

ALASKA STATE LEGISLATURE
SENATE RESOURCES STANDING COMMITTEE

March 22, 2004

3:30 p.m.

TAPE(S) 04-26, 27

MEMBERS PRESENT

Senator Scott Ogan, Chair
Senator Thomas Wagoner, Vice Chair
Senator Fred Dyson
Senator Ralph Seekins
Senator Ben Stevens
Senator Kim Elton
Senator Georgianna Lincoln

MEMBERS ABSENT

All Members Present

OTHER MEMBERS PRESENT

Senator Donny Olson
Representative Vic Kohring

COMMITTEE CALENDAR

SENATE BILL NO. 355

"An Act relating to the protection of land and water from waste disposal; providing for the regulation of waste management; making conforming amendments; and providing for an effective date."

HEARD AND HELD

SENATE BILL NO. 312

"An Act relating to natural gas exploration and development and to nonconventional gas, and amending the section under which shallow natural gas leases may be issued; and providing for an effective date."

HEARD AND HELD

PREVIOUS COMMITTEE ACTION

BILL: SB 355

SHORT TITLE: WASTE MANAGEMENT/DISPOSAL
SPONSOR(s): RULES BY REQUEST OF THE GOVERNOR

02/27/04 (S) READ THE FIRST TIME - REFERRALS
02/27/04 (S) CRA, RES
03/10/04 (S) CRA AT 1:30 PM FAHRENKAMP 203
03/10/04 (S) Moved SB 355 Out of Committee
03/10/04 (S) MINUTE(CRA)
03/12/04 (S) CRA RPT 1DP 3NR
03/12/04 (S) DP: STEDMAN; NR: LINCOLN, STEVENS G,
03/12/04 (S) ELTON
03/22/04 (S) RES AT 3:30 PM BUTROVICH 205

BILL: SB 312

SHORT TITLE: CONVENTIONAL & NONCONVENTIONAL GAS LEASES
SPONSOR(s): RESOURCES BY REQUEST

02/09/04 (S) READ THE FIRST TIME - REFERRALS
02/09/04 (S) RES, FIN
02/23/04 (S) RES AT 3:30 PM BUTROVICH 205
02/23/04 (S) Heard & Held
02/23/04 (S) MINUTE(RES)
03/05/04 (S) RES AT 3:30 PM BUTROVICH 205
03/05/04 (S) <Above Bill Hearing Postponed>
03/22/04 (S) RES AT 3:30 PM BUTROVICH 205

WITNESS REGISTER

Commissioner Ernesta Ballard
Department of Environmental Conservation (DEC)
410 Willoughby
Juneau, AK 99801-1795
POSITION STATEMENT: Commented on SB 355.

Mr. Dan Easton, Director
Division of Water
Department of Environmental Conservation (DEC)
410 Willoughby
Juneau, AK 99801-1795
POSITION STATEMENT: Commented on SB 355.

Mr. Jack Chenoweth
Legislative Legal and Research Services Division
Legislative Affairs Agency
Alaska State Capitol
Juneau, AK 99801-1182
POSITION STATEMENT: Commented on SB 312.

Mr. Mark Myers, Director
Division of Oil and Gas
Department of Natural Resources
400 Willoughby Ave.
Juneau, AK 99801-1724
POSITION STATEMENT: Commented on SB 312.

Ms. Michelle Church
Friends of the Mat-Su
HCO1, Box 6218
Palmer AK 99645
POSITION STATEMENT: Commented on SB 312.

Mr. Myrl Thompson, Chairman
Ogan Is So Gone Recall
PO Box 877189
Wasilla AK 99687
POSITION STATEMENT: Commented on SB 312.

Mr. John Vanduska
Palmer AK 99645
POSITION STATEMENT: Commented on SB 312.

Ms. Robin McLean
Glenn Hwy.
Sutton AK 99674
POSITION STATEMENT: Commented on SB 312.

Ms. Kathryn Franzenburg
Palmer AK 99645
POSITION STATEMENT: Commented on SB 312.

Ms. Patricia Mack
Palmer AK 99645
POSITION STATEMENT: Commented on SB 312.

Mr. Bob Shavelson
Homer AK 99603
POSITION STATEMENT: Commented on SB 312.

Mr. Pete Praetorius
Palmer AK 99645
POSITION STATEMENT: Commented on SB 312.

Mr. Mike McCarthy
Kachemak Bay Property Owners' Alliance

Homer AK 99603

POSITION STATEMENT: Commented on SB 312.

ACTION NARRATIVE

TAPE 04-26, SIDE A

^#SB355

SB 355-WASTE MANAGEMENT/DISPOSAL

CHAIR SCOTT OGAN called the Senate Resources Standing Committee meeting to order at 3:30 p.m. Present were Senators Thomas Wagoner, Ben Stevens, Fred Dyson, Ralph Seekins, Kim Elton, Georgianna Lincoln and Chair Scott Ogan. The first order of business to come before the committee was SB 355.

COMMISSIONER ERNESTA BALLARD, Department of Environmental Conservation (DEC), said this bill came from Administrative Order 202, issued in December 2002. The order asks DEC to review its programs to make sure they are compliant with its constitutional and statutory responsibilities. She briefed the committee:

We found that our water program had some holes in it - that both its statutory authorities and its regulatory implementation did not provide a comprehensive, what we call raindrops to oceans, protection of the waters in the state. The bill doesn't provide any new statutory authorities for DEC. It does, however, make fairly significant opportunities for improvement in the way we protect water. I'd like to review those very briefly....

The most important change that the bill makes is in the method of permitting. We currently have a statutory requirement to permit and the word 'permit' is specifically used. This bill will change that requirement to the ability to provide prior authorization. That will allow us to use a risk-based spectrum of tools. We can use for riskier situations more precise permitting tools; for less risky situations, we can use new tools, particularly one called 'Permit By Rule....'

The handout raised the permitting tool that we will intend to use starting with individual permits, which we have now - in which we have an individual

relationship with a specific discharger and in that relationship we categorize the characteristics of their effluent and specifically identify those in the permit - a general permit we use when we authorize a number of smaller activities in a single geographic area.

A permit by rule is one of the new tools that this bill will allow us to use. A permit by rule tool we would use to permit relatively low risk activities, but to assure that the people engaged in them - such as bilge pumping would be a good example - that there are rules, which they must follow, which we have promulgated through notice and comment rulemaking. We also will have statutory authority through this bill to issue plan approvals, which we do use now, and finally, the new statutory language will allow us to use an integrated waste management permit for large projects that have multiple discharge streams that could be handled now with the new bill with a single permit instead of with multiple individual permits. The bill also allows us to use a very important tool called administrative extension of permits. If a permit has expired, this bill will allow us to administratively extend it to be sure that the person holding the permit is still covered if we've been unable to attend timely to renewing or changing the permit.

It also allows us to expand the requirements for proof of financial responsibility. This is important particularly in the case of mining in Alaska where we have a large discharger with potential long-term implications for waste management - that we be able to require evidence of financial ability to manage that waste long into the future and, particularly, in the event that the company defaults.

Finally, the bill modifies some fairly important definitions. The present definition of solid waste requires us to determine the intent of the discharger. If the waste is not wanted, it's considered solid waste. I don't think it should be up to the state to have to determine what the intent is. The definition of solid waste in this bill runs to the common English concept of garbage and refuse and the bill allows us to differentiate between municipal solid waste and

other solid waste - municipal solid waste being that waste discharged by municipalities, common household waste. With this new definition we'll be able to use simple permit by rule permitting for rural communities who now would be required to go through a complex individual permit program. The combined benefits of the new municipal solid waste definition and the plan approvals will allow us to handle the rural Alaskan situation with much better results and much more effectively and efficiently for those communities. That in a quick summary is what SB 355 provides. There's no fiscal note because there would be no additional staff required to fulfill these responsibilities. It simply allows us to use the staff we have more efficiently.

CHAIR OGAN noted that all the members of the committee were present.

SENATOR ELTON asked if he intended to move the bill.

CHAIR OGAN said he didn't intend to move it today, but wanted to get it on the record.

