

**ALASKA STATE LEGISLATURE  
HOUSE RESOURCES STANDING COMMITTEE**

April 7, 2004

1:10 p.m.

**MEMBERS PRESENT**

Representative Nancy Dahlstrom, Co-Chair  
Representative Beverly Masek, Co-Chair  
Representative Cheryll Heinze, Vice Chair  
Representative Carl Gatto  
Representative Bob Lynn  
Representative Kelly Wolf  
Representative David Guttenberg

**MEMBERS ABSENT**

Representative Nick Stepovich  
Representative Beth Kerttula

**COMMITTEE CALENDAR**

HOUSE BILL NO. 309

"An Act prohibiting the release of nonindigenous predatory fish into public water."

- MOVED CSHB 309(RES) OUT OF COMMITTEE

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 309

SHORT TITLE: PROHIBIT RELEASE OF PREDATORY FISH

SPONSOR(S): REPRESENTATIVE(S) WOLF

05/08/03 (H) READ THE FIRST TIME - REFERRALS  
05/08/03 (H) FSH, RES  
05/16/03 (H) FSH AT 7:30 AM CAPITOL 124  
05/16/03 (H) Heard & Held  
05/16/03 (H) MINUTE(FSH)  
03/22/04 (H) FSH AT 9:00 AM CAPITOL 124  
03/22/04 (H) Moved CSHB 309(FSH) Out of Committee

03/22/04 (H) MINUTE(FSH)  
03/24/04 (H) FSH RPT CS(FSH) NT 3DP 2NR  
03/24/04 (H) DP: GARA, WILSON, SEATON; NR: OGG,  
03/24/04 (H) GUTTENBERG  
03/31/04 (H) RES AT 1:00 PM CAPITOL 124  
03/31/04 (H) Heard & Held  
03/31/04 (H) MINUTE(RES)  
04/01/04 (H) JUD REFERRAL ADDED AFTER RES  
04/05/04 (H) RES AT 1:00 PM CAPITOL 124  
04/05/04 (H) Heard & Held  
04/05/04 (H) MINUTE(RES)  
04/07/04 (H) RES AT 1:00 PM CAPITOL 124

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  
02/24/04 (H) Heard & Held  
02/24/04 (H) MINUTE(O&G)  
02/26/04 (H) O&G AT 3:15 PM CAPITOL 124  
02/26/04 (H) Heard & Held  
02/26/04 (H) MINUTE(O&G)  
03/09/04 (H) O&G AT 3:15 PM CAPITOL 124  
03/09/04 (H) Moved CSHB 395(O&G) Out of Committee  
03/09/04 (H) MINUTE(O&G)  
03/12/04 (H) O&G RPT CS(O&G) NT 1DP 3NR 1AM  
03/12/04 (H) DP: KOHRING; NR: ROKEBERG, CRAWFORD,  
03/12/04 (H) HOLM; AM: KERTTULA  
03/19/04 (H) RES AT 1:00 PM CAPITOL 124  
03/19/04 (H) -- Meeting Canceled --  
04/07/04 (H) RES AT 1:00 PM CAPITOL 124

**WITNESS REGISTER**

RICK VANDERKOLK, Staff  
to Representative John Harris  
Alaska State Legislature  
Juneau, Alaska

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

ROBIN McLEAN  
Sutton, Alaska  
POSITION STATEMENT: Provided testimony on HB 395.

MYRL THOMPSON  
Sutton, Alaska  
POSITION STATEMENT: Provided testimony on HB 395.

KATELYN BALDWIN  
Wasilla, Alaska  
POSITION STATEMENT: Testified on HB 395.

MARK MYERS, Director  
Division of Oil & Gas  
Department of Natural Resources (DNR)  
Anchorage, Alaska  
POSITION STATEMENT: During bill hearing on HB 395,  
provided information and answered questions.

MICHAEL O'MEARA  
Homer, Alaska  
POSITION STATEMENT: Testified on HB 395 and answered  
questions from the members.

JOHN NORMAN, Chairman  
Alaska Oil and Gas Conservation Commission  
Anchorage, Alaska  
POSITION STATEMENT: Testified on HB 395.

**ACTION NARRATIVE**

**TAPE 04-19, SIDE A**  
Number 0001

**CO-CHAIR NANCY DAHLSTROM** called the House Resources Standing Committee meeting to order at 1:10 p.m. Representatives Dahlstrom, Masek, Gatto, Wolf, and Guttenberg were present at the call to order. Representatives Heinze and Lynn arrived as the meeting was in progress.

