

ALASKA STATE LEGISLATURE
SENATE RESOURCES COMMITTEE

April 2, 2001
3:35 p.m.

MEMBERS PRESENT

Senator John Torgerson, Chair
Senator Drue Pearce, Vice Chair
Senator Pete Kelly
Senator Robin Taylor
Senator Kim Elton
Senator Georgianna Lincoln

MEMBERS ABSENT

Senator Rick Halford

COMMITTEE CALENDAR

SENATE BILL NO. 76

"An Act amending the permissible period of renewal of a lease entered into under the Alaska Right-of-Way Leasing Act, and providing for treatment of a pending application for lease renewal as a lease continued under its existing terms until entry of the final determination affecting the application for renewal; and providing for an effective date."

MOVED SSSB 76 (RES) OUT OF COMMITTEE

SENATE BILL NO. 121

"An Act adding, for purposes of the Alaska Right-of-Way Leasing Act, a definition of 'substantial change' as applied to an amended right-of-way lease application; and providing for an effective date."

MOVED CSSB 121 (RES) OUT OF COMMITTEE

SENATE BILL NO. 148

"An Act relating to remote water storage for fire departments."

MOVED SB 148 OUT OF COMMITTEE

SENATE BILL NO. 141

"An Act relating to aquatic farming of shellfish; and providing for an effective date."

HEARD AND HELD

PREVIOUS COMMITTEE ACTION

SB 76 - No previous action to record.

SB 121 - See Resources minutes dated 3/16/01.

SB 141 - No previous action to record.

SB 148 - No previous action to record.

WITNESS REGISTER

Senator Therriault
State Capitol Bldg.
Juneau AK 99811

POSITION STATEMENT: Sponsor of SB 76.

Ms. Steve Jones
TAPS Right-of-way Manager
No address provided

POSITION STATEMENT: Supported SB 76.

Mr. Bill Britt, State Pipeline Coordinator
Department of Natural Resources
400 Willoughby Ave.
Juneau, AK 99801-1724

POSITION STATEMENT: Supported SB 76.

Ms. Annette Kreitzer
Staff to Senator Lemam
State Capitol Bldg.
Juneau AK 99811

POSITION STATEMENT: Commented on SB 121 for sponsor.

Mr. Jim Eason
Foothills Pipe Lines Ltd.
3100 - 707 Eighth Ave. S.W.
Calgary Alberta T2P 3W8

POSITION STATEMENT: Commented on SB 121.

Mr. Darwin Peterson
Staff to Senator Torgerson
State Capitol Bldg.
Juneau AK 99811

POSITION STATEMENT: Commented on SB 148 and SB 141 for sponsor.

Mr. Joe Stam, Chief
Fire Program
Division of Forestry

Department of Natural Resources
550 West 7th Ave., Ste 1450
Anchorage AK 99501
POSITION STATEMENT: Supported SB 148.

Ms. Roberta Highland
Kachemak Bay Conservation Society
P.O. Box 846
Homer AK 99603
POSITION STATEMENT: Opposed SB 141.

Ms. Nina Faust
P.O. Box 2994
Homer AK 99603
POSITION STATEMENT: Opposed SB 141.

Mr. Scott Thomas
Alaska Trade Mark Shellfish
945 Lincoln St.
Ketchikan AK 99901
POSITION STATEMENT: Commented on SB 141.

Mr. Ron Long
Qutekcak Hatchery
Seward AK 99664
POSITION STATEMENT: Commented on SB 141.

Mr. John Agosti
Alaska Shellfish Growers Association
Seward AK 99664
POSITION STATEMENT: Commented on SB 141.

Ms. Janice Adair, Director
Division of Environmental Health
Department of Environmental Conservation
555 Cordova Street
Anchorage AK 99501
POSITION STATEMENT: Commented on SB 141.

Mr. Mike Bangs
P.O. Box 1733
Petersburg AK 99833
POSITION STATEMENT: Opposed SB 141.

Mr. Rick Harness
P.O. Box RDO, Red Mountain
Homer AK 99603
POSITION STATEMENT: Opposed SB 141.

Mr. Ray Rowland, Aquaculture Specialist
University of Alaska Southeast

11120 Glacier Hwy.
Juneau AK 99801
POSITION STATEMENT: Supported SB 141.

Mr. Bob Hartley
Alaska Shellfish Growers Association
Homer AK 99603
POSITION STATEMENT: Supported SB 141.

Ms. Julie Decker, Executive Director
Southeast Alaska Regional Dive Fisheries Association (SARDFA)
P.O. Box 2138
Wrangell AK 99929
POSITION STATEMENT: Supported SB 141 with some changes.

Mr. Bob Loeffler, Director
Division of Mining, Land and Water
Department of Natural Resources
550 W 7th Ave, Ste 1070
Anchorage AK 99501
POSITION STATEMENT: Commented on SB 141.

Ms. Vi Jerra
Anchor Point AK
POSITION STATEMENT: Opposed SB 141.

Mr. Mako Haggerty
P.O. Box 2001
Homer AK 99603
POSITION STATEMENT: Opposed SB 141.

Mr. Don Fell
P.O. Box 615
Homer AK 99603
POSITION STATEMENT: Supported SB 141.

Ms. Nancy Hillstrand
P.O. Box 674
Homer AK 99603
POSITION STATEMENT: Opposed SB 141.

