

ALASKA STATE LEGISLATURE
SENATE TRANSPORTATION STANDING COMMITTEE

April 27, 2004

1:42 p.m.

TAPE(S) 04-19, 20

MEMBERS PRESENT

Senator John Cowdery, Co-Chair
Senator Thomas Wagoner, Co-Chair
Senator Gene Therriault
Senator Georgianna Lincoln
Senator Donny Olson

MEMBERS ABSENT

All members present

COMMITTEE CALENDAR

SENATE BILL NO. 394

"An Act relating to a port development project on Lynn Canal, providing legislative approval for the Alaska Industrial Development and Export Authority to issue bonds for the project; and providing for an effective date."

MOVED SB 394 OUT OF COMMITTEE

SENATE CONCURRENT RESOLUTION NO. 25

Relating to state agency construction and maintenance contracts throughout the state.

MOVED SCR 25 OUT OF COMMITTEE

SENATE BILL NO. 391

"An Act relating to use of a snow machine within the James Dalton Highway corridor to establish, maintain, and service traplines located outside the corridor."

MOVED CSSB 391(TRA) OUT OF COMMITTEE

PREVIOUS COMMITTEE ACTION

BILL: SB 394

SHORT TITLE: AIDEA BONDS FOR LYNN CANAL PORT

SPONSOR(s): RULES

04/22/04 (S) READ THE FIRST TIME - REFERRALS
04/22/04 (S) TRA, FIN
04/27/04 (S) TRA AT 1:30 PM CAPITOL 17

BILL: SCR 25

SHORT TITLE: STATE CONSTRUCTION/MAINTENANCE CONTRACTS
SPONSOR(S): TRANSPORTATION

04/21/04 (S) READ THE FIRST TIME - REFERRALS
04/21/04 (S) TRA, STA
04/27/04 (S) TRA AT 1:30 PM CAPITOL 17

BILL: SB 391

SHORT TITLE: DALTON HIGHWAY TRAPLINE ACCESS
SPONSOR(S): JUDICIARY

04/20/04 (S) READ THE FIRST TIME - REFERRALS
04/20/04 (S) TRA, FIN
04/27/04 (S) TRA AT 1:30 PM CAPITOL 17

WITNESS REGISTER

MR. ZACK WARWICK
Staff to Senator Therriault
Alaska State Capitol
Juneau, AK 99801-1182
POSITION STATEMENT: Presented SB 394.

MR. JIM McMILLAN
Deputy Director of Credit and Business Development Alaska
Industrial Development and Export Authority (AIDEA)
Anchorage, Alaska
POSITION STATEMENT: Answered questions pertaining to SB 394.

MR. TIM ARNOLD
V.P. and General Manager
Coeur Alaska Inc.
Juneau, Alaska
POSITION STATEMENT: Answered questions about Coeur d'Alene
Mines Corporation relating to SB 394.

REPRESENTATIVE BRUCE WEYHRAUCH
Alaska State Capitol
Juneau, AK 99801-1182
POSITION STATEMENT: Testified on SB 394 that this project would
be beneficial to the Juneau area.

MR. MARK O'BRIEN
Chief Contracts Officer
Department of Transportation &
Public Facilities
3132 Channel Dr.
Juneau, AK 99801-7898

POSITION STATEMENT: Provided information on SCR 25.

MR. FRANK RICHARDS
State Maintenance Engineer
Department of Transportation &
Public Facilities
3132 Channel Dr.
Juneau, AK 99801-7898

POSITION STATEMENT: Answered questions pertaining to SCR 25.

SENATOR RALPH SEEKINS
Alaska State Capitol
Juneau, AK 99801-1182

POSITION STATEMENT: Sponsor of SB 391.

MR. MATT ROBUS
Director of Wildlife Conservation
Department of Fish & Game
PO Box 25526
Juneau, AK 99802-5226

POSITION STATEMENT: Testified that he was available to answer questions on SB 391.

ACTION NARRATIVE

TAPE 04-19, SIDE A

CO-CHAIR JOHN COWDERY called the Senate Transportation Standing Committee meeting to order at 1:42 p.m. Present at the call to order were Senators Lincoln, Olson, Co-Chair Wagoner, and Co-Chair Cowdery. Senator Therriault arrived while the meeting was in progress. Also present was Representative Weyhrauch.

SB 394-AIDEA BONDS FOR LYNN CANAL PORT

The committee took up SB 394.

MR. ZACK WARWICK, staff to Senator Therriault, presented the bill and testified that SB 394 authorizes Alaska Industrial Development and Export Authority (AIDEA) to issue tax-exempt

bonds to finance port and port related projects on Lynn Canal in Southeast Alaska, specifically for the Kensington Mine Project. He noted that committee members have an overview of the project's re-design that would include a port from Cascade Point to Slate Creek Cove, and would use existing road systems that would be upgraded to get to Kensington Mine. This is required under statute for any project over \$10 million. At this point, these are estimated numbers, but authorization was requested so that if cost exceeds \$10 million, tax-exempt bonds would be issued to finance this program. This doesn't guarantee funding would go forward, it just provides authorization to look at the project. The project would still have to meet the four criteria set out in statute.

MR. JIM McMILLAN, Deputy Director of Credit and Business Development, AIDEA, testified that the bill pertains to two dock facilities supporting the Kensington Gold Project, proposed to be financed under this legislation. There are two basic requirements under IRS code addressing financing with tax-exempt proceeds: the docks must be owned by a government entity, and dock facilities must be available for the likelihood of public use. That determination has not been made yet. Because of the location of these two facilities, especially the one on the northern end of the Berners Bay - Slate Creek - AIDEA's bond counsel will be seeking an IRS letter ruling for the determination of public use to ensure either one or both projects qualify for tax-exempt financing. That process may take up to six months; however, Coeur is hoping to start construction later this summer or early fall. The reason for the timing of this legislation is to receive authorization if due diligence falls in place so that the bonds can be issued.

MR. TIM ARNOLD, V.P. and General Manager of Coeur Alaska Inc., representing Coeur d'Alene Mines Corporation, said he was available to answer questions about the Kensington Gold Mine Project.

CO-CHAIR COWDERY noted there were no further questions and asked for the will of the committee.

SENATOR GEORGIANNA LINCOLN commented she had received SB 394 about 10 minutes prior to the meeting, that the bill had just been introduced on the 22nd of April, and she was hoping to have more of an opportunity to review the information. She said the proposed Juneau access project has considered developing an Alaska Marine Highway ferry terminal in Berners Bay, and asked if this project would be available for bonding through AIDEA.

MR. McMILLAN responded that with tax-exempt proceeds, AIDEA can finance an exempt facility such as a dock if it meets the two requirements of government ownership and the likelihood of public use. He said because he wasn't familiar with the project she was referring to, he was hesitant to answer directly other than to outline those two criteria.

SENATOR LINCOLN referred to the fiscal note, "The bill provides \$20 million in bonding authorization" and asked if the \$20 million bond would prevent other applicants with large projects from applying.

