

ALASKA STATE LEGISLATURE
HOUSE SPECIAL COMMITTEE ON OIL AND GAS

February 24, 2004

3:27 p.m.

MEMBERS PRESENT

Representative Vic Kohring, Chair
Representative Cheryll Heinze
Representative Jim Holm
Representative Norman Rokeberg
Representative Harry Crawford
Representative Beth Kerttula

MEMBERS ABSENT

Representative Lesil McGuire

OTHER LEGISLATORS PRESENT

Representative Carl Gatto
Representative Bill Stoltze

COMMITTEE CALENDAR

HOUSE BILL NO. 395

"An Act relating to shallow natural gas leasing and the regulation of shallow natural gas operations."

- HEARD AND HELD

PREVIOUS COMMITTEE ACTION

BILL: HB 395

SHORT TITLE: SHALLOW NATURAL GAS

SPONSOR(S): REPRESENTATIVE(S) HARRIS

01/23/04	(H)	READ THE FIRST TIME - REFERRALS
01/23/04	(H)	O&G, RES, JUD, FIN
02/05/04	(H)	O&G AT 1:00 PM CAPITOL 124
02/05/04	(H)	Heard & Held
02/05/04	(H)	MINUTE(O&G)
02/24/04	(H)	O&G AT 3:15 PM CAPITOL 124

WITNESS REGISTER

RICHARD VANDERKOLK, Staff

to Representative John Harris
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Presented HB 395 on behalf of
Representative Harris, sponsor.

ERIC MUSSER, Staff
to Representative Vic Kohring
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Clarified portions of HB 395.

ROBERTA HIGHLAND
Homer, Alaska

POSITION STATEMENT: Testified during the discussion of HB 395.

MARK MYERS, Director
Division of Oil and Gas
Department of Natural Resources
Anchorage, Alaska

POSITION STATEMENT: Explained aspects of HB 395.

ROBERT ARCHIBALD
Homer, Alaska

POSITION STATEMENT: Testified during the discussion of HB 395.

MYRL THOMPSON, Spokesman
for Ogan is So Gone
Wasilla, Alaska

POSITION STATEMENT: Testified during the discussion of HB 395.

ACTION NARRATIVE

TAPE 04-5, SIDE A

Number 0001

CHAIR VIC KOHRING called the House Special Committee on Oil and Gas meeting to order at 3:27 p.m. Representatives Kohring, Holm, Rokeberg, Heinze, and Kerttula were present at the call to order. Representative Crawford arrived shortly thereafter.

HB 395-SHALLOW NATURAL GAS

[Contains discussion of HB 420, which was merged into HB 395, Version V; contains discussion of SB 312]

Number 0085

CHAIR KOHRING announced that the only order of business would be HOUSE BILL NO. 395, "An Act relating to shallow natural gas leasing and the regulation of shallow natural gas operations."

CHAIR KOHRING noted that a proposed committee substitute (CS) combines HB 420, which deals with water issues, and HB 395. He explained that the bill would be held over after public testimony because there are so many other bills in both the House and the Senate, and because the Department of Natural Resources (DNR) is still going through a review process that could result in other additions to the bill. He acknowledged the arrival of Representative Crawford.

Number 0169

RICHARD VANDERKOLK, Staff to Representative John Harris, Alaska State Legislature, spoke on behalf of Representative Harris, sponsor. Agreeing that Version V is an amalgamation of two bills previously heard, HB 420 and HB 395, he said there have been no significant changes to the content of the two.

Number 0247

REPRESENTATIVE ROKEBERG moved to adopt the proposed CS for HB 395, Version 23-LS1314\V, as the working document. There being no objection, Version V was before the committee.

Number 0300

MR. VANDERKOLK referred to a change in Section 1, paragraph (2), a permissive statement for the regulation of reinjection of water through hydraulic fracturing. He said that section is now a standard practice, or a mandate, for the regulation. He noted that in Section 5, page 4, lines 17 and 18, notification by direct mail was added because constituents and sponsors really wanted to see a greater sense of awareness for the public. On page 5 [Section 6], lines 13-19, provisions for water well testing [were added]. He explained that the testing would be done by the lessee, who is required to test the water and to present results to the owner. Finally, in Section 7 and throughout is a standardized reference to what is meant by shallow and natural gas leasing. The hard cap at a depth of 3,000 feet is still included; now, however, by administrative discretion, there is a 1,000-foot buffer. He said those were the only changes created by merging the two bills.

