

ALASKA STATE LEGISLATURE
SENATE JUDICIARY STANDING COMMITTEE

April 27, 2006

8:43 a.m.

MEMBERS PRESENT

Senator Ralph Seekins, Chair
Senator Charlie Huggins, Vice Chair
Senator Gene Therriault
Senator Hollis French
Senator Gretchen Guess

MEMBERS ABSENT

All members present

COMMITTEE CALENDAR

SENATE BILL NO. 307

"An Act relating to a fee provided for in the rental agreement for late payment of rent under the Uniform Residential Landlord and Tenant Act."

HEARD AND HELD

SENATE BILL NO. 316

"An Act amending the Alaska Stranded Gas Development Act to eliminate the opportunity for judicial review of the findings and determination of the commissioner of revenue on which are based legislative review for a proposed contract for payments in lieu of taxes and for the other purposes described in that Act; and providing for an effective date."

HEARD AND HELD

CS FOR HOUSE BILL NO. 414(RLS) am

"An Act relating to the interception of the private communications of a minor."

SCHEDULED BUT NOT HEARD

CS FOR HOUSE BILL NO. 190(FIN)

"An Act relating to the purchase of alcoholic beverages and to access to licensed premises; relating to civil liability for certain persons accessing licensed premises; requiring driver's licenses and identification cards to be marked if a person is restricted from consuming alcoholic beverages as a result of a conviction or condition of probation or parole and relating to

fees for the marked license; and requiring the surrender and cancellation of driver's licenses under certain circumstances."

SCHEDULED BUT NOT HEARD

PREVIOUS COMMITTEE ACTION

BILL: SB 307

SHORT TITLE: LANDLORD REMEDIES; LATE FEE

SPONSOR(s): LABOR & COMMERCE

02/23/06	(S)	READ THE FIRST TIME - REFERRALS
02/23/06	(S)	L&C, JUD
03/09/06	(S)	L&C AT 1:30 PM BELTZ 211
03/09/06	(S)	Heard & Held
03/09/06	(S)	MINUTE(L&C)
03/16/06	(S)	L&C AT 1:30 PM BELTZ 211
03/16/06	(S)	Scheduled But Not Heard
03/28/06	(S)	L&C AT 1:30 PM BELTZ 211
03/28/06	(S)	Heard & Held
03/28/06	(S)	MINUTE(L&C)
03/30/06	(S)	L&C AT 1:30 PM BELTZ 211
03/30/06	(S)	Moved SB 307 Out of Committee
03/30/06	(S)	MINUTE(L&C)
03/31/06	(S)	L&C RPT 2DP 1NR 2AM
03/31/06	(S)	DP: BUNDE, STEVENS B
03/31/06	(S)	NR: DAVIS
03/31/06	(S)	AM: ELLIS, SEEKINS
04/19/06	(S)	JUD AT 8:30 AM BUTROVICH 205
04/19/06	(S)	Heard & Held
04/19/06	(S)	MINUTE(JUD)
04/25/06	(S)	JUD AT 8:30 AM BUTROVICH 205
04/25/06	(S)	Heard & Held
04/25/06	(S)	MINUTE(JUD)
04/27/06	(S)	JUD AT 8:30 AM BUTROVICH 205

BILL: SB 316

SHORT TITLE: COURT REVIEW OF STRANDED GAS DECISION

SPONSOR(s): JUDICIARY

04/13/06	(S)	READ THE FIRST TIME - REFERRALS
04/13/06	(S)	JUD
04/19/06	(S)	JUD AT 8:30 AM BUTROVICH 205
04/19/06	(S)	Heard & Held
04/19/06	(S)	MINUTE(JUD)
04/20/06	(S)	JUD AT 8:30 AM BUTROVICH 205
04/20/06	(S)	Heard & Held
04/20/06	(S)	MINUTE(JUD)

04/21/06 (S) JUD AT 9:30 AM BUTROVICH 205
 04/21/06 (S) Heard & Held
 04/21/06 (S) MINUTE(JUD)
 04/22/06 (S) JUD AT 9:30 AM BUTROVICH 205
 04/22/06 (S) -- Continued from 04/20/06 --
 04/25/06 (S) JUD AT 8:30 AM BUTROVICH 205
 04/25/06 (S) Heard & Held
 04/25/06 (S) MINUTE(JUD)
 04/26/06 (S) JUD AT 8:30 AM BUTROVICH 205
 04/26/06 (S) Heard & Held
 04/26/06 (S) MINUTE(JUD)
 04/27/06 (S) JUD AT 8:30 AM BUTROVICH 205