SENATOR BEN STEVENS asked if language on page 2, line 22, saying "Department authorization shall be obtained for direct disposal and for disposal, other than of domestic sewage, into publicly owned or operated sewerage systems" was existing language.

MR. DAN EASTON, Director, Division of Water, DEC, replied that that is existing language.

SENATOR STEVENS asked if language on page 3, lines 11 - 13, saying, "The department may require the submission of plans..." was existing language as well.

COMMISSIONER BALLARD replied yes.

SENATOR STEVENS requested a sectional analysis from the department to see how section 3 was changed.

SENATOR SEEKINS asked what "active ranges" meant on page 4, line 21.

COMMISSIONER BALLARD replied that is existing language.

CHAIR OGAN asked if active ranges referred to Eagle River Flats where artillery is used.

SENATOR ELTON said the department requested that language two or three years ago. He noticed that section 5 on page 6 generally reduces the amount of public notification from two notices in a newspaper of general circulation to one notice and he was contemplating an amendment that would avoid that kind of situation that had already happened in the southern end of the Kenai Peninsula, where coalbed methane (CBM) leases were noticed in the Kenai paper, but not in the Homer paper.

CHAIR OGAN sought other comments, but there were none and he held the bill for further work.

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^#SB312

SB 312-CONVENTIONAL & NONCONVENTIONAL GAS LEASES

CHAIR SCOTT OGAN announced SB 312 to be up for consideration. He noted a conceptual amendment called the "Alaska Property Owners' Bill of Rights" that needed to be adopted for discussion.

ALASKA PROPERTY OWNERS' BILL OF RIGHTS

WHEREAS, Alaskans cherish their private property rights; and

WHEREAS, coalbed methane (shallow gas) development threatens the rights of private property owners to enjoy the fruits of their labors; and

WHEREAS, state law currently fails to adequately protect private property owners from the threats of coalbed methane development; and

WHEREAS, Alaskans rely on public lands and waters for subsistence, recreation, and the operation of businesses that depend on the health of those lands and waters; and

WHEREAS, many Alaskans live adjacent to public and private lands that have been leased for coalbed methane development;

NOW, THEREFORE, BE IT RESOLVED WE ALASKANS DEMAND THE ADOPTION OF AN ALASKA PROPERTY OWNERS' BILL OF RIGHTS TO PROTECT OUR CLEAN AIR, PURE WATER, PLENTIFUL FISH AND WILDLIFE RESOURCES, AND QUALITY OF LIFE FOR FUTURE GENERATIONS; AND

BE IT FURTHER RESOLVED THAT IN ORDER TO PRESERVE AND SUSTAIN THESE VALUES AND OUR PRIVATE PROPERTY RIGHTS THE LEGISLATURE MUST ADOPT STATEWIDE LEGISLATION THAT INCLUDES ALL OF THE FOLLOWING PROTECTIONS:

- 1) PROPERTY OWNER CONSENT: Property owners must have the legal right to say if, when, where and how anyone comes onto their private property to explore, develop and/or produce the subsurface mineral estate. The state must provide a legal fund, which surface owners can access to hire legal counsel. Private property owners must also be protected from retaliatory lawsuits from developers.
- 2) BUYBACK AND MORATORIUM: The state must buy back all coalbed methane leases already let and halt all further coalbed methane leasing until all the provisions of this Property Owners' Bill of Rights are enacted.
- 3) PROPER NOTICE: The state must provide all landowners within five miles of a proposed coalbed methane lease with 90 days actual written notice before a best interest finding process begins. Notice by registered mail must also be provided to local, municipal and tribal entities with jurisdiction within the proposed lease areas. Notice by publication must also be provided at local post offices in a local newspaper and a newspaper of statewide circulation. All notices described above must include, among other things, a detailed map of the affected area proposed for lease.
- 4) BEST INTEREST FINDING: Prior to issuing any leases, the state must conduct a best interest finding process to analyze the economic, environmental and social costs and benefits of potential coalbed methane operations including but not limited to the potential diminution in value of private and public properties.
- 5) BASELINE STUDIES AND BURDEN OF PROOF: The state must measure baseline water quality and quantity in all areas proposed for leasing prior to granting any lease application, including all surface and well waters that may be affected. Prior to granting any lease application, the state must also measure baseline conditions for methane seepage, as well as for hydrological and geological conditions in all areas proposed for leasing. Finally, the state must conduct baseline inventory studies of existing fish and wildlife populations to identify sensitive or

critical wildlife areas to be excluded from coalbed methane leasing. If a property owner's water quality or quantity diminishes during or within five years after coalbed methane operations on or around his/her property, there shall be a presumption such operations caused such diminishment or pollution and the coalbed methane operator shall carry the burden of proving otherwise.

- 6) LOCAL CONTROL: The state must ensure local governmental entities have maximum powers of self government that enable them to regulate coalbed methane development to protect the health, safety, general welfare and quality of life for local residents.
- 7) PROTECT CRITICAL HABITAT AND RECREATIONAL LANDS: The state must identify and implement "no drill" zones and prohibit coalbed methane leasing and development in sensitive or critical wildlife areas, particularly those areas used for subsistence, hunting, fishing and recreational activities.
- 8) WATER PROTECTION: The state must prohibit coalbed methane water extraction in groundwater aquifers that are the source of existing or future water wells and prohibit the use of toxic hydraulic fracturing fluids. Furthermore, the state must require the deep-well underground reinjection of all liquids and wastes produced and used during coalbed methane development and it must ensure there is no hydrological connection between the waste injection zones and present or future drinking water sources.
- 9) PROPERTY OWNER SAFEGUARDS: The state must promulgate by December 2004 enforceable minimum statewide regulations that require best available technology and practices to ensure the health and safety of citizens on the issues of noise, air and water quality, setbacks, use and disposal of any toxics, surface restoration and reclamation. New standards must also be established that increase the statewide and per incident bond requirement for all coalbed methane operators and developers to ensure full restoration of the surface. These amounts must be sufficient to provide the full preleasing fair market value of any property or business damaged by coalbed methane development.
- 10) COMPETITIVE BIDDING: In order to maximize the benefit of our natural gas resources, the state must reinstitute a competitive bidding process for all coalbed methane (shallow gas) leases.

Submitted this 18th day of March, 2004, to all Alaskans and the Alaska Legislature.

SENATOR THOMAS WAGONER moved to adopt the amendment for purposes of discussion. There were no objections and it was so ordered.

MR. JACK CHENOWETH, drafting attorney, Legislative Legal and Research Services Division, said he spent quite a bit of time reviewing the conceptual amendment.

CHAIR OGAN asked him to review the requirement in section 1.

MR. CHENOWETH replied:

The requirement in section 1 is that the property owners must be in a position to give consent to the exploration, development and production from the subsurface mineral estate. That in my judgment is contrary to the constitutional and legal basis under which our state has framed the development of the subsurface resources.

Beginning back with the Statehood Act - Section 6(i) of the Statehood Act has language that speaks in terms of the right in conveying this land - the state having the right to develop these subsurface resources. We've also picked this up in the statutory provision that establishes the reservation of the mineral estate in AS 38.05.125 and we've captured it, as well, in several constitutional provisions, notably the provision in Article XII, that talks about the ratification of the clause, the agreements that we had in place at the time of statehood in three provisions in [Title 38], which talk about leasing and sale of land. All of these provisions talk in terms of the right to have access to and to develop these particular subsurface resources. And when you propose to allow a property owner to withhold consent to obtain access for a lessee or for the state's agent to come onto the property and develop that resource, I think you're going to run into problems in terms of trying to get that enforced when you lay that kind of proposition down against the federal law and the state constitutional provisions that I have identified.

CHAIR OGAN asked if changing the statute to allow surface owners the right to "when, where and how anyone comes on their private property to explore, develop or produce the subsurface mineral estate" would take a constitutional amendment.

MR. CHENOWETH replied:

At least that, sir. The problem goes back to the [Section 6(i)] provision in the Statehood Act and it talks about the grant of mineral rights being made together with the right to prospect for, mine and remove the same. That's the reservation given to the state. I'm not sure that even if we enact the provisions in our state constitution that amended the kinds of things that I am concerned about, we still would run into a problem with the language of section 6(i) that talks about the right to prospect for, mine and remove these reserved subsurface minerals.