Number 0459

REPRESENTATIVE ROKEBERG asked about the rationale for the water well testing requirement. He wondered if it was to allow a baseline by the lessee.

MR. VANDERKOLK explained that [Section 6, paragraph (2)] is another provision for the lessee to attend to the guarantee of water quality assurance for all wells before coal bed methane operations begin. It's a provision just for the lease itself, he noted.

Number 0530

REPRESENTATIVE ROKEBERG asked if the lessee or operator would test the property owner's source of water.

MR. VANDERKOLK said he believes that is the case.

REPRESENTATIVE ROKEBERG responded that it sets the baseline data for water quality standards.

Number 0580

REPRESENTATIVE HEINZE referred to page 3, where it talks about getting permission from the commissioner to allow for recovery of gas to 4,000 feet. She asked if that happens when gas has not been hit or when the seam is bigger than expected. She asked how it is defined to allow recovery to go the extra 1,000 feet.

MR. VANDERKOLK said he believes administrative discretion comes into play if shallow natural gas is, in fact, below the threshold [of 3,000 feet] and it can be proved that the extra buffer is needed. The sponsor still wanted to maintain a hard cap, he added, and it was agreed that 4,000 feet was a fair number.

Number 0655

REPRESENTATIVE HEINZE referred to page 4 and asked who pays for the ads in the papers, postage, printing, and so forth.

MR. VANDERKOLK replied that the notification by mail and the ads referred to in lines 26-31 are costs incurred by DNR. He said there was one fiscal note of approximately \$10,000 for all ads

in the original version of HB 395. The real change in this proposed CS is the requirement for notification by direct mail.

REPRESENTATIVE HEINZE asked if it was \$10,000 per well.

MR. VANDERKOLK said he believes it is per area, and that there would be a legal notice. He noted that the sponsor is still waiting for fiscal notes from the Department of Revenue (DOR) and DNR.

Number 0757

REPRESENTATIVE CRAWFORD pointed to page 8, subparagraph (B), lines 21-24, and noted that there is a limit of 1,500 feet and that it says "the activities appear to be probable hydrologic consequences of the lessee's activities on the lease". He asked why the limit is at 1,500 feet, and inquired, "What if the well was at 1,550 feet and the activities appeared to have hydrologic consequences? It would be the same cause and have the same consequences."

MR. VANDERKOLK said he wasn't certain why 1,500 feet was the absolute cap. He referred to existing law in AS 38.25.130 and pointed out that damages are already guaranteed. He said he thought the idea was to have general locations so it doesn't get out of hand.

Number 0876

ERIC MUSSER, Staff to Representative Vic Kohring, Alaska State Legislature, explained that because the restoration fund is established as a presumed liability, and as a result of those probable hydrologic consequences, a great deal of discussion went into distances, existing well locations, and drafting the provision. It was determined [1,500 feet] was a reasonable baseline area surrounding an existing property owner's well.

REPRESENTATIVE CRAWFORD, in response to Mr. VanderKolk's earlier statement about the property owner's being protected if there are consequences, asked if it "trumps" that protection if it is 1,550 feet.

MR. MUSSER said the potential could exist; that could be the case as it relates to a well-replacement situation, specifically.

Number 0999

REPRESENTATIVE KERTTULA asked if the owner has to go out, take the tests, and maintain them.

MR. MUSSER replied that [the sponsor] tried to address community and public concerns relative to establishing that baseline criteria, and consulted with those in the industry. The end result is that the lessee is now responsible for conducting the test and providing the department with a copy of the test. He indicated the requirement was on page 5, line 13.

Number 1058

REPRESENTATIVE KERTTULA said the lessee would do the testing and get the baseline, and then the owner, according to page 8, would have to receive and "maintain" the record. She asked whether "maintain" meant "just keeping them."

