

ALASKA STATE LEGISLATURE
HOUSE RESOURCES STANDING COMMITTEE

March 21, 2011

1:04 p.m.

MEMBERS PRESENT

Representative Eric Feige, Co-Chair
Representative Paul Seaton, Co-Chair
Representative Peggy Wilson, Vice Chair
Representative Alan Dick
Representative Neal Foster
Representative Bob Herron
Representative Cathy Engstrom Munoz
Representative Berta Gardner

MEMBERS ABSENT

Representative Scott Kawasaki

COMMITTEE CALENDAR

HOUSE BILL NO. 189

"An Act relating to the Alaska Gasline Development Corporation and creating an exception to the public records statute for information provided to the Alaska Gasline Development Corporation; amending the composition of the Joint In-State Gasline Development Team; and providing for an effective date."

- MOVED CSHB 189(RES) OUT OF COMMITTEE

HOUSE BILL NO. 146

"An Act authorizing the transfer of land from the State of Alaska and the Alaska Railroad Corporation to property owners along the Eielson Spur Line; and providing for an effective date."

- HEARD & HELD

HOUSE JOINT RESOLUTION NO. 21

Urging the Secretary of the United States Department of the Interior to withdraw a secretarial order that creates a wild land classification and to administer federal lands in the state in accordance with existing statutes and agency guidelines; and urging the United States Congress to prohibit the use of appropriated funds by the United States Department of the

Interior and the Bureau of Land Management to implement, administer, or enforce the secretarial order.

- MOVED HJR 21 OUT OF COMMITTEE

HOUSE BILL NO. 89

"An Act authorizing the commissioner of natural resources to offer bedload material for disposal for flood control purposes in exchange for a percentage of the profit from the sale of that material."

- MOVED CSHB 89(RES) OUT OF COMMITTEE

PREVIOUS COMMITTEE ACTION

BILL: HB 189

SHORT TITLE: GASLINE DEV. TEAM/CORP. MEMBERS/INFO

SPONSOR(S): REPRESENTATIVE(S) CHENAULT

03/10/11 (H) READ THE FIRST TIME - REFERRALS
03/10/11 (H) RES
03/21/11 (H) RES AT 1:00 PM BARNES 124

BILL: HB 146

SHORT TITLE: LAND TRANSFER FROM STATE AND ALASKA RR

SPONSOR(S): REPRESENTATIVE(S) T.WILSON

02/09/11 (H) READ THE FIRST TIME - REFERRALS
02/09/11 (H) RES, FIN
03/21/11 (H) RES AT 1:00 PM BARNES 124

BILL: HJR 21

SHORT TITLE: OPPOSING FEDERAL WILD LAND DESIGNATION

SPONSOR(S): REPRESENTATIVE(S) FEIGE

03/10/11 (H) READ THE FIRST TIME - REFERRALS
03/10/11 (H) RES
03/21/11 (H) RES AT 1:00 PM BARNES 124

BILL: HB 89

SHORT TITLE: EXTRACTION OF BEDLOAD MATERIAL

SPONSOR(S): REPRESENTATIVE(S) SEATON

01/18/11 (H) PREFILE RELEASED 1/14/11
01/18/11 (H) READ THE FIRST TIME - REFERRALS
01/18/11 (H) RES, FIN
03/14/11 (H) RES AT 1:00 PM BARNES 124

03/14/11 (H) Heard & Held
03/14/11 (H) MINUTE(RES)
03/21/11 (H) RES AT 1:00 PM BARNES 124

WITNESS REGISTER

REPRESENTATIVE MIKE CHENAULT
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Spoke as the prime sponsor of HB 189.

TOM WRIGHT, Staff
Representative Mike Chenault
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Reviewed HB 189 on behalf of the sponsor,
Representative Chenault.

DAN FAUSKE, CEO/Executive Director
Alaska Housing Finance Corporation
President, Alaska Gasline Development Corporation
Anchorage, Alaska

POSITION STATEMENT: During hearing of HB 189, answered
questions.

KEN VASSAR, Attorney at Law (Of Counsel)
Birch Horton Bittner & Cherot
Anchorage, Alaska

POSITION STATEMENT: Speaking as the attorney for AGDC, answered
questions during hearing of HB 189.

LISA MORITZ KIRSCH, Attorney
Legislative Legal Counsel
Legislative Legal and Research Services
Legislative Affairs Agency (LAA)
Juneau, Alaska

POSITION STATEMENT: During hearing of HB 189, answered
questions.