MR. McMILLAN said if this legislation passed, AIDEA is authorized to issue up to \$20 million in bonds for a port development project on Lynn Canal. Assuming that a sum less than \$20 million was needed for the two dock projects related to Kensington, then this authorization would allow AIDEA to utilize the difference for another port development project on Lynn Canal.

SENATOR DONNY OLSON asked about other reasons for developing a port other than Kensington.

MR. McMILLAN responded, "We're not saying that there is or is not another reason for developing it. We are looking at these two projects, both the Cascade Point and the Slate Creek, for supporting the Kensington Mine, but to do it by the issuance of tax exempt bonds, it has to be owned by the government, and it also has to be available for public use."

SENATOR OLSON asked if the parent company would be charged for the use of this port, after it's been built.

MR. McMILLAN replied this was correct. If the legislation passes and bonds are issued, there will be some type of user fee that will re-pay the bond proceeds and generate a reasonable return to AIDEA.

SENATOR OLSON asked if a private person or tourist would pay a fee to use the port.

MR. McMILLAN said there has been discussion of assessing a fee for individual use.

SENATOR OLSON said he was hoping for more of a yes or no answer regarding whether there would be a charge for private as opposed to commercial use.

MR. McMILLAN replied that he didn't have a specific answer right now, but his perception is a fee won't be charged to individual boaters tying up to the dock.

SENATOR OLSON reflected on current global unrest and the high price of gold and said, "Let's say that the price of gold drops after the presidential election or after a semblance of peace comes in the Middle East. How do we make sure that this port facility, or these two port facilities that are involved don't turn into another seafood-plant-type project that's there in Anchorage, or Point Mackenzie farm situation, or even the Delta Junction farm debacles that we've seen happen in the past?"

MR. McMILLAN acknowledged that any project involves risk and attempts are made to mitigate that risk. There will be extensive due diligence, Coeur's underwriters will find a placement for the purchase of those bonds - either a private or public offering - and underwriters in the market will determine the structure and the required credit enhancements to mitigate the risk. AIDEA's agreement for operation or repayment of a fee is supposed to be with Coeur Alaska Inc., which is a fully owned subsidiary of Coeur d'Alene Mines Corporation. An available credit enhancement would be the guarantee of the parent corporation. Through due diligence, if financial standing is deemed un-satisfactory, purchasers of the bond and AIDEA would look to other potential credit enhancements to assure the project is successful.

SENATOR OLSON asked where Coeur d'Alene Mining Corporation's parent offices were located.

MR. ARNOLD responded that Coeur d'Alene Mines Corporation was located in Coeur D'Alene, Idaho. Coeur Alaska Inc. is located in Juneau.

SENATOR GENE THERRIAULT asked if public use of the Coeur facility would be immediate.

MR. McMILLAN responded that this requirement would need to be satisfied at the outset. His understanding is that it wouldn't be necessary that the public use occur simultaneously with the completion of the facility, but there would need to be assurance

that there is the likelihood of public use during the life of the project.

SENATOR THERRIAULT asked if the two port facilities fit under the \$20 million, or if surplus authorization might be used for some Coeur facility on the Lynn Canal; he asked for an estimated cost of the two mine-associated dock facilities.

MR. McMILLAN replied that as a conceptual design, according to preliminary discussions with the engineer, the projected cost budget is approximately \$10 million. This is a very preliminary cost estimate, and probably additional geotechnical work is necessary which could drive up the cost, and also the IRS code allows for financing improvements that are ancillary and related to the primary project. "It is too soon to indicate if there are some other improvements that could be thrown in this package. If that is the case, we may get much closer to the \$20 million," he said.

SENATOR OLSON asked if this was a hard rock mine.

MR. ARNOLD said yes, it is underground hard rock.

SENATOR OLSON asked how to ensure that difficulties with environmental concerns or objections that have been pointed out within the past week at Kensington will not be encountered

MR. ARNOLD said he wasn't sure what Senator Olson was referring to, but noted that the EIS has been addressed, and currently, a supplemental EIS; the comment period ended April 7. Coeur is currently going through the permitting phase.

SENATOR OLSON said he was referring to a major mine project that had all of the permits in order, but is now shut down because of difficulties.

MR. ARNOLD said there is always the opportunity for issues to come up. Mining permits take years to get, so he honestly couldn't predict what would happen.

SENATOR THERRIAULT asked if the port facility's infrastructure would be needed only if the mine was permitted; would this infrastructure be built if the mine were not permitted?

MR. ARNOLD said the facilities would not be built unless there was a go-ahead on the permitting processes.

SENATOR THERRIAULT asked Mr. McMillan if there would be restrictions that no infrastructure be built until the mine had secured all necessary permits.

MR. McMILLAN replied that because of the timing of the issues and the desire to start construction this year, due diligence will need to begin immediately; this means an expenditure of some funds. At the next board meeting on May 7, a cost reimbursement agreement will be presented to the board to be executed with Coeur d'Alene Mines Corporation. If the project goes forward, this allows advance funds for due diligence to be part of the financing package. If it does not go forward, a reimbursement agreement, a promissory note, will be repaid. Also, the bonds will not be issued and financing will not take place from AIDEA until the feasibility study is seen and permits are issued, that is, until the project is ready to go.

SENATOR LINCOLN asked if, without SB 394, Coeur would continue with the mining.

MR. ARNOLD said yes.

SENATOR LINCOLN asked how this would be done without the port.

MR. ARNOLD questioned, "Without the port facility or without the financing?"

SENATOR LINCOLN replied, "Without the port facility."

MR. ARNOLD said he misspoke. Coeur would need some sort of port facility.

SENATOR LINCOLN asked, "Why don't you just do that?"

MR. ARNOLD said that with the permits for the Kensington Mine in the supplemental EIS, there are two options. The option of using AIDEA to create the facility offers the advantage of the bonding issue and the tax-exempt financing. "This is a win-win situation for both Coeur d'Alene Mines and the state of Alaska, in our opinion. It helps us in one way. But at the end of the day you end up with a port facility and it belongs to the state of Alaska." If Coeur d'Alene Mines creates the port without using AIDEA financing, Alaska will not own the port and when mining is finished, the port facility would be taken away.

SENATOR LINCOLN asked how the requirement for public use of the port is envisioned.

MR. ARNOLD said it wasn't envisioned yet. That is something that AIDEA and Coeur d'Alene Mines need to discuss. He noted that the timing is unfortunate because the current level of detail is not the final detail, and the [legislative] session will end in a matter of weeks. The details will be available at the end of May.

SENATOR LINCOLN said this bill had been introduced the 22nd of this month, and she assumed Coeur approached the Legislature to introduce this.

MR. ARNOLD responded he wasn't sure whether Coeur or AIDEA approached the Legislature.

SENATOR THERRIAULT told members that AIDEA representatives had contacted him and other legislators about the port infrastructure possibly going over the current statutory \$10 million, and the need for increased authorization.

SENATOR LINCOLN said the project has been in the works for a while and asked why on April 22nd it was determined that the project might go over \$10 million.