Mr. Doug Mecum, Director
Division of Commercial Fisheries
Department of Fish & Game
PO Box 25526
Juneau, AK 99802-5226
POSITION STATEMENT: Commented on SB 141.

Ms. Shannon O'Fallon, Assistant Attorney General
Department of Law
PO Box 110300

Juneau, AK 99811-0300

POSITION STATEMENT: Commented on SB 141.

Mr. Roger Painter
Alaska Shellfish Growers' Association
Juneau AK

POSITION STATEMENT: Supported SB 141 with changes.

ACTION NARRATIVE

TAPE 01-25, SIDE A

Number 001

#SB76

SB 76-RIGHT-OF-WAY LEASING ACT

CHAIRMAN JOHN TORGERSON called the Senate Resources Committee meeting to order at 3:35 p.m. and announced SB 76 to be up for consideration.

SENATOR THERRIAULT, sponsor of SB 76, said since the bill's introduction, the Administration has carried on negotiations with officials at Alyeska regarding terms. All have agreed to the language in the sponsor substitute. He explained the contents of the bill as follows.

Section 1 modifies the length in which a lease for a pipeline right-of-way can be granted from 10 years to 30 years. That would conform to federal law. He thought it made sense to conform our law to federal laws so that pipelines that cross both state and federal lines would be assured they have a right-of-way to continue operations.

Section 2 deals with the issue of how to deal with ongoing negotiations that exceed the original lease length. The state does not want to be subject to litigation just because negotiations are ongoing.

Section 3 deals with reimbursements of the state's expense in negotiating for a lease extension, language that was in the Governor's original bill.

Section 4 deals with the definition of state land and rights-of-way across it.

Section 5 deals with the 30 years applicable to leases that are currently in existence.

SENATOR ELTON asked if there is a definition in statute of "timely

requested."

SENATOR THERRIAULT answered that there is no definition of that term in statute but there is one in regulation that says two years. He thought the committee might want to allow some flexibility in regard to the TransAlaska pipeline.

SENATOR LINCOLN said the fiscal note indicates a potential savings to the state that would begin to accrue in 2014. She asked if he had any idea what the cost savings would be.

SENATOR THERRIAULT replied, "The expense of the permitting process will get rolled into the tariff that is paid for shipping the product down the line. That impacts on the state treasury, because it reduces the wellhead value. It doesn't start accruing until then, because right now if existing law continued, it would be back before us in 10 years..."

MR. STEVE JONES, TransAlaska Pipeline System right-of-way renewal project manager, stated support for SB 76 and pointed out that they had spent the last month and a half working on language that everyone would be happy with.

MR. BILL BRITT, State Pipeline Coordinator, stated support for SB 76. Regarding Senator Elton's question about the term, "timely requested," the Right-of-way Leasing Act only applies to large common carrier oil and gas pipelines and does not apply to the smaller gathering lines.

CHAIRMAN TORGERSON asked what his intentions are for the renewal, which says up to 30 years.

MR. BRITT answered they would first have to receive an application and the applicant would request the term of renewal. He presumes it will be 30 years. He said they are in the process of cooperating with Alyeska to do a reliability center maintenance study, which will give them the exact physical condition of what they consider to be the critical systems on the TransAlaska Pipeline. He also pointed out that five other pipeline right-of-way leases on the North Slope expire on the same day as the TransAlaska Pipeline's right-of-way lease. DNR will have to deal with those five pipelines at the same time.

CHAIRMAN TORGERSON asked what DNR will do if they are found to be out of compliance with the lease and they have signed a 30-year lease.

MR. BRITT said he presumed Senator Torgerson meant they had a 30

year lease and encountered a problem after the renewal. He explained the lease has a number of tools so that, "We can issue orders directing Alyeska to take specific actions." They have done this a number of times and Alyeska has responded to every one of those.

MR. BRITT explained, "Should that fail, we have the ability to go perform the work ourselves and bill the operator for doing the work. Should the operator not respond, we have the ability to go to court and a whole series of tools we can use to affect whatever change we think is necessary."

SENATOR LINCOLN asked how many times the state has utilized the "recourse" he is talking about.

MR. BRITT said he has been employed in this position for the last four years and prior to that some actions were taken. During his term, he has issued about 10 directives instructing Alyeska to take specific actions. No further steps needed to be taken.

SENATOR ELTON asked if he supports the legislation.

MR. BRITT responded that he does support it.

SENATOR ELTON asked his definition of "timely requested."

MR. BRITT stated that DNR has recently promulgated regulations that ask that applications be submitted two years prior to the expiration of the lease and that would be his definition. The regulations allow the commissioner to waive that period should circumstances warrant a waiver. He reiterated for the purpose of this bill, he is only talking about the big pipelines.

SENATOR ELTON asked how he would define a feeder line off the pipeline, like the feeder line to Williams.

MR. BRITT told members DNR does not have a separate lease for that line; it is covered by the TAPS right-of-way lease.

Number 1000

SENATOR PEARCE moved to pass SSSB 76 from committee with its zero fiscal note and individual recommendations. There were no objections and it was so ordered.

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#SB121

SB 121-RIGHT-OF-WAY LEASING ACT

CHAIRMAN TORGERSON announced SB 121 to be up for consideration.