HB 309-PROHIBIT RELEASE OF PREDATORY FISH

CO-CHAIR DAHLSTROM announced that the first order of business would be HOUSE BILL NO. 309, "An Act prohibiting the release of nonindigenous predatory fish into public water."

CO-CHAIR DAHLSTROM clarified that during the April 5, 2004 bill hearing an objection was made and had not been removed, so for procedural reasons the committee would again address the issue.

Number 0110

CO-CHAIR MASEK moved to report CSHB 309, [Version 23-LS1097\W, Utermohle, 3/24/04] out of committee with individual recommendations and the accompanying fiscal notes, and asked for unanimous consent. There being no objection, CSHB 309(RES) was reported out of the House Resources Standing Committee.

[CO-CHAIR DAHLSTROM passed the gavel over to Co-Chair Masek.]

HB 395-SHALLOW NATURAL GAS

Number 0245

CO-CHAIR MASEK announced that the next 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."

CO-CHAIR MASEK clarified that the House Resources Standing Committee had not been holding up [HB 395], but had been waiting for almost two weeks for the bill's sponsor to provide the CS [committee substitute] containing the changes requested by the Department of Natural Resources (DNR). She said the Division of Oil and Gas has indicated that it is satisfied with the bill with a couple of small changes, and noted that the changes are reflected in Version J.

Number 0305

CO-CHAIR DAHLSTROM moved to adopt the proposed committee substitute (CS), labeled 23-LS1314\J, Chenoweth, 4/6/04, as the work draft. There being no objection, Version J was before the committee.

CO-CHAIR MASEK noted that testimony would be taken and the bill would be held over.

Number 0418

RICK VANDERKOLK, Staff to Representative John Harris, presented HB 395 on behalf of Representative Harris, sponsor. Mr. VanderKolk indicated he would go through the changes to CSHB 395(O&G), and he remarked:

HB 395 is undergoing a fascinating journey, and conceptually the sponsors have been after three main points. ... They've wanted to protect property rights if some semblance of that to the best of the legislature's ability, even under the provisions set out in Article VIII of the [Alaska] State Constitution.

Give the protection available for ... water quality for both agricultural and human consumption purposes, and allows some way to ensure that public notice is absolutely done to ... the maximum; that all residents understand what is happening to their property, what the leasing process is about, and what exactly can take place for reasonable access and entry ... to the property.

So that's the spirit in which ... [HB] 395 has evolved .

MR. VANDERKOLK said a great deal of collaboration and research was the done with the Alaska Oil and Gas Conservation Commission (AOGCC), the Department of Natural Resources (DNR), the Department of Environmental Conservation (DEC), constituents, and with the sponsors. There was a concentrated effort to address all of the concerns that people have. He explained that Section 1 deals with the shallow natural gas activity oversight by AOGCC, and a change was made to alter the authority of the AOGCC such that paragraph (1) prohibits the commission from issuing a permit if operations would involve producing gas from an aquifer that serves as a source of drinking water or for agricultural purposes, and a conditional prohibition against the reinjection of produced water. Paragraph (2) expands the authority of the commission to regulate hydraulic fracturing associated with exploration for and the disposal of wastes produced by those operations. He said a new provision was added to Section 2 directing AOGCC to initiate a public forum process to resolve, informally,

matters of public health, safety, welfare, and environmental complaints.

MR. VANDERKOLK told the committee that Section 4 adds provisions for interaction between a developer and a surface owner, as defined in the new chapter in mineral interests, only for activities not governed by the Alaska Land Act of AS 38.05. Sections 5, 6, and 7, deal with changes to authorizing shallow natural gas leasing under AS 38.05.177. Section 5 amends requirements of notice by acknowledging that the director should actually consider public comment that may be received before executing a lease. He said substitution of "may" for "shall" alters the scope of the director's authority where discretion can be exercised, and noted that the intention is to make it less of an automated process.