SENATOR THERRIAULT said this could be answered by Coeur or AIDEA, but thought it had become clearer as numbers were firmed up.

MR. McMILLAN offered that while the project has been on the drawing boards for quite a while, the most recent discussions with Coeur regarding AIDEA's providing financial assistance has only occurred during the past month and a half. "Coeur came to us and said they were ready. We laid out potentials for them, and these two projects being potentials under development financing." He acknowledged the timing as unfortunate, but to move forward under development finance, authorization from the Legislature is required.

SENATOR LINCOLN said the US Forest Service owns the land on which most of the mine will be situated, and their EIS won't be completed until September at the earliest. She asked if AIDEA begins evaluating the project before the project is actually permitted to proceed.

MR. McMILLAN said yes. The project begins immediately after the May 7th board meeting, assuming the board authorizes entering into a cost reimbursement agreement. Regarding Cascade Point,

some if not all of the property on the south side of Berners Bay was owned by Goldbelt Corporation. A lease will need to be negotiated for the use of that property. He said he thought Senator Lincoln was correct regarding the northern side. He said he understood the EIS to be rendered in June unless it is extended.

SENATOR LINCOLN asked Mr. Arnold if this loan would be going to Coeur Alaska, Inc.

MR. ARNOLD deferred the question regarding the workings of finances to AIDEA.

SENATOR LINCOLN asked about a guarantee by the parent company, and whom the loan would be going to.

MR. McMILLAN said it is proposed that the parent company, Coeur d'Alene Mines Corporation, will issue a guarantee that there may be additional mitigates of risk, or credit enhancements.

CO-CHAIR WAGONER asked for an expansion of the guarantee from the parent company, wondering if this was a letter of credit, or what type of guarantee would need to be provided to AIDEA if this project moves forward.

MR. McMILLAN said AIDEA normally goes into it knowing it will be an unsecured guarantee, meaning they will be standing behind the payment by Coeur, of the user fee, with all of the assets of Coeur d'Alene Mines Corporation.

SENATOR LINCOLN questioned if this was the normal legislative procedure, without going into the timing or the guarantee.

SENATOR THERRIAULT responded that Mr. McMillan could say for certain.

MR. McMILLAN said that is correct. He said there are similarities with previous authorizations for other development finance projects. There isn't more detail because statute merely requires authorization from the Legislature if bonds are in excess of \$10 million, and also because the statute sets forth very specific requirements before the financing can take place.

CO-CHAIR WAGONER asked what Coeur d'Alene Mines Corporation's total assets were.

MR. ARNOLD said he didn't know but could find out.

SENATOR LINCOLN asked if \$12 million was an estimate for this project, why was "not to exceed \$20 million" specified?

MR. McMILLAN explained the project's budget is not firm at this point and also the code allows financing for related improvements. Although the conceptual cost estimate of the two dock facilities is within the \$10 million range it will likely be higher with the final design. If the \$20 million authorization passes, AIDEA will only issue bonds up to the required amount to finance portions of the project that qualify. The remaining amount could be used for other qualifying Coeur development projects in Lynn Canal.

SENATOR LINCOLN reviewed that Coeur was asking for \$2.9 million for the Cascade Point dock, \$4.4 million for the Slate Creek dock, which total \$7.3 million; that leaves \$12.7 million for the uplands. She asked if these figures were correct.

MR. ARNOLD said yes those were the preliminary numbers.

SENATOR LINCOLN asked if the balance would be tied to this project or if it could be used in another part of the state.

MR. McMILLAN said the authorized amount left over could potentially be used for the [indisc.] rural development project, meeting the IRS requirements, that is, "a port development project on Lynn Canal" so if there was a feasible project and issued bonds could be repaid, AIDEA would look at the project and its location to see if it meets the intent of the original authorization. He said, "It's a hard question to answer specifically at this point. It wouldn't necessarily have to be related to this mine project."

SENATOR LINCOLN asked if it was AIDEA's language to allow for development of other areas in Lynn Canal.

MR. McMILLAN reported that once the determination was made that Coeur wanted to move forward and legislation was required, AIDEA provided sample language to Coeur. This is the result of discussions between Coeur and AIDEA, attorneys at Legislative Legal and AIDEA's assistant to the attorney general.

CO-CHAIR COWDERY announced that Representative Weyhrauch was at the meeting and wanted to testify.

REPRESENTATIVE BRUCE WEYHRAUCH testified that Goldbelt, Inc., the Native Corporation that Mr. McMillan referred to, is called such because there is gold throughout this area. The Kensington Mine has worked long and hard to develop that project, and it would provide tremendous employment and diversification opportunities for this locality. The city of Juneau has worked with Goldbelt, Inc. to develop lands and opportunities. This project seems to meet the exact statutory criteria in AS 44.88.095, as the project is economically advantageous to the state and the general public welfare and will contribute to the state's economic growth.

REPRESENATIVE WEYHRAUCH continued that Senator Olson had mentioned potential impacts to the Pogo Mine and the drop in gold prices. The state has relied on mining opportunities to develop the economy. The project applicant is financially responsible, has developed huge mining operations throughout the world, and is the likely candidate to support AIDEA in issuing these bonds. Work has been done with the Southeast Alaska gillnet fleet to address water quality and fishing issues in the area. The other statutory requirement is to provide and retain employment related to the amount financed by the authority in consideration of the amount of investment per employee for comparable facilities and other related relevant factors. The Red Dog Mine Dock and the Federal Express terminal in Anchorage seem to fall within that criterion.

REPRESENTATIVE WEYHRAUCH said this meets the employment, resource development, and public use need for this type of facility. It would be rare for boats to use this dock because there are dock facilities in Skagway and Haines just north of the facility and in Auke Bay just south of the facility. However, in most cases in Alaska, if a mariner needs a dock for emergency purposes, this would be readily available. In addition, beyond the life of this project, there will be access to public lands in that area for hunting, fishing, hiking, camping, and so forth. Beyond the intended purposes of the dock, this provides a valuable public resource for people, some of whom may be opposed to the mine. He expressed his support on behalf of a community that needs this resource development and opportunity for diversification.

SENATOR THERRIAULT asked Mr. McMillan if there was currently statutory authority to put together projects of up to \$10 million.

MR. McMILLAN said if the project is financed under the development finance program, this would apply if the facility was owned. He clarified that the proposed financing structure of the two docks was a hybrid of two of the programs.

TAPE 04-19, SIDE B

MR. McMILLAN continued that issuing general obligation bonds means AIDEA was at risk for repayment of those bonds if there was a default. That has been subsequently corrected in a future refunding. Another example of a similar project is the sale of Snettisham. AIDEA owned the facility but the type of financing was a conduit bond as indicated in the fiscal note. Under a conduit bond, the assets, credit [indisc.] or authority are not at risk, and that's what is being proposed here. AIDEA's ownership is [indisc.] classified as non-ownership in order to give lower-cost financing issuance of tax-exempt bonds. AIDEA will have title to the facility but will not be at risk for repayment of bonds that will be issued. That also speaks to Senator Olson's earlier concern about future risk. He thought due diligence would be more extensive on the part of people or entities who buy these bonds.