MS. ANNETTE KREITZER, staff to Senator Leman, sponsor of SB 121, said:

During the last hearing there were three concerns brought to the committee's attention concerning this bill. One was changes in the routing of a pipeline, another was changes from above ground to below ground pipeline and a third was a change in the diameter of a pipeline. The department has dealt administratively with the diameter and changing from above ground to below ground issues. So we think the only remaining issue is the routing issue.

MS. KREITZER indicated there was an amendment to clarify that language on page 2, lines 5 - 7.

MS. KREITZER said:

I want to put Senator Leman's intention on the record. He intends that the amendment addressing routing makes clear that routing changes would not be considered substantial changes, which trigger all the provisions of the Pipeline Right-of-way Leasing Act. Specifically, his intention is not to prohibit a pipeline from being built on one side of a creek or the other. This type of deviation from the pipeline would not be considered a substantial change.

MS. KREITZER used a map to illustrate his point.

SENATOR PEARCE said as long as the route roughly parallels the Alaska Highway that would not be a substantial change, even though it might move a little bit.

MS. KRIETZER responded that the intent is to allow those decisions to be made onsite.

CHAIRMAN TORGERSON asked if it would still have to meet the test of a net increase of 10 percent in subsection (1).

MS. KRIETZER replied that was correct.

SENATOR PEARCE moved to adopt Amendment 1.

SENATOR ELTON asked for further clarification and said, "For instance, if you take an elbow out to save two miles and it goes through a neighborhood, would the sponsor of this amendment consider that a substantial change?"

MS. KRIETZER said that she would defer to Mr. Britt's answer on

that, but she didn't think a deviation of two miles would show up on her map.

MR. BRITT responded that he thought Senator Elton was discussing the situation on a case-by-case basis. He remarked, "The wording I have in front of me is a fundamental change proposed by the applicant and the general route as set out in the original application."

CHAIRMAN TORGERSON said that is correct.

MR. BRITT said depending on the length of the pipeline, a deviation of less than two miles with generally the same origin and the same end points would probably not be considered to be a fundamental change.

CHAIRMAN TORGERSON asked if he favored the amendment and the bill as amended.

MR. BRITT replied that he could administer the bill in front of him but they are seeking clarification of the undefined term.

SENATOR ELTON said:

It seems to me that what we've had put on the record is we held up a map that's 18 x 24 inches that has a green line running down through it with the only geographical demarcation being Fairbanks, and it seems to me that what the maker of the amendment proposes is that, if you can see a change in that line across the room, then that's a substantial change. To me that seems to be an unworkable definition of 'substantial change.'

CHAIRMAN TORGERSON said, "I did clarify that it had to meet the rest of page 1, 10 percent. You have the same test regardless of what she was pointing at on the map."

SENATOR ELTON responded, "Absolutely, Mr. Chair, but I think we established through the discussion on this bill previously that you could completely change the route and still not have a problem with the 10 percent threshold. You'd just be exchanging some state land for other state property."

CHAIRMAN TORGERSON said, "That isn't the way I read it." He asked Mr. Britt if that was the way he read it.

MR. BRITT replied it is.

MR. JIM EASON, Foothills Pipe Lines, attempted to clarify the situation by saying:

I think there may be some misunderstanding about what happens in a circumstance where the hypothetical that has been proposed by Senator Elton might occur. My understanding is, and our belief in supporting this bill is, that there are provisions, which Mr. Britt will administer to have public notice and to have a commissioner's best interest finding about changes that occur in a proposed application.

The issue that we're trying to address and, hopefully, this bill will address is whether all the provisions of the Pipeline Right-of-Way Act are implicated any time you have a substantial change and how you define substantial change. So the intent is not to do something that would not have notice, in the case that Senator Elton has proposed or provided as a hypothetical, but with the amendment that is under consideration here, you're defining a third standard with the first two being the option of proposing the use of 10 percent or more additional state acreage that was originally proposed in an application.

Secondly, if you propose to substitute less effective and environmental protection or technology, once you've submitted an application; and thirdly, if you proposed a fundamental change in the general route. The reason for the selection of those words is important because, as all of us would agree, changes in a route are gradational and they are in the eye of the beholder. We think it is fundamentally unfair and probably not a good idea for the state or an applicant to leave open the question of whether minimal changes where they are proposed by the applicant or by the agencies in order to accommodate routing selection criteria that the agency develops or to avoid communities or to do whatever an applicant has to do after he has submitted a requested proposed route, those things should not be the triggers for all the provisions in the chapter. In other words, if you're down a year or so into an application and it's determined that, to use the example of the map, that you have to cross a creek for whatever reason from a different angle, we think that is entirely appropriate, if that's what the agencies decide or if they decide based upon public comment that some accommodation of the route is needed but there's a difference between having full public comment and agency review of those kinds of decisions, and the thing we're hoping we can all agree on that we

need to avoid. That is retriggering all the provisions of Title 38.35, which would include going back and refileing an application and going through every procedure that's outlined in that statute.