RICK VANDERKOLK, Staff
Representative Tammie Wilson
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Presented HB 146 on behalf of the sponsor,
Representative T. Wilson.

BILL HUPPRICH, Vice President, General Counsel

Alaska Railroad Corporation
Anchorage, Alaska

POSITION STATEMENT: During hearing of HB 146, answered questions.

JIM POUND, Staff
Representative Wes Keller
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: During hearing of HJR 21, answered questions.

ACTION NARRATIVE

[1:04:19 PM](#)

CO-CHAIR ERIC FEIGE called the House Resources Standing Committee meeting to order at 1:04 p.m. Representatives Dick, Munoz, P. Wilson, Foster, Gardner, Seaton, and Feige were present at the call to order. Representative Herron arrived as the meeting was in progress.

[1:05:12 PM](#)

CO-CHAIR SEATON passed the gavel to Co-Chair Seaton.

HB 189-GASLINE DEV. TEAM/CORP. MEMBERS/INFO

[1:05:30 PM](#)

CO-CHAIR SEATON announced that the first order of business would be HOUSE BILL NO. 189, "An Act relating to the Alaska Gasline Development Corporation and creating an exception to the public records statute for information provided to the Alaska Gasline Development Corporation; amending the composition of the Joint In-State Gasline Development Team; and providing for an effective date."

[1:05:45 PM](#)

REPRESENTATIVE MIKE CHENAULT, Alaska State Legislature, characterized HB 189 as cleanup language that addresses issues that arose after the passage of House Bill 369 in 2010.

[1:07:03 PM](#)

TOM WRIGHT, Staff, Representative Mike Chenault, Alaska State Legislature, explained that it became necessary to make some changes to the membership of the Joint In-State Gasline Development Team. Although John Binkley, chair of the Alaska Railroad Corporation (ARRC), was replaced by Linda Leary this year, he remains a member of the ARRC Board. However, in order to allow Mr. Binkley to continue to work on the development team as a representative of ARRC, HB 189 added the following bold and underlined language "chair of the board of directors of the Alaska Railroad Corporation **or the chair's designee**". The legislation also changed the makeup of the development team by removing the following language: "the chief executive officer of the Alaska Natural Gas Development Authority". Therefore, Harold Heinze would be removed from the development team. He explained that there were potential conflicts of interest with regard to Alaska Natural Gas Development Authority's (ANGDA) bids on the TransCanada line. The other cleanup requested by the Alaska Gasline Development Corporation (AGDC) was in regard to confidentiality. He reminded members that the language in House Bill 369 referring to confidentiality disappeared from the legislation in the Senate. Therefore, in order to ensure that confidentiality is maintained when information is passed between AGDC and state agencies or private companies, language pertaining to confidentiality is necessary.

[1:10:00 PM](#)

REPRESENTATIVE MUNOZ inquired as to the status of ANGDA.

MR. WRIGHT answered that ANGDA is still in existence and charged with the tasks set forth in House Bill 369. Although he was unsure what exactly ANGDA is working on, he presumed that it was still working on a bullet line and some work for electrical utilities.

REPRESENTATIVE CHENAULT interjected his understanding that ANGDA is still working on the deliverability of propane in Western Alaska.

[1:11:13 PM](#)

CO-CHAIR SEATON related his understanding that HB 189 doesn't address the operation of ANGDA as the legislation simply removes the chief executive officer of ANGDA from the development team.

REPRESENTATIVE CHENAULT answered that is correct.

[1:11:31 PM](#)

REPRESENTATIVE MUNOZ asked whether ANGDA continues to pursue the concept of an all-Alaska line.

REPRESENTATIVE CHENAULT said that he couldn't say exactly on what ANGDA is working. However, he recalled that ANGDA placed bids for the throughput in the Alaska Gasline Inducement Act (AGIA) and Denali processes. He further recalled that ANGDA was reviewing options with TransCanada as well.

[1:12:28 PM](#)

REPRESENTATIVE GARDNER inquired as to whether ANGDA is taking a position on HB 189.

REPRESENTATIVE CHENAULT said that he hasn't had a conversation with Mr. Heinze on that point.

[1:13:14 PM](#)

REPRESENTATIVE GARDNER pointed out that most boards and commissions the legislature establishes consist of an odd number of members. She asked whether the sponsor would anticipate any problems with having an even number of members.

REPRESENTATIVE CHENAULT said he does not believe there will be a problem, but he offered that Dan Fauske with the development team might have a better idea.