SENATOR WAGONER said he's had inherent distrust of AIDEA. He then asked what facilities are being talked about in SB 394 other than the construction of ports.

2:30 p.m.

MR. McMILLAN replied that no related facilities have yet been identified. Because of the timing and preliminary discussions, AIDEA wanted to allow for related facilities such as fuel storage, for example.

SENATOR LINCOLN referred to the \$12.7 million and asked if AIDEA could resolve an amount, up to the \$20 million cap, that Coeur is willing to bond for regarding related facilities on Lynn Canal.

MR. McMILLAN said this was probably correct but thinks it requires a separate bond issue which would double the issuance cost. If the project were clearly going to be under \$10 million, then legislative authorization would not be required. They really don't know yet about the issues of preliminary costs and capital improvements, and would like to include it under one issuance to minimize issuance costs.

SENATOR WAGONER said he would like to know the value of Coeur d'Alene's assets before voting on SB 394. He repeated that he has an inherent distrust of AIDEA, that he's seen the ASI building in Anchorage that will cost the state several million dollars, and he doesn't want the state to get into another similar situation with AIDEA.

MR. ARNOLD told committee members he had just been informed that the parent company's assets are currently \$258 million.

SENATOR THERRIAULT moved to report SB 394 and the accompanying fiscal notes to the Senate Finance committee for review, with individual recommendations.

SENATOR LINCOLN objected and spoke to her objection. She said even though she was able to ask questions during the meeting, she was uneasy about not knowing how all the pieces will fall together. Her questions were financial in nature and she would relate those question to members in Finance. With that, she withdrew her objection.

CO-CHAIR COWDERY acknowledged there were no further objections and announced the bill was so moved.

2:40 p.m.

SCR 25-STATE CONSTRUCTION/MAINTENANCE CONTRACTS

The committee took up SCR 25.

CO-CHAIR COWDERY, sponsor of SCR 25, said SCR 25 was his effort to address problems due to SB 40, and testified as follows:

In order to maintain transparency and to make certain public funds are spent efficiently, statute requires construction and maintenance contracts be awarded on the basis of a competitive bid.

In the case of small projects or repairs, law allows the state, for the purpose of efficiency, to fund a project in-house through what's termed a 'force account.' Ideally, these are for projects costing \$250,000 or less.

The purpose of SCR 25 is to encourage the State of Alaska (primarily DOT&PF) to use day labor, 24-hour call out contracts, competitively bid, in the range of \$250,000 to \$1,500,000. Contractors employ skilled managers and maintain an inventory of specialized

equipment. Therefore, construction work done in the public sector requires similar staffing as well as inventory, thus resulting in increased cost to the ratepayer.

Day labor contracts on 24-hour call would be all encompassing, using the competitive bid process to set line item costs for a set of numerous individual tasks, such as replacing a road sign to filling a pothole to grading a gravel runway, and in some places in rural Alaska, boardwalks. Contractors on 24-hour call would use pretty much local labor sources.

CO-CHAIR COWDERY questioned if force accounts ever use a competitive bid project if they run into problems that they don't have the money for, and use force accounts to finish the project.

MR. MARK O'BRIEN, Chief Contracts Officer for DOT&PF, said yes. In a case where there is an ongoing construction project and they run into an unknown repair, it is fairly typical to use a force account to conduct work that was not previously called for, under the low-bid competitive bid that was put out and awarded under the contract. That needs to be accounted for in a different manner.

CO-CHAIR COWDERY asked if the force account was used, in the original conception of force accounts for the purpose just referred to.

MR. O'BRIEN replied this was probably the most common use for force account within the department; to pick up and address these issues that were not within the scope of the original hard money bid that was put out and awarded. There are other uses for it too.

CO-CHAIR COWDERY asked if the estimated savings on calendar year 2002 force account projects, between \$250,000 and \$1.5 million was \$905,000, or 38 percent.

MR. O'BRIEN confirmed this was correct.

CO-CHAIR COWDERY said assuming the amount of force account projects remains constant, over the next six years the lost savings would total \$5.43 million.

MR. O'BRIEN said this was correct.

CO-CHAIR COWDERY asked if this referred to contracts that were competitively bid by engineers' estimates.

MR. O'BRIEN said these were estimated savings based on the difference between issuing a competitive sealed bid and using in-house force account labor to accomplish the work. Savings are primarily the result of the differential between Davis Bacon wages and the wages paid by the state, a profit that contractors receive that the state does not charge on a project. Cheaper materials are a result of stockpiling materials in advance of the project, and a number of factors determine that for a particular project it was 'x' percent less expensive to do it with a force account. The representative number is an accumulation and average.

CO-CHAIR COWDERY said these were never bid out competitively. He asked if this was an estimate of what it would be if it went on the street.

MR. O'BRIEN said that was correct.

CO-CHAIR COWDERY, suggesting that estimates are guesswork, asked if engineers' estimates were always accurate.

MR. O'BRIEN said no, occasionally engineers' estimates are considerably off from the price that comes in from contractors.

CO-CHAIR COWDERY said he has bid on jobs where it was as high as 50 percent. For example, bidding on the Port of Anchorage, he came in very low because of "having a better mousetrap or whatever." They did the job but it was about fifty percent less than the engineer's estimate. He said his point was that there's no way to be accurate until you have a competitive bid. He referred to the St. Mary's project, and mentioned that local residents were state employees. He said whether one lives in rural or urban Alaska, the labor force should be paid the same since people work just as hard to finish the project. The wage scale should be on a par with the urban wage scale. This resolution assures that it's competitively bid, that Davis Bacon wages are followed, and so forth. He said he doesn't agree with the fiscal note showing a savings because it's all speculation.

MR. O'BRIEN said that some projects are based on competitive bid. For instance, in a year when they did resurfacing in a particular area with a contractor, they knew what those costs were. If they do a force account project on a similar stretch

of road, they have accumulated both of those costs to verify that in fact the estimate for savings was verified through actual bid results.

CO-CHAIR COWDERY said he didn't understand if a job was put out to bid, the contractor went to the cost of bidding it but then it went to the force account. Until one actually does something, all one has is an educated guess which isn't accurate, he said.

MR. O'BRIEN said he meant that if there are two separate projects, one accomplished by a contractor under low bid, and one accomplished by the state under force account, and track the cost for both of those projects, it verifies a cost-savings for the state to use force account for the re-surface job that he referred to earlier. He clarified that it wasn't that they did the project and then told the contractor that they were going to do it with their own forces, but rather that it was a comparison of two similar projects, one accomplished with a contractor and one with state forces.

CO-CHAIR COWDERY said, "Granted, the state has equipment, but do they pay taxes like the contractor does? Have overhead?" He said with the St. Mary's project, two contractors spent time bidding on the job and then the bids were cancelled.

MR. O'BRIEN said the department did not actually competitively bid the St. Mary's project.