SENATOR ELTON said he understands that, but they have just heard testimony from Mr. Britt that his hypothetical scenario does, in fact, preclude him from defining that as a substantial change and that bothers him [Senator Elton]. He thought that provision essentially says: "The pipeline, if you take away 1,000 state acres here and you add 1,080 state acres there, that is precluded as a substantial change. "

MR. BRITT commented, "While that's correct, what Mr. Eason was indicating is, in fact, correct as well. Many of the safeguards to the public process would occur after such a change - by which I mean that we promulgate a commissioner's analysis on a proposed lease and we've public noticed those vehicles in and around potentially affected areas. If there is sufficient public interest, we hold a public hearing prior to making a decision. So the commissioner's analysis would ultimately have to reflect whatever piece of ground it is we finally are talking about."

SENATOR PEARCE tried to clarify the situation and said in the beginning someone has to come up with a route and if a community wanted to change it from north of town to south of town, the company would have to start the application process from the beginning as opposed to being able to move forward with a change that everyone wants. She asked if that's what the bill does.

MR. BRITT replied, "It depends. We make those decisions on a case by case basis based on what we have in front of us." He thought the example the committee was using was outside of the realm of any process. It would be up to the department to decide if that was a substantial change and that decision would be open to litigation potentially.

CHAIRMAN TORGERSON announced an at-ease from 4:10 to 4:25 p.m. He asked if there was any further discussion on Amendment 1. There were no further questions and it was adopted.

SENATOR PEARCE moved to pass CSSB 121(RES) from committee with individual recommendations and its zero fiscal note. There were no objections and it was so ordered.

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#SB148

SB 148-REMOTE WATER STORAGE FOR FIRE DEPARTMENTS

CHAIRMAN TORGERSON announced SB 148 to be up for consideration.

MR. DARWIN PETERSON, staff to Senator Torgerson, sponsor, described the measure as follows.

SB 148 instructs the Department of Natural Resources [DNR] to construct remote water storage sites for fire protection. These sites will consist of 10,000-gallon underground storage tanks with a pump and a hydrant. DNR will solicit applications for these remote storage tanks from all the organized fire service areas statewide. Then the Department will rank the applications and based upon appropriations available construct as many as they can afford. The applications will be ranked by the following factors:

- distance from an adequate water supply;
- number of buildings to be protected;
- extent of spruce bark beetle infestation;
- ability of the fire service to provide matching funds; and
- ability to maintain and operate the remote water storage site.

The need for remote water storage sites is evident in many areas of the state, especially in the areas where beetle infested timber greatly increases the risk of catastrophic wildfire. This legislation will help protect the lives of those people living on the fringe of fire service areas. It will also reduce property loss and possibly lower ISO rates for our residents.

SENATOR TAYLOR asked if the spruce bark beetle infestation areas are considered in the bill.

MR. PETERSON said the bill is not supposed to eliminate those areas.

CHAIRMAN TORGERSON said an applicant might actually get more points if the site is in a spruce bark beetle infested area. It's for fire protection in general, not just wildfire and oil well fires.

MR. JOE STAM, Chief, Fire Program, DNR, said initially he was neutral on the bill but he talked to some fire departments across the state that are interested in this and he would be glad to help facilitate it.

SENATOR TAYLOR moved SB 148 from committee with individual recommendations and the accompanying fiscal note. There were no objections and it was so ordered.

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#SB141

SB 141-AQUATIC FARMS FOR SHELLFISH

CHAIRMAN TORGERSON announced SB 141 to be up for consideration.

MR. DARWIN PETERSON, staff to Senator Torgerson, sponsor, described the bill as follows.

The Alaska Department of Fish and Game [ADF&G] recently proposed new mariculture regulations that were met with sharp criticism from the aquatic farming industry. The industry feels that the proposed regulations impose such restrictive and unreasonable operational procedures for farmers that, if implemented, [they] would constitute a regulatory ban on shellfish farming in Alaska. SB 141 is a good faith effort to mitigate the unsatisfactory relationship between the aquatic farming industry and the department. This legislation is also intended to preserve an industry that has been proven successful in diversifying the economy of Alaska.

SB 141 requires the Department of Natural Resources [DNR] to offer public leases on 60 suspended shellfish sites, 20 clam sites and 20 geoduck sites. These leases are in addition to permits already issued. The leasing program charges more money for sites rich in harvestable shellfish and less money for barren sites. If shellfish are located on the site, the farmer must abide by the sustained yield principle of management when harvesting the wild stock. When selecting the sites for lease, the commissioner of DNR must solicit nominations from the industry and select sites that don't interfere with established commercial, subsistence, or personal use.

SB 141 is intended to maintain the existence and prosperity of a viable Alaskan industry without interfering with other user groups.

SENATOR TAYLOR asked how the value of a site is determined.

MR. PETERSON said he assumes the department has that information when it is charged with finding the fair market value.

SENATOR TAYLOR said that part of his concern is that before one could acquire a site, [ADF&G] would have to make a valuation of the shellfish onsite. That might create a situation in which only wealthy fishing organizations, perhaps from offshore, could bid on them.

MR. PETERSON said that is correct, but the intent was not to deal with the common property clause, which has been a very contentious issue with the state and the industry. Leasing these sites and having the industry pay the state for the stock is one idea in an effort to get around the common property clause. He suggested, "There may be a better way to do that."

SENATOR TAYLOR agreed saying that the common property clause is probably one of the more difficult aspects to work with in this area.

CHAIRMAN TORGERSON said they would continue to discuss the issue until they get it figured out.

Number 2200

MS. ROBERTA HIGHLAND, Kachemak Bay Conservation Society (KBCS), asked if this applies to residents only or whether it would allow large corporations to come in.