Number 0733

MR. VANDERKOLK explained that Section 6 adds a series of additional requirements to be inserted in a shallow natural gas lease to include water well testing, appropriate setbacks for compressor stations, noise mitigation measures, and surface restoration requirements if the surface is disturbed by exploration or development, which would take place after the termination of the lease. He said in instances in which an owner and a lessee cannot reach agreement for the lessee's entry onto property to explore and develop shallow natural gas and the lessee seeks to post a bond to permit entry, the first amendment adds a further requirement that the lessee demonstrate the necessity to access the property. Sections 9 and 10 amend the notice requirements for activities under the Alaska Land Act under AS 38.05. Section 11 imposes permit requirements that relate to operations resulting in disposal of waste materials on state land and water. Mr. VanderKolk explained that the amendment allows discharges from coal bed methane drilling to be covered under AS 46.03.100. He remarked, "Previously, ... the discharge was exempted under the DEC; we've wanted to make sure that that was covered as regulated."

MR. VANDERKOLK said in terms of the maximum depth of shallow natural gas recovery, Sections 3 and 13 set the standard of recovery at 3,000 feet. Suggesting that there has been some inconsistency in statute, he said this is a way to clarify it and set a benchmark maximum depth.

Sections 14 and 15 eliminate provisions by which the commissioner of DNR may approve a waiver of the local planning authority approval and requirements relating to compliance of local ordinances and regulations, which is covered in [Section 14], he explained. Mr. VanderKolk said those are the fundamental changes of [CSHB 395(O&G)].

Number 0845

REPRESENTATIVE GUTTENBERG turned attention to Section 6, and asked how [paragraphs (2)-(5)] would be implemented.

MR. VANDERKOLK explained that the intention is to give more regulatory direction, as opposed to enshrining it because it is recognized that local situations are going to be relative to the matter. He pointed out that there is more direction in Section 6, subsection (f), paragraph (3), which talks about the parameters used for determining setbacks, general character of the land subject to the lease, the size of parcels, the size of the owner's parcel, and population density. Mr. VanderKolk commented that some direction is provided for regulators to determine where to place [compressor] stations. He remarked, "I think the same impression is given with the other points."

Number 0990

ROBIN McLEAN testified. She mentioned that she is a member of the Sutton Community Council, which has been following this issue very closely. Ms. McLean said [residents of the Matanuska-Susitna Valley] and Homer are very eager to see some legislation go forward. She turned attention to page 1, subparagraph (A), and suggested removing the language "unless the commission finds" because [residents] would feel more comfortable if that prohibition was "written across the board." Ms. McLean commented that she was happy to see the 3,000-foot depth limitation put back in [HB 395], but would like to see water well testing for all the wells in leased areas. She remarked:

I know Mr. [John] Norman ... testified to this in the ... [Senate Resources Standing Committee]. We'd like very much to see a specific statement that toxic fracturing fluids would be prohibited in Alaska, and I know he testified something to the effect ... that AOGCC [Alaska Oil and Gas

Conservation Commission] would be amenable to that.

... I think it would be an easy fix that would make a lot of people happy since, apparently, the industry doesn't want to use toxic fracturing material anymore. I don't see any reason why that can't be added in. I really strongly encourage that.

MS. McLEAN encouraged the committee to keep the bill moving, because [residents] would like to see something get signed by the governor this year which would protect property owners. She remarked:

One thing I hope you guys do while you have Mark Myers on the phone is ask him some of the things that ... DNR learned from the hundreds and hundreds of people who came from DNR meetings in the Mat-Su and what the strong feelings of the property owners are because it seems like there's a bit of a disconnect between the measures that are being implemented in Juneau and what the property owners actually want. So, he's a resource; I know he came to several of the DNR workshops ....

Number 1260

MYRL THOMPSON testified. He noted that he had just received a copy of the bill and had not had much time to review it. Mr. Thompson remarked:

For Section 1, I don't like the ... word "unless" the commission finds that will not adversely affect. That doesn't do us a whole lot of good. ... The 3,000-foot has been in ... that's good that that's in place of the 4,000 foot just looking at it in the short amount of time that I've had.

In Section (6), under the water testing part, some of that looks pretty agreeable but I might suggest that when you're testing each well under [paragraph (2), subparagraph (A)] for dissolved content, I'm assuming that's total dissolved solids ... including methane and water flow. I

might want to add (indisc.) test for conductivity also. ... Under Section 7, the words "may", I don't have a lot of faith in "may" anymore.

REPRESENTATIVE GATTO interrupted.

CO-CHAIR MASEK told Representative Gatto that he was out of order. She said Mr. Thompson is testifying and she would recognize [Representative Gatto's question], but first let Mr. Thompson finish giving his testimony.

REPRESENTATIVE GATTO stated that he couldn't follow Mr. Thompson's testimony if he didn't provide the page and line numbers for [the sections he was referring to].