CO-CHAIR COWDERY mentioned that contractors went there to see the job.

MR. O'BRIEN responded that may be correct.

SENATOR OLSON acknowledged that the force account system has done a wonderful job in rural Alaska for some DOT&PF projects. He said a number of the airports done under force account have been a positive factor for those involved with the project. He mentioned the project in Elim in particular where the village and the city were involved, and the project was done under budget. After the project was completed, people took pride in it. He said the force account system has been working well in the past, and asked for the department's opinion of the resolution.

MR. O'BRIEN said some concerns about the resolution have been formulated. The resolution intends to encourage the use of as-

needed contracts, which are commonly referred to as term contracts where one doesn't have a specific piece of work but has a contractor on board to take on whatever next piece of work comes along. He said the department currently uses term-contracts for various pieces of work, but is usually restricted to individual tasks or individual contracts. He said there should be a list of examples of term-contracts the department currently uses, provided in the packet. He gave the examples of construction inspection, corrosion inspection, cost estimating, and materials testing. Those are examples of "as-needed" contracts that are kept on the maintenance and operation side.

MR. FRANK RICHARDS, State Maintenance Engineer for Department of Transportation and Public Facilities (DOT&PF), said that included in the committee packet is an extensive list of contracts currently under maintenance, including specialty work such as brush-cutting, guard rail replacement, electrical repair, and the largest one likely being the snow haul in Anchorage. It's an as-needed, on-call basis for contract repair to remove the snow. One of the other large efforts is the rural highways and airport contracts. There are about 170 contracts essentially on an as-needed basis, primarily to remove the snow on the runways and roads in rural Alaska. Those are worth about \$2 million per year, which is a fairly large number.

SENATOR OLSON said he was talking about new capital projects as opposed to maintenance and operations projects.

MR. O'BRIEN responded that this ties in to the construction contracts because statute and regulations require all of the construction contracts, absent those approved by force account, to be done by competitive sealed bid, to the lowest responsive and responsible bidder. That is different than the way this tool sets that up. If these as-needed contracts were imposed, there is no project for the contractor to bid on when he is responding to the as-needed contract. His only option is to bid hourly rates, equipment costs, and those kinds of figures so they are sitting there when the department is ready to turn on a project. In this case, if an as-needed contract were used, the department would not have a contract low bid price for this work going in; it would be time and materials. Rarely has the department seen a low bid come in that is going to be more expensive than the time and materials contract. Locking the contractor in from day one for the specific construction project is the main concern. If the department used this vehicle to use a contractor who was not locked in, it may result in additional costs to the state. That's the primary concern, he said.

CO-CHAIR COWDERY said once when he worked for the mayor of Anchorage, the same problem arose and he developed a day labor contract. Everybody who bid on it, including ABC, liked it. He said he thought that in years past, he had given contract copies of that to DOT&PF. It was put out similar to a job to build a road from Juneau to Skagway, that is, anticipating everything that's needed, whether that be guard rails, signage, glass culvert, or asphalt per ton per mile. It started out at \$.5 million dollars with the city of Anchorage and went to a million; it was very competitively bid, and it was understood that "items that you bid may not ever occur. But everybody being on the up and up, the size of the contract was determined by someone to be a fair expectation of the amount of work that was going to be done in that year. In other words, it wouldn't be said that it would be \$10 million and then do \$10."

2:58 p.m.

CO-CHAIR WAGONER referred to Mr. O'Brien's comment about different salaries the state pays versus Davis Bacon wages, saying he doesn't think one could stick to those parameters when figuring the cost of jobs because he has observed that between Kenai and Anchorage, a lot of guard rail is lost every year. He said he had the chance to observe private contractors working with two to three people, whereas the highway department would have a much larger crew doing that type of work. He said it was really difficult to estimate the actual cost unless it was bid out, and then one takes that bid and relates it to the state and looks at the increase in the amount of hours. He said he wasn't saying which was right or wrong, but intangibles were involved regarding figuring prices and jobs.

CO-CHAIR WAGONER remarked that this is a good bill. He referenced 1996 when he was running for office and going back and forth between Kenai and Anchorage every day. The state was doing a large seal coat job on the highway, there was continuous traffic and it was all state equipment, state workers. He didn't know how many millions of dollars the job was worth, but it must not have been a job that was bid out. He said he would much rather see state employees working in maintenance-type efforts to keep the good quality of the roads up than seeing them working with equipment that costs several hundreds of thousands of dollars, doing construction work. He said this was a major construction project that he doesn't think was ever bid, although the private sector is there to do the work, and has the equipment. He questioned whether the state should have that

type of equipment, because "that's a lot of money sitting around in inventory" although he understands in the winter there is some use for sanding and other functions.

CO-CHAIR COWDERY questioned whether the state could do those jobs for less.

SENATOR OLSON said he wanted to distinguish between the force account projects on the road system and those not on the road system. He said he was more familiar with the one outside of the Railbelt, or road system in Alaska. He said he knows the state has leased a lot of equipment and it has cut the price down. This was true for the St. Mary's and the Elim project. There has been an addition to the community as opposed to a project that goes on in the community, when everybody comes and then leaves, including a majority of the labor capital. He said from a business perspective, he has concerns regarding equipment being purchased or depreciating, and yet, in looking at the whole picture, he sees the positive effects of force accounts where it has been unfettered by the numbers or the size of the project, especially in construction. From a public policy standpoint, he said DOT&PF's force account system seems to be a positive factor, despite some of the negative sentiments being voiced. He reiterated that there should be a distinction between road and not-on-the-road force account projects.

CO-CHAIR COWDERY asked if the marine highway was on the road system.

SENATOR OLSON said this wasn't black or white, but a grey area. He said somebody representing the Marine Highway System should comment.

CO-CHAIR COWDERY commented that the purpose of SCR 25 on SB 40 would be to give some latitude to the local people. Having been a contractor involved with making money, he said whenever he could, he hired local people. The local people were anxious to work, were good, creative workers, and he paid Davis Bacon wages.

SENATOR LINCOLN said she didn't find that SCR 25 would help the villages, as Co-Chair Cowdery was suggesting. She said she has some misunderstanding of the "as needed" contractors and asked, "In the force account projects that you've had in the villages, how much in 2003 would have been provided to force account to villages versus competitive bidding throughout Alaska, or even competitive bidding in the villages?"

MR. O'BRIEN said he didn't have those numbers with him today.

SENATOR LINCOLN asked, regarding force account, if he could give a percentage, such as 50 or 80 percent of the projects in Alaska.

MR. O'BRIEN said no, in terms of the total highway [indisc.] force accounts, for instance, in 2002, force account represented 2.23 percent of the department's funding.

SENATOR LINCOLN asked, of that 2.23 percent, were those all in rural, bush communities?

MR. O'BRIEN said no they weren't. They reflect two different programs - maintenance and operation programs that Senator Wagoner discussed - with road crews doing jobs in an area. It would also include projects such as King Cove or Soldotna, where there were individual force account projects in those communities. He said it's a mixture of both and he didn't have a breakdown for where those percentages were.