CHAIRMAN TORGERSON said his intent was to take testimony on the bill today [and not to take action on it].

MS. HIGHLAND responded that while the KBCS recognizes the importance of supporting a sustainable industry like mariculture, it is concerned about how the industry grows, where it is located and how it is regulated. SB 141 and HB 208 mandate leasing 90 sites statewide to different mariculture uses. The KBCS does not see the need to mandate leases. As needs develop, the agriculturists find suitable locations. Sites should be evaluated for suitability and consistency with state laws.

She said that a disposal of this number of sites all at once would overburden the fishery managers and not allow complete evaluation. She also said that as mariculture expands into new areas, they have to be certain that conflicts between user groups are resolved. She said, "ADF&G does a good job in its analysis of available information and public input. Literature about shellfish farming indicates that we should continue vigilance in inspections of shellfish farms to prevent introduction of diseases and exotic species. East Coast oyster farming brought in exotic pests there. In Chesapeake Bay a disease wiped out natural oysters..."

She suggested a ban on genetic alterations of shellfish and the use of antibiotics and fertilizers on shellfish farms.

MS. NINA FAUST, a Homer resident, said she didn't see a need for this bill because it will artificially speed the growth of this industry faster than it can be monitored. She stated, "Natural growth of this industry is preferable." She said if this bill

passes, she would like it to set a maximum number of sites rather than a minimum.

TAPE 01-25, SIDE B

MS. FAUST asked if residents would be able to comment on the nominated sites. She thought that would be an important part of the process and asked, "Where is the public oversight to protect the public interest?"

MS. FAUST said she has concerns about restocking natural stocks with farmed stocks because many of the places where mariculture has proliferated have problems with introduced species and genetic disorders. She also thought this bill would overburden the budgets of the Department of Environmental Conservation (DEC) and ADF&G and they wouldn't be able to do a good job for the state. She had a concern with public auctions, especially if they're not restricted to state residents. They could perhaps bring in outside interests that may outbid local residents. The bill also says that sites must be included in areas where mariculture is already occurring and she is concerned with the numbers in Kachemak Bay (23 leases).

MS. FAUST also submitted written testimony from Ann Weiland, who opposed the bill.

MR. SCOTT THOMAS, Alaska Trade Mark Shellfish, said his organization is currently involved in a lawsuit with the state and hasn't had a chance to take a position on the legislation. He stated, "At first glance, the bill is a start and you have to start somewhere. I think it forces the department to at least do something here."

MR. THOMAS said he thought the first section, which directs the department to establish fair market value, will be cumbersome. The second section, which requires the sites to be restocked, is one of the conditions his organization proposed to the department earlier. It proposed a performance bond on every animal to be held in escrow as a replant. He said, "We are already being taxed on this industry. For example, our company last year, when we acquired our leases, we had to put up \$20,000 in bonding to DNR." In addition, they had to pay \$6,000 in lease fees and will pay a raw fish tax on the stock they harvest. He thought the bill should concentrate more on propagation and perpetuation of the species, not just the standing stock and its value.

MR. RON LONG, Qutekcak Hatchery, Seward, stated support for the idea behind the bill. He said the way to determine fair market value was in statute, but he is concerned that the term "potential productivity" is unclear. He thought, "They could do a better job of returning appropriate value to the state for the resource in a back-end loaded solution rather than a front-end loaded solution,

something in the form of a royalty based on what's extracted. If the productivity is null, we can only guess on what productivity will be until we try it."

MR. LONG suggested including a provision in Section 3 that would, in addition to charging the commissioner with identifying sites and zones, engage the stake holders in a planning effort that would get them past the perceived conflicts as they arise.

MR. LONG told members that no exotic species are being introduced in Alaska. The department has a very strict genetics policy that does not allow genetic modification to the native species. He is not aware of any farms in Alaska that use fertilizers on their sites. Some have commented that this would stimulate big outside interests to come to Alaska and he believes this would be precisely the kind of investment that would be needed to reach critical mass in the industry. He suggested if all other resources are limited to in-state only bidders, that resource industry will be lost. He remarked "That may be okay with some, but it's not okay with me."

In reference to comments that there are already too many farm sites and development is happening too fast, he said no new permits have been issued in the last six years.

MR. JOHN AGOSTI, Alaska Shellfish Growers Association, said he has problems with the definition of "essential productivity of a site" in section 1. There are too many natural and human factors to realistically and fairly determine potential productivity. Additionally, he would like to see the Department of Community and Economic Development (DCED) involved in the list of agencies in section 3. DCED could play an essential role in selecting sites with community wide planning and a hearing type process. On line 13 he suggested replacing the word "identify" with "planning and select".

MS. JANICE ADAIR, Director, Division of Environmental Health, Department of Environmental Conservation (DEC), said she would answer questions.

CHAIRMAN TORGERSON asked if she was trying to balance her budget on the one fiscal note.

MS. ADAIR responded, "There are some requirements we have to follow under the National Shellfish Sanitation Program and we really didn't know what 'suitable' meant. If 'suitable' was defined as sites that were already in areas certified by DEC, then our fiscal note would be zero.