MR. MUSSER explained that once the lessee tests the well, if the lessee is going to be conducting activities within that parameter, the lessee must provide any owner of the well a copy of the testing results, which will show the purity, the flow, and the general condition of the well. The owner has to keep a copy, which would preclude anybody from walking up at a future date with no documentation.

Number 1115

REPRESENTATIVE KERTTULA said she has the same exact concern that Representative Crawford has. She explained:

If it's obviously a hydrologic consequence, then I'm assuming you intend the person to be paid out of the fund, and maybe that's the way to restructure this, is to point out that it's only if it's just a "probable." It's a lesser degree of proof, I guess. But if someone could prove that it was a hydrologic consequence, you'd want the money paid out of the fund to the landowners.

MR. MUSSER said that is the intent, the presumed liability component. If it's in all likelihood a result of the drilling activity, the owner gets a new well.

REPRESENTATIVE KERTTULA remarked:

But only if they're within 1,500 feet, right now. What if they can prove it's the consequence of the drilling and they're outside the 1,500 feet? 1,502 feet? They should get recovery, shouldn't they? Maybe that's the restructuring that needs to happen in this, is to point out that if they can prove it, they're going to get it, and it's only if it's down at this lower degree of probable consequence, you know, you can't really prove it, but it's probable, ... I can work with you on that.

Number 1233

REPRESENTATIVE HOLM said he noticed discussion in [paragraph (2), page 2, lines 13-14] of "hydraulic fracturing of shallow natural gas wells to assure protection of drinking water quality". He asked if [hydraulic fracturing] had ever occurred previously upon development of coal bed methane.

MR. VANDERKOLK replied that he was not aware of the data suggesting that there is a direct correlation between hydraulic fracturing and serious contamination of a water table, but what is done with the water afterwards has been a problem in other states. Reinjection is the key aspect there, he noted, a reinjection to a depth separate and much lower than that of potable water.

REPRESENTATIVE HOLM responded that the purpose of [the wording] is for reinjection, and not so much that the fracturing is the problem.

MR. VANDERKOLK replied that hydrologic fracturing is the standard method for puncturing into the coal bed.

Number 1344

REPRESENTATIVE HOLM referred to page 6 [lines 16-18], which says in part, "Except when the commissioner exercises discretion to allow recovery of gas at a depth of not more than 4,000 feet, a lessee may not recover gas at a depth greater than 3,000 feet". He requested clarification.

MR. VANDERKOLK explained that it is a reference to the commissioner's discretion; there is an absolute hard cap of shallow natural gas leased at 4,000 feet, but general practice at 3,000 feet. Administrative discretion would allow another 1,000-foot buffer.

REPRESENTATIVE HOLM offered his understanding: "In essence, what we're saying is that this coal bed methane is all from 3,000 feet up unless the DNR commissioner, or whoever, makes that decision."

MR. VANDERKOLK mentioned Alaska Oil and Gas Conservation Commission (AOGCC).

Number 1380

REPRESENTATIVE ROKEBERG referred to page 8 [paragraph (B)] and the issue of 1,500 feet, and said he agreed with Representatives Kerttula and Crawford. "We're talking, fundamentally, about 1/4 mile away from the drill site," he remarked. He described that as delimiting, and said it seems having an arbitrary limitation of 1,500 feet is not equitable. He said he could appreciate trying to set limits, but it looks as if there are two standards: a defined distance, and a standard of causality of "appears to be probable," which is pretty low. He said there is a natural corollary between the distance and the level of proof.

REPRESENTATIVE ROKEBERG recommended following Representative Kerttula's line of thinking to delete a specific distance and raise the standard a little bit. Typically, constituent elements that change the water quality by measurement may be found, but more often turbidity and cloudy water would show up first. He continued to explain that water aquifers are found, like oil, in different areas, depths, and widths. He concluded by saying the level of proof that appears to be probable is almost a joke. He gave an example of when the aquifer might be drained by natural causes and the driller blamed by the owner.