SENATOR LINCOLN asked if 97.75 percent of all the projects were done through competitive bidding.

MR. O'BRIEN said this was correct.

SENATOR LINCOLN asked for an explanation of why 97.75 percent of all the projects in 2002 - and she expressed interest in 2003 - was a concern, when force accounting is 2.23 percent.

CO-CHAIR COWDERY asked what the largest contract was in 2002, that is, "What's the dollar value of the largest and the smallest?"

MR. O'BRIEN asked if the question was the largest dollar amount of a force account project.

CO-CHAIR COWDERY said no, of a project. He reviewed that in 2002, 2.23 percent was in force account, of all the projects. He asked what the high bid was on whatever projects that "you made in to this equation," what the low bid was, and where they were located?

MR. O'BRIEN answered that the program for 2002 would have been roughly a \$550 million total program, of which the force account

approvals represented \$11,242,000, reflected in the 2.23 percent.

CO-CHAIR COWDERY asked about there being hydrocarbons in the road, and whether the force account would be used to add to the cost of the project, or if the project would be stopped and there would be new funding.

MR. O'BRIEN responded that was a different kind of force account. A force account that occurs on a construction project is not a force account that requires approval by statute because the original contract was competitively bid. The department had a project that required that kind of a force account with a contractor, it's not found in these numbers and it's not required for statutory approval. Statutory approval is required when the department conducts a force account with its own employees and does it from the very beginning, so there is no competitive bid for the work itself.

SENATOR LINCOLN stated that force accounting is so critical to many small communities. She mentioned the village of Rampart, where none of the employees were local hires in a competitive bid. Men and women watched the project, almost with tears in their eyes. She concurs with Senator Olson's comments about pride in projects done by local hire versus projects where there is no idea how it was put together. She then asked for a review of the handouts that were included in the committee packet.

MR. O'BRIEN referred to and explained the three handouts, noting that the department currently utilizes as-needed contracts. The difference between those contracts and the contract for a construction bid is what is commonly called, a "hard dollar bid." An as-needed contract, for the purposes of a construction project, is not a hard dollar bid. There is no amount. The amount comes along after the contract is in place with the term contractor. He gave the example of winning a term contract in Anchorage, which entitles one to do various repairs on the road surface. DOT&PF has a \$1.5 million project involving changes at an intersection. That contract is already acquired, before the project comes along, so he is paid according to his rates, not on a hard dollar bid. The state doesn't have a bid for the \$1.3 million for that job, but has the hourly rate, cost for the equipment, overhead profit; it is not a hard dollar bid. That is primarily the difference between the list of contracts and how the department normally contracts for the competitive awards for construction projects.

SENATOR LINCOLN acknowledged that it was probably difficult for Mr. O'Brien to sit in the hot seat and speak honestly about what the effects of this resolution might be, and a reflection on SB 40 as well. She asked if he was representing the department, the administration.

MR. O'BRIEN said that was correct.

MR. RICHARDS responded to Senator Lincoln's question and referred to the three lists. One was a list of contracts that Mr. O'Brien mentioned and the second was an identification of projects that would not be completed, based on certain dollar value limitations. The third was the fiscal note. He addressed DOT&PF's force account efforts that Co-Chair Wagoner referenced, and said the benefit of utilizing federal funds for preventive maintenance type work is it allows for a continuity of work force. The general fund dollars currently used for operating budgets aren't sufficient to keep folks employed year round; there would be seasonal lay-offs in the summertime to relieve the workforce of those labor costs. The second benefit is of the equipment costs. When the department is able to utilize snowplows, tractors, loaders, and sweepers for preventive maintenance contracts, there is an ability to charge that equipment cost onto the federal project.

TAPE 04-20, SIDE A

MR. RICHARDS continued that the preventive maintenance programs that have been put into place have been beneficial in preserving the life of the assets that the department is constructing, by utilizing federal highway and aviation dollars. It's not always the best practice to have to reconstruct, once a pavement has failed, and if preventive measures can be done up front during the life of that pavement, there will be a cost savings overall to state and federal programs.

SENATOR LINCOLN asked if there have been any major problems with force accounting.

MR. O'BRIEN said he has been with the department in this capacity since 1998, and is responsible for proving all of the force account projects; he was not aware of any significant problems.

CO-CHAIR COWDERY said this is not about force accounts. He asked, without SB 40, what is the limit regarding somebody who had a finding saying this is in the best interest of the state.

MR. O'BRIEN responded the requirement is for cost effectiveness of finding on the individual project and there is no limit on the size of the [project].

CO-CHAIR COWDERY said the purpose of this resolution is to help out rural Alaska, and it addresses SB 40.

SENATOR LINCOLN read from the last paragraph of SCR 25 as follows:

Be it resolved that the Alaska State Legislature respectfully requests that the governor consider directing the Department of Transportation and Public Facilities and other state agencies to use, when handling construction and maintenance projects between approximately \$250,000 and \$1,500,000 throughout the state, an approach under which a competitively selected contractor agrees to provide construction and maintenance services on an as-needed basis over a particular period of time to a specific geographical area and on a 24-hour response basis.

She asked what this does to force accounting.

MR. O'BRIEN replied that it is difficult to answer that question because "be it resolved" is not binding on the department. It requests that the governor consider it. It is difficult to know if the administration would go forward with that request. Assuming they did, projects that fall within that category for all state agencies, not just DOT&PF, would be required to use this approach whereby contractors are identified up-front. It's difficult to say for certain what this would do. The department's concern is since these are not hard-dollar bids, not competitive, there could be an increase in the overall cost to the state for those same groups of projects. That's the primary concern.

SENATOR LINCOLN asked if the force accounting would continue as is, under that resolve.

MR. O'BRIEN said projects in excess of \$1.5 million would continue under the normal force account process unless the law changes as a result of SB 40, in which case it would be restricted to \$250,000. The department would be prohibited from doing any project in excess of \$250,000 by force account.

SENATOR WAGONER moved to report SCR 25 out of committee with individual recommendations and the accompanying fiscal note.

SENATOR LINCOLN objected.

A roll call vote was taken. Senators Therriault, Wagoner, and Cowdery voted in favor of the motion; Senators Lincoln and Olson voted against it. Therefore, SCR 25 moved from the Senate Transportation Standing Committee by a vote of 3 to 2.

SB 391-DALTON HIGHWAY TRAPLINE ACCESS

The committee took up SB 391.

SENATOR RALPH SEEKINS, sponsor of SB 391, explained this bill will allow trappers to use snow machines within the five mile corridor of the Dalton Highway to access traplines. Currently, Alaska statutes ban, with limited exceptions, use of off-road vehicles within five miles of the highway, starting at mile 57, at the Yukon River Crossing, and extending 357 miles north to the Arctic Coast. The state has not actively enforced this statutory ban, nevertheless, this has not stopped the federal government from co-opting the state law, and let BLM close long-existing traplines and threatening to tear down, or has torn down cabins, unless trappers resort to non-motorized access. This bill seeks to remedy that situation by allowing the limited use of snow machines within the corridor for the express purpose of establishing, maintaining, and servicing a trapline located outside the corridor. To the extent that trapping is a seasonal activity, each trapline needs to be re-established annually. He said his intent was to provide a measure of relief to trappers who have already been operating in the area. Some of these traplines are as much as 275 miles long and the only feasible access is by snow machine in the wintertime.