MR. MICHAEL BANGS, a Petersburg resident, said it might be a suitable bill to help aquatic farms, but he is concerned about geoducks. He is on the board of directors for the Southeast

Regional Dive Fisheries Association, although he is not representing it today. Their mission is to develop, expand and enhance the dive fisheries in Southeast Alaska. He told members, "When you entered geoducks in this Act, you created a situation where we're mandated by the state to develop the fishery and when you have geoducks being farmed on a site that has existing stocks, it creates conflicts."

MR. BANGS explained the reason that many of these areas aren't open for harvest to geoduck divers is because they haven't had the funding from the legislature to expand into the areas. They are in the process of expanding through self-taxation. He said, "If there would have been a little bit more communication, I think they would have found that as a regional dive association, one of the original protocols for developing the geoducks fishery was to reseed the population as we harvest them and do a lot of farming techniques that the farm applicants plan on doing as individuals. We are planning virtually the same thing on a regional basis. All of a sudden, we have a wall in front of us and that really bothers me."

He thought in terms of common property law, the legislature is contradicting itself in helping the fishery.

MR. RICK HARNESS, a Homer resident, opposed SB 141 and said his area of Kachemak Bay is a critical habitat area that has too much development already. This proposal would cripple the ecosystem even more. He said they have already lost indigenous species, such as crabs and shrimp. Now they are concerned about shellfish being diminished because of the biomass. He noted, "We need to study what we have so we can better manage it."

MR. RAY ROWLAND, Aquaculture Specialist, University of Alaska, supported the committee's efforts to resolve the issue and the general contents behind the bill. He said there is a tremendous amount of ignorance about how this industry runs and the impact it has on the environment. He expressed concern about the productivity issue in Section 1 and said, "The potential productivity of a site is often determined by the farmers themselves. You could have a highly productive area with a farmer that's not doing a very good job."

He said that productivity is also quite variable from one year to the next. He also expressed concern about the up-front public auction. He said they had talked about placing some kind of assessment on harvested stock as payback to the State of Alaska as the farmer operates that facility.

MR. BOB HARTLEY, Alaska Shellfish Association, said he is an oyster farmer in Kachemak Bay. Generally, the bill tries to accomplish a number of things. He sees a couple of problems in Section 1 and the requirement that the value of the lease is to be appraised every

five years. He wanted to know what the value would be based on and questioned whether it would be the value of the improved beaches in the area. He thought "productivity" needed clarification. He thought Section 3 gave them a good date to shoot for, but suggested DCED should be involved in the process since new farms would help develop a community. He thought it made sense to get community involvement on an area wide basis rather than statewide.

On line 19, he thought the word "interfere" should be changed to "significantly alter" since that is the term used in regulation and the present state mariculture law.

MS. JULIE DECKER, Southeast Alaska Regional Dive Fisheries Association (SARDFA), thanked the committee for taking up this issue.

SARDFA foresees several problems with offering leases of wild resources to the highest bidder. First, allowing the resource to go to the highest bidder often sets up a system that is beneficial to large corporations and precludes the smaller, independent business person. Second, this form of leasing of wild stocks seems to be following the direction of the state of Washington. Please allow me to give you some information regarding commercial diving and aquatic farming of geoducks in Washington. For its commercial dive fishery, Washington leases tracts of its wild geoducks on sub tidal lands to the highest bidder through its Department of Natural Resources. This system does several things:

- It brings in approximately \$30 million per year to WA DNR (or 80% of the ex-vessel value).
- It yields approximately \$.50/per pound to the diver (or approximately 10% ex-vessel value).
- It yields approximately \$0.50/per pound to the leaseholder (or approximately 10% ex-vessel value).
- It allows large Chinese-owned, Canadian companies to dominate the leases and control the geoducks markets.
- It precludes management by the WA Fish & wildlife Service and does not allow the commercial industry to employ other management techniques or begin enhancement strategies.
- It has encouraged highgrading of geoducks, which may lead to problems with sustainability.

SARDFA members believe this is exactly the opposite direction Alaska should be taking to protect the long-term sustainability of the geoducks resource. In the words of a SARDFA member, "Some of

the dirtiest words a geoducker can hear are DNR, highest bidder and lease."

MS. DECKER told members:

However, in Washington, geoducks are being successfully farmed on private, intertidal areas, where very few, if any, wild stocks grow. This example demonstrates that wild geoducks are not needed for biological or financial reasons in order to farm geoducks. The two most important factors in successful geoduck farming are having the proper substrate and having access to seed.

Although SARDFFA understands the necessity to make suggestions of changes, which will remedy this situation to our satisfaction, SARDFFA does not currently see a clear solution to this problem.

The next problem SARDFFA sees in this bill is continuing conflicts between existing users in the the geoducks fishery. SARDFFA suggests three possible solutions for this problem that could be inserted into these bills:

- Require that on-bottom farming sites be intertidal.
- Require that on-bottom farming sites have little stocks, for example, setting density levels above which the site would not be suitable.
- Require that geoduck farming sites have no wild stocks.

In 1997, the divers and municipalities in Southeast recognized that with budget reductions, there was little hope of money being appropriated to develop the dive fisheries. Thus, the divers and the municipalities stepped forward to develop a program in which the divers would tax themselves and work in a partnership with ADF&G and ADEC to develop the fishery in an orderly and economically beneficial manner. SARDFFA is glad to report that we are moving forward in a coordinated and productive mode.