CHAIR OGAN said his studies found that when Alaska became a state, the federal government quit claimed the subsurface to the state. The [Section 6(i)] clause also said that if the state attempted to transfer that property to anyone besides the state, the U.S. Attorney General has specific instructions to litigate in district court for Alaska to take back the subsurface estate. He asked if that meant just the subsurface that the state attempted to transfer or surface, as well.

MR. CHENOWETH replied:

The [Section 6(i)] provision, beyond the reservation, talks in terms of 'mineral deposits in such land shall be subject to lease by the state as the state Legislature may direct, provided that any land or minerals hereafter disposed of contrary to the provisions of this section, shall be forfeited to the United States by appropriate proceedings instituted by the Attorney General - I assume that means the U.S. Attorney General - for that purpose in the U.S. District Court for the district of Alaska.' So, that is the penalty provision, if you will, if the Legislature moves too far afield of violating the restrictions in Section 6(i).

CHAIR OGAN said he thought a contract could be changed if both parties agreed and asked if that is correct.

MR. CHENOWETH replied yes and that Congress could amend this provision to remove or modify that limitation.

CHAIR OGAN said, "So, basically, to make the first section of this property owners' consent, it would take a constitutional amendment and then a change in the federal law to change that part of the compact."

He asked if the compact gets changed, do the voters have to ratify that as well.

MR. CHENOWETH replied:

We put a provision in the constitution in the last decade or so that talks about changes being made to the compact, to the Statehood Act and to other relationships that affect a right given by the state have to be ratified by the voters. I believe they do....

CHAIR OGAN summarized that adopting the first section of the Alaska Property Owners' Bill of Rights requires a constitutional amendment (which requires a two-thirds vote of the House and Senate) and an act of Congress, both of which have to be ratified by the people.

MR. CHENOWETH replied, "I think that's correct, sir."

CHAIR OGAN concluded, "It sounds like a big project."

MR. CHENOWETH also pointed out:

The current state of the law in the state, as I understand it, is that property owners who are affected by potential leases that are to be let by the state are in a position to sit down and negotiate with the state's agent, its lessee, who come on the property and barring that, if the property owner fails or refuses to negotiate in good faith or they can't come to some agreement, the lessee can go down to the Department of Natural Resources and, in a process, secure a determination of the amount of a bond that would allow them to get on the property to recover the minerals under the terms of the lease. That goes back to 1959 or 1960, right after statehood that we put that into effect. I think that what buttresses the view of the people back at that point in time - of the

legislators back at that point in time - that some mechanism had to be put in place that didn't impede or didn't obstruct the ability of the state to get at the right to develop the retained subsurface mineral estate.

SENATOR ELTON said he understood the discussion of the constitutional and Section 6(i) issues and asked if either of them get in the way of a mediation or arbitration process between the leasing entity of the subsurface rights and the property owner that is interested in protecting their property rights that could be delineated in statute.

MR. CHENOWETH replied:

All three of the provisions I have mentioned, the Statehood Act provision, the reservation and the constitutional provisions that I would look to speak in terms of the right to explore and develop. I think anything that would leave the surface owner in the position of preventing the exercise of that right would be challengeable. So, if you could, then, come up with some sort of a mechanism by which the parties were required to reach an agreement - it could be compulsory arbitration or something like that - as long as there was some mechanism in place by which the right could be exercised, I think you've fulfilled both the principles at work under the Statehood Act provision and the constitutional provisions.

SENATOR ELTON followed up asking if the mediation process failed and then the issues went to an arbitration process, as long as that didn't lead to a denial of access to the subsurface mineral rights, would that be okay.

MR. CHENOWETH replied, "I think that might survive."

SENATOR RALPH SEEKINS said he thought some protections were already in place for some of the provisions in the Bill of Rights. Article VIII, Section 10 of the Constitution already addresses the public notice issue in item 3 of the Property Owners' Bill of Rights.

MR. CHENOWETH agreed and added that it is fleshed out in the Alaska Lands Act. Current law requires 60 days notice and the Property Owners' Bill of Rights requests 90 days. It asks for additional notice to people who are not now named in statute as

entitled to that notice, but enacting those things doesn't require a constitutional change.

SENATOR SEEKINS said according to page 135 in a manual called "The Citizens' Guide to the Alaska Constitution," Alaskan voters turned down an amendment that would have given the Legislature veto power over all disposals of state-owned natural resources in 1976 and, at this point, it appears that the Legislature could not effectively veto a disposal of natural resources that was otherwise compliant with the law. He read:

The proposed amendment stemmed from legislative dissatisfaction with certain sales of state royalty oil that had been negotiated by the executive branch. At the time, many proponents of the amendment believed that its failure at the polls resulted from a biased summary of the proposition on the ballot, which was written by individuals in the executive branch who they claimed were opposed to the measure.

MR. CHENOWETH replied:

Well, in the sense of overriding, you do have the authority, and you just exercised it here a few weeks ago, to approve or withhold approval of the sale of royalty oil in the face of Williams. Had the Legislature not ratified that, we would not have a contract, but a contract having been executed and then ratified, anything you do now would raise questions on impairment of that contract.

SENATOR SEEKINS asked him to look into the background on that to clarify the issue. He thought it meant that somehow some of the Legislature's authorities are limited.

CHAIR OGAN said there are 70 or so shallow gas leases throughout the state now and he didn't know if certain areas could be identified for buyback or that a buyback program had to be generally applied. The state has already entered into a number of contracts and it would be violating contract law if it retroactively passed a law that voided a lease contract. He joked that would be known as the Litigator's Employment Act.

MR. CHENOWETH replied that the Chair was talking about a contract impairment provision under either the federal or state constitution. The second item under the Property Owners' Bill of

Rights talks about a buyback of all coalbed methane leases already let.

If the parties agree, you're not going to have an objection; but if the parties don't agree - if one of the parties, the lessee, says you're not offering us a fair price or we think there's more to be made in allowing us to go forward with the exploration and development of any reserves or anything we find under this lease, they are going to not consent to a state buyback. The question arose, I think, in another context in this session about what would be an adequate or fair price to support the buyback. Is it merely the nominal amounts that have been provided so far by the lessees in obtaining these leases - the rent and relatively low amounts that are specified in the statute or is there something more than that? And, I understand the Department of Natural Resources may have indicated, perhaps not to this committee, but in another context, that the costs of the amounts of recoverable coalbed methane that might be captured under these leases have to be factored into a determination of how much would have to be offered as a fair price to recover these leases. In other words, where they might have gotten in for nominal amounts, it might cost us substantially more than that to meet the kind of price that the lessees would ask for. Rightly so, I suppose, in order to make these lease buybacks work.

CHAIR OGAN said the buyback isn't just paying back the buck an acre lease price. It's the hard development costs and the possible loss of value of the profits or the aggregate value.

MR. CHENOWETH responded that it would be the value of one or the other of those depending on what DNR represented. He hadn't seen anything in writing regarding buyback of the Homer leases.

SENATOR ELTON stated that testimony in the Senate Community and Regional Affairs "was rather flabbergasting testimony."

I think the assumption had been that a buyback - you pay back what the lessees had paid for the lease. And, in fact, the testimony from the Department of Natural Resources was that you pay back that cost plus the potential profit from the resource that had been leased. It raises an interesting question and that

question being, if that's the case, are we leasing these resources at fair market value. If we lease them at a minimal X amount and have to buy them back at a huge Y amount, have we set an appropriate price on the resource. I think it would be interesting to invite the Department of Natural Resources back before the committee, if there's going to be any discussion at all of the buyback, and have them talk to that point, because it is a rather startling point.

CHAIR OGAN pointed out:

The higher the value, the more royalty we all get. I guess we could argue whether or not the leases on the North Slope are leased out too cheap that have created \$70 billion worth of revenues for the state.... It's a wide-open subject.

SENATOR SEEKINS directed the committee's attention to Article VIII, Section 9 of the Alaska Constitution, which basically says:

The Legislature may provide for the sale or grant of state lands or interest therein, and establish sales procedures. All sales or grants shall contain such reservations to the state of all resources as may be required by Congress or the state and shall provide for access to these resources. Reservation of access shall not unnecessarily impair the owners' use, prevent the control of trespass, or preclude compensation for damages.

