

**ALASKA STATE LEGISLATURE
HOUSE RESOURCES STANDING COMMITTEE**

March 15, 2004

1:07 p.m.

MEMBERS PRESENT

Representative Nancy Dahlstrom, Co-Chair
Representative Beverly Masek, Co-Chair
Representative Nick Stepovich
Representative Kelly Wolf
Representative Beth Kerttula
Representative David Guttenberg

MEMBERS ABSENT

Representative Cheryll Heinze, Vice Chair
Representative Carl Gatto
Representative Bob Lynn

COMMITTEE CALENDAR

CS FOR SENATE BILL NO. 265(RES)

"An Act relating to the schedule of proposed oil and gas lease sales and to a related report to the legislature; and providing for an effective date."

- MOVED CSSB 265(RES) OUT OF COMMITTEE

SENATE BILL NO. 266

"An Act approving an interim classification by the commissioner of natural resources closing certain land within the area of the proposed Bristol Bay (Alaska Peninsula) competitive oil and gas areawide lease sale to oil and gas exploration licensing and shallow natural gas leasing; and providing for an effective date."

- MOVED SB 266 OUT OF COMMITTEE

HOUSE BILL NO. 417

"An Act amending the definition of 'project' in the Act establishing the Alaska Natural Gas Development Authority; and providing for an effective date."

- MOVED HB 417 OUT OF COMMITTEE

SENATE JOINT RESOLUTION NO. 27

Relating to the resolution of submerged land title disputes.

- MOVED SJR 27 OUT OF COMMITTEE

PREVIOUS COMMITTEE ACTION

BILL: SB 265

SHORT TITLE: OIL&GAS LEASE SALE SCHEDULE/NOTIFICATION

SPONSOR(S): RULES BY REQUEST OF THE GOVERNOR

01/14/04	(S)	READ THE FIRST TIME - REFERRALS
01/14/04	(S)	RES
02/04/04	(S)	RES AT 3:30 PM BUTROVICH 205
02/04/04	(S)	Moved CSSB 265(RES) Out of Committee
02/04/04	(S)	MINUTE(RES)
02/06/04	(S)	RES RPT CS 5DP 1AM SAME TITLE
02/06/04	(S)	DP: OGAN, SEEKINS, WAGONER, DYSON,
02/06/04	(S)	ELTON; AM: STEVENS B
02/25/04	(S)	TRANSMITTED TO (H)
02/25/04	(S)	VERSION: CSSB 265(RES)
02/26/04	(H)	READ THE FIRST TIME - REFERRALS
02/26/04	(H)	O&G, RES
02/26/04	(H)	O&G AT 3:15 PM CAPITOL 124
02/26/04	(H)	Scheduled But Not Heard
02/27/04	(H)	RES AT 1:00 PM CAPITOL 124
02/27/04	(H)	-- Meeting Canceled --
03/02/04	(H)	O&G AT 3:15 PM CAPITOL 124
03/02/04	(H)	Heard & Held
03/02/04	(H)	MINUTE(O&G)
03/09/04	(H)	O&G AT 3:15 PM CAPITOL 124
03/09/04	(H)	Moved Out of Committee
03/09/04	(H)	MINUTE(O&G)
03/12/04	(H)	O&G RPT 5DP
03/12/04	(H)	DP: ROKEBERG, KERTTULA, CRAWFORD,
03/12/04	(H)	HOLM, KOHRING
03/15/04	(H)	RES AT 1:00 PM CAPITOL 124

BILL: SB 266

SHORT TITLE: BRISTOL BAY OIL & GAS LEASE SALE CLOSURE

SPONSOR(S): RULES BY REQUEST OF THE GOVERNOR

01/14/04	(S)	READ THE FIRST TIME - REFERRALS
01/14/04	(S)	CRA, RES
02/02/04	(S)	CRA AT 1:30 PM FAHRENKAMP 203
02/02/04	(S)	Moved SB 266 Out of Committee
02/02/04	(S)	MINUTE(CRA)
02/04/04	(S)	CRA RPT 3DP 2NR