Senator Torgerson, you were a supporter of our legislation and it is something you should be pleased to have had a part in. SARDFFA hopes the aquatic farming industry will be one that is mutually beneficial to the dive industry; not destructive to it.

MR. BOB LOEFFLER, Director, Division of Mining, Land and Water, DNR, thanked the committee for taking up this issue but told members DNR has a number of concerns with the bill. He said he believes DNR's program works; a vast majority of applications get approved. SB 141 would make a one-time separate procedure for cultures and the program's real problem is the difference between common property resources with respect to on-bottom culture. His concern is that this bill will not solve that problem but just establishes a new procedure.

MR. LOEFFLER said DNR received 45 applications in 1999 and that was after it hadn't had an opening for a number of years. DNR expects to receive an average of 15 - 20 applications for most openings. He noted, "This is a much bigger program; it returns about \$48,000 of income to the state in terms of beach rentals."

MR. LOEFFLER said DNR is concerned that the requirements for the state to identify locations means it must gather expensive site specific environmental information that's typically gathered by the private sector, such as stock density, water quality, water flushing out and other site specific information. Those are the major costs in DNR's fiscal note.

MS. VI JERRA, an Anchor Point resident, opposed SB 141. She said they want the public access and beaches to be kept for public use and not restricted to private uses. She thought private use might be unconstitutional.

MR. MAKO HAGGERTY, a Homer resident, opposed SB 141 for several reasons, one being the use of public property for private use. His second concern is restricting the habits of everything that eats the clams, like ducks and fish. His greatest concern is that this is an end run around ADF&G in terms of regulation and it's dangerous territory for the legislature to be micromanaging the fisheries.

MR. DON FELL, a Homer resident, stated support for SB 141. He believes it is a good idea to establish mariculture. He thought the farmers should have the first option and can best decide where the site should be, not ADF&G. He thought the language on line 19 was a bit vague. He said that some of his neighbors are concerned with lost species and stated, "Kachemak Bay has been pretty well drained of everything that I've seen here since I came and it is time to replace some of these species rather than to continually take them out. Seabirds have been depleted, not because of mariculture or oyster farms; but because of eagles, which are being fed off the spit..."

MR. FELL said if clam farming were given a chance, his colleagues' concerns would be alleviated as, "The oyster farms in this

community have added a permanent resource to the community. This is the only seafood that comes out of our bay year-round and we've brought in over \$100,000 worth of products into Homer. The end product for local restaurants could easily be tripled."

MR. FELL said that taking public beaches is the equivalent of limited entry. The beaches are a public resource that can be used for all the public's good in terms of jobs.

MS. NANCY HILLSTRAND said she has worked for 20 years in the Division of Fisheries Rehabilitation and Enhancement on depleted stocks of salmon. She said they instituted hatcheries, but the enhancement that started out as something good has turned into something that is quite bad. It's created problems with production, disease, predatory control, and crash prices for commercial fisheries. She noted, "It's just the nature of the beast that we need to have a handle on these things." Right now they have a processing plant, an oyster bar, a gift shop, a retail outlet and a mail order seafood business in Homer. Even though clams could help their business, she thought open access taking of the clams would be better than mariculture.

MS. HILLSTRAND thought this process should go before the Board of Fisheries as a developing fisheries proposal, which would then go to the local Fish and Game Advisory committees and through the public process. She noted, "Commercial fisheries, if managed wisely, can be regulated with bag limits, season limits and open access. On-bottom intertidal dredging is something there is no handle on. There can't be, as I saw for 20 years in the hatchery. There were many policies in place, but still disease was allowed to continue and the problems were tremendous."

MS. HILLSTRAND concluded by saying if the state does not follow its three-point constitutional mandate of utilization, development, and conservation, it's going to be in trouble.

MR. MARK DONAHUE, a Homer resident, said he supports SB 141 with reservations. He questions the bid process and having the department determine values. He wished the state had started with shellfish hatcheries before fish hatcheries.

MR. DOUG MECUM, Director, Division of Commercial Fisheries, ADF&G, said ADF&G has looked at previous versions of this bill and does not believe the exclusive right of fishery and common use issues have been solved with the current language. He said Section 1 requires DNR to include the value of harvestable resources on the site in determining the fair market value.

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MR. MECUM said:

We have similar concerns with Section 2 in that it implies that a farmer has somehow obtained a right to harvest these wild resources on the site. We do support the idea in Section 3(b) that sites for on-bottom farming be chosen in areas where wild stocks do not exist. Subsection (c), however, conflicts with that and allows a farmer to apply for a site they've chosen with no such restriction on the presence of the wild stock.

One sort of a housekeeping issue is defining what constitutes an established commercial, subsistence or personal use fishery. That might be something that could be included in the bill.

ADF&G's part of it isn't so much in the site selection. One of the things we would suggest for consideration would be something we have talked to various people about and talked to the industry about and that is setting up a system in areas where there essentially are no wild stocks present. There's clearly no common use issue, no constitutional roadblock. In areas where there are lots of these resources, highly abundant geoduck clams, for example, and perhaps that area would be the kind of area that would be established as a commercial fishing area, personal use and subsistence. In this gray zone or in-between zone where there's some, but not very many, perhaps not supporting a commercial fishery, some sort of a mechanism could be established to harvest those resources and put them into some sort of program receipt account or something along those lines to prepare the site for farming. I would also say that we would certainly support your efforts to try to jumpstart the process. We'd like to work with you on suggestions to the bill.