[1:13:46 PM](#)

REPRESENTATIVE P. WILSON inquired as to why the AGDC member that is being lost isn't being replaced with someone else.

REPRESENTATIVE CHENAULT related that with ANGDA placing a bid for throughput for the other projects there is concern that there would be the opportunity for confidential information to not be confidential.

REPRESENTATIVE P. WILSON stated that she agreed with the elimination of Mr. Heinze from the development team because she agreed with the problem it presented. However, she reiterated her question regarding why he wasn't replaced with someone else in the state.

MR. WRIGHT offered that the project is in such an advanced state that bringing on someone new would hinder the operation, especially since the report is due July 2011.

[1:15:37 PM](#)

CO-CHAIR SEATON related his understanding that the new confidentiality language on page 4, lines 16-18, would protect proprietary, privileged, or trade secret information, although the language on page 4, lines 12-13, already seems to cover that. He expressed the desire to ensure that the confidentiality language isn't so broad that it includes more than would be required to maintain proprietary, privileged, or trade secret information that's already covered in the legislation.

MR. WRIGHT recalled that there was discussion [with regard to the confidentiality language] between AGDC and the drafter regarding how to make the language conform. He deferred to Legislative Legal Services representatives for further response.

CO-CHAIR SEATON pointed out that the committee packet includes a memorandum dated March 8, 2011, from Legislative Legal Services that addresses some of the aforementioned issues.

[1:18:25 PM](#)

DAN FAUSKE, CEO/Executive Director, Alaska Housing Finance Corporation, President, Alaska Gasline Development Corporation, explained that [AGDC] is asking firms and other state agencies for information, and therefore wants to feel confident that it won't be compromised such that under a Freedom of Information Act (FOIA) request the information would have to be released. There is no desire to be in a position in which the information is "so tightly held" that [AGDC] is in a box. He recalled that his first few weeks working at AHFC were spent hammering out the details of the ENSTAR Natural Gas Company agreement. Therefore, he said he could provide first-hand knowledge of entering a situation prior to a company providing proprietary information. He opined that it's much easier to start with a confidentiality agreement so that there aren't arguments about what is and isn't confidential. Mr. Fauske informed the committee that process is at the stage during which much of the [confidential] information is going to be requested in order to be able to finalize the engineering, environmental, and air quality data. He emphasized the need to avoid getting derailed because AGDC can't obtain

information from a company or agency without a [confidentiality agreement].

[1:21:48 PM](#)

CO-CHAIR SEATON clarified that he didn't want to prevent the aforementioned, but he opined that the state must keep itself out of a situation in which legislators couldn't obtain enough information because of the confidentiality in the legislation which was the case with AGIA.

MR. FAUSKE said that he didn't want to be in a situation in which AGDC provides the legislature a report with recommendations based on confidential information that it can't share with the legislators. He explained that AGDC will vet the information and the [new] confidentiality language provides the freedom to gather the data and do a complete and thorough report. Mr. Fauske said that he didn't envision any subsidiary creation that would result in the owners of the project, the legislature, being privy to the data. Still, that's not to say that there wouldn't be information in a report that would be proprietary to [a company].

[1:23:52 PM](#)

KEN VASSAR, Attorney at Law (Of Counsel), Birch Horton Bittner & Cherot, explained that in preparing the report, AGDC is required to gather information, which it could perform via field research and hiring the necessary staff to do so. However, the aforementioned would be costly and time consuming. Furthermore, AGDC is aiming to prepare the report in a fairly short timeframe and thus the most efficient way in which to achieve the aforementioned is to gather information from those who have already gathered it. By and large most of the information has been gathered by private companies, which have no obligation to disclose any of their information. In fact, private companies are averse to disclosing information because they have spent a great deal of money to gather the information and don't want competitors to have access to it, whether that access is directly or via an agency that's susceptible to a public records information request. However, he informed the committee that each of the confidentiality agreements that are planned will include a provision that expressly provides that the information is being gathered and planned to be used for the purposes of AGDC in order to prepare the report and present it to the legislature. Therefore, AGDC will be free to manipulate and use the information for the purposes of putting together the report.

[1:26:27 PM](#)

MR. VASSAR acknowledged that the existing public records act includes a provision for proprietary information and trade secrets. Although that provision is helpful, there isn't a bright white line drawn between what is proprietary and what is trade secret in every instance. Even if every document received from a private company could be reviewed, analyzed, and verified as to whether it's proprietary, trade secret, or not and immune from disclosure requests, someone else could reach the opinion that the information isn't proprietary and should be disclosed. Such a situation would likely result in a time-consuming process of negotiating, litigating, and possibly arbitrating that point. The aforementioned would be a timing problem for AGDC. By allowing AGDC to enter into a confidentiality agreement with a private corporation and including a provision in that agreement that maintains the status quo of the information provided to AGDC, it ensures that the private company doesn't risk its investment in the information and makes it easier to obtain the information from the private company.

