

**ALASKA STATE LEGISLATURE
SENATE RESOURCES STANDING COMMITTEE**

May 4, 2004

3:55 p.m.

TAPE(S) 04-48

MEMBERS PRESENT

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

MEMBERS ABSENT

Senator Georgianna Lincoln

COMMITTEE CALENDAR

SENATE RESOLUTION NO. 4

Requesting the United States Congress to amend the federal Wilderness Act to authorize fishery enhancement programs and similar activities in wilderness areas.

MOVED SR 4 OUT OF COMMITTEE

CS FOR HOUSE BILL NO. 319(FIN) am

"An Act relating to the disposal of state land by lottery; relating to the reservation of rights by the state in land contracts and deeds; relating to the disposal, including sale or lease, of remote recreational cabin sites; and providing for an effective date."

HEARD AND HELD

CS FOR HOUSE BILL NO. 531(FIN) am

"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."

MOVED SCS CSHB 531(RES) OUT OF COMMITTEE

PREVIOUS COMMITTEE ACTION

BILL: SR 4

SHORT TITLE: AMEND WILDERNESS ACT

SPONSOR(S): RESOURCES

05/03/04 (S) READ THE FIRST TIME - REFERRALS
05/03/04 (S) RES
05/04/04 (S) RES AT 3:30 PM BUTROVICH 205

BILL: HB 531

SHORT TITLE: CONVENTIONAL & NONCONVENTIONAL GAS LEASES

SPONSOR(S): RESOURCES

03/04/04 (H) READ THE FIRST TIME - REFERRALS
03/04/04 (H) O&G, RES, FIN
03/16/04 (H) O&G AT 3:15 PM CAPITOL 124
03/16/04 (H) Heard & Held
03/16/04 (H) MINUTE(O&G)
03/18/04 (H) O&G AT 3:15 PM CAPITOL 124
03/18/04 (H) Heard & Held
03/18/04 (H) MINUTE(O&G)
03/22/04 (H) RES AT 1:00 PM CAPITOL 124
03/22/04 (H) <Pending Referral>
04/01/04 (H) O&G AT 3:15 PM CAPITOL 124
04/01/04 (H) Moved CSHB 531(O&G) Out of Committee
04/01/04 (H) MINUTE(O&G)
04/05/04 (H) O&G RPT CS(O&G) 7AM
04/05/04 (H) AM: HOLM, KERTTULA, MCGUIRE, ROKEBERG,
04/05/04 (H) CRAWFORD, HEINZE, KOHRING
04/14/04 (H) RES AT 1:00 PM CAPITOL 124
04/14/04 (H) Heard & Held <Assigned to Subcmte>
04/14/04 (H) MINUTE(RES)
04/16/04 (H) RES AT 1:00 PM CAPITOL 124
04/16/04 (H) Moved CSHB 531(RES) Out of Committee
04/16/04 (H) MINUTE(RES)
04/19/04 (H) RES AT 1:00 PM CAPITOL 124
04/19/04 (H) Moved CSHB 531(RES) Out of Cmte. Again
04/19/04 (H) MINUTE(RES)
04/21/04 (H) RES RPT CS(RES) 3DP 1DNP 3NR 2AM
04/21/04 (H) DP: GATTO, STEPOVICH, MASEK; DNP: LYNN;
04/21/04 (H) NR: HEINZE, WOLF, DAHLSTROM;
04/21/04 (H) AM: KERTTULA, GUTTENBERG
04/26/04 (H) FIN AT 1:30 PM HOUSE FINANCE 519
04/26/04 (H) Continuation of Meeting Canceled 6:39
PM
04/27/04 (H) FIN AT 1:30 PM HOUSE FINANCE 519
04/27/04 (H) Moved CSHB 531(FIN) Out of Committee