Number 1573

REPRESENTATIVE KERTTULA said she has the same concerns. She remarked that she likes the expanded notice sections [in Version V], because it is important for people to understand the leasing that is about to happen, but she had a concern about the landowners and how they were defined. She suggested, instead of saying "residents" - because there could be thousands of them - that "owners" should be used if there are good enough records to figure out who they may be. She asked Mr. VanderKolk if he'd considered this change.

MR. VANDERKOLK deferred the "well portion" to Mr. Musser, but said he was open to the will of the committee.

REPRESENTATIVE KERTTULA reiterated that the broad notice was a great step forward.

Number 1648

REPRESENTATIVE HEINZE asked for clarification on the bonding issue and the 1 percent amount. She asked if there is a \$250,000 cap specifically for water reclamation, and then, if any money is taken out, 1 percent comes back, in effect, keeping the amount at \$250,000.

MR. MUSSER replied that is correct.

CHAIR KOHRING opened the hearing to public testimony.

Number 1694

ROBERTA HIGHLAND, Homer, thanked the sponsor for adding the public notification [to the bill], although she said she was somewhat confused about residents versus landowners. She agreed that direct mailing should be a part [of the bill]. She said she appreciates changing the water quality testing to the lessee. She voiced concern about the dense population areas that have been included in the shallow natural gas leases, and wondered if something about the mix not working very well could be included in the bill. She pointed out a problem in Homer because DNR did not know what kind of land was put on the table for leasing: the drinking water reservoir, schools, and dense populations. She opined that in this day of computers [such information] should not be a surprise to anyone. It is a little embarrassing for DNR to put out that land and then discover it was a drinking water reservoir, she suggested. She wondered if [this bill] was a place for that missing link.

MS. HIGHLAND voiced another concern, that none of the bills addresses the hundreds of thousands of acres of presently leased land across the state; she wondered if that could be included in this bill with retroactive dates. She recalled questioning Patrick Galvin from [DNR] as to how lands could be leased without regulations in place. She said she thinks he said it was a fairly normal process to lease and then do regulations; if that is true, she said, there would be room to address regulating those areas, because that issue is causing so much grief, outrage, and distrust. She requested ideas from the committee.

Number 1875

CHAIR KOHRING addressed restrictions on dense development, saying there were no specific provisions in this legislation regarding that topic, but it could be addressed by the committee as a future subject. Responding to Ms. Highland's concern about DNR's leasing lands that have now been determined to be water-sensitive in terms of water quality and quantity, he maintained that current regulations in place deal with that matter. He noted that [Version V] addresses this in terms of a provision directly related to impacts on water, which was part of HB 420 and is rolled into this legislation. Last, assuming Ms. Highland was referring to lease buy-backs, he pointed out that they weren't part of this legislation; however, some bills that may or may not come before the committee do address the issue.

Number 1948

MS. HIGHLAND explained that land directly under [Homer's] drinking water reservoir - the lake - was leased, and she is trying to get a link for DNR, which didn't know the actual ownership of the land. She said the buy-back is a major issue, but if something simpler would fix it, her area would love to see it.

CHAIR KOHRING suggested that Mr. Myers could address the water issues.

Number 2011

MARK MYERS, Director, Division of Oil and Gas, Department of Natural Resources, clarified that under the shallow gas leasing program, DNR does not choose the land to be leased; it is applicant-driven. The applicant applies for the land, and anything that is not currently in a statewide leasing program, or under an exploration license, is eligible. That is the nature of the program, he said. He continued:

As far as the issue of the surface estate, in general, basically, we use the stipulations and mitigation measures. For instance, people have to separate the actual act of leasing versus any activity that occurs on the lease. Any activity near an existing or known reservoir would be heavily regulated. There would probably be no surface occupancy allowed in [the] near vicinity. Any drilling in that area would probably be for conventional gas, directionally drilled at much

deeper depths underneath the lake, so, the drilling would occur at 1,000- to 3,000-foot depths, and the aquifer they're using is right on the surface.

