken from their sites. The transportation time from Anchorage to Palmer sometimes makes the difference of whether the sample gets to the lab in time or not."

MR. TOM LIVINGSTON, principal, Livingston Sloan Inc., said he was

available to answer questions on the feasibility study. [No one had questions at this time.]

MR. ROGER PAINTER, Vice President, Alaska Shellfish Growers Association, supported SB 24. He agreed with Ms. Decker that the 30-hour window to deal with water quality samples is a very short time frame when shipping from remote locations in Prince of Wales Island or Prince William Sound. They have had a number of samples fail to make it to the lab because of the Palmer leg.

MR. PAINTER said it has been difficult to get the results from tests on geoducks from Prince of Wales Island in time to ship the product all the way to China. Their shelf life is about three days. He has had many unfortunate experiences with product arriving in China dead. They have lost a lot of money because of the logistics. He has also visited the lab in Palmer a couple of times. It is extremely antiquated and definitely needs to be improved.

MR. PAINTER said he knows there isn't a private lab in the United States that processes PSP samples. It's very expensive and difficult. It would be impossible to make money off of processing those samples in a private lab. He has also looked for alternatives in the state for processing their water samples in Juneau, Sitka and Dutch Harbor. The labs there can process fresh water samples for drinking water, but they can't process marine samples. Those have to be done at a lab approved by FDA and private facilities don't have that certification.

SENATOR LINCOLN said she supports the legislation, but she always has a problem when they "centralize, centralize, centralize to Anchorage." She realizes from testimony, however, that being close to the airport is very important.

CHAIRMAN TORGERSON said the committee had lost the quorum so they would hold the bill and adjourned the meeting at 5:25 pm.
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