He asked if this doesn't embody what the Alaska Property Owners' Bill of Rights is asking for.

MR. CHENOWETH replied that he didn't think that assumption was wrong. Article VIII, Section 9, directs the state to honor the reservations that are made by the Congress or by the state's own laws and "shall provide for access to these resources."

It's a mandate on the Legislature on formulating a mechanism by which the state's agents, its lessees, shall have access to development of these resources. At the same time, in order to try and strike a balance, and again, consistent very much with Section 6(i), the language says that the state is within its rights to establish a mechanism by which the access to

the resource 'does not unnecessarily impair the owners' use, prevent the control of trespass, or preclude compensation for damages.'

To date, through the first 45 years of statehood, our statutory reservation, AS 38.05.125, does repeat some of these concepts and the next section, AS 38.05.130, does provide a mechanism for compensation for damages by the posting of a bond. My understanding...that this is the first time with the shallow natural gas leases, this is the first time the state has in such a large way encountered a situation where the subsurface resource underlies private land. And, again, in the case of the North Slope and in the case of Cook Inlet, the development of the resource has been on land that the state has held both surface and subsurface title. In this case, in the areas that we're talking about, both in Mat-Su and the Kenai, extensive areas have been previously conveyed to private ownership with the reservation held by the state. And the question is how are you going to, for example, protect the surface owner in his right to use and claim any compensation for damages that may occur. The mechanism that we have in place now is simply the bonding mechanism. Either the surface owner and the lessee come to some agreement as to how compensation shall be paid or if they cannot come to an agreement because of the owners' refusal to negotiate or inability to come to some kind of a meeting of the minds, then a third party, the DNR, will determine what those damages are. So, we have some mechanism in place that is I think consistent with Article VIII, Section 9. I look here and under the Property Owners' Safeguard provisions, the ninth element of the Property Owners' Bill of Rights, the proposal is to take a little bit quite a bit farther than what we have in place right now in terms of to insure full restoration of the surface and to provide the full preleasing fair market value of any property or business damaged by coalbed methane development.

I'm not sure what standard DNR uses, for example, when it's called upon to set the amount of the bond. There is a requirement, though, that they give notice to both parties, sit down at a table and try to figure it all out, but my sense is that the bond amount set is generally on the low side. And although the statute

talks in terms of an amount to recover all damages or full damages, I'm not sure that the amount they set would, in fact, do that if the lessee subsequently acts in a way that is reckless and indifferent of the owners' improvements on the property.

SENATOR LINCOLN asked who authored and presented the Alaska Property Owners' Bill of Rights and if Mr. Chenoweth is explaining how it can be incorporated into SB 312.

CHAIR OGAN explained that SB 312 was previously noticed and could be used as a vehicle for the subject matter that is covered in the Bill of Rights, especially the competitive bidding, public notices and best interest findings. A bill would be drafted in proper statute form, but he wanted to have a discussion on the conceptual amendment while the presenters were in Juneau.

SENATOR LINCOLN said she had no objection to that, but she still wanted to know what organization presented the Property Owners' Bill of Rights.

CHAIR OGAN quipped, "I think the organization is Oganissogone.org."

SENATOR LINCOLN asked if Property Owners' Bill of Rights discussed leasing as it pertains to shallow natural gas and coalbed methane.

MR. CHENOWETH responded that was his interpretation, although the property owner consent was intended to be more generally applicable.

CHAIR OGAN noted that the state has no requirement for recording deeds and requiring proper notice to all landowners might be problematic. He said that the best interest finding language in the adopted CS would remain. Paragraph 5 in the Property Owners' Bill of Rights talks about a presumption that the "coalbed methane operator shall carry the burden of proving otherwise" and asked if that burden of proof is very common.

MR. CHENOWETH replied that in this context it is not a common mechanism in law, although it does exist. It might be employed in certain matters relating to evidence in the Civil Code and maybe the Criminal Code - that sort of thing.

CHAIR OGAN said the state already has authority to waive local elections if an overriding state interest existed and the Alaska Oil and Gas Conservation Commission (AOGCC) has authority to prevent waste of the resource. He asked if local regulation says well spacing can be every 360 acres and the AOGCC says the resource will be wasted with the wells that far apart, if AOGCC would have authority to override the local regulation.

MR. CHENOWETH answered:

The provisions in HB 69 that caused some controversy that were added last year represent, in my judgment, something that could be called an explicit preemption. Under certain circumstances the commissioner of Natural Resources is given the right to set aside the operation of any local government requirements and compel adherence to whatever the state requirement would be - both as to how DNR would operate under the amendment to AS 38.05.177 and as to the AOGCC provisions under AS 31.05. Take away that explicit preemption provision, repeal it, if you will, and you still have operating in this state a doctrine called preemption by implication. It's fairly well established; there are a handful of court decisions. And, essentially where we come down to in this state is that if you can make an accommodation between a state provision and a provision that's proposed by a general law municipality, so that the two can be harmonized, that they don't conflict one another, that the local ordinance does not substantially interfere with the effective functioning of a state statute or rule, then both can be made to operate. But, where the local ordinance does substantially interfere, it will be preempted by the state standard. In the context of oil and gas development, we don't have a lot of law; it's just not something that we have come to. Other jurisdictions do. I looked at Colorado, which has a history of oil and gas development and particularly coalbed methane development and determined that in a couple of key cases, the court has determined the provisions of the Colorado Oil and Gas Association (COGCC) rules governing, for example, well spacing, would generally govern over [END OF TAPE]...

TAPE 04-27, SIDE B

MR. CHENOWETH continued:

...effort by a local city or county ordinance to require a greater spacing - because the state of Colorado does direct that COGCC take the lead on the protection against waste to conservation efforts, etc.

Some of the other areas that have been addressed in some of these decisions include setback requirements, visual impact, criminal penalties that might attach, building permits, requirement of access roads, things of this sort. Those are areas where there have been conflicts. In some cases, the COGCC rules have been treated as presumptively preempting the operation of tighter local ordinances. And some of them, such as the requirement of building permits and access roads and emergency response cost disclosure and things of that sort, local ordinances have been allowed to function. Colorado case law and the Colorado body of rules seems to be more extensive than anything we have, but the principles that we have are generally heading in the same direction as what Colorado courts have been doing.

CHAIR OGAN asked if the state or AOGCC has an implied authority constitutionally to override local ordinances.

MR. CHENOWETH replied:

Actually, in this state, it's almost contrary to what we say in our constitution. We give broad powers to local governments under the applicable title in the constitution and we buttress that with some fairly broad statements of authority in Title 29. But, despite that, the courts in the state have found that preemption, either by express legislative direction or by implication using certain standards, continues to operate in this state in a whole area where there are potential land use regulation conflicts between the state and local governments. The Eklutna decision a few weeks ago is another example of that. This is where we are in terms of the development of our state law.

So, to the extent that this says the state must insure local government entities have matching powers of self-government enabling them to regulate coalbed methane development to protect the health, safety and

general welfare and quality of life of their local residents, well, hurray. Our provisions in the appropriate title of the constitution give broad powers to municipal governments. Our Title 29 provisions give broad authority to municipal governments and, nonetheless, you should expect that there would still be limitations put on the operation by the local governments where they conflict with what the Legislature has said state agencies shall regulate - or have implied the state agencies shall have a preemptive right to regulate.

CHAIR OGAN paraphrased:

Basically, the state gives the authority to DNR to lease and AOGCC to manage and regulate the waste and down-hole operations and those types of things and so those are authorities that there is a lot of case law that says the state is dominant in that.

MR. CHENOWETH said that is right. The committee might want to look at AOGCC authorities and add or take away from them with respect to coalbed methane regulation "where you might want to give local governments broader authority without having them run up against a preemption by implication argument...."

SENATOR SEEKINS said Article X of the Constitution says:

1. Purpose and Construction. The purpose of this article is to provide for maximum local self-government with a minimum of local government units, and....