So, again, you're hydrologically/geologically separate. Unless those could be assured, we wouldn't issue a permit to drill; neither would AOGCC; neither would DEC [Department of Environmental Conservation] allow it. There are multiple bites of the apple, but I think one of the confusions is, people separate out the regulatory function on activity versus the very act of leasing. We lease near a river on a regular basis, ... but we do have setbacks, distances away from the river that are substantial, to protect the surface values of the river.

MR. MYERS pointed out that the regulatory tools are in place when the leases are issued, as well as standard practices and negotiated terms with the lessee as part of the plan of operation, which also includes the surface owner. He mentioned areas in the [Matanuska-Susitna] area where additional regulatory functions may be looked at for the coal bed methane process going on there. He reiterated that he thinks people get confused with the act of leasing versus actual activity. Most leases never get explored, he added. To put those resources to developing and examining surface-parcel private leasing is not practical, nor is it done here or elsewhere, he said. He indicated that in SB 312, the whole program would change to hold a best-interest finding; there would be plenty of public output and comment, and those leases would be chosen by DNR, rather than an advocate group.

Number 2176

REPRESENTATIVE ROKEBERG asked Mr. Myers for his opinion on the impacts of any regulations on the existing leases. He said it was his understanding, under the initial coal bed methane legislation, that DNR was granted the authority to write regulations. Whether it did or not seems to be an issue, he remarked. He repeated his question about retrospective impacts of any new regulations and/or statutes.

MR. MYERS responded that he thinks there are two issues. One is the regulation of activity on the leases, and those are an appropriate place for statutory or regulatory control on coal bed methane drilling, in general. Specific terms on the leases, such as depth, however, are lease contract rights, and

restricting the depth requirements on existing leases is not within the legislature's authority, he opined. He said [the legislature] does have the ability to change the way coal bed methane is regulated through statutes or adoption of new regulations. The original coal bed methane legislation did restrict DNR's typical authority on regulations, by saying only those regulations necessary could be applied.

MR. MYERS said one thing DNR did was to carefully develop stipulations and mitigation measures with the leases, which are extensive in allowing DNR discretion to determine setbacks, noise abatement, and water quality issues. He said the tools are available, but might not be as specific as people would like, so the recommendations may lead to specifics for each individual plan of operation.

Number 2290

REPRESENTATIVE ROKEBERG replied, "Then I take it your answer is yes and no, depending on what it is?"

MR. MYERS said that's correct. It is a mixture of strict standards that are controlled by regulation and other standards that are more general by stipulations of mitigation.

REPRESENTATIVE ROKEBERG cited an example of a new fund created in the bill, and asked if the fund would be applicable to the current outstanding leases that have been issued by DNR.

MR. MYERS said if it is a tax, he believes [the legislature] is free to regulate a tax on the industry because it is not a part of the lease-contract relationship, nor is it required to be.

Number 2350

CHAIR KOHRING asked Mr. Myers when DNR expected to conclude the workshops that have been going on since November. He said the committee is interested in looking at recommendations by DNR that could be parlayed into legislation.

MR. MYERS answered that there have been four workshops, so far, with the fifth this Saturday. In two weeks a report will follow, then recommendations will go forward to the commissioner, and probably by May a final report will be made. In the interim, DNR has posted an organized list of all of the public comments on the web site. Finally, the commissioner will need time to sort through and develop additional guidelines.

Number 2424

CHAIR KOHRING noted it could be a process that would continue into the next [legislative] session as far as any prospective legislation.

MR. MYERS agreed that was likely.

CHAIR KOHRING noted that Representatives Gatto and Stoltze were present and invited them to join the committee [at the table].

The committee took an at-ease. The meeting was called back to order at 4:17 p.m.

Number 2485

REPRESENTATIVE CRAWFORD questioned Representative Kohring about the at-ease.

CHAIR KOHRING replied that he'd felt the need to discuss the timing of moving the legislation.

Number 2519

REPRESENTATIVE KERTTULA thanked Chair Kohring for coming back into the room and said she was remiss in not objecting because it shouldn't have happened unless it was executive session.

REPRESENTATIVE ROKEBERG replied that they were not trying to hide from anybody.

CHAIR KOHRING announced that public testimony would continue.