SENATOR SEEKINS pointed out this was an interim step, specifically designed with the intent of allowing people with already established traplines to be able to continue to trap in the face of a federal threat to close them down. He said, "I think that's fair and just. There's no harm that's been shown by people operating in the past. There's no good reason for the federal government to shut them down ... it's state law that the federal government is quoting when they say they're going to shut these folks down. Even though Alaska's DPS and none of our other departments are doing anything to enforce this statute against these people at this time."

SENATOR LINCOLN said she didn't believe and didn't think the sponsor intended to say there were cabins that were burnt down or destroyed because she understands that no cabins have been destroyed or moved. Regarding the individual who purported to have 225 miles of trapline - the local people in the area stated this individual doesn't have 225 miles of trapline. He has gone off the road in two areas, but is a pilot car driver, and does not drive (she referred to a letter) the 225 miles by snow machine.

CO-CHAIR COWDERY asked if anybody has a 225-mile trapline.

SENATOR LINCOLN said the individual being referred to that was reported to have a 225-mile trapline, but in fact, trappers have said this was not the case. She said she has contacted Alyeska. There is concern for pipeline safety; that's why the five mile corridor existed. She said she has not heard from Alyeska regarding the implications, should this bill go through. She said she was out of the loop and perhaps the sponsor could explain about the bill the sponsor is working on with Senator Olson. She questioned why, instead of amending that legislation, there is this new bill.

SENATOR SEEKINS said he has no information to refute the fact that BLM has told people who are trappers that they have to remove the cabins they are using that are outside of that five-mile corridor. He said, "I've seen an official letter to a trapper that says you cannot access, if this decision comes down, and you will be forced to remove the cabins that are out there." If those are accessed with something other than a snow machine, it would not fit into the restriction being proposed. He explained he was still working with Senator Olson on another bill, and that this bill eliminates any confusion about his intent; it has been introduced for this specific purpose. If it was morphed or lengthened to any extent, he said he would withdraw it. "I want to make clear to everyone that this is a specific purpose for people who have been legally operating their traplines but illegally accessing it according to state law to be able to do so." Senator Seekins said he remains working with Senator Olson to ensure that if an agreement can be reached addressing how to protect these people, that will be done, and then this bill will die.

SENATOR WAGONER said he was trying to relate snow machines going legally from one side to the other side, and from the road just to one side. He asked if Senator Seekins and Senator Olson worked out another bill, that would disappear.

SENATOR SEEKINS said it would disappear.

SENATOR WAGONER asked if this would then be taken care of in the other bill.

SENATOR SEEKINS said similar language was being worked on that would do exactly this, down the line. Senator Olson has a different constituency than he does, and they need to feel comfortable. That bill was expanded in the past, and he said he's agreed to restrict it down. This bill is meant to give comfort to other people.

SENATOR OLSON asked if there was a sunset date in this bill.

SENATOR SEEKINS said he didn't know. He said he didn't think there was a sunset on the other one. He said people who are doing this now would be allowed to continue, just like the people currently mining have the right to access, and the oil and gas industry has the right to go out and explore or maintain. There is access available, and the intent is to perpetuate legal usage. This is intended to protect only those people who are already engaged, not to allow any increase in trappers or to encourage a proliferation of trappers. In the next session, the intention is to address other access provisions after there is time to study it.

SENATOR OLSON asked how many trappers were involved with this.

SENATOR SEEKINS said it was his understanding that there are less than 10.

SENATOR OLSON asked when the trapping season takes place, and how many months out of the year was this expected to be an issue.

SENATOR SEEKINS responded, only when there was sufficient snow cover to get out there. He thinks the trapping season is during the coldest few months of the year; most of the traps are shut down now.

SENATOR OLSON asked if people were trapping by using four-wheelers.

SENATOR SEEKINS replied no, not to his knowledge. He added that this was strictly for snow machines.

SENATOR LINCOLN read [page 1, line 13] as follows: "the use of a snow machine to travel across the highway corridor from land outside the corridor to access land outside the other side of the corridor or the use of a snow machine to travel from within, or into, the corridor for the purpose of establishing, maintaining, or servicing a trapline located outside of the corridor." She said a trap license is \$15, and this doesn't address existing traplines, but says it can be used to service a trapline. So, with a \$15 license, one could throw a couple of traps on a snow machine and go trapping; it doesn't prohibit the use of that corridor to the 10 people, but opens it to anybody who throws traps on their snow machine. She reminded the sponsor that while the concerns are in one part of the corridor, that corridor affects a number of villages as well.

SENATOR SEEKINS said a resident trapping license is \$15, although he buys his as part of a regular hunting, fishing, and trapping license. He said the safety issue was bogus, as people drive up and down that road all day long; a terrorist is not going to drive with a snow machine on the back of the truck, take the snow machine off, and then drive 15 yards off the road to get to the pipeline to destroy it. People from outside the corridor, as Senator Wagoner indicated, can drive from one side to the other with no problem at all and evidently this is not a safety risk. He repeated, for the record, that the intent is to protect people who already have traplines there. He emphasized that until this issue is settled, we don't want the federal government to enforce our law against our residents.

SENATOR THERRIAULT asked how this was tied to an established trapline.

SENATOR SEEKINS said a trapline could be established now, but it has to be re-established in the next trapping season, so the word "established" is a little confusing. In one sense, established trappers have been trapping there for a period of time, but that trapline expires and needs to be re-established the next year.

MR. MATT ROBUS, Director of Wildlife Conservation, Alaska Department of Fish and Game (ADF&G) said he was available to answer questions.

SENATOR THERRIAULT asked how someone establishes a trapline.

MR. ROBUS responded establishment of a trapline is the physical act of cutting the trail, but there is no legal precedence as there is in other jurisdictions.

CO-CHAIR COWDERY said he homesteaded in 1952 and asked if there were any grandfather rights, wondering if one could start at the same location today and do the same thing.

MR. ROBUS said this was correct and if another trapper had established and traditionally run a trapline since then, it would basically involve negotiating with the trapper and hopefully coming to a friendly agreement. There are no rights to be grandfathered in, nor does the other trapper have exclusionary rights.

SENATOR LINCOLN referred to the individual with the 225-mile trapline; entrapping on an established line is a taboo, as is leaving no wood at a remote cabin. The individual went to BLM and BLM told him to find his own area. He went up to another area. So there is sort of a gentlemen's agreement. She expressed concern that with this legislation, someone could just throw a trap on their snow machine, with a permit, and go in there, even if this is not the sponsor's intent.