He asked if it was inconceivable that the state could, in addition to those powers that are mentioned in the rest of Article X, provide for additional levels of maximum self-control to a municipality or is there a limit to what powers it can give.

MR. CHENOWETH replied:

I think the answer to that probably relates to what the Legislature does in writing the law. The framework in Title 10 spells out the organization, the idea that there is a home rule concept that operates in this state, the notion that we have boroughs for regional government and cities as the two forms of government

that shall operate - the authority for them to levy and collect taxes and things of that sort. But, beyond that basic outline, the authority given to these municipalities is largely laid out in Title 29. The dimensions of what you grant or withhold from a home rule municipality are laid out in Title 29. All of that then rubs up against what it is that you tell state agencies to do and how that may come to interfere with what the municipalities would like to do. It's at that point where we run into these problems in terms of which entity, the appropriate state agency or the local government, has the final authority in this area. That's where the courts have started to lay down some principles in this. And in Colorado, comparable principles have been identified and they have been applied to oil and gas leasing.

SENATOR SEEKINS asked in that regard, if the state wanted to give preemptive authority to a lower political subdivision of the state, could the Legislature do that shy of a constitutional amendment.

MR. CHENOWETH replied yes, it could simply take the authority away from AOGCC or take it out of the Alaska Lands Act. The municipalities would presumably step up to the plate and come up with their own regulations and ordinances.

CHAIR OGAN referenced item 6 of the Property Owners' Bill of Rights, which said:

The state must ensure local government entities have maximum powers of self government that enable them to regulate coalbed methane development to protect the health, safety, general welfare, and quality of life for local residents.

He interpreted that to mean that some of DNR's and AOGCC's authority would have to be delegated to local government to regulate coalbed methane development and they would have to create a division and hire some experts or have the borough assembly manage the authority. He was trying to figure out how the policy would be drafted.

CHAIR OGAN asked Mr. Chenoweth how long he had been an attorney for the state.

MR. CHENOWETH replied that he has worked for Legislative Affairs off and on for 26 years.

CHAIR OGAN asked, "Have I in any way asked you to or tried to influence you on what your testimony is here today?"

MR. CHENOWETH replied:

No, you have directed my attention to this and one of your colleagues had previously provided it kind of under the door and so I knew what you were talking about. In all honesty, my living with this over the weekend came in the context of drafting a bill to carry this out and trying to get a handle on what it is that was doable and my philosophy is give 'em what they want but, if it's going to cause problems, send them a memo that identifies what those problems are. And the problems that I see are with, basically, the property owner consent provision for the reason that we talked about earlier and with the issue of local control and how that is to play out. Those are the two big ones. We have a head start because the bill that you've noticed - is it 312 in the Senate - and the comparable bill in the House were based upon DNR's suggestions that this could be handled by competitive bidding and just switch from the particular kind of approach here to a competitive bidding basis. So, drafting-wise I was just trying to get a handle around the rest of these concepts and see what could or should be done.

CHAIR OGAN asked if any other state had given surface owners dominance over the subsurface estate?

MR CHENOWETH replied:

Not that I've come across. We generally follow the rule of what is happening in most of the western states and put the holder of the subsurface rights in the driver's seat even as against the person who has the surface estate ownership.

CHAIR OGAN said he has observed in some states where private citizens own subsurface estate that often a rancher would get fee simple title to property with no mineral reservation and then sell off the surface rights to a subdivision while he retains the subsurface rights. A couple of transactions later,

some people are a little disturbed to find that the land they bought from the rancher didn't include the subsurface rights. "Everybody should know when they buy property what they are buying. It's actually two pieces of property. There is the property on the surface and there's property underneath the surface. There's two titles."

MR. CHENOWETH said that information should be disclosed in the title search. "If you happen to get on land that came by way of the Statehood Act, you don't have it."

SENATOR LINCOLN asked Mr. Chenoweth to point out the sections of the Property Owners' Bill of Rights that he thought could be incorporated into legislation.

MR. CHENOWETH replied:

I think everything here could be incorporated into the legislation. That legislation would come with a very strong caution about the requirement of mandatory property owner consent. It would certainly raise questions about where the pivot point falls in the area of local control. And the one area that I thought at this time I could draft to would be to protect critical habitat and recreational lands - simply because in this state the ability to identify and withdraw lands from the public domain for a specific purpose rests with DNR if it's under 640 acres or with DNR and legislative approval if it's greater than 640 acres and, in addition, as far as elements of that particular paragraph are concerned, as part of a best interest finding, I would assume that if you had land that was identified in the best interest finding as having a higher best use for a wildlife refuge or protection for purposes of subsistence hunting or something like that, they would simply omit it from the area proposed for lease administratively. So, I'm not sure as a drafting matter, what would be required there. But, I think all of the rest of this certainly can be drafted to and then it becomes a question of whether as a matter of policy you want to adopt it.

SENATOR LINCOLN said the Property Owners' Bill of Rights was handed to her this afternoon, but she hasn't had a chance to read it through and asked if he had had an opportunity to write language on any parts of it that might be incorporated into SB 312.

MR. CHENOWETH replied that he had language, but he didn't know if the committee wanted to see it or not.

SENATOR ELTON suggested that however the work product is done, it be shared with the people who brought the Property Owners' Bill of Rights forward, the Friends of the Mat-Su, DNR, AML, the Mat-Su Borough and the Kenai Borough - so that comments on it could come from the people who are affected by it.

SENATOR DYSON said he had questions, but he would hold them until later so that the people who are visiting could have the time to testify.

CHAIR OGAN asked the director of the Division of Oil and Gas, Mr. Mark Myers, if he was available to testify regarding buyback and moratorium.

MR. MYERS, Director, Division of Oil and Gas, DNR, replied:

Mr. Chairman, we were asked specifically with regard to another bill that looked at just buyback of the eight leases in the Homer area and under that bill there are basically, kind of, three categories. The first category said that you had to refund the purchase price of the lease. And then, if that wasn't adequate to, basically, the lessee, you had to then pay them any cost they actually incurred in evaluating the lease and any work they did onsite. And then, the third element, if that couldn't be resolved, then the state has the right to take it back by eminent domain. So if you look at the cost of those particular leases in the Homer area, in our example, it was a \$500 application fee at the time - that was for leases applied for before the program was changed to the \$5,000 fee structure.

The specific example we looked at was for the eight leases in the Homer area because it was germane to that particular piece of legislation. Again, the first thing was the cost of acquiring the leases and if that wasn't satisfactory to the lessee, then the cost of any activity that had been performed in evaluating that lease. Then the third is, if that couldn't have been resolved, then the state had the right to take the leases back by eminent domain. So, in the case of the particular Homer area, we sort of did a resource

assessment and we looked at it in terms of the first format. It was no problem - \$500 application fees for those particular leases. So, that was relatively inexpensive. We don't know what work has been done, but we do know no wells have been drilled and maybe a little bit of surface work, but no seismic data being shot in the area - so, probably not a whole lot of cost.

The issue came in, then, under eminent domain, if the applicant protested, what would it cost to buy the leases back. And our understanding, when we had the lawyers look at it, was that the eminent domain standards of the state, and there are multiple ones, and it wasn't specified which one, but they all use the concept of just compensation. So, what we did is evaluate the resource potential of the area; again, we didn't do a full evaluation. We did some hypotheticals for the committee.

So, in order to do that, and we did as if you would be an exploration company assumably purchasing a lease or looking at whether you are going to expend money to drill. The first thing you look at is if you are successful in exploring, how much gas in this case, would you be able to recover and then what was your cost of recovery and then what was your profit after you sold it into the market.

So, you look at your basically, the potential size of the resource and then the netback you would receive on the value of that if you spent your money developing it. So, when you do those sorts of calculations, you have to do another thing. You have to assume so much gas and since you haven't done the exploration work, you have to guess at that using scientific methods. Your quality of guess will be dependent on the qualities of data you have in the area and that will help confine it somewhat and then geologic analogues you might use, your distance from market and then the size and shape of the accumulation and obviously the cost of development.

CHAIR OGAN asked him to get to the bottom line.