CO-CHAIR MASEK asked Representative Gatto to go through the chair.

MR. THOMPSON said he hoped the committee would not move the bill and would take more public testimony [at a later time]. He acknowledged that there seemed to be some pretty clear changes from the last version of the bill.

CO-CHAIR MASEK said the committee would have another hearing on the bill and [Mr. Thompson] would have another chance to testify. She noted that there had been many committee substitutes for the bill.

REPRESENTATIVE GATTO told Mr. Thompson he thought it would be easier for the committee to follow his testimony if he provided a page and line number when referring to specific sections of the bill.

MR. THOMPSON said he understood.

Number 1539

KATELYN BALDWIN testified. She said she was [in Juneau] with the Alaska Youth for Environmental Action, but the testimony she was giving are her personal views. She said she believes that there should be best interest findings before development begins because DNR favors best interest findings. Ms. Baldwin commented that best interest findings are already done for traditional oil and gas leases. If the bill does pass, she told the committee she hopes that is one factor that should definitely be included. Ms. Baldwin said she believes the bill is a good

avenue to pursue and is a really good attempt to deal with community problems of water quality, public notice, fragmenting fluid regulations, and noise mitigation. However, she said she doesn't think it does enough. Ms Baldwin told the members that she would like to see the repeal of HB 69 included in the bill, so that the commissioner does not have the right to override local zoning regulations.

MS. BALDWIN said she is concerned about the reclamation of an area after it has been developed, and would like to see clear language defining what will happen to the land after it's been drilled upon. She said she thought DEC and DNR should definitely have jurisdiction over their areas for making the regulations - DEC for water quality and DNR for resources issues - because those [departments] are obviously the best suited to make those crucial regulations on the shallow natural gas drilling. Ms. Baldwin said this bill needs to be a foundation for private property owner rights and developmental regulations. She added that she was real excited about traveling to Juneau from Wasilla to testify in person.

Number 1647

REPRESENTATIVE WOLF suggested that both federal and state policies which are in place require guidelines and parameters with respect to remediation concerns.

MS. BALDWIN replied that she does not see it in the bill.

REPRESENTATIVE WOLF commented that he believes there are agencies that have procedures in place which address these issues.

REPRESENTATIVE GATTO asked Ms. Baldwin if she attends Wasilla High School.

MS. BALDWIN replied that she attends Colony High School.

REPRESENTATIVE GATTO asked if Ms. Baldwin is in Juneau as part of a group.

MS. BALDWIN replied yes.

REPRESENTATIVE GATTO asked the name of the group.

MS. BALDWIN said she is with the Alaska Youth for Environmental Action which is participating in the civics conservation summit.

REPRESENTATIVE GATTO questioned whether her testimony is based on her background with the group or if she had put forth testimony on her own.

MS. BALDWIN responded that she had done a lot of the research on her own and these are her personal views on the bill.

REPRESENTATIVE GATTO said he is happy to see that people Ms. Baldwin's age are getting involved in the community.

MS. BALDWIN said she really appreciated [Representative Gatto's comment].

REPRESENTATIVE WOLF pointed out that the [state and federal procedures] he had been referring to are on page 6, lines 9-14.

Number 1806

MARK MYERS, Director, Division of Oil & Gas, Department of Natural Resources (DNR), testified in support of HB 395. He remarked, "Our other concern was making sure that you had legislation that we both believe to be implemented in DNR's perspective, and I think DEC, DNR, and AOGCC also believe that those will be implemented, so ... that's a very important step, I think, for this legislation." He noted that he believes the sponsor very accurately outlined what the bill accomplishes. He said there are some significant new protections in the bill. There were a lot of areas which are already practiced by state agencies either within the lease or "within our stipulations and mitigation measures or within our practices," he commented. Mr. Myers said that this bill would codify them, make them clear, and it's a good positive step. It eliminates some of the uncertainty people have, and addresses a broad level of issues from surface owner rights to water quality issues, he added. A significant new protection which is currently not available in statute is the implementation of protections for surface owners in bonding on nonstate lands, he pointed out.

MR. MYERS said concerns were noted during [DNR's public] process in the valley and all of the public comments are within DNR's web site on oil and gas. He added that [DNR also had] a separate coal bed methane workshop and people are free to view the public comments.

MR. MYERS said there were two major concerns expressed in the workshops. One is the issue of the best interest finding, which is addressed in HB 531 and which is supported by DNR. He commented that there is a mechanism to implement it if the legislature would want to pursue that avenue of approach, he added.