02/04/04 (S) DP: STEDMAN, WAGONER, STEVENS G
 02/04/04 (S) NR: LINCOLN, ELTON
 02/04/04 (S) RES AT 3:30 PM BUTROVICH 205
 02/04/04 (S) Moved Out of Committee
 02/04/04 (S) MINUTE(RES)
 02/06/04 (S) RES RPT 6DP
 02/06/04 (S) DP: OGAN, SEEKINS, STEVENS B, WAGONER,
 02/06/04 (S) DYSON, ELTON
 02/25/04 (S) TRANSMITTED TO (H)
 02/25/04 (S) VERSION: SB 266
 02/26/04 (H) READ THE FIRST TIME - REFERRALS
 02/26/04 (H) O&G, RES
 02/26/04 (H) O&G AT 3:15 PM CAPITOL 124
 02/26/04 (H) Scheduled But Not Heard
 02/27/04 (H) RES AT 1:00 PM CAPITOL 124
 02/27/04 (H) -- Meeting Canceled --
 03/02/04 (H) O&G AT 3:15 PM CAPITOL 124
 03/02/04 (H) Heard & Held
 03/02/04 (H) MINUTE(O&G)
 03/09/04 (H) O&G AT 3:15 PM CAPITOL 124
 03/09/04 (H) Moved Out of Committee
 03/09/04 (H) MINUTE(O&G)
 03/12/04 (H) O&G RPT 1DP 3NR 1AM
 03/12/04 (H) DP: ROKEBERG; NR: KERTTULA, CRAWFORD,
 03/12/04 (H) HOLM; AM: KOHRING
 03/15/04 (H) RES AT 1:00 PM CAPITOL 124

BILL: HB 417

SHORT TITLE: AK NATURAL GAS DEV. AUTHORITY INITIATIVE
 SPONSOR(S): REPRESENTATIVE(S) CHENAULT

02/02/04 (H) READ THE FIRST TIME - REFERRALS
 02/02/04 (H) O&G, RES
 02/17/04 (H) O&G AT 3:15 PM CAPITOL 124
 02/17/04 (H) -- Meeting Canceled --
 02/19/04 (H) O&G AT 3:15 PM CAPITOL 124
 02/19/04 (H) Moved Out of Committee
 02/19/04 (H) MINUTE(O&G)
 02/23/04 (H) O&G RPT 2DP 3AM
 02/23/04 (H) DP: ROKEBERG, MCGUIRE; AM: HEINZE,
 02/23/04 (H) CRAWFORD, HOLM
 02/23/04 (H) FIN REFERRAL ADDED AFTER RES
 03/15/04 (H) RES AT 1:00 PM CAPITOL 124

BILL: SJR 27

SHORT TITLE: SUBMERGED LAND TITLE DISPUTES
 SPONSOR(S): SENATOR(S) SEEKINS

02/06/04 (S) READ THE FIRST TIME - REFERRALS
02/06/04 (S) RES
02/18/04 (S) RES AT 3:30 PM BUTROVICH 205
02/18/04 (S) Moved Out of Committee
02/18/04 (S) MINUTE(RES)
02/19/04 (S) RES RPT 4DP 1NR
02/19/04 (S) DP: OGAN, SEEKINS, STEVENS B, WAGONER
02/19/04 (S) NR: ELTON
02/23/04 (S) RETURNED TO RLS COMMITTEE
03/02/04 (S) RESOLUTION IN SECOND READING
03/04/04 (S) TRANSMITTED TO (H)
03/04/04 (S) VERSION: SJR 27
03/08/04 (H) READ THE FIRST TIME - REFERRALS
03/08/04 (H) RES
03/15/04 (H) RES AT 1:00 PM CAPITOL 124

WITNESS REGISTER

MARK MYERS, Director
Division of Oil & Gas
Department of Natural Resources (DNR)
Anchorage, Alaska
POSITION STATEMENT: Presented CSSB 265(RES) and SB 266.