 04/24/06 (H) VERSION: CSHB 414(RLS) AM
 04/25/06 (S) READ THE FIRST TIME - REFERRALS
 04/25/06 (S) JUD
 04/27/06 (S) JUD AT 8:30 AM BUTROVICH 205

WITNESS REGISTER

Jane Alberts, Legislative Aide
 Staff to Senator Con Bunde
 Alaska State Capitol
 Juneau, AK 99801-1182

POSITION STATEMENT: Introduced SB 307

Bob Maier
 Alaska Manufactured Housing Association
 Anchorage, Alaska

POSITION STATEMENT: Commented on SB 307

Ed Sniffen, Assistant Attorney General
 Department of Law
 PO Box 110300
 Juneau, AK 99811-0300

POSITION STATEMENT: Commented on SB 307

Larry Ostrovsky, Senior Assistant Attorney General
 Oil, Gas & Mining Section
 Department of Law
 PO Box 110300
 Juneau, AK 99811-0300

POSITION STATEMENT: Responded to questions regarding SB 316

ACTION NARRATIVE

CHAIR RALPH SEEKINS called the Senate Judiciary Standing Committee meeting to order at [8:43:03 AM](#). Present were Senators Hollis French, Gretchen Guess, and Chair Ralph Seekins.

SB 307-LANDLORD REMEDIES; LATE FEE

[8:43:32 AM](#)

CHAIR SEEKINS announced SB 307 to be up for consideration.

JANE ALBERTS, Staff to Senator Con Bunde, introduced the bill.

BOB MAIER, Alaska Manufactured Housing Association, testified he has been involved in the bill since inception. The Association is arguing for a 15 percent cap on late fees because "rents pay mortgages." This late fee is based on the fees that mortgage companies charge and should be the responsibility of the renter who causes a late mortgage payment.

[8:46:26 AM](#)

SENATOR GUESS asked Ms. Alberts whether the state caps or regulates any other fees.

MS. ALBERTS said she did not know of any but deferred to Mr. Sniffen.

ED SNIFFEN, Assistant Attorney General, Department of Law (DOL), addressed the question. The Division of Banking has a cap on payday loan vendors and non-sufficient funds checks.

[8:48:22 AM](#)

Senator Gene Therriault joined the meeting.

SENATOR FRENCH noted that normally late payments are well under five percent. He said 15 percent was not fair and speculated that 10 percent might not be fair as well.

CHAIR SEEKINS asked Mr. Mayer whether he was certain in his earlier statement that the bank charges a 15 percent late fee on a mortgage.

MR. MAIER responded there are not late fees but penalties. Historically there has never been a set percentage on a late fee. He suggested the committee go back to the original language of the bill and let the market dictate the penalty.

[8:51:17 AM](#)

SENATOR GUESS asked whether a local government could regulate the penalty.

MR. SNIFFEN said the Landlord Tenant Act would supersede regulation of the rental market but that the municipalities would be free to address anything not addressed in the Act.

SENATOR GUESS asked Ms. Alberts whether late fees would be used as a basis for eviction.

MS. ALBERTS responded a person could be evicted but as previous testimony suggested it does not happen.

[8:54:13 AM](#)

CHAIR SEEKINS said he had no problem capping the late fee. He also said he was nervous about some of the things in the bill, such as allowing a landlord to have too much control over late fees and evictions.

[8:57:46 AM](#) at ease [9:24:47 AM](#)

[9:24:47 AM](#)

CHAIR SEEKINS asked Mr. Sniffen to continue with his interrupted testimony.

MR. SNIFFEN mentioned the only reason the committee was talking about a cap on late fees is to address fair treatment to tenants. A cap would be a reasonable compromise. He had no comment on the percentage though.

[9:26:47 AM](#)

SENATOR FRENCH asked whether version G allows for an eviction on a late fee.

CHAIR SEEKINS said, "That's correct."

SENATOR FRENCH proposed a conceptual amendment. If the committee were going to allow an eviction on a late fee to push it back to ten days. That would give the tenant three extra days to make rent. He suggested streamlining the process to one notice and one hearing. He said that would gain in efficiency what the process loses in the three days.

MR. MAIER responded the reason for the 7-day notice was that there are 30 days in the month and by the end of the grace period and the court process weeks could go by without the landlord collecting the rent.

MR. SNIFFEN commented that the three days would not be a deal-breaker. The single notice concept is a good idea but the committee needs to make sure that the notice is clear and easy for tenants to understand.