MR. MEYERS told the committee the second issue and the more contentious issue is that of buy backs. He explained that there are a lot of people in the valley that would like the shallow gas leases to be bought back. He pointed out that he'd testified previously on mechanisms that might be employed in doing that, and what the fiscal costs would be. He summarized that the process of issuing leases without a best interest finding and the desire of people to see the process start over with a buy back provision are the two issues not addressed by HB 395.

Number 1977

REPRESENTATIVE GUTTENBERG referred to pages 5 and 6, and commented the he believes the remediation processes for testing water, setbacks, and noise mitigation seem to be pretty subjective. He asked what standard is currently in place, and how HB 395 changes them.

MR. MYERS responded that there are no set standards with respect to water well testing. No standards are in place which require a water well to be tested. He explained that there are, however, objective standards which say water wells within approximately a quarter mile radius around the drill site have to be tested. He added that it is a new standard that goes beyond existing practices. Mr. Myers told the members that those same standards are being addressed in the process in the valley in terms of noise abatement and setbacks. He commented that the factors listed here are reasonable factors to consider. Furthermore, he explained that DNR also put the requirement to allow setbacks and noise abatement in its leases in stipulations and mitigations measures. Mr. Myers shared that [DNR] is aware of the issues. He remarked:

More typically, then actually you put those standards up front that there that something that is considered on a site-by-site basis when a final operation's request were submitted. It's quite clear from the process in the valley the folks wanted more certainty than that, so we are moving through.

MR. MYERS said [DNR] should have a draft report on the process by next week. He commented that there are likely to be recommendations on more direct standards in terms of depth limits and minimum setbacks. The department believes that one size does not fit all and each individual case needs to be looked at for the values involved, he acknowledged. Mr. Myers remarked, "This legislation does cut out those values, value of the parcel, character of the land, et cetera." He summarized that he believes that standards give clear direction to DNR from the legislature on what should be considered in future leases.

Number 2110

REPRESENTATIVE GUTTENBERG asked Mr. Myers if he sees a difference between what has been said during the public comment process and what is being said in [the legislature].

MR. MYERS remarked:

I think there's several different arenas in which the issue is being played out. The first thought is obviously in the press - there's lot's of stuff going around in the press. The second is in our public process in the valley; we had five workshops where we really in took all the concerns of the residents in valley. The workshops were specific to these various issues; a lot of them are issues that are addressed in this legislation.

The goal was ... at the end of the day for the commissioner to have fully heard all the public concerns, to address it, and then look for developing more specific standards than were currently in place. ... and we put the general standards in place ... prior to the leasing in

stipulations and mitigation measures, but it's quite clear it has more specific management and enforceable guidelines and regulations, so this is a process to develop that ....

The third is the legislative process. We at DNR recognize the value of having a best interest finding and actually having a more organized way of leasing than over-the-counter. It is our opinion that the over counter leasing has led to approximately 60 percent of the leases being picked up on speculation by folks that typically are involved or engaged in oil and gas activities. It's led to leasing in areas that ... are more densely populated than has historically been leased, although in some cases that's not true.

We have in other areas, but we've done that leasing after the best interest finding process and the public process has been fully evolved. I think again, that developed because the shallow gas leasing program was used in areas that were historically in larger area-wide sales but they had been shrunk back to the more limited best interest finding and that led to (indisc.) in ... the Wasilla-Sutton area, and down in the Homer area, which has led to lots of conferences.

... The third part ... I'm trying to get at is the concerns that were brought out because of the legislation. There are certain areas that we believe strongly need legislative fixes. We at DNR would like to see a bill like [HB] 531, which goes back to a best interest finding competitive natured program and the appropriate remedies.

It gives us a lot more public input; it gives us ability to more customize the leasing program; and it gives the commissioner a better, stronger balancing test and whether or not to issue leases. I think also in the long run the state will receive more income off leases than it would through this over-the-counter program.

MR. MYERS indicated there were some concerns and confusions over the various bills.

Number 2290

REPRESENTATIVE WOLF turned attention to page 6, lines 9-14, and asked if there are standard procedures for remediation during the operation.