REPRESENTATIVE MIKE CHENAULT
Alaska State Legislature
Juneau, Alaska
POSITION STATEMENT: Testified as sponsor of HB 417.

HAROLD HEINZE, Chief Executive Officer
Alaska Natural Gas Development Authority (ANGDA)
Anchorage, Alaska
POSITION STATEMENT: Testified on HB 417; explained that the bill would expand ANGDA's options for a terminus for the natural gas pipeline to include Cook Inlet.

STEVEN PORTER, Deputy Commissioner
Department of Revenue (DOR)
Anchorage, Alaska
POSITION STATEMENT: During hearing on HB 417, presented information and answered questions.

SENATOR RALPH SEEKINS
Alaska State Legislature
Juneau, Alaska
POSITION STATEMENT: Presented SJR 27 as sponsor.

ACTION NARRATIVE

TAPE 04-14, SIDE A

Number 0001

CO-CHAIR BEVERLY MASEK called the House Resources Standing Committee meeting to order at 1:07 p.m. Representatives Masek, Dahlstrom, Stepovich, Wolf, Guttenberg, and Kerttula were present at the call to order.

SB 265-OIL&GAS LEASE SALE SCHEDULE/NOTIFICATION

[Contains discussion of SB 266]

CO-CHAIR MASEK announced that the first order of business would be CS FOR SENATE BILL NO. 265(RES), "An Act relating to the schedule of proposed oil and gas lease sales and to a related report to the legislature; and providing for an effective date." [SB 265 was sponsored by the Senate Rules Standing Committee by request of the governor.]

Number 0094

MARK MYERS, Director, Division of Oil & Gas, Department of Natural Resources (DNR), explained that CSSB 265(RES) and SB 266 are bills to help enable DNR to hold a Bristol Bay oil and gas lease sale in the fall of 2005. Under current statute, the state, before making any changes in the areawide sale, must notify the legislature in the first [session] of that legislature and two years in advance of the sale; under current law, the state would have to notify the legislature of this lease sale at the beginning of the first session of the next legislature. In addition, fulfilling the two-year notice requirement will mean that the earliest the sale could occur is 2007. Therefore, DNR and the governor are requesting a change to that notification procedure.

MR. MYERS specified that the proposed change in CSSB 265(RES) would allow the state to notify the legislature anytime with regard to the changes to the sale and process. It would also require that annually, in February, DNR would provide the legislature with a report laying out the five-year schedule for areawide lease sales. The aforementioned proposal seems to provide good balance in that additional notification is provided while allowing flexibility to add sales to the schedule without a potential three- to four-year delay in a sale.

MR. MYERS highlighted that the notification doesn't mean the sale will occur; it merely allows the process to occur. The process includes a best interest finding document, which weighs whether a sale is in the state's best interests. Mr. Myers referred to a map that specified the schedule based on passage of CSSB 265(RES). With its passage, prior to the sale there'd be a long period of review, public input, a preliminary best interest finding, public comment on the aforementioned document, and a final best interest finding. Even with this bill, the earliest this process could happen is in the fall 2005. He clarified that this bill will allow the state to accelerate the process for the Bristol Bay lease sale by allowing the sale in the fall of 2005, rather than January 2007.

Number 0418

MR. MYERS, in response to Representative Stepovich, clarified that the bill amends the entire process. If the state were to contemplate future areawide sales, it would be under the same timeframe proposed in the bill. However, the immediate need for the bill is for the proposed Bristol Bay lease sale.

Number 0480

CO-CHAIR DAHLSTROM moved to report CSSB 265(RES) out of committee with individual recommendations and the accompanying fiscal note. There being no objection, CSSB 265(RES) was reported from the House Resources Standing Committee.

SB 266-BRISTOL BAY OIL & GAS LEASE SALE CLOSURE

Number 0534

CO-CHAIR MASEK announced that the next order of business would be SENATE BILL NO. 266, "An Act approving an interim classification by the commissioner of natural resources closing certain land within the area of the proposed Bristol Bay (Alaska Peninsula) competitive oil and gas areawide lease sale to oil and gas exploration licensing and shallow natural gas leasing; and providing for an effective date." [SB 266 was sponsored by the Senate Rules Standing Committee by request of the governor.]

