

**ALASKA STATE LEGISLATURE
SENATE RESOURCES STANDING COMMITTEE**

March 19, 2004

3:28 p.m.

TAPE(S) 04-25

MEMBERS PRESENT

Senator Scott Ogan, Chair
Senator Thomas Wagoner, Vice Chair
Senator Ralph Seekins
Senator Ben Stevens
Senator Kim Elton

MEMBERS ABSENT

Senator Fred Dyson
Senator Georgianna Lincoln

COMMITTEE CALENDAR

Confirmation Hearings:
Commercial Fisheries Entry Commission
Mr. Frank Homan

Alaska Oil and Gas Conservation Commission
Mr. John K. Norman

Royalty and Gas Development Advisory Board
Mr. Charles Cole
Mr. Ken Stout

SENATE BILL NO. 69

"An Act relating to participation in matters before the Board of Fisheries by members of the board; and providing for an effective date."

HEARD AND HELD

PREVIOUS COMMITTEE ACTION

BILL: SB 69

SHORT TITLE: BOARD OF FISHERIES CONFLICTS OF INTEREST

SPONSOR(S): SENATOR(S) WAGONER

02/14/03	(S)	READ THE FIRST TIME - REFERRALS
02/14/03	(S)	STA, RES

03/25/03 (S) STA AT 3:30 PM BELTZ 211
03/25/03 (S) Moved Out of Committee
03/25/03 (S) MINUTE(STA)
03/26/03 (S) STA RPT 5DP
03/26/03 (S) DP: STEVENS G, HOFFMAN, COWDERY,
03/26/03 (S) DYSON, GUESS
03/19/04 (S) RES AT 3:30 PM BUTROVICH 205

WITNESS REGISTER

Mr. Frank Hohman, nominee for the Commercial Fisheries Entry Commission

Mr. Charlie Cole and Mr. Ken Stout, nominees for the Royalty and Gas Development Advisory Board

Mr. John Norman, nominee for the Alaska Oil and Gas Conservation Commission

Ms. Amy Seitz
Staff to Senator Thomas Wagoner
Alaska State Capitol
Juneau, AK 99801-1182

POSITION STATEMENT: Commented on SB 69 for sponsor.

Mr. Ed Dersham
Board of Fisheries
Department of Fish & Game
PO Box 25526
Juneau, AK 99802-5226

POSITION STATEMENT: Supports SB 69.

Mr. Roland Maw, Executive Director
United Cook Inlet Drift Association (UCIDA)
Kasilof AK

POSITION STATEMENT: Supports SB 69.

Ms. Karen Dunmall
KAWERAK, Inc.
P.O. Box 948
Nome AK 99762

POSITION STATEMENT: Opposes SB 69.

ACTION NARRATIVE

TAPE 04-25, SIDE A

CHAIR SCOTT OGAN called the Senate Resources Standing Committee meeting to order at 3:28 p.m. Present were Senators Thomas Wagoner, Ben Stevens, Ralph Seekins and Chair Scott Ogan. Senator Kim Elton arrived at 3:40 p.m. The first order of business to come before the committee was the confirmation hearings.

^CONFIRMATION HEARINGS

^COMMERCIAL FISHERIES ENTRY COMMISSION (CFEC)

MR. FRANK HOMAN, Commercial Fisheries Entry Commission (CFEC), presented the committee with his resume'.

CHAIR OGAN asked him why he wanted to keep doing this job.

MR. HOMAN answered that he thought it was important work and he kept people fishing.

There were general comments from the committee about what a good commissioner he was.

CHAIR OGAN thanked him for his service to the state and indicated there were no questions.

3:30 - 3:34 p.m. - at ease

^ROYALTY AND GAS DEVELOPMENT ADVISORY BOARD

MR. CHARLES COLE, Royalty and Gas Development Advisory Board, was present to answer questions.

CHAIR OGAN asked him to tell the committee a little about the board and why he wants to be on it.

MR. COLE began by saying that he was asked by Governor Murkowski if he would serve on it. He looked at the criteria the board is required to consider in the exercise of its powers in AS 38.060.70 and believes that he can satisfactorily and properly consider those criteria. He has lived in Alaska for 50 years and is generally familiar with oil and gas transactions and detailed contractual provisions.

CHAIR OGAN said he didn't recall the Advisory Board weighing in on much, if anything, in the last 10 years. "If we're going to continue to fund these things, they should be little bit higher profile or maybe they should go away.