04/27/04 (H) MINUTE(FIN)
 04/28/04 (H) FIN RPT CS(FIN) 4DP 5NR
 04/28/04 (H) DP: STOLTZE, CHENAULT, FATE, FOSTER;
 04/28/04 (H) NR: MEYER, JOULE, CROFT, HARRIS,
 04/28/04 (H) WILLIAMS
 05/01/04 (H) TRANSMITTED TO (S)
 05/01/04 (H) VERSION: CSHB 531(FIN) AM
 05/01/04 (S) READ THE FIRST TIME - REFERRALS
 05/01/04 (S) RES, FIN
 05/04/04 (S) RES AT 3:30 PM BUTROVICH 205

WITNESS REGISTER

Mr. Paul Shadura, President
 Kenai Peninsula Fishing Association
 Soldotna AK

POSITION STATEMENT: Supports SR 4.

Mr. Jerry Fandrei, Executive Director
 Cook Inlet Aquaculture Association
 Kenai AK

POSITION STATEMENT: Supports SR 4.

Mr. Jerry McCutcheon
 Anchorage AK

POSITION STATEMENT: Commented on SR 4.

Representative Hugh Fate
 Alaska State Capitol
 Juneau, AK 99801-1182

POSITION STATEMENT: Sponsor of HB 319.

Mr. Bob Loeffler, Director
 Division of Mining, Land and Water
 Department of Natural Resources
 400 Willoughby Ave.
 Juneau, AK 99801-1724

POSITION STATEMENT: Commented on HB 319.

Mr. Mark Myers, Director
 Division of Oil and Gas
 Department of Natural Resources
 400 Willoughby Ave.
 Juneau, AK 99801-1724

POSITION STATEMENT: Commented on HB 353.

Mr. Matt Davidson

Alaska Conservation Voters
Juneau AK

POSITION STATEMENT: Commented on HB 531.

ACTION NARRATIVE

TAPE 04-48, SIDE A

^#SR4

SR 4-AMEND WILDERNESS ACT

CHAIR SCOTT OGAN called the Senate Resources Standing Committee meeting to order at 3:55 p.m. Present were Senators Wagoner, Seekins, Elton and Chair Scott Ogan. Senator Stevens arrived at 5:12 and Senator Dyson arrived at 4:53. The first order of business to come before the committee was SR 4, a follow up resolution to the one passed by the committee earlier, asking the Department of Interior to allow the release of sockeye fry into Tustumena Lake in Wilderness Society and Alaska Center for the Environment versus the U.S. Fish and Wildlife Service. The Department of Interior has determined that qualifications to assert in the Supreme Court aren't there and the Ninth Circuit has met and balked. The result of the lawsuit is that 100,000 adult fish will not be returning to lower Cook Inlet.

SR 4 asks Congress to amend the Wilderness Act to deal with non-commercial activities such as the sockeye salmon enhancement programs, which have been going on in Tustumena Lake for 30 years.

MR. PAUL SHADURA, President, Kenai Peninsula Fishing Association, supported the resolution saying, "The urgency of this action cannot be overstated.... It is imperative that Alaska encourages our federal delegation and our president of the need to take action...."

MR. JERRY FANDREI, Executive Director, Cook Inlet Aquaculture Association (CIAA), recognized the importance of this issue.

The Ninth Circuit Court of Appeal's decision to enjoin the Tustumena Lake project restricts our ability to complete our goal of providing protection for the Cook Inlet salmon resource. The decision also limits the ability of the state to manage its fishery resources, particularly those resources providing the basis for the state's rural economy. On behalf of CIAA, I support SR 4 and look forward to its submittal....

MR. JERRY MCCUTCHEON, Anchorage resident, said:

Put the fish into Tustumena Lake. Let the state take the legal responsibility for having it happen and let's solve it somewhere else. I think by not putting the fish in the lake we set a bad precedent.... The waters of the state of Alaska belong to the state of Alaska. I don't know whatever happened to that, but I think it's a good time to solve the problem.

CHAIR OGAN said he agreed with him.

SENATOR WAGONER moved to pass SR 4 from committee with individual recommendations and attached fiscal note. There were no objections and it was so ordered.