MR. MYERS continued:

The bottom line was we used a hypothetical in that case of 20 to 100 BCF of gas. We low-balled what our resource estimate might be and then we kind of low-balled development costs and came up with a dollar an MCF netback, because it's pretty typical of what people will require. Anyway that comes in at millions of dollars, basically - if you have to assess the resource. That was for conventional gas and that didn't include any coalbed methane potential. The methodology we would have to use to evaluate just compensation, I believe, we would have to contemplate what the risk resource base is and the netback if the development cost went forward. That's how companies assess for projects and that's again how we would attempt to do that. It would certainly be debated about how good the resource potential is and there would be some sort of legal settlement once you finally got sorted through it. The bottom line is if you have to go to eminent domain, the cost of acquiring the leases, if they're in a good geologic area, are significant. If the area is of low potential, low probability areas, difficult to develop, those costs are considerably less.

CHAIR OGAN asked how much that was.

MR. MYERS estimated acquiring the leases would cost millions of dollars and he would have to do a similar analysis for the Mat-Su Valley. The coal is there, but how commercial it is is not known. There would be a wide range of values.

But if you go into the resource base and you have a company, say, like Evergreen that's shot core holes and worked on the ground, on those particular leases, you would have to minimally compensate them for the hundreds of thousands of dollars, or potentially millions of dollars, they might have spent to evaluate those leases and then you would have to take some look at what you felt the potential resource base was economically. So, that would be hypothetical, but I would guess in the Valley also, it would probably go into the millions of dollars. I don't have the solid number on that one. I don't know the commerciality of coalbed methane in the area.

CHAIR OGAN asked if there were further questions of Mr. Myers. There were none, but Mr. Myers added that there are 72 leases

currently issued statewide and 26 applications that have not been granted.

MS. MICHELLE CHURCH, Friends of Mat-Su, appreciated the opportunity to speak. She was heartened to hear Mr. Chenoweth say that the Property Owners' Bill Of Rights can be written into law. She felt that now is the time to do a buyback, because significant dollars had not yet been invested by industry. However, she also said:

Senator Elton's comment was excellent in that if you sold these leases for a few tens of thousands, maybe, a couple hundred thousand dollars and they're now claiming they're valued at a hundred thousand dollars or a hundred million dollars or whatever it is, then you have vastly undersold our resources and I think that's something that you guys really need to look at.... The other thing is that if those leases, that coal potential is worth millions of dollars, then it should be taxed at millions of dollars. You can't have it both ways. Our suggestion would be that you institute a buyback now and certainly compensate them for the core holes that they've done and for the work they have put in and then make them come back in under new regulations in a competitive bidding process and then if they can make millions of dollars under those regulations, then so be it. At this point, there's no real harm done.

The point that doesn't sit well with her is the whole idea of arbitration.

If the property owner cannot say no and the oil or the gas company knows that that property owner cannot say no, then they are never going to offer them the best deal that that property owner could get....

MS. CHURCH supported taking control from the AOGCC and giving it to local government, because:

We can walk into their offices any day; we don't have to get on a plane and come down and deal with this kind of an entity. That kind of development is very intensive on the surface and it's going to affect our community enormously and my only last comment would be that I ask that you figure out a way to incorporate a severance tax or allow the municipalities or whatever

needs to happen on that, because the Mat-Su Borough is going to do nothing but bear the brunt of this and we need to be able to benefit from it. That should be part of the cost benefit best interest finding.

SENATOR WAGONER said he thought AOGCC was headquartered in Anchorage.

MS. CHURCH responded:

Well, our experience with the AOGCC has been less than exemplary and so I think that we would really like again to have our local legislators who are elected from our neighborhoods, who also live in our community and are going to be impacted by the same things that we're all going to be impacted by to have that final say over that local control. I would much rather have that. They could work in concert, of course, with AOGCC, but the AOGCC, as it currently is put together is a political party; it is a politically appointed board and that does not give us any amount of confidence.

SENATOR WAGONER replied that all politics are local and it seems that she is asking for local control at the borough level to supercede the state's right to develop its resources in all cases.

MS. CHURCH replied, "Well, yeah."

CHAIR OGAN thanked her for her comments and invited Myrl Thompson to testify.

MR. MYRL THOMPSON, Chairman, Ogan Is So Gone Recall, suggested if Mr. Myers' concern about the buyback being so expensive is due to the potential loss of gas revenues, why not trade those leases out. He contended:

You have no loss, whatsoever, of the gas because the gas potential here could be argued as just as well as the gas potential over there and that would take that part of the equation totally out of there and then you would just have to give back the money that they spent for the core holes and moving their equipment around. Plus that would take this stuff out of our neighborhoods, which it should have never been in to begin with. You guys have 99 percent of the rest of

Alaska that nobody has ever said boo to when you guys wanted to go for gas or for oil or anything. The problem arose when you guys came on our private property....

Another thing, we don't have protections for our water in place. What if an aquifer goes down? What if it gets polluted by salinity or polluted by other elements? I'm going to explain this to you as best I can. Water does not rise from the center of the earth and go up to 3,000 ft. That water came from the surface and worked its way down to 3,000 ft. When you go down and you pump this water up the coal seams to release the gas, you've got processed water that has to be reinjected into a disposal, class 2, disposal well.

MR. THOMPSON used the disposal well on Vine Road as an example of one that is in the middle of a large aquifer. Sixty thousand gallons of water was taken out and 1.2 million gallons of production water, from Church Road to Houston, was getting pumped back in. There is a chance that the additional pressure could make the dirty water raise back up and, "What if it pollutes your well?"

MR. THOMPSON said his parents' house is right next to that disposal well and their house is worth more than \$250,000. "What if you ruined their water? How are we going to remedy that?"

He said there are about 80 water wells in that area and a lot of the houses are worth over \$200,000. There is nothing protecting the owners. He asked:

What's more important, Evergreen's profits or these people's livelihoods? There's no remedy for that whatsoever.... Who are we going to sue? We're going to sue you guys; we're going to sue Evergreen. Who's going to take care of that?

CHAIR OGAN responded that there are constitutional protections in Article VIII, Section 9, that are similar to what is mentioned in the Property Owners' Bill of Rights.

SENATOR WAGONER asked how deep the wells are in Mr. Thompson's area.

MR. THOMPSON answered that the average well in that area is between 168 - 186 ft. and the aquifer could go down as far as 300 ft. The problem is that the water that was pumped out from 3,000 ft. well below the aquifer, originated from the surface.

If it had a route down and you're applying pressure to water that's down there, it could very easily rise up and mix in to the bottom of the aquifer, therefore, polluting this aquifer and there's nothing in place to protect the folks.... I believe this is a sweetheart deal so that Evergreen could maximize their profits using our infrastructure that we pay the taxes on or have paid the taxes on for years.

SENATOR WAGONER asked what infrastructure he is talking about.

MR. THOMPSON replied roads and whatever. He asked what objections there would be to taking the gas exploration to a land where people don't live.

CHAIR OGAN said there were a lot of people who wanted to testify and he would give the ones who were going to catch a plane priority.

SENATOR SEEKINS asked how deep the gas wells are.

CHAIR OGAN replied the deepest one is 3,750 ft.

MR. THOMPSON asked again why the leases couldn't be relocated.

CHAIR OGAN replied because they were already leased.

MR. THOMPSON asked how they were leased.

CHAIR OGAN replied they became available through the state's leasing program.

MR. THOMPSON asked who made that available.

CHAIR OGAN replied that he did nine years ago.

MR. THOMPSON said, "My suggestion to you, Mr. Ogan, is fix it or we'll fix it."

SENATOR SEEKINS interrupted to explain that it takes 11 votes in the Senate and 21 votes in the House to get anything passed.

CHAIR OGAN recalled that last year's bill passed 19 to 1 in the Senate.

SENATOR SEEKINS said, as a point of order, that Senator Ogan did not pass the bill, the Legislature did.

MR. THOMPSON said, "Let me rephrase that. The body did it; let the body fix it."

CHAIR OGAN responded, "It's always about policy around here."

MR. JOHN VANDUSKA, Palmer resident, supported Ms. Church's and Mr. Thompson's comments. He said that Senator Ogan had a lot of influence on the way the shallow gas issue was formed and really believed it was to provide cheap energy to the Bush communities.