MR. COLE agreed and related that he told the governor he wouldn't rubber-stamp any contracts that the commissioner of DNR proposes saying:

If you expect me to do that, you shouldn't appoint me, because I think that I have a responsibility as a board member to the people of this state and specifically to the Legislature and I would not make recommendations to the Legislature for approval of a contract that I did not believe satisfactorily met the criteria. That's number one.

Number two, you know, if you look at the statute, the statute provides that a board should appoint an executive director and contract for the services of professionals, persons with knowledge of economics and disciplines that may be necessary to assist the board to adopt regulations under the act and the exercise of its powers. And that just hasn't been done. And I agree with you that, you know, the board should either do that or it should be disbanded, because we're not doing what we ought to be doing at the present time - this board is not.

CHAIR OGAN responded that he expected to hear advice from him.

SENATOR RALPH SEEKINS jested that Mr. Cole might be too old to have enough energy to do this job.

MR. COLE quipped back that he has been running about 20 miles per week and has the physical energy to do it, at least.

SENATOR KIM ELTON arrived at 3:40 p.m.

SENATOR SEEKINS said he appreciated Mr. Cole's participation on the board.

CHAIR OGAN asked for any further comments. Hearing none, he thanked Mr. Cole for serving the state and looked forward to the elevated engagement by the Royalty Oil and Gas Development Advisory Board. "They've got to use it or they'll lose it."

CHAIR OGAN asked Mr. Norman his qualifications beyond being just a public member.

^ALASKA OIL AND GAS CONSERVATION COMMISSION (AOGCC)

MR. JOHN NORMAN, Alaska Oil and Gas Conservation Commission (AOGCC), said he first came to Alaska in 1968 with Skelly Oil Company. Prior to that, he worked in oil and gas exploration and a little bit of production in Texas. He was trained as a geologist and attended law school, doing military service in Germany. He was transferred to Alaska where Skelly had 25 percent in production in Cook Inlet prior to the Prudhoe Bay discovery. The attorney general's office recruited him and he's been here ever since. He has worked under Governors Hickel, Miller and Bill Egan. He advised the Department of Natural Resources on oil and gas matters and served as counsel to the State Oil and Gas Conservation Committee. He was in private practice in 1971 and has been practicing for 33 years. He has known most of the commissioners for a number of years.

I don't mean to leave anyone out, but there are just some exceptionally outstanding people, particularly following statehood that rendered great service to the state....

MR. NORMAN remembered that Tom Marshal was the first geologic member of the commission and recommended that the state select acreage at Prudhoe Bay. He has traveled all over Alaska and has a good understanding of Alaska generally. When an opening on the commission came up, a number of people encouraged him to apply for it.

I'll be pleased to answer questions; I see this as an opportunity to give back to the State of Alaska some of what the state has provided me over the years by way of an opportunity for professional development and gaining experience and working in the natural resource and oil and gas areas.

CHAIR OGAN said he thought the AOGCC is important, but the state had not been doing a lot of exploration work.

There's maybe a half dozen exploration wells going on the North Slope.... The last commissioner said they got paid too much money. It's one of the higher paid commissioner jobs. I'm not asking you to comment on that, but I guess I'm under the impression that there isn't a tremendous workload going on...and we're hoping to change that and get some more exploration going. What's your impression of that?

MR. NORMAN replied:

My impression is that - and I think that's a good astute observation about the number of rigs running. Throughout the country, there are rig reports, drilling reports and I think given the size of our state, I believe we should have more exploration activity. I am pleased to see...over the past six months or so and maybe even over the past year, the entrée of the new operators in the state. That's always healthy. Traditionally, it's a lot of the smaller companies that actually discovered the oil.... Governor Murkowski is trying to make Alaska a more receptive, friendly place for oil operators to move into and I do know that when they come into an area, the pace of exploration picks up and then the number of reportable discoveries kick in....

We have applications to drill a number of new wells There is a fair amount of activity, but in comparison to our size and the potential that Alaska has, I think we are probably not allowing Alaska to be able to realize its full potential.

CHAIR OGAN said he heard that Alberta has about 500 oil and gas wells being drilled. He remarked that Mr. Norman is definitely overqualified for the public member slot and asked if he is licensed to practice law.

MR. NORMAN replied, "I am."

CHAIR OGAN said there were some down-hole controversies running around out in the Matanuska Valley and asked Mr. Norman what he thought the commission's role was in terms of disseminating public information about how the different operators conduct their work, for instance protecting water supplies. "What's your philosophy as far as making sure the operators operate safely?"