CHAIR OGAN added that Mr. McCutcheon's comments relate to the submerged lands issue and he thought the State of Alaska should have the ability to regulate what happens on them, whether they are an in-holding in a national wildlife refuge or not. "I'm outraged that somehow somebody thinks their wilderness experience is being compromised because there's some little fishies swimming in a lake somewhere and maybe a float plane that landed."

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4:08 - 4:09 - at ease

^#HB319

CSHB 319(FIN) am-REC.CABIN SITES/LOTTERY SALE/RTS. RESERV

CHAIR SCOTT OGAN announced CSHB 319(FIN)am to be up for consideration.

REPRESENTATIVE HUGH FATE, sponsor of HB 319, said he'd reviewed only some of the amendments.

4:10 - 4:12 - at ease

MR. BOB LOEFFLER, Director, Division Mining, Land and Water, Department of Natural Resources (DNR), said he is very proud of the division's remote recreation program, which is continually being improved. The technical amendments are just workability sections so his goal can be accomplished.

He informed the committee that surveys are currently taking his department roughly two years from the time a lease is initiated.

Individual parcels usually take longer than the batches. The Mat-Su Borough has a 10-month backlog and the proposed legislation would probably put individuals to the end of that line; Fairbanks North Star Borough's situation is similar. This brings about his concern that this program might eliminate a portion of the department's current program to do surveys in the proposed 24 months. Secondly, he was concerned that an individual would go through the process and not be finished in the 24-month timeframe and the department would lose its authorization to convey the surveyed land to them. To protect individual Alaskans, he proposed Amendment 1 that says survey and appraisal shall be completed within 24 months of lease issuance unless an extension is deemed necessary by the commissioner. This directs him very clearly to accomplish the sponsor's intent, but doesn't penalize an individual if it can't be done.

MR. LOEFFLER said that Amendment 2 prohibits the department from selling land with high mineral potential by standards adopted by the department in regulations (page 4, section (g)). Requiring standards to be put into regulations would eliminate his FY05 sale. However, he can accomplish the sponsor's intent by adopting standards, but not putting them into regulations.

MR. POUND refined the amendment saying he would delete only "in regulations".

MR. LOEFFLER said that would be fine. The third technical amendment deletes subsection (g). He explained that at least two boroughs require either absolutely or approximately 10 acres as the minimum parcel size, but the bill sets 10 acres as the maximum parcel size. Given his experience with people going out on the ground and trying to figure out the area along curved streams and lakes, he didn't think most of them would get particularly close. It would be odd to send people out knowing they would be unsuccessful in the Mat-Su and Kodiak boroughs. He thought the sponsor's intent could be accomplished by the technical change.

MR. POUND replied that it was acceptable.

SENATOR WAGONER said he liked line 31 in section (g) that deals with lake and river frontage so one person couldn't go in and develop one-acre lots clear around a lake.

MR. LOEFFLER agreed with him in general and said those requirements are typically in all his division's remote sales.

He said the third part of (g) says parcels sold under this section are subject to 16 USC 31, the famous no more clause in ANILCA. While he is supportive of the clause, it binds Congress to not do certain things and it's an odd thing to have to put in everybody's patent.

CHAIR OGAN summarized that there was agreement by the sponsor on all the technical changes except for Amendment 1. He went on to the policy amendment that would revise (f).

MR. LOEFFLER explained that the policy problem he wanted to solve in (f) is that Alaska land needs to be open to all Alaskans. Just because one person nominates a particularly good parcel doesn't mean he is the only one who should be entitled to it as he is currently. However, it has been the department's experience that people don't bid when someone has nominated a parcel and has the right of first refusal. His solution has been to offer enough land so that there are enough choices.

SENATOR WAGONER said he has been involved in a couple right of first refusal purchases and that people do bid competitively for them.

MR. LOEFFLER responded that the department offers auctions for surveyed parcels without the right of first refusal, but auctions are spirited nevertheless. The publications for those parcels are much more elaborate than mere classifieds. HB 319 is an opportunity to stake land, but the department doesn't know exactly what is included in the offers because the land hasn't been surveyed yet. The problems are operational.