[1:28:46 PM](#)

CO-CHAIR SEATON clarified that he's trying to understand the breadth of the confidentiality agreement. He then highlighted the concern in the March 8th legal opinion that the exception will mislead the entity that everything it provides to AGDC would remain confidential. Co-Chair Seaton said that the legislation doesn't specify what can be determined as confidential information for which AGDC can sign a confidentiality agreement with the companies. The language of the legislation seems to allow AGDC to utilize a confidentiality agreement with any entity on any information to exclude the information from becoming public.

[1:30:35 PM](#)

LISA MORITZ KIRSCH, Attorney, Legislative Legal Counsel, Legislative Legal and Research Services, Legislative Affairs Agency (LAA), explained that the paragraph in her March 8th memorandum that relates the concern about misleading the corporation providing the information is largely an explanation as to why she drafted this provision in a different way than the original request. To some degree, the provision adding that it will be an exception when it's covered by a confidentiality agreement does minimize that particular concern.

1:31:27 PM

CO-CHAIR SEATON opined that the aforementioned only minimizes the concern if there are some sideboards on the confidentiality agreement that AGDC signs with the parties. If AGDC is allowed to utilize a blanket confidentiality agreement on all material, he surmised that the concern would remain or it would exclude all of the information.

MS. KIRSCH related her understanding that Co-Chair Seaton is saying that the concern that a confidentiality agreement could still be overly broad remains. However, she didn't believe that's the intention here. That concern does remain when there is language that says: "a confidentiality agreement" without any limitations.

CO-CHAIR SEATON asked if Ms. Kirsch has any suggested language that could be inserted to restrict the confidentiality agreement to the appropriate materials without being too broad.

MS. KIRSCH opined that would be better answered by those looking at the information because they would be more familiar with the nature of the information they desire to protect and the reasons to do so.

1:33:28 PM

REPRESENTATIVE P. WILSON highlighted the language on page 4, lines 16-18, which basically says that there must be a confidentiality agreement between the information provider and AGDC. However, she imagined that AGDC will have to place some sideboards in the confidentiality agreement so it can provide information to legislators to make decisions.

MR. FAUSKE, drawing from his experience with the ENSTAR Natural Gas Company agreement, explained that without a confidentiality agreement one would request information from a company and then have to wait until the company decides whether it's confidential or not. The aforementioned process takes weeks. The goal, he opined, is to expedite the process such that an entity that wants to do business with [AGDC and the state] has faith that the information it provides won't be divulged without some prior agreement or stipulation that it won't be divulged without their permission because the information being requested is the private company's information. Mr. Fauske said that AGDC isn't going to find itself in a position that it doesn't divulge

anything because it's AGDC's responsibility to divulge as much as possible since AGDC will be providing a recommendation to the legislature with regard to how to proceed.

1:35:28 PM

CO-CHAIR SEATON posed a scenario in which a confidentiality agreement is made in which no information provided by the private company is divulged and that all information exchanged and discussions are held private and confidential, such that it's not a public record and not available to the legislature. He asked if that's the type of confidentiality agreement being considered in HB 189.

MR. VASSAR answered, "Partly." The confidentiality agreement would certainly specify that the data being provided by the company to AGDC is confidential and won't be disclosed by AGDC. Another part of the confidentiality agreement will be an express recognition by the private company that the reason for gathering that data together is to prepare a report for the legislature and the information from the private company will be part of the report. Therefore, the private company would give the information to AGDC, but AGDC can't bundle it into a 3-ring binder and give it to legislators rather it can sort through the information that's valuable to the project. Mr. Vassar pointed out that each of the companies have interest in various projects and the details of those projects may be different from that of AGDC's project, and thus some of the information will be irrelevant and some will be useful. He highlighted that this is a situation in which AGDC can obtain the information that's already been created and not have to recreate it; the private companies will provide the information with the knowledge that AGDC is preparing a report for its project and the report for AGDC's project will be public.

1:38:06 PM

CO-CHAIR SEATON inquired as to whether the confidentiality agreement would not specify with which companies AGDC is dealing.

MR. FAUSKE said he couldn't imagine that ever happening.