CO-CHAIR MASEK explained that the committee packet should contain a memorandum to Representative Kerttula dated March 4, 2004, from Thomas E. Irwin, Commissioner, Department of Natural

Resources (DNR), as well as a letter of intent that follows what Commissioner Irwin's memorandum states. The letter of intent read:

It is the intent of the Legislature that, if the State deems that an Alaska Peninsula Oil and Gas Lease Sale is in the State's best interest and a sale occurs, companies only be allowed to access offshore Prospects from onshore drill sites, utilizing directional drilling technology.

Number 0637

MARK MYERS, Director, Division of Oil & Gas, Department of Natural Resources (DNR), explained that SB 266 is a mineral closing order for the area of the proposed Bristol Bay sale. To preserve the prospective area for an areawide lease sale, [DNR] wants to close it to shallow gas leasing and exploration licensing. The thought, he said, is that the intent of the areawide sale will be better met if the leases are left intact and the entire area is available for the competitive program.

MR. MYERS referred to a map that illustrates the prospective section. Under shallow gas leasing, entities are allowed, in a noncompetitive program, to file for land with a depth down to 3,000 feet and deeper, if part of the field is below that. He said DNR believes the competitive process is better served if the leases are left intact, and thus all the mineral rights for oil and gas are left and bid at the same time in the competitive sale. There are examples in which the shallow gas lessee would probably be different from those bidding on the conventional lease sale. Thus there would be a correlative-rights issue between the shallower section and the deeper section. At this point, he said, it's better to preserve the area for the more traditional conventional lease sale area.

MR. MYERS further explained that [DNR] believes there will be an additional economic value brought in by higher bonus bids than if the leases were segregated vertically. He said the intent of the bill is merely to prevent those activities from occurring until there is an areawide sale. Once an area is in an areawide sale, he noted, it's no longer eligible for either program. He added that the legislation closes this only for the shallow gas leasing and exploration licensing; it doesn't close it to other mineral entry programs or prohibit conventional oil and gas leasing.

Number 0816

REPRESENTATIVE STEPOVICH inquired as to the difference between this [proposal] and Prudhoe Bay or Cook Inlet.

MR. MYERS answered that this legislation would align it with the same leasing programs used on the North Slope and at Cook Inlet. Outside those areawide areas in which competitive sales occur, over-the-counter leases are allowed for shallow gas leases, just for the shallow section. Such activity has occurred north of the areawide leasing area in the Matanuska-Susitna region, Homer, and other places. This legislation would provide for a competitive process versus an over-the-counter process, and all the mineral rights would be leased at the same time.

CO-CHAIR MASEK, upon determining no one else wished to testify, announced that public testimony was closed.

Number 0900

CO-CHAIR DAHLSTROM moved to report SB 266 out of committee with individual recommendations, [the accompanying fiscal notes], and the accompanying letter of intent. There being no objection, SB 266 was reported from the House Resources Standing Committee.

HB 417-AK NATURAL GAS DEV. AUTHORITY INITIATIVE

CO-CHAIR MASEK announced that the next order of business would be HOUSE BILL NO. 417, "An Act amending the definition of 'project' in the Act establishing the Alaska Natural Gas Development Authority; and providing for an effective date."

Number 0960

REPRESENTATIVE MIKE CHENAULT, Alaska State Legislature, sponsor, explained that HB 417 amends the definition of "project" to include all options for a terminus of the Alaska natural gas pipeline. This specifically identifies Cook Inlet as a possibility for a terminus.

Number 0993

REPRESENTATIVE CHENAULT, in response to Representative Guttenberg, said this would give the Alaska Natural Gas Development Authority (ANGDA) the ability to look at the Cook Inlet basin as a possible terminus, rather than only looking at Prince William Sound as a possible terminus.