[9:30:54 AM](#)

SENATOR FRENCH said he would need time to work his concept out.

SENATOR GUESS added she would prefer to see the amendment in writing.

CHAIR SEEKINS held the bill in committee.

Brief at ease [9:32:08 AM](#)

SB 316-COURT REVIEW OF STRANDED GAS DECISION

[9:39:30 AM](#)

CHAIR SEEKINS announced SB 316 to be up for consideration.

Senator Charlie Huggins joined the meeting.

CHAIR SEEKINS reminded the committee that the previous day he had asked the drafter to conform the language between Section .310 of the SGDA and Section .435 of the bill. He asked Mr. Ostrovsky whether he had a chance to look at the committee substitute (CS) entitled 24-LS1842\I.

LARRY OSTROVSKY said he thought that .435(2) ought to look like .410(2) and clarify the information that needs to stay confidential.

[9:41:49 AM](#)

[The committee studied the existing law together

CHAIR SEEKINS said his intent was to get the same language in .410(2) transferred over to .435(b)(1) so they would conform to each other.

SENATOR FRENCH explained then (b)(1) would read, "submit to the Legislature the commissioner's final findings and determination and, to the extent the information is not required to be kept confidential under AS 43.82.310, the supporting financial, technical, and market data, including work papers, analyses, and recommendation s of any independent contractors used, etcetera."

[9:44:23 AM](#)

CHAIR SEEKINS said the CS did not reflect what he wanted to relay and that the committee would continue to work off version Y.

SENATOR GUESS explained her proposed amendment that she referred to as Y.2. The amendment would allow for the preliminary and final findings to have the same language. Also "fiscal interest" is implied but inconsistent throughout the statute.

CHAIR SEEKINS said he didn't think the contract could be provided to the Legislature with any proposed amendments. There is an impasse unless the contract absolutely meets the requirements of the Chapter.

SENATOR GUESS said she didn't see the difference. For example, one of the purposes of the Stranded Gas [Development] Act is a new investment without altering the taxes and royalties in the current gas infrastructure and production.

[9:50:06 AM](#)

SENATOR FRENCH noted the committee was discussing the mismatch between current law and the contract that is being developed right now. He reminded the committee that the governor has the authority inherent in his position to release the contract no matter what.

CHAIR SEEKINS said he would like to see everything spelled out and in the open. He would like to see the contract and its agreements as well as what exactly needs to be changed in current law to get the contract moving.

SENATOR FRENCH said he thought the committee was in agreement on that point. It would have been a better process to amend the Stranded Gas Development Act before negotiating a contract.

CHAIR SEEKINS stated the public should know why the contract doesn't meet the requirements.

[9:52:58 AM](#) at ease [9:53:25 AM](#)

CHAIR SEEKINS reiterated his earlier comment that he wants the entire contract process to be "out in the light of day."

SENATOR FRENCH said it was up to the committee to decide what language the governor would have to overcome in order to finalize a contract.

SENATOR GUESS said the question might be on the preliminary findings and whether the contract meets the requirements of the Chapter and that language probably shouldn't be in the final findings. It seems like there may be a role in the preliminary findings given the current timing.

SENATOR FRENCH agreed and said the preliminary findings are as to "whether" the contract meets the requirements and the final probably shouldn't even though the Legislature would be considering the contract after the SGDA was amended.

[9:56:57 AM](#)

CHAIR SEEKINS opined there have always been two findings contained in the final findings. One is an absolute finding in 430(b) that the contract is in the long-term financial interest of the state. The other finding is in .410(a)(3), which is as to whether the proposed contract and any proposed amendments meet the requirements and purposes of the Chapter. In the past that was executed by the administration. Now there is a further approval on the part of the Legislature and they must be careful to specify that the Legislature can't consider a proposed contract until it meets those two provisions.

SENATOR GUESS argued that .430(b) was not a "final finding or determination." That's a commissioner determination, not an agency decision, she noted.

[10:01:45 AM](#)

MR. OSTROVSKY responded the change in .400 reflects the process in terms of the amendments. In terms of changes in .430(a)(3), the "as to whether" is preferable language partly due to the issues of effective date. He speculated that the amendments to the SGDA might not be effective until another 90 days.

SENATOR GUESS said the final findings should not be wishy-washy. They should meet the requirements of the Chapter and comply with the Act. She asked specifically what it would be that people would take to court in a challenge.

CHAIR SEEKINS said the constitutional issue that remains is whether or not the contract meets the requirements of the Chapter.