MR. ROBUS said yes, the way the bill is written, there is opportunity for an additional trapper to go in there. His testimony on the First Haul Road bill, SB 298, was to the extent there is a rise in the number of people going through the corridor on snow machines as a result of the SB 391, ADF&G and the Board of Game have management tools to ensure the impacts to the populations of animals are controlled. ADF&G has the ability to deal with management issues, emergency orders, and board regulations for different bag limits and seasons and so forth.

SENATOR LINCOLN asked, if somebody said, "I'm going trapping," how this would be managed, as that person couldn't be cited for doing anything wrong.

MR. ROBUS said ADF&G wasn't the enforcement agency. He was referring to management regarding an increase of hunting pressure on caribou or moose due to more people going through the corridor. ADF&G could adjust bag limits, seasons, or issue emergency closures to protect the resource. Regarding enforcement, Senator Lincoln was correct in that if somebody was going to run a trapline, and they have a snow machine, you'd basically have to take them at their word or investigate.

SENATOR OLSON asked for clarification of Mr. Robus's position.

MR. ROBUS said he was involved with ADF&G wildlife management; enforcement is with the state troopers.

SENATOR OLSON asked what types of animals are being trapped.

MR. ROBUS said the Haul Road crosses many different habitats and includes wolves, marten, wolverine, fox, lynx, and a wide variety of fur-bearing animals.

SENATOR OLSON asked if the department has a position on the bill.

MR. ROBUS said he didn't think so.

SENATOR WAGONER asked if it was correct that anybody wishing to buy a license can trap in any given area and that basically the department does not regulate where they trap or how many furs are produced per year.

MR. ROBUS responded this was basically correct, but wanted to put some sideboards on this. He said if it got to a point where indications were such that populations were suffering from pressure, ADF&G would shorten seasons or even close those areas. The Board of Game has a few trapping closures where it's not appropriate for trappers to go. Other than that, trapping is basically self-regulating. Trappers have to sort out amongst themselves where they're going to operate in order to make it worthwhile to go trapping from year to year.

SENATOR OLSON asked if besides this bill, there is another way to keep these trapping cabins from being torn or burned down to ensure that these sanctuaries of safety would be available, in addition to being used by the people who put them up and who have a financial investment in them.

MR. ROBUS said he wasn't equipped to answer that since state law doesn't have a penalty clause and it has never been enforced. The state law is not the proximate problem and he doesn't know much about BLM regulations or recent actions.

SENATOR OLSON said state law may not be in question, but the sponsor is stating that the federal [government] is using state law as a justification.

MR. ROBUS confirmed he's heard the same statement in several hearings and gathers that state statute is allowing BLM to make attempts at enforcement.

SENATOR LINCOLN referred to a gentleman in her district who noted there are two real established trappers in this large area, saying, "I was not opposed to access permits to areas that do not conflict with established traplines for these two real trappers." She said there is expressed concern with people other than these trappers. She asked why the five-mile corridor was established.

MR. ROBUS said it was to protect the pipeline itself and there may have been intent to protect wildlife populations along the Haul Road.

[Co-Chair Cowdery left the room and the gavel was turned over to Co-Chair Wagoner.]

SENATOR LINCOLN asked Senator Seekins if he intended to amend this, acknowledging that his intent was for SB 391 to apply to those who were already established trappers.

SENATOR SEEKINS responded, "Go ahead and propose the amendment."

SENATOR LINCOLN suggested conceptually, "That a trapper must have received a BLM permit for snowmobile access in the past 24 months to access their - or - this trapline."

4:00 p.m.

SENATOR SEEKINS said he'd just as soon leave BLM out. If someone can show they've trapped there, they should have access; to the best of his knowledge, based on talking with people from the Trappers' Association, this amounts to less than 10 people. He said only the BLM is enforcing the restriction and he wanted to protect people actually trapping there now because they're not causing any huge disruption. Conceptually, he said, "Those people who can show that they have trapped there, you know in the last 24 months, something like that, that adequately meets my intent. But we've had troubles struggling with this, with the drafters, as well, to make sure that we're taking care of those folks who have been doing this from this federal threat, without opening it up to somebody who says, 'I've got two traps in the back of my snow machine and I'm going out there.' That's not our intent, and I think you know that."

CO-CHAIR WAGONER asked if this addresses people who have currently either constructed or taken over and maintained a cabin.

SENATOR SEEKINS said probably some people. He said he's not sure of the permitting process but BLM said they would cite people using the cabins, under state law. If we can show these people have trapped there in the past 24 months and have established traplines, this might allow them the opportunity to continue without federal interference.

SENATOR LINCOLN asked if conceptual language could be that a trapper must have received a permit for snowmobile access in the past 24 months to access the trapline.

SENATOR SEEKINS suggested that a trapper who has taken fur needs to tell the state where he's trapped or took the animal.

MR. ROBUS said this was correct.

SENATOR SEEKINS said it would solve his problem if it could be shown through ADF&G trapping forms or some documentation that people have been trapping there, because then this law would exempt them from that restriction.

SENATOR LINCOLN said this was her concern as well. She asked Mr. Robus about ensuring that nobody would get around this conceptual language.

SENATOR SEEKINS said, "That's up to us to do that, not Mr. Robus."

SENATOR LINCOLN said, "Mr. Robus said that this would work, that there's a way that they can show that they have indeed trapped in the area. And if you're saying that there is a way to do that, then I want assurance that there is no way that they can get around this."

MR. ROBUS said that on state sealing forms, the trapper has to report the locality where that fur was taken. There is a little fuzziness because people don't want to reveal this.

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MR. ROBUS continued that those records are stored and are available to enforcement in the future.

SENATOR LINCOLN moved the conceptual amendment.

SENATOR SEEKINS said he believes he and Senator Lincoln were now on the same page. If it can be shown through the state forms that someone actually trapped within that vicinity and the Haul Road was used as access, then they're exempt from this restriction; "if that's where we're going, I have no problem with that, it's a friendly amendment."

CO-CHAIR WAGONER asked if there was any objection to the amendment and acknowledged that there was no objection. [Amendment 1 was treated as adopted.]

SENATOR LINCOLN referred to Senator Seekins's comment that SB 391 just be incorporated into the other piece of legislation that he and Senator Olson were working on, and asked if SB 391 should have a sunset clause.

SENATOR SEEKINS said for the record that if he and Senator Olson work out a committee substitute (CS) that fits this conceptual language, he would just not pursue SB 391 any longer.

SENATOR LINCOLN said SB 391 might move along and the other bill might not.

SENATOR SEEKINS said the differences could be worked out in the Senate Finance committee.

The committee took a brief at-ease.

CO-CHAIR COWDERY moved to report SB 391 as amended to the next committee of referral.

SENATOR OLSON objected.

A roll call vote was taken. Senator Therriault, Co-Chair Cowdery, and Co-Chair Wagoner voted in favor of the motion; Senators Lincoln and Olson voted against it. Therefore CSSB 391 (TRA) moved from the Senate Transportation Standing Committee by a vote of 3 to 2.

There being no further business to come before the committee, he adjourned the meeting at 4:10 p.m.