SENATOR WAGONER said that a lot of people in Alaska will know better than other people immediately where the prime pieces of property are.

I believe what the chairman of this committee said that we're going to create a mini land rush and the best parcels in those areas are going to be taken up by the people that know those areas best.... But I think it's our responsibility to make sure the state gets the largest amount of profit out of this land that we can....

CHAIR OGAN suggested adding "after a best interest finding" on line 3 of the policy amendment.

MR. LOEFFLER said that a best interest finding is required for the department to sell all land, but it's not required on land that isn't being sold.

4:40 - 4:48 - at ease

SENATOR DYSON arrived at 4:53.

CHAIR OGAN said he would hold HB 319 for further work.

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^#HB531

CSHB 531(FIN)am-CONVENTIONAL & NONCONVENTIONAL GAS LEASES

CHAIR OGAN announced CSHB 531(FIN) am, version 23-LS1818/KA.2, to be up for consideration.

CHAIR OGAN announced that he has no conflict with this bill because he is not employed by anyone that it affects. However, some people have a perceived conflict and he asked Vice Chair Wagoner to conduct the meeting.

SENATOR SEEKINS said in case anyone perceives Chair Ogan has a conflict he objects so that he could vote.

CHAIR OGAN noted that according to the Ethics Committee, he has no conflict to declare.

SENATOR WAGONER said he was instructed that a person had to declare financial conflicts when a bill was voted on, not when it was under discussion.

5:00 - 5:03 - at ease

TAPE 04-48, SIDE B

MR. MARK MYERS, Director, Division of Oil and Gas, Department of Natural Resources (DNR), said the current version of the bill is 23-LS1818/KA.2. He explained that Amendment 1 is clean up language; the substantive part starts on line 13.

23-LS1818\XA.2

A M E N D M E N T 1

OFFERED IN THE SENATE

TO: CSHB 531(FIN) am

Page 6, line 25:

Delete "finds"
Insert "determines"

Page 7, line 4, following "or the":
Insert "United States"

Page 7, line 5:
Delete "and"

Page 7, line 11, following "required":
Insert "; and

(D) as a condition of approval of a permit to drill a well for production or production testing of coal bed methane, require the operator to design and implement a water well testing program to provide baseline data on water quality and quantity; the commission shall make the results of the water well testing program available to the public"

He explained that a new standard requires the applicant to develop baseline water data and testing prior to approval by AOGCC of a permit to drill. This data would be available to the public.

SENATOR DYSON moved to adopt Amendment 1. There were no objections and Amendment 1 was adopted.

VICE CHAIR WAGONER announced that Amendment 2 was up for consideration.

23-LS1818\XA.5

A M E N D M E N T 2

OFFERED IN THE SENATE

TO: CSHB 531(FIN) page 19, line 10:
Delete "(A)"

Page 19, line 23:
Delete "and"

Page 19, lines 24 - 29:
Delete all material.

Page 23, line 7:
Delete "AS 38.05.180(n)(2)"
Insert "AS 38.05.180(n)(2)(A)"

Page 26, lines 26 through 30:
Delete all material.

Page 38, line 28, following "gas,":
Insert "(A)"

Page 38, line 30, following "lease":
Insert "; and

(B) if the nonconventional gas produced will not be in direct competition with gas on which a royalty at a rate of at least 12.5 percent is payable, then the royalty share payable to the state on all production of gas from the pool attributable to that lease shall be 6.25 percent based upon production delivered in pipeline quality and free of all lease expenses, including separation, cleaning, dehydration, gathering, salt water disposal, and preparation for transportation off the lease"

MR. MYERS explained that Amendment 2 is basically another clean up amendment. The Shallow Gas Program has a \$1 per acre leasing fee. Currently, if gas doesn't compete with other gas in the market, it possibly can get a 6.25 percent royalty. This bill contains that same right under certain conditions. This language is put in the correct place where it can deal with the royalty issue.