MR. MYERS replied that there are many avenues toward [remediation]. He explained that the first way is through stipulations and mitigations set forth in the lease. For example, typically there are setbacks from fish bearing streams and other types of habitat. The requirement is to use existing roads and infrastructure wherever possible, so there's no allowance in the final operations for new roads unless they're really proven to be needed, he told the members. Mr. Myers said that the process includes a comment period when the landowner can come in and weigh-in on his or her concerns. He stated that DNR takes these concerns very seriously in terms of moving facilities, setbacks, et cetera, in light of the landowner's perspective and in minimizing the surface impact.

Number 2358

MR. MYERS said other federal [and] state agencies have standards. For instance, the U.S. Army Corps of Engineers requires a permit if wetlands are to be filled and requires mitigation to the wetlands. He commented that DEC also has certain requirements in terms of water discharges and the issuance of permits. Mr. Myers noted that the whole process is highly regulated. He said he thought one [misconception] is that the issuance of the lease is only the first step and does not really [provide] the right to do any activities on the lease.

MR. MYERS said it is all permitted and regulated through numerous agencies involved with the process, so it really affect the size and shape of the development. He said another issue is that if a development situation were to occur, more than likely it would involve unitization where multiple producing leases would be put together into a common facility to minimize the number of separate facilities. He remarked:

One of the things that was learned early on in the oil industry is that if you allow me just to go on regulating in terms of its production you

could see multiple duplicative facilities in the same area, so the surface impact is increased. So the unitization - we limit those numbers of facilities to those where they need it and that ... minimizes the environmental impact and maximizes the economic return on the project, so that's another way of access to use to minimize the surface impact.

REPRESENTATIVE WOLF suggested that the activity of shallow gas wells would not compromise any current regulations that are in place.

MR. MYERS, noted that he was not 100 percent sure, said the protections are there, but this bill adds some additional protections in terms of water testing and quantifying in a more precise way the standards used for setbacks, et cetera. He said the legislation better defines the interaction between the surface owner and the lessee. He commented that there are some clarifications, some additional standards, and some additional testing and mitigation requirements in the bill, as well as clarification of existing requirements. Mr. Meyer said he believes [the bill] "tightens up" the regulatory framework that already exists, and added that the regulatory framework still has a lot of protections in it. For instance, the well design has to be approved by AOGCC, but that's not the way to limit or manage issues involving risk of contamination. The "well casing program" ensures that the well has multiple layers of casings of cement that protect the producing zone, which separates and isolates it from any possible aquifers required for any reinjection of water, for example.

MR. MYERS said some of those [elements] are in the bill and some are in standard practices. He said the only substantive difference in the bill is similar to the coastal zone management program in that it is exempted from a coastal zone review. In coastal zone reviews there are public processes involved, so development on shallow gas leases have one less process. In some areas the bill gives additional protection not available in existing oil and gas programs, he summarized.

Number 2598

REPRESENTATIVE GATTO suggested that all people who drill their own water well should have it tested. He said he knows of an entire subdivision that has arsenic in it's water and suggested it is possible for an individual to have arsenic in his/her water. Representative Gatto asked if after drilling and production occurred, if a person had an initial water well test and found heavy metals in the water, would there be a way to connect that to any kind of production occurring in the vicinity.

MR. MYERS suggested it would be more appropriate for AOGCC to address that issue. He remarked:

The geochemistry of the water - ... you'd have to look to see if the contaminants - the heavy metals or other contaminants are contaminants likely to have been in that water within that (indisc.). ... There's lots of other sources for ... arsenic and other heavy minerals and (indisc.) actually; the natural seeping of methane through the water system occurs throughout Cook Inlet just due to the hydrological conditions for the aquifers.

So, when you look at it, you really need the baseline data to tell and to link it; ... unless you have a unique geochemical signature, I significantly doubt that you could argue that's 100 percent sure that's coming from the coal bed methane, so base level data does make sense, and that's exactly why you use something like that; you pretest to get that baseline data. Whether or not you need to test all the wells again in the area or whether just representative wells that penetrate specific aquifers.

MR. MYERS said from the standpoint of a testing program, hydrologists would test representative wells with representative distances in various aquifers prior to [exploration and production]. He explained that this standard is stronger than that in which it requires all of the wells to be tested. He noted that specific aquifers would have to be tested in order to get the baseline data. Mr. Myers said trying to retrospectively tie it to a unique characteristic in the whole may or may not be the problem. A lot of the large contamination occurs from more shallow sources such as agricultural runoffs or from septic systems

that are improperly designed or over used. He remarked, "You'd have to be able separate out those sorts of agreements -- arsenic is not a problem in those types of systems though." He said other cases could be a result of a lot of contaminants but the hope is that the pretest baseline data would provide that information. Mr. Myers said the requirement is general enough that regulations would have to be written to [specify] what is being tested, and he anticipated that would be a part of the process.