MR. NORMAN replied:

My philosophy on that is that Alaska should be encouraging of development, but that it must be done properly up here. I think, across the spectrum, if we are to have development, it should occur properly and I think all of us who have lived here and made Alaska our home and have come to love Alaska and plan to be here for many years, we want to make sure that it gets done properly.

As far as the Alaska Oil and Gas Conservation Commission is concerned, the philosophy that I would bring to it is that we are an independent, regulatory agency and I intend personally, if confirmed, to embark on public speaking and to try to get the public awareness raised as to the role of this commission and, thereby, maybe ease some of their concerns. The surveys and studies we have done do not agree with some of the anxiety that we've heard expressed by the public in connection with, for example, the production of what's referred to as shallow gas and coalbed methane. But, on the other hand, I certainly cannot fault the public. One thing I believe this commission can do is get out in front and through public information and regulatory actions assure the public that their water will be 100 percent protected with no exceptions - that we will not allow production in any aquifer if there is any possibility that it might interfere with - and I use the word interfere, because I'm not even talking about contamination - I'm just talking about degrading or drawing down on the water supply. I think that's one good function that this commission can fulfill. We don't have the mandate that the Division of Oil and Gas has, which is to raise revenue for the State of Alaska. That certainly is an extremely important function that they carry out, but I think it also makes the Division of Oil and Gas somewhat suspect, not necessarily fairly, because I think, it's a fine organization and staff, but I can understand it if I was a member of the public. The Alaska Oil and Gas Conservation Commission, I believe, can come to the public and we don't have any other agenda than to make sure that we regulate and one of our functions in protection of drinking water, protection of water use for agricultural purposes, in fact, just plain protection of fresh water. We've regulated that for many years. It's nothing new to us. I do see that we need to step forward and become more visible particularly in the Valley, on the Kenai Peninsula and in other areas.

I do see shallow gas production having potentially wonderful benefits for the State of Alaska, particularly for Bush villages. If shallow gas could be encountered there and the public can be assured that it can be developed in a very safe way without

any degradation, then I think that it can eliminate a lot of dependence that, particularly our rural communities, have had on diesel fuel. I have in mind right now that there is this shallow gas exploration proceeding up north of Red Dog mine, as an example. In that region, if that's successful, that could open up other opportunities for that entire region. I know it's being looked at down in the Holitna Basin and within the area of the Chulista Native Corporation region. I do think that in order to reach the potential of that resource, as well as any resource, it's fundamental that the public must accept it and sign on to it. And to do that, they have to have the confidence that there's an independent regulatory agency that's looking out for their interests - not looking out for the oil industry or the gas industry or anything else.... That's the philosophy I've always had as a public servant. I look at it that our primary clients are the citizens of the State of Alaska and they're depending on us to look at this....

CHAIR OGAN thanked him for his comments and added, "Make sure that the operators do it right and... make sure that they just do the best management practices and protect the water...." Hearing no further questions, he asked Mr. Ken Stout to testify.

^ROYALTY AND GAS DEVELOPMENT ADVISORY BOARD

MR. KEN STOUT, Royalty and Gas Development Advisory Board, said he has a business background and has lived in Alaska for 32 years.

I was surprised to see how little this board has been functioning.... I thought the comments of Charlie were quite astute. The board has been basically a rubber stamp for quite some time. What I have discovered is that at one time it was a very, very active board with heavy responsibility. It had a full-time executive director and was well-funded. But the executive director found one of the contracts that the DNR had entered into to be a real questionable one and he came to Juneau and testified against it and consequently, the board was defunded and he no longer had a job and from that point on, it didn't really do much, if anything, except to be a rubber stamp.

I put together a letter and sent it to Charlie and we put our heads together. Basically, I made some recommendations.... We need to have someone in authority appoint a temporary chair for our organizational meeting and form the elected chair and establish some priorities for our board. Since no budget now exists, we need to establish some kind of a funding source, probably other than the Department of Natural Resources to allow us to have secretarial services, which is required at a minimum and while we don't need an executive director, at all.... We should probably have a meeting, at least, yearly and submit a formal report to the governor and to the Department of Natural Resources.

I see this board as an overseer board to provide an independent review of what the department staff is doing and to provide a public forum to discuss proposed public contracts before finalization.

MR. STOUT said that both he and Charlie Cole are dedicated to making this a functioning board that can serve the purpose it was originally designed to do.

CHAIR OGAN asked if he was a real estate broker.

MR. STOUT replied that he was one for several years, but hadn't been for the last four or five years. "Basically, I thought I was going to retire, but you get tired of that, also, I find. So, I'm interested to be back and involved in a few things."

CHAIR OGAN said that the names would be forwarded to the joint body.