SENATOR SEEKINS interrupted to say that the governor at the time [Tony Knowles] didn't veto it, either.

MR. VANDUSKA continued saying that he thought Evergreen didn't want to develop gas in the Bush because it didn't have the roads and relatively close infrastructure that the Kenai and Mat-Su have. Somehow, the state made a mistake and industry was allowed to come into the fastest growing area in the state, the Mat-Su Valley.

The surface owner needs to have priority over the subsurface...and I believe that isn't giving up the state's rights to the subsurface. A lot of the people in this room would negotiate a deal.... But, to sit here and say that 'Oh, we've had this since the 1800S. You're going to have to live with it.' That is what is going to destroy a lot of your guys' political careers, because we won't go away. It's just going to get worse and worse.

SENATOR SEEKINS interrupted saying that he understood Mr. Vanduska to say that a few dollars would make this issue go away and he is trying to use it as the primary issue to recall Senator Ogan.

MR. VANDUSKA replied that that wasn't true and there were other reasons for recalling him.

SENATOR LINCOLN raised the point that the recall is not under discussion, but rather the Property Owners' Bill of Rights.

SENATOR SEEKINS said he is worried that testimony he is hearing is disingenuous because it is being suggested that a few dollars could make this issue go away. He is also concerned with the comment about everyone's career if they don't go along with it.

SENATOR ELTON felt they were straying way off the topic and pointed out that he hadn't heard anyone testify, "Give me a few dollars and this issue goes away." He has heard testimony directed toward the Bill of Rights, some of which may or may not be able to be implemented because of Section 6(i) or constitutional concerns.

SENATOR SEEKINS justified his remarks saying he heard a veiled threat about their careers when only public policy was being discussed.

MR. VANDUSKA said the property subsurface rights issue is a small part of the bill. All of the safeguards [in the Property Owners' Bill of Rights] need to be put in place.

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4:50 p.m.

MR. VANDUSKA concluded saying that he thought the state leasing program was designed for the Bush area and somehow industry did some fast dealing and got it into his area.

SENATOR WAGONER said he heard the public testifying that they felt more comfortable with the borough handling the coalbed methane and shallow gas issue than the state and AOGCC. He asked if the public knew that the borough manager and mayor were fully aware of the bill that went through the Legislature last year.

Someone from the audience stood up and started shouting.

SENATOR OGAN gaveled the person out of order and asked for the Sergeant at Arms to be called.

MR. VANDUSKA responded to Senator Wagoner's question saying that some officials did know about it and at first coalbed methane sounded like a good deal, but after looking into it a little deeper, it looked like a really bad deal.

That's why these people are upset. When you get a tiny bit of the story, which a lot of you guys probably don't know half of what we know, already, it sounds

good - until you realize what it actually does and how little power you've got. I have thousands and thousands of dollars, hundreds of thousands of dollars invested in property. I have 120 acres next to Scott. All of a sudden I've been paying taxes on that for 30 years and all of a sudden some company from Colorado can come on that property and I'm just some little peon that doesn't have a single thing and he's going to be there for 30 years. That's why these people like Michelle are really upset and justifiably so.

CHAIR OGAN asked if he was aware when he bought the property that [he didn't have the subsurface rights].

MR. VANDUSKA replied, "Totally aware..., but you would think that you would have some negotiating power to get some kind of compensation. You don't realize that you have nothing."

CHAIR OGAN countered, "Actually, you do."

SENATOR WAGONER repeated that the borough mayor and manager were aware of the bill and its ramifications.

SENATOR DONNY OLSON said he is a Bush legislator and wanted to know if the Property Owners' Bill of Rights intended to include the Native Corporations as private property owners for which "the state must provide a legal fund [Item 1 in the Property Owners' Bill of Rights]."

MR. VANDUSKA replied, "Everybody in this room knows that my part in this Bill of Rights is the property owners' rights.... I'm a little weak on that."

SENATOR OLSON said he just wanted that cleared up.

MR. VANDUSKA said private citizens did not want to be put in the position of taking a multibillion-dollar company to court and that the little guys need more leverage. "Everything in this whole thing has been to tromp us down and just give the industry everything."

SENATOR SEEKINS said he understood the property owners' concerns, because he is a property owner also, but today he wanted to hear why what they are doing is good or bad public policy. "As far as I know, it isn't us against them; it's a matter of what is good public policy."

MS. ROBIN MCLEAN, Sutton resident, said she is on the Sutton Community Council, which is very concerned about coalbed methane development. She was representing herself today and thanked the committee for bringing Mr. Chenoweth to the meeting and said she was heartened to know that the Property Owners' Bill of Rights can be drafted in a way that could become law.

She accused "our leaders" for trying to use the state's constitution against property owners saying the constitution states "may lease" which is language that also gives the Legislature the discretion not to lease "subject to reasonable concurrent uses." The bill that passed last year did not provide an opportunity to consider those concurrent uses. She said, "Well, I have a reasonable concurrent use. I have an unreasonable concurrent use with the coalbed methane lease."

She pointed out that it is Mark Myers' job, as director of the Division of Oil and Gas, to make reasonable decisions about where to develop our natural resources.

So, we sort of have a problem here, because for years and years it's gone along just fine - leasing our resources in places where nobody lives. But what's happened here is that we have the principle of maximizing our resources, which we all believe in, running head on with property rights, which, hopefully we all believe in. This particular industry, when it happens on private land is an anti property rights industry, because of the way our laws are written. So, what you have to do is basically let this industry go into residential areas. It does not work.

There are 12,396 individual pieces of land in the Mat-Su that are leased under this program. Ninety-six percent of them are private property. I say that this is a jobs bill - this coalbed methane bill is a jobs bill, but it is a jobs bill for lawyers - because you're going to have 12,396 lawsuits in the Mat-Su. You're going to have people fighting and spending good money to protect what they have and if they lose in court, because their land has been leased away, then that is shame on our system. What should have happened is this land never should have been leased.

In the very first meeting of the coalbed methane meetings back this summer in Sutton, on August 18, a man was looking at the map and he said on public

radio, 'I just learned that I just rent my land; I don't own my land.' I don't think that's anything that people in Alaska really believe in. This is a property rights issue and it needs to be corrected or there is just worlds of trouble that are going to come and I am really very encouraged to hear that the state can draft the Alaska Property Owners' Bill of Rights, to make it law. I encourage you to do it and I don't want to take up any more of your time. That's all I have to say.

SENATOR WAGONER asked how many people don't want coalbed methane or shallow gas development [of the 96 percent of 12,396 private property owners].

MS. MCLEAN replied that most of them still don't know about the issue. Most of them haven't seen the maps. She said that there were no maps to look at during their borough assembly meetings. On August 18, 2003, the Sutton Assembly created the "meeting map" so people could finally see where the leases are.

When you see where the leases are, it takes your breath.... The DNR now has available these little map books where you can see the entire core area.... Industry is interested in the hinterlands, too, but they're interested right in the center of the Mat-Su Valley. There is \$230 million in assessed value that has already been leased.

Now for schools, some of our money for schools in Mat-Su comes from property values and we know from the Lower 48 that if you get one of these wells on your land, your property values drop by 22 percent. That's going to have a huge impact on the Mat-Su Borough. Our Mat-Su Borough is very much in favor of controlling this industry and we hope that they are sending a message of the resolutions and that you folks down here respect the local control of the Mat-Su and the Kenai Boroughs and you also respect our wish for you guys to get this anti property rights industry out of the private property area and to the other 99 percent and we hope you can do that.

CHAIR OGAN commented he had just watched a TV program about oil wells in downtown Los Angeles where a derrick was set up right next to skyscrapers. He thanked Robin for her testimony and asked Kathryn Franzenburg to testify.

MS. KATHRYN FRANZENBURG, private property owner, endorsed the others' testimony. She also believed that when the legislation passed last year, it was with the best of intentions, but she is concerned that her land is part of the one percent of privately owned land that has been leased. She encouraged the committee to honor the moratorium until all perspectives and implications could be fully investigated. She felt the leases needed to be bought back or traded for others so that 100 years from now people would feel good about the decisions that were made.