Number 2748

REPRESENTATIVE GATTO asked if [DNR] had considered going into homes within a selected distance to test existing wells for contamination beforehand.

MR. MYERS commented he believes that is what the standard does. He said it doesn't differentiate between wells at the well site, but it's all water wells within a box that approximately represents a quarter-mile radius around the well site. Each home with a well would have to be tested within that radius prior to the withdrawal of water from the potential coal bed zone, Mr. Myers explained. He reiterated that he believes this standards does what Representative Gatto is asking, and it does it not just for representative water wells of homeowners, but also for all water wells.

Number 2812

MICHAEL O'MEARA testified on HB 395. He told the members that he is concerned about the bill even though he does not live within the lease area. He commented that his property could be at some future time. Mr. O'Meara said he believes there should be a buy-back of existing leases because anything that is attempted without that provision is just a cosmetic change. He told the members that he had questions based on the earlier version of the bill and asked if it has been changed substantially since Monday.

CO-CHAIR MASEK replied that have been several CS brought to the committee. The sponsor reviewed all the changes at the beginning of the meeting, she said. Co-Chair Masek asked if Mr. O'Meara needed to have the sponsor repeat the review of the changes.

MR. O'MEARA asked if there had been changes since Monday.

CO-CHAIR MASEK replied this is correct.

MR. VANDERKOLK asked if Mr. O'Meara was referring to version N.

MR. O'MEARA responded that he does not have the bill in hand, but said that may well be the version.

MR. VANDERKOLK told Mr. O'Meara that since Monday there have only been three changes. The first is a title change which makes it more specific. The second includes a change in language on page 5, line 19, which makes the language very specific with respect to water well testing requirements. It clarifies that the bill pertains to production testing and production activities on the lease, as opposed to testing for any particular reason an agency might like to work on the surface. On page 7, line 17 and 21, it clarifies that the provision to pay the owner for all damages is by the lessee, not the state.

**TAPE 04-19, SIDE B**

Number 2975

MR. O'MEARA commented that he does not have a lot of faith in the Alaska Oil and Gas Conservation Commission (AOGCC) because some of the past members' staff have been people who have obvious political motivations and conflicts. He said he doubts that forum will provide the public with very much. Mr. O'Meara complimented the committee on elements of their work. He was happy that the 3,000-foot well depth limitation was maintained. Mr. O'Meara said he believes it is good that the committee is trying to refine language in Section 7, although some of it is very difficult to understand. For example, he read the following from page 7, lines 6 and 7:

...reasonably necessary or convenient to render beneficial and efficient the complete enjoyment of the property and the reserved rights;

MR. O'MEARA said he hopes that it can be written in plain language because not only does this confuse him, but suggested that later if there ever is a dispute the attorneys will have a field day with that language. He emphasized that he thinks the concept is a good one.

MR. O'MEARA told the members that he believes another good thing the committee is doing is overriding the provisions of HB 69 which he believes was terrible legislation.

MR. O'MEARA commented that there are still a couple of important elements missing from the legislation. There still is no provision for direct notice to property owners in the lease area, he said. Mr. O'Meara told the members that he is disturbed by a requirement for review by the Alaska Coastal Zone Management Program.

MR. VANDERKOLK responded to the point on public notice. He suggested that Mr. O'Meara read Section 10, AS 38.05.945(b), which highlights how all pertinent parties are to be notified. With several decades of using conventional oil and gas leasing public notice, there will be a broad and useful way of notifying pertinent parties, he commented.

MR. O'MEARA asked where to look.

MR. VANDERKOLK directed him to page 9, starting on line 6 through to the end of the section [on line 25]. There are various methods of communicating that leases are being proposed and awarded. He referred to AS 38.05.177(c) which allows for a public forum to take place which is outlined in Section 2.

MR. O'MEARA pointed to page 9, line 11, which reads:

(ii) notification of parties known or likely to be affected by the action; or ...

MR. O'MEARA asked if that language refers to individuals who hold property within the lease area.

MR. VANDERKOLK replied presumably so.

MR. O'MEARA commented that he is troubled by the "presumably" part of Mr. VanderKolk's answer. He said he would like to see clearer language that would put forth a requirement that individuals who own property in the area to be leased would be notified directly.