[10:05:09 AM](#)

SENATOR GUESS said she would question again the reason for the Stranded Gas Development Act and said that question was the

"Elephant in the Room." The other issue is a law review of 393 that asks whether the Legislature could approve the Act or not. If someone takes that to court and the court finds that because of "separation of powers" then the Legislature does not have the authority to approve or disapprove an Act. That is why final findings and determination should be kept whole in the bill.

[10:07:12 AM](#)

SENATOR THERRIAULT asked Chair Seekins whether it was his opinion that the bill still leaves a snag in the system.

CHAIR SEEKINS said it leaves it open to one possibility and that is that unless the contract absolutely complies with the Act it would be improper to forward it to the Legislature for consideration.

SENATOR THERRIAULT reminded the committee that the Act was pending a handful of amendments.

[10:10:38 AM](#)

SENATOR GUESS responded that the debate brings the committee back to her question of why even have the Stranded Gas [Development] Act. If the Act is going to see more than 20 offered amendments and the Legislature only approves 10 of them, the contract reflects the 20 amendments and so she questioned the reason for wasting the public's time if there is not going to be a requirement that the contract meet the Act.

CHAIR SEEKINS asked if the committee was in agreement of the conceptual proposed language to the amendment Y.2.

[10:13:03 AM](#)

SENATOR FRENCH reread the language.

CHAIR SEEKINS asked Mr. Ostrovsky to comment.

MR. OSTROVSKY said that language reflects the fact that the commissioner would say if the proposed contract doesn't line up.

CHAIR SEEKINS said he would have the conceptual amendment drafted up. He indicated he would also have the drafter work on his proposed amendment of the previous day, which did not come out right. He advised Senator Guess that the committee would no longer need to consider her amendment in regards to .430(b).

SENATOR GUESS said .430 (b) addresses when the commissioner gives the contract to the governor. It does not address the

long-term fiscal interest because that is not in the final determination.

10:16:42 AM

MR. OSTROVSKY responded the language might be somewhat ambiguous but the final findings support the conclusion that the contract is in the long-term fiscal interest of the state. Even though the statute separates them, for all practical purposes they are linked.

CHAIR SEEKINS asked Mr. Ostrovsky whether there was any reason not to add "and findings and determination that the proposed contract is in the long-term fiscal interest of the state" to page 4 paragraph 3.

MR. OSTROVSKY said that could be done.

10:19:21 AM

CHAIR SEEKINS referred to the content on determination and findings regarding requirements and purposes of the Chapter. He asked the committee whether they wanted to amend that part.

SENATOR GUESS said she was leaning towards clarity. She questioned the reason a contract would be forwarded if it didn't align with the statute.

MR. OSTROVSKY interjected that would raise a potential timing issue.

SENATOR GUESS questioned why. The issue is whether or not the contract is in alignment with the statute.

10:21:27 AM

MR. OSTROVSKY replied the timing issue is an effective date issue. With that change it would say the contract meets the requirements and purposes of the Chapter. If the legislature changed the requirements of the chapter but it wasn't effective at the time the commissioner submitted the final findings it still wouldn't necessarily line up.

CHAIR SEEKINS said the bill could pass with an immediate effective date.

MR. OSTROVSKY agreed that if that were to occur it would negate the timing issue.

SENATOR FRENCH referred to his proposed amendment titled Y.1 and spoke to it. He said it would maintain all the substantive rights for the public to bring forth a challenge. Senator Therriault brought up a good point in respect to the constitutionality of the Legislature's authorization of the contract. He speculated that there could be a real issue with that in regards to a violation of the separation of powers and whether or not the Legislature's review of the contract would be intruding on an executive function.

If such legal argument were successfully made then the final finding of the commissioner of revenue would be the end of the contract negotiation process and would be the default place that a person would bring about a challenge.

[10:26:33 AM](#)

CHAIR SEEKINS stated that was a good point. Most importantly the committee has preserved the challenge on a constitutional issue and limited the time that it can be brought forth.

[10:27:59 AM](#)

SENATOR GUESS explained the reason she was confused is because she believed that the committee was trying to deal with protecting a person's right to challenge a contract but without affecting or creating a timing issue.

CHAIR SEEKINS advised the committee that he was going to draw up a CS for members to consider at the next bill hearing.

SENATOR THERRIAULT informed members of an amendment that he was prepared to introduce that would extend the public comment period to 90 days.

[10:32:27 AM](#)

CHAIR SEEKINS held the bill in committee.

There being no further business to come before the committee, Chair Seekins adjourned the meeting at [10:33:01 AM](#).