Number 2560

ROBERT ARCHIBALD, Homer, said this is a step in the right direction. He said he has been fairly disenchanted with the coal bed methane gas issue. He mentioned the testing of the water by the lessee and suggested language that says it be done by a third party. He also said he believes the 1,500-foot requirement is lax on the hydrological consequences. He said a number of people were not present today to testify because they were not notified of the meeting. He repeated that the bill was a step in the right direction and thanked the committee.

[Chair Kohring mentioned that Chuck Logsdon from the Department of Revenue was prepared to answer revenue-related questions via teleconference.]

Number 2678

MYRL THOMPSON, Spokesman for Ogan is So Gone, Wasilla, said he represented 2,200 registered voters from District H for the recall [of Senator Ogan]. He said the bill is a step in the right direction but does not go far enough in many areas. He said he has some contention with the 1,500-foot distance because a lot of the well drillers in his area know that a lot of the aquifers are huge, some described as underground lakes. If something were to happen outside of the 1,500-foot range, what recourse would people have if their wells are polluted or their aquifer is damaged, he asked.

Number 2737

MR. THOMPSON responded to Mr. Myers' statement about the \$10,000 cost of publishing ads for the area. Recalling mention in a Senate meeting of a \$1-per-head cost of sending out notices to each private property owner affected, he asked if that was in addition to the \$10,000. Following up on Mr. Myers' mention of SB 312 and best-interest findings, he pointed out that it doesn't affect the people in the [Matanuska-Susitna area] whose lands are already leased and the lands that are under application. He said he was glad public testimony [on the bill] was opened, but added that notification came very late today. He said he appreciated the fact that the meeting would be extended to another date. He suggested that the committee get information from the ongoing DNR workshops. He made the correction that there had only been three workshops; the fourth one would be tomorrow night, and another one will be held in Willow. He said the information could be obtained on the [DNR] web site.

Number 2813

MR. THOMPSON responded to the hydraulic fracturing discussion by saying no one had mentioned that a number of test wells were tested expressly, after the fact, for residue fracturing fluids, and 23-62 percent of the fracturing fluids were left in the well as residue. He suggested there could be a long-term effect if it got into aquifers. He noted that earthquakes could be a possible cause of damage.

MR. THOMPSON spoke about a core-drilling appeal that was overruled, and said they were told it would be very low-impact and last about 3-5 days. Instead, it has lasted about five weeks, and they are through one-half of a core hole. He opined that the company was badly mistaken or given the wrong information, and if they were wrong about a core hole, they can certainly be wrong about a lot of other things that could have detrimental impacts to the community. He stated his support for the buy-back.

MR. THOMPSON asked about a section of HB 395 that mentioned compensation for surface owners. In response to Chair Kohring, he said the original HB 395, Section 5, subsections (f)(2)(A) and (B), refers to \$300 a month for each wellhead and \$600 a month for a compressor [station]. He asked if this was still in the proposed CS.

MR. MUSSER replied that the proposed CS is a new version of legislation that supersedes the previous one, and that the fees referenced by Mr. Thompson have been removed from the bill.

Number 2965

MR. THOMPSON said the people he represents will want to know that.

CHAIR KOHRING thanked Mr. Thompson for his testimony and said the 1,500-foot issue, as well as the "frac fluids" issue, would be reevaluated.

TAPE 04-5, SIDE B

Number 2980

CHAIR KOHRING said the issue of the buy-back could be considered by subsequent committees. He said meetings are noticed under the title "Bills Previously Heard" [scheduled in BASIS, when committee schedules are posted] and that is why this bill is before the committee today. He said it would possibly come up again on Thursday, depending on possible proposed CS changes.

MR. THOMPSON said he hoped that meeting would also be open to the public.

MR. MYERS acknowledged that the speaker was correct that the fourth DNR meeting hadn't occurred; it is tomorrow night.

Number 2914

CHAIR KOHRING asked if there was any further public testimony; he then closed the public hearing. He announced that HB 395 would be held over.

ADJOURNMENT

There being no further business before the committee, the House Special Committee on Oil and Gas meeting was adjourned at 4:23 p.m.