CHAIRMAN TORGERSON asked where the suggestions were that he asked for two months ago.

MR. MECUM said that they responded with some suggestions, which are also in a letter to the committee.

CHAIRMAN TORGERSON asked what happened to the list of things the department had agreed to do.

MR. MECUM said he thought they had responded to a lot of those concerns and he would go through the list with him point by point.

CHAIRMAN TORGERSON said, "It's a waste of my time." He was convinced that the department did not want to go forward with it.

SENATOR TAYLOR asked what impact this legislation would have on the regulations they are in the process of submitting.

MR. MECUM replied that he didn't think it would have a lot of impact. They have had two public workshops and extended the public comment deadline on those regulations. He thought they would come up with very acceptable regulations when the process was done.

SENATOR TAYLOR asked what affect he thought the regulations would have upon the pending litigation with the shellfish mariculture group.

MS. SHANNON O'FALLON, Department of Law, responded that they don't have a ruling from the Superior Court judge yet. She didn't think the regulations would have any impact on it, but the judge's decision could have an impact on the regulations in regard to access to common property resources on a farm site. She explained if the judge were to find that the department's interpretation of the constitution is inconsistent and would find that the statutes do allow a farmer to access common property resources, they would have to look at changing the regulations or, "More than likely, we would ask for a stay of the Superior Court decision pending appeal to the Supreme Court while we take this issue up."

SENATOR TAYLOR said that was what he thought and he was concerned that the department "fast tracked" the regulations with the litigation pending, especially with some of the allegations within the litigation of coercion on the part of the department. He thought that maybe they should defer to the judiciary to resolve the initial problems, "before we attempt through either the legislature or the department to come in with a back door solution that may very well preclude the findings of the judiciary."

MS. O'FALLON responded:

There are a number of issues in the litigation, apart from the common property resource and exclusive right to fishery issues. One of the allegations was the department applied policies that weren't in regulation and, therefore, the application of those policies is invalid. So the promulgation of regulations that more fully implement the Aquatic Farm Act is a good idea. One of the things the department argued to the court was to the extent you find that we improperly applied policies because they weren't in regulation, the proper remedy is not to just grant the applications. The proper remedy is to remand the applications back to the department for consideration under the new regulations. There are also some issues with concerns with statutory interpretation

over conflicts with different fisheries, traditional fisheries, etc. I think that in the next round of applications these regulations will get the department a long way towards having a smoother application process.

CHAIRMAN TOGERSON asked where the department's fiscal note was.

MR. MECUM responded that DNR submitted the fiscal note and it had an RSA for a quarter of a million dollars going back to ADF&G, which is roughly the equivalent to what they requested last year for a similar thing.

MR. ROGER PAINTER, Alaska Shellfish Growers Association, complimented the chairman on his attempt to address some of these troubling issues. He said he is glad that the chairman said this is a work in progress, because he has some concerns with two sections. In section 1 the phrase, "potential productivity," is a very difficult concept to define. Professor Weiland said that natural productivity varies significantly with environmental conditions. It's really inadvertent, but the new language would result in much higher lease fees for all farmers, whether or not there's standing stocks on the site. He said that he would get suggested language in the near future on that issue.

MR. PAINTER pointed out that Alaska already has the highest lease fees for aquatic farm sites in the country and section 1 would add to those already high costs. He added that he was glad the chairman clarified that the special process wouldn't supplant the existing application process in section 3(c), but he was concerned with the last clause on line 27 "leases for aquatic farming sites that are issued after the effective date of this Act on the basis of lease applications filed with the department before the effective date of the Act may be counted toward the satisfaction of the requirement established by (a) of this section." He thought that it could mean if he came in with applications for another acre to add to his farm, that he would be put in the position of a competitive auction on that particular site. He wasn't sure that was the intent.

MR. PAINTER said that Professor Weiland had commented earlier on aquaculture development zones and they are very interested in this concept and have been trying to work with local communities, governments and state agencies on furthering it. He thought it could be embodied in this bill as it gets toward the legislation's objective.

MR. PAINTER said he differed with Mr. Mecum in that the Alaskan Shellfish Grower's Association is not real pleased with the regulations. He said they were pleased with the progress in changing them, "That's much different than being pleased with the final product." He explained that the regulations started out "95% bad" and they have probably corrected 75% so far.

SENATOR TAYLOR asked what he thought about using a royalty on the product coming off of the ground instead of a bidding process for leases.

MR. PAINTER answered that that concept is already in effect since they do pay a fisheries business tax that is equal to what the commercial fishermen pay that is based on the value of their production. In addition to the lease fees they pay, they are paying a value on the production on the site.

SENATOR TAYLOR asked if that wasn't just a flat 3 percent. He was talking about a royalty that would include the lease.

MR. PAINTER answered if it were a royalty instead of a lease fee, they would be very interested in pursuing it further. Mr. Thomas pointed out earlier that they are paying lease fees on sites they are not able to farm right now. It is a problem to get sites late in the year that they are not able to use for that particular growing season and having to pay lease fees on them. They are paying lease fees on a site that won't see profits for three or four years.

There being no further questions or discussion, CHAIRMAN TORGERSON adjourned the meeting at 5:45 pm.

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