4:02 - 4:02.5 - at ease

^#SB69

SB 69-BOARD OF FISHERIES CONFLICTS OF INTEREST

CHAIR SCOTT OGAN announced SB 69 to be up for consideration.

MS. AMY SEITZ, staff to Senator Thomas Wagoner, sponsor, explained that currently, if a member is found to have a conflict with an issue and doesn't get to participate in the discussion or vote, SB 69 changes the procedure to match that of the Legislature. A member would declare what their conflict is

and why and still be able to participate and vote. The reason they do this is because the member who has the conflict is also often the member who has the most knowledge and experience on that issue.

SENATOR THOMAS WAGONER said the administration fully supports this bill as does Alan Austerman, Fisheries Policy Advisor for the governor.

SENATOR RALPH SEEKINS said, "I always believe in the old theory of no conflict no interest, but I'm wondering why we would not extend this same policy to the Board of Game?"

MS. SEITZ responded that she asked the Board of Game that question and the members responded that they didn't want it.

SENATOR SEEKINS said he was curious about why the statute is there in the first place.

CHAIR OGAN attempted an explanation that perhaps most of the issues the Board of Game deals with occur during the sport hunting season and the only people to have a commercial interest would be guides or outfitters.

SENATOR SEEKINS supposed in a guide's case, it might take away a significant portion of their ability to make a living. He was trying to figure out why it would be good for one board and not the other.

MS. SEITZ added that the Board of Game only conflicts out one person per year.

SENATOR SEEKINS countered, "In this case, we won't conflict out anybody on the Board of Fish."

CHAIR OGAN asked Ms. Seitz how many times per year a member of the Board of Fish is conflicted out.

MS. SEITZ replied that she didn't have a number, but Mr. Dersham might.

MR. ED DERSHAM, Chair, Board of Fisheries, replied about 10 times per year.

CHAIR OGAN said his concern is that if people are not required to conflict themselves out, they're going to end up being on the short end of the stick.

SENATOR SEEKINS said he didn't agree that a person should be conflicted out of a vote because they have an interest in what they are looking at. He had never seen an instance arise where they didn't tell the person to go ahead and vote anyhow. He also was uncomfortable with holding someone else to a higher standard than he is bound to as a member of the Legislature.

CHAIR OGAN agreed. He reminded the committee that Senator Lincoln had the biggest Senate district in the state and he wanted to contact her on this issue. He also wanted more time to consider whether or not the Board of Game should be included.

MR. ROLAND MAW, Executive Director, United Cook Inlet Drift Association, supported SB 69. He said his bill is needed because many good fishermen with college degrees in resource-related fields are being excluded from participating on the Board of Fisheries process. Also, with all the rationalization and consolidation going on in the industry, it is hard to maintain conflict boundaries.

MS. KAREN DUNMALL, KAWERAK, Inc., a non-profit travel consortium in Norton Sound, opposed SB 69. The Board of Fisheries website says it is charged with making allocative decisions based on biological and socioeconomic information provide by ADF&G, public comment and guidance from the Alaska Department of Public Safety and the Department of Law.

TAPE 04-25, SIDE B

4:18 p.m.

MS. DUNMALL was, secondly, concerned that some proposals before the board could result in severe economic consequences to various groups of people including the board members. In most of those cases, it would be difficult to impossible to represent all users. Her last point was that the interests of subsistence users are underrepresented on the Board of Fisheries as compared to commercial interests. If persons with a conflict of interest were allowed to vote on proposals, the public process would disintegrate and the gap between commercial and subsistence users would widen.

MR. DERSHAM said the board has discussed this bill, but is not taking an official position although several members spoke favorably of it. No board member spoke against it.

SENATOR ELTON applauded the sponsor for checking with the Board of Game to see if it wanted to be under the umbrella. The only reason he would not make a motion to move the bill is because the sponsor has said he is willing to wait until Senator Lincoln could comment on it. "I hope we can do it expeditiously on Monday, because this is a real issue. It is a real problem.... It is very difficult to get people to serve...."

CHAIR OGAN pointed out that a person is still subject to AS 39.52.120 - misuse of official position. He agreed with Senator Elton's comments pointing out that the Senate Resources Committee has four commercial fishermen, a subsistence fisherman and two fillet and release fishermen on it.

SENATOR WAGONER said he would meet with Senator Lincoln on Monday and move the bill on Wednesday. Senator Seekins would check with the Board of Game in the meantime.

There being no further business to come before the committee, CHAIR OGAN adjourned the meeting at 4:30 p.m.

#