MR. VANDERKOLK commented that since this is common practice out of current statute he said he believes Mr. Meyers would be useful in responding to the question.

Number 2712

MR. O'MEARA commented that he lives in an area that has been available for leasing a number of times under the areawide plan, and that it is clear to him that individuals do not get the information that is needed under the current plan. He told the members he believes this is an opportunity for the committee to take a hard look at this and improve it by providing for direct notification of landowners.

CO-CHAIR MASEK advised Mr. O'Meara that another hearing on the bill will be scheduled so he will have additional time to provide testimony.

Number 2664

MR. O'MEARA urged the members to take a closer look at the basic language in the property owners' bill of rights. He said he believes this is very important and does not want to see the legislature fail to pass substantive reform legislation.

Number 2553

JOHN NORMAN, Chairman, Alaska Oil and Gas Conservation Commission (AOGCC), testified on HB 395. He commented that there is a qualification in the first page that some of the speakers have expressed concern about. It relates to production from an aquifer. There is an option that would allow someone to petition the AOGCC to make a finding that production from a well would not adversely affect the aquifer. Mr. Norman told the members that it is believed that this is an important provision to have in the bill for the state of Alaska. This should be an option if it can "clearly" be shown that this is in an area where it will not in any way adversely affect an aquifer. He said he knows that there are villages that are desperate for power because they have diesel fuel at a high cost. If a village had the option to produce fuel but it would have to be from an aquifer and this bill would provide an option with a public hearing and notice for decisions to be made, he explained.

MR. NORMAN said that he understands that the public has concerns. As chairman of the AOGCC he stated that he wanted it on the record that it is the responsibility of the agency to protect fresh water in the course of oil and gas production. The commission accepts that responsibility and will absolutely discharge it, he stated.

Number 2433

MR. NORMAN emphasized a positive aspect of the public forum process which is on page 2, [lines 26 and 27,] which reads as follows:

For any other matter, the commission shall refer the complaint to other federal, state, or local agencies, as appropriate.

MR. NORMAN commented that this language when read with Section 15 of the bill, which is a repealer section, would put more global control into effect. The commission sees that as a positive aspect of the bill because it empowers local property owners in having more say-so in what occurs in their areas.

MR. NORMAN referred to page 3, [lines 12 through 15,] which read as follows:

(a) Except for activities governed by AS 38.05, the developer shall give the surface owner written notice of the oil and gas operations contemplated at least 20 days before commencement of operations. The requirement of written notice may be waived by the parties.

MR. NORMAN said in conjunction with that subsection he pointed to page 4 [lines 10 through 12,] which reads as follows:

(4) "oil and gas operations" means the drilling of an oil and gas well, the production and completion operations ensuing from the drilling, and oil and gas geophysical exploration activities that require entry upon the surface estate;

MR. NORMAN said that there should be a clear trigger of the requirement to give notice. He said he believes "commencement of operations" is clear, but when reading the definition [of oil and gas operations] he asked if it means when drilling is commenced or again when production and completion operations are commenced. He questioned if this is one notice [or many]. Mr. Norman offered to assist in creating language that would make the intent clear.

Number 2325

MR. NORMAN said where the bill references the drilling of oil and gas wells and ties it to an existing statute which allows for cross enforcement and very careful monitoring of every single well, the commission suggests that the bill use the following language:

...the drilling of a well requiring a permit  
under AS 31.05.090

MR. NORMAN told the members that this language would pick up all of these wells because the commission is statutorily required to track all wells.

MR. NORMAN pointed to page 3, subsection (c), which reads as follows:

(c) If a developer fails to give notice as provided in this section, the surface owner may seek any appropriate relief in the court of proper jurisdiction and may receive punitive and actual damages.

MR. NORMAN commented that punitive damages are normally awarded for some sort of reckless conduct. He told the members that he points this out because he believes it is important that the statutes are very clear as to when required notice is to be given since this could trigger not only actual damages, but punitive damages as well. Mr. Norman emphasized that there should not be any gray area.

Number 2200

CO-CHAIR MASEK said for the record that Representative Heinze joined the meeting at 3 p.m.

CO-CHAIR MASEK suggested that Mr. VanderKolk work with Mr. Norman and Mr. Meyer to address issues that were discussed.

MR. VANDERKOLK replied that he looks forward to doing so.

[HB 395 was held in committee.]

**ADJOURNMENT**

There being no further business before the committee, the House Resources Standing Committee meeting was adjourned at 2:15 p.m.