SENATOR SEEKINS asked questions about maps of San Juan County she had handed out.

MS. FRANZENBURG clarified that the maps showed the additional roads that had been put in to make access for coalbed methane.

SENATOR SEEKINS said he researched the Farmington area of San Juan County [New Mexico], which has 115,000 people, and nothing indicates that the roads access coalbed methane development.

MS. FRANZENBURG responded that's exactly why the moratorium is needed - so the situation can be studied. She maintained that the roads came with the coalbed methane development in that area and that will happen in the Mat-Su Borough, too. When the industry leaves, the property owners and taxpayers will be left to pay for maintenance of all the roads.

SENATOR SEEKINS didn't think the map was credible.

CHAIR OGAN said, in looking at other maps of the area he was able to obtain on short notice, that some of the roads are actually in national parks and other federal properties that aren't open to coalbed methane development and many are subdivision roads.

SENATOR WAGONER cautioned that the Kenai Peninsula has thousands of acres of private land currently under lease that are having conventional gas produced on them. He said the whole City of Kenai is under lease for gas production.

SENATOR LINCOLN asked how long Ms. Franzenburg envisioned a moratorium lasting.

MS. FRANZENBURG replied until they can agree that all the issues have been researched. She thanked the committee and Senator Ogan, particularly, for taking the time to hear this out.

CHAIR OGAN responded that rural Alaska has tremendously high energy costs and many people depend on the shallow gas Red Dog Mine. He noted that the committee is not just speaking about their "backyard," but the whole state, and it was up to the Legislature to make a policy call.

MS. PATRICIA MACK, Palmer resident, said she is very familiar with the Red Dog project and did not think that anyone in Alaska is against coalbed methane, but she just didn't want it in her backyard. Before Alaska became a state, people knew the state had reserved the mineral rights and why. She stated that shallow gas venting produces brown smog, which is a public health hazard that is directly linked to cardiac failure and asthma.

CHAIR OGAN said his experience is that the stuff that comes up the vent is methane gas and that's what they put in the pipeline and sell.

MS. MACK replied that is true, but in the process of developing the well, a lot of the gas escapes.

5:40 p.m.

MR. BOB SHAVELSON, Homer resident, said he was encouraged to hear Mr. Chenoweth's comments about the Property Owners' Bill of Rights. He wanted to highlight that this is a first-time conflict with coalbed methane, not conventional gas. He thought everyone needed to get educated about its development and how much it would really cost to buy back the leases. He noted that the subsurface under Homer's drinking water reservoir had been leased for coalbed methane and he rhetorically asked what that would be worth.

He said that Evergreen Resources circulated a letter on February 25 to the residents of Willow that included a number of misstatements, one of which asserted a state law says that all waste waters produced in coalbed methane had to be reinjected. He encouraged the committee to get sound information to base its decisions upon. He pointed out that the Property Owners' Bill of Rights embodies property owner consent and local control and that those are two, red meat, conservative, Republican issues and he hoped a way could be found to embrace them in some type of intelligent policy. He concluded saying, "I don't think we can ignore this problem; it's too big and I hope we can find some solutions rather than look for an excuse not to act."

SENATOR LINCOLN thanked him for his comments and asked if Homer supported the leasing of lands for coalbed methane projects.

MR. SHAVELSON replied, "Emphatically no." There are over a thousand signatures on a petition requesting that the leases in the Homer area, over 22,000 acres, be bought back. There was even vociferous opposition to leasing conventional oil and gas wells in the Homer area out to Anchor Point. He said:

I think the Homer area has been very clear that oil and gas development in any shape or form conflicts with the fishing and tourism economies that are important to the area.

SENATOR LINCOLN asked specifically if the Homer City Council supported it.

MR. SHAVELSON replied, "No." He thought there was also a resolution from the Kenai Peninsula Borough opposing it, as well.

SENATOR SEEKINS asked him to clarify his comment about state law saying shallow well water has to be reinjected.

MR. SHAVELSON replied that a February 25 letter from Evergreen Resources to every box holder in the Willow area asserted that the wastewater produced in coalbed methane development had to be reinjected and that it was state law to do so.

SENATOR SEEKINS asked if that wasn't the case.

MR. SHAVELSON replied that is not the case.

CHAIR OGAN responded that the water they are producing is required to be reinjected because it's not drinking water quality and has large amounts of dissolved solids in it - mainly sodium and other minerals. Surface discharge is allowed in Alaska with a permit saying the water is good enough and won't pollute anything. "We have the toughest water quality laws in the nation."

All the produced water Evergreen has encountered so far is not drinking water quality, so by law they are required to reinject it.

SENATOR SEEKINS sought clarity asking if Senator Ogan said all the wastewater that Evergreen Resources has encountered so far must be reinjected by law.

CHAIR OGAN replied that is correct and the reason is because it is not high enough quality to be discharged on the surface.

MR. SHAVELSON clarified that DEC Commissioner Ballard confirmed to him that there is a loophole in the law that allows the surface discharge of coalbed methane produced water.

CHAIR OGAN said there is a difference between produced water and water from drilling operations and, "That's the loophole she is talking about."

CHAIR OGAN said he didn't have a problem with clarifying the intent.

MR. PETE PRAETORIUS, Palmer resident, said he would talk about two issues, the moratorium and local control. He felt that a lot more studies were needed about coalbed methane issues before it was allowed into their neighborhoods. About local control, he said:

It doesn't start with local government; it starts with good sound regulations from the state. Then if local government deems that regulations aren't strict enough, they can step in and put in some stricter regulations. I don't think local control means weakening state regulations. That wouldn't make sense.... Local control doesn't mean more excess burden and good state regulations will prevent that....

MR. MIKE MCCARTHY, retired geologist from Homer, said he represented the Kachemak Bay Property Owners' Alliance, one of the most intensive oil and gas producing areas of the state, and that Kenai Peninsula Borough Resolution 2003-1.9 was passed by the Assembly in opposition to coalbed methane development.

If they can see that coalbed methane is not appropriate for their area, then I certainly think the Senate can see the same thing. This resolution was a difficult thing to pass. It took more than one meeting, but it did, in fact, pass. It was a resolution requesting additional public notice requirements and requesting the state to buy back the

south peninsula shallow gas leases. There is a similar resolution [2003-12a] from the City of Kachemak, which is an area that is almost totally impacted.... The City of Homer passed a resolution, 03-147s.... The potential adverse impacts of CBM development may far outweigh the beneficial benefits.

He read a portion of a letter, dated March 17, from Ann Whitney, a realtor who tried to sell property where subsurface rights had been leased, saying that buyers were getting to be more difficult to find because of the leasing issue. However, he felt it was still possible to find a way out of the dilemma. He was just told by an attorney that contracts against public policy can be voided and offered to research that issue more.

SENATOR LINCOLN asked him when the resolutions were dated.

MR. MCCARTHY answered Homer on December 1, 2003, the City of Kachemak on December 10, 2003, and the Kenai Peninsula Borough on December 16, 2003.

5:58 p.m.

TAPE 04-27, SIDE B

An unidentified person from Senator Seekins' district commented from the audience, but it was indiscernible.

SENATOR LINCOLN stated that she represents a great deal of Bush Alaska and hoped people didn't think her constituents were saying to come on out and put it in their front or back yard, because that's not the case. She hoped the public would remember her small communities when they are trying to stop something from coming into their area. "You will remember Bush Alaska - that it isn't just a problem that occurs in urban Alaska."

CHAIR OGAN concluded:

This committee is about policy, always will be about policy. We will grapple with these issues. I personally see some almost insurmountable obstacles, especially the property rights issues that would take a constitutional amendment and an amendment of the Statehood Compact....

I wanted to be very clear for the record that I have committed to make this about policy and we'll work on

it. Beyond that, I can't promise anything, because I don't control the members of this committee nor do I control the members of the Legislature.... Sometimes there is the law of unintended consequences and we deal with those all the time around here and that's why we have a legislative process that allows us to review these things and work on them.... Thank you for the committee members' patience in hanging there and thanks for coming down today. We're adjourned [at 6:00 p.m.].

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