Number 1049

HAROLD HEINZE, Chief Executive Officer, Alaska Natural Gas Development Authority, explained that Ballot Measure 3, passed in 2002, defines what a "project" is. It specifically includes not only a [main natural gas pipeline] to Valdez, but also a spur line from Glennallen to the Cook Inlet area. Mr. Heinze noted that he'd provided information to demonstrate that ANGDA has been looking at Cook Inlet and has considered delivering gas into the Cook Inlet area, which is one of ANGDA's most important responsibilities and benefits offered to Alaska. He said his understanding of the bill is that it would instruct ANGDA in looking at its development-plan work targeted for June 15, to expand its [options] for a terminus to specifically include a pipeline directly to a Cook Inlet port.

MR. HEINZE said the level of detail it takes to address that kind of a routing between now and June 15 is going to be a little tricky. He said ANGDA has mainly been using the work that relates to the Yukon Pacific [Corporation] effort that went down the Trans-Alaska Pipeline. In looking at the feasibility of the project, he said, he isn't uncomfortable with looking at Cook Inlet in a feasibility sense. He said the engineering technical data, in particular, the environmental permitting issues related to that, would be difficult for ANGDA to assess in the short amount of time available.

Number 1197

STEVEN PORTER, Deputy Commissioner, Department of Revenue (DOR), explained that DOR and the state have looked at ANGDA as the entity to look at all of the in-state gas use, and is looking at bringing gas to Cook Inlet and other areas throughout the state. He said DOR doesn't consider this legislation to be inconsistent with that. Mr. Porter mentioned the broader economics of bringing gas to Cook Inlet versus Valdez, barring the permitting and the environmental issues. He said the basic economics of those two areas are so similar that research on one area fairly well much applies to the other area in terms of the overall economics of an LNG [liquefied natural gas] project. The permitting and environmental work on each element, including the spur line from Glennallen to Anchorage, would require some additional work on behalf of the authority to solve and answer those problems.

Number 1277

REPRESENTATIVE KERTTULA asked how much of an extra workload this could result in, and if that was being taken into account with respect to ANGDA's budget.

MR. HEINZE explained that based on what had been looked at thus far, regardless of a route, there hasn't been a lot of difference in the numbers relating to where and how gas is brought to tidewater in Alaska. He said in terms of the early feasibility phase [ANGDA] is currently in, it isn't seen as necessary to differentiate, fairly exactly, those different options at this point; to do that would require little to no additional work, but a more definitive choice between the two areas would require considerable work and time. He indicated no additional effort or funding is required in looking at the two locations indeterminately, but said to make the choice between the two locations would require considerably more effort than is included in ANGDA's funding.

Number 1388

REPRESENTATIVE STEPOVICH asked why Cook Inlet wasn't included originally.

MR. HEINZE said he had nothing to do with Ballot Measure 3. He explained that the project's sponsors had chosen what was felt to be the most executable project at the time. He said the value of the permitting already done on the route to Valdez is extremely significant with regard to the [June 15 deadline] and all of the other issues. However, [ANGDA] is aware that ConocoPhillips Alaska, Inc., and BP, in conjunction with several others, have looked at a more direct route to Cook Inlet. Saying [ANGDA] has never seen the work and has no knowledge of it, he indicated he'd feel much better about moving quickly and about what the problems are if he could see the work.

Number 1502

REPRESENTATIVE GUTTENBERG asked if there was any reason to exclude other possibilities for other routes.

MR. PORTER said the governor has stated interest in looking at all the different options for economic marketability for the gas, so there isn't a reason to exclude any option that may become an economically viable project.

Number 1551

CO-CHAIR DAHLSTROM moved to report HB 417 out of committee with individual recommendations and the accompanying fiscal notes. There being no objection, HB 417 was reported from the House Resources Standing Committee.

SJR 27-SUBMERGED LAND TITLE DISPUTES

CO-CHAIR MASEK announced that the final order of business would be SENATE JOINT RESOLUTION NO. 27, Relating to the resolution of submerged land title disputes.