SENATOR DYSON moved to adopt Amendment 2. There were no objections and it was so ordered.

VICE CHAIR WAGONER announced Amendment 3 to be up for consideration.

23-LS1818\XA.6

A M E N D M E N T 3

OFFERED IN THE SENATE

TO: CSHB 531(FIN) am

Page 20, line 13, following "AS 38.05.180(ff)(4)":
Insert "or 38.05.180(gg)"

Page 20, line 26, following "AS 38.05.180(ff)":
Insert ", 38.05.180(gg),"

Page 39, line 18:
Delete "a new subsection"
Insert "new subsections"

Page 40, following line 17:

Insert new subsections to read:

"(gg) Before approving operations for the development of coal bed methane under AS 38.05.134, 38.05.177, or this section, the director shall ensure that the approval is conditioned upon

(1) reasonable and appropriate setbacks governing the placement by the operator of compressor stations; setbacks approved under this paragraph must be determined with reference to the population density and general character of the parcels surrounding the proposed compressor station site; and

(2) reasonable and appropriate measures to mitigate the noise of compressors, engines, and other noise generating equipment operated by the operator on the lease or license; measures approved under this paragraph must be determined with reference to the population density and general character of the parcels surrounding the proposed compressor, engine, or other noise generating equipment."

MR. MYERS explained that Amendment 3 adds new protections that aren't in the current bill that apply to all coalbed methane operations on state lands. It allows for the commissioner to require reasonable and appropriate setbacks for the placement of compressor stations with reference to population density and the general character of the parcel surrounding the site. It also requires noise mitigation. This amendment seeks to address some of the conflicts between surface and subsurface owners.

Secondly, it places shallow gas leasing under the same bonding requirements that exist on the conventional program and adds an additional protection for the surface owner.

SENATOR BEN STEVENS arrived at 5:12.

5:14 - 5:15 - at ease

SENATOR STEVENS moved to adopt Amendment 3. There were no objections and it was so ordered.

VICE CHAIR WAGONER announced Amendment 4 to be up for consideration.

23-LS1818\XA.7
Chenoweth

A M E N D M E N T 4

OFFERED IN THE SENATE

TO: CSHB 531(FIN) am

Page 40, lines 6 - 12:

Delete all material and insert:

"(3) the provisions of AS 38.05.130 apply to the extraction of coal bed methane, except that the provisions of that section shall be implemented as follows:

(A) for an activity or operation for which the department, by regulation, requires submission and approval of a plan of operations before activities or operations may be undertaken, the director shall, as a condition for issuing the bond, after notice and an opportunity to be heard, review the plan of operations to determine if use of the surface is reasonably necessary to extract coal bed methane; and

(B) the director may not require a bond posted under this paragraph from a lessee or agent of a lessee if the lessee or agent has already posted a bond covering the lessee's statewide oil and gas leasing activities;"

MR. MYERS explained that Amendment 4 is a duplication of the second part of Amendment 3 on bonding and he recommended that the committee not consider it. The committee agreed not to consider it.

VICE CHAIR WAGONER renumbered Amendment 5 to be Amendment 4.

MR. MYERS explained that [renamed] Amendment 4 is technical and on page 41, lines 27 and 28, it deletes "shales containing gas" and inserts "gas contained in shales".

SENATOR STEVENS moved to adopt Amendment 4. There were no objections and it was so ordered.

MR. MATT DAVIDSON, Alaska Conservation Voters, said he hoped the public would have time to review the amended version of HB 531 before it came up in the Finance Committee.

VICE CHAIR WAGONER explained that the committee rolled the best part of what it thought was HB 395 into HB 531 and the public would get a chance to review it.

SENATOR SEEKINS moved to pass SCS CSHB 531(RES) from committee with individual recommendations and attached fiscal notes.

Senators Stevens, Dyson, Seekins and Vice Chair Wagoner voted yea; and SCS CSHB 531(RES) moved from committee.

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There being no further business to come before the committee, Vice Chair Wagoner adjourned the meeting at 5:23 p.m.