Number 1589

SENATOR RALPH SEEKINS, Alaska State Legislature, sponsor, explained that SJR 27 relates to resolving land-title disputes between the state and the federal government. He paraphrased from the sponsor statement, which read [original punctuation provided but some formatting changed]:

Alaska holds over 20,000 rivers and more than 1,000,000 lakes considered to be potentially navigable waterways. This amounts to nearly 60,000,000 acres of submerged lands. Title to all submerged land was to be transferred to Alaska from the federal government at statehood. It's important to note that up until statehood this land was held in trust for the future state by the federal government. Now, more than 45 years after Alaska became a sovereign state, the federal government has yet to transfer title to these promised lands.

SJR 27 does three things:

1. It encourages the Secretary of the Interior and the Alaska congressional delegation to support and endorse the continuation of the process for recording federal disclaimers of interest for quieting title to submerged lands;
2. It requests the Alaska congressional delegation to introduce legislation in the Congress to provide for federal participation in the proposed state and federal Navigable Waters Commission for Alaska; and
3. It requests the introduction of legislation in the Congress to amend the Quiet Title Act to ensure

federal cooperation in resolving submerged land title disputes.

The dilemma is clearly illustrated in the U.S. 9th Circuit Court of Appeals case Alaska v. USA (decision filed on January 28, 2000). Circuit Judge Andrew Kleinfeld authored the opinion of the court excerpted as follows:

It is undisputed that when the Union was created, each of the thirteen original states retained title to the lands covered by navigable waters, and that under the "equal footing doctrine" each new state succeeds upon statehood to the federal interest in these lands. The Submerged Lands Act gave Alaska title to the beds of navigable rivers on January 3, 1959.

Under [the Quiet Title Act] ... the federal government takes the position that its sovereign immunity shields it from the state government's claim [to clear title to submerged lands] until the federal government itself makes a claim. Because Alaska is very large, much of it is wilderness, and there are innumerable waters, the federal government has not had time yet (45 years) to determine what claims it wishes to make. Therefore, the state government must wait until the federal government makes a claim, if it ever does, before settling whether it has title.

In a nutshell, the federal government's preferred method for reconciling these disputes appears to be to wait the state out. When (if ever) the government decides to make a claim against state ownership, only then does Alaska have an opportunity to protect its ownership interest. This is accomplished by filing a quiet title suit against the federal government - just as it did in the case cited above relating to the Nation, Kandik and Black Rivers.

The bottom line? That which should be indisputable - that Alaska holds title to its submerged lands - has, in fact, been effectively disputed as a function of the federal government's foot dragging. Without doubt, the existing processes of resolving submerged lands title disputes are inadequate and exceptionally slow. SJR 27 seeks resolution to this extraordinarily unfair dilemma.

Number 1848

REPRESENTATIVE GUTTENBERG asked whether there was any indication from the federal government that it would [act to resolve these issues].

SENATOR SEEKINS said no.

REPRESENTATIVE GUTTENBERG asked if that could be done with the commission or would have to be done with legislation.

SENATOR SEEKINS said he believes the commission is needed to help analyze the situation between the federal and state governments and the cooperation that could be extended. However, the [state] is asking for some changes to the Quiet Title Act because, based on the opinion written by Justice Kleinfeld, the [federal] government can hold its claim until it wants to assert it. He said this is basically unfair and the thought is that, as a sovereign state, [Alaska] should be able to go around that; thus [the state] is asking for some changes in the legislation as well as the commission.

REPRESENTATIVE STEPOVICH said he applauds this legislation and hopes to see more like it.

CO-CHAIR MASEK noted that there was a hearing with DNR in which Senator Gene Therriault was present; discussed were land issues and land swaps that dealt with Native corporations, the state, and the federal government. She said she thought this was timely and important to go forward with.

Number 1987

CO-CHAIR DAHLSTROM moved to report SJR 27 out of committee with individual recommendations and the accompanying fiscal notes. There being no objection, SJR 27 was reported from the House Resources Standing Committee.

ADJOURNMENT

There being no further business before the committee, the House Resources Standing Committee meeting was adjourned at 1:34 p.m.