CO-CHAIR SEATON clarified that he's trying to determine whether [the confidentiality agreement] refers to the trade secret information, proprietary information, or all information that

AGDC receives and that no one knows anything until the final report to the legislature.

MR. FAUSKE surmised that Co-Chair Seaton is referring to a sort of open season situation in which one wouldn't be allowed to know who placed a bid. He reiterated that he didn't believe this would be such a situation at the juncture at which this report will be on July 1. First, it won't be an open season situation. Second, AGDC will have gleaned from the information gathered the ability to create a report that will be distributed to the legislature, which then becomes a public document. Therefore, AGDC will negotiate with the firms ahead of time with regard to what information can be divulged and how that information is being used.

[1:39:33 PM](#)

CO-CHAIR SEATON asked if this confidentiality agreement is being placed in statute not just for this report but for the project as it goes forward.

MR. WRIGHT replied no. He reminded the committee that all House Bill 369 did was establish the guidelines and the joint In-State Gasline Development Team. In order to reach the point of an open season, based on what is reported to the legislature further legislation would be required. The [open season] is the situation in which Co-Chair Seaton's concerns could arise, but that's not contained in House Bill 369 or HB 189. The legislation, HB 189, before the committee today clarifies what was passed in House Bill 369. In further response to Co-Chair Seaton, Mr. Wright clarified that paragraph (13) on page 4 of HB 189 relates specifically to AGDC. When the report is complete, there is no knowledge as to what the legislature will do. However, he acknowledged that AGDC does have a subsidiary and the chances are good that it will participate in the next process. Still, that's for the legislature to determine.

[1:41:15 PM](#)

REPRESENTATIVE GARDNER asked whether it makes sense to place the language of paragraph (13) under paragraph (12)(A) in order to clarify that proprietary, privileged, and trade secret [information] is covered by a confidentiality agreement.

MS. KIRSCH responded that it would be a possibility, although it would take a little re-drafting. She recommended that the

committee would have to ask the attorney for AGDC whether such a change would work for the documents that they need to protect.

MR. VASSAR surmised that the suggestion is for the existing paragraph (13) to become paragraph (12)(C).

REPRESENTATIVE GARDNER replied yes.

MR. VASSAR said he is completely comfortable with that.

[1:42:48 PM](#)

CO-CHAIR SEATON asked whether that really changes anything. He then suggested that the discussion is really for [paragraph (12)(B) to become paragraph (12)(A)(1)] and the existing paragraph (13) to become paragraph (12)(A)(2). He asked if the aforementioned would be effective for AGDC.

MR. VASSAR replied yes.

MS. KIRSCH inquired as to whether the intent of the amendment is that the confidentiality agreement would only cover proprietary, privileged, or trade secret information.

[1:44:19 PM](#)

CO-CHAIR SEATON said he thought that there are two different questions, and then asked if [Ms. Kirsch's understanding] would satisfy AGDC's needs.

MR. VASSAR replied no. He reminded the committee that the language in paragraph (12)(A) is existing law, and therefore proprietary, privileged, and trade secret information is already protected. Therefore, adding a sub-subparagraph to that subparagraph wouldn't add anything to what [AGDC] is doing.

[1:45:06 PM](#)

CO-CHAIR SEATON emphasized that he's trying to understand what's being [protected] and added beyond proprietary, privileged, and trade secret information.

MR. VASSAR stated that AGDC largely anticipates receiving proprietary, privileged, and trade secret information. However, AGDC is trying to avoid the necessity of making fine point distinctions between what is proprietary or trade secret information and what is not. These are terms that don't have

specific meanings when considering a specific item of information. By allowing an exemption for confidentiality agreements that AGDC enters into, AGDC wouldn't have to make those distinctions.

[1:46:11 PM](#)

REPRESENTATIVE P. WILSON questioned whether AGDC could develop a definition for "proprietary, privileged, and trade secret information" that would fit its current circumstances. The current language, she opined, is "really wide." Therefore, the committee would like to narrow the scope [of the confidentiality agreement] while allowing AGDC to accomplish its goal.

MR. VASSAR asked then whether the legislation would specify that AGDC would define these terms by regulation or in the confidentiality agreement.

REPRESENTATIVE P. WILSON highlighted that definitions are often placed in legislation so there's no doubt.

[1:48:28 PM](#)

REPRESENTATIVE DICK said he understands the need to maintain confidentiality of [proprietary, privileged, and trade secret information]. However, there may be some fairly mundane information for which [a company] spent lots of money to obtain that the company would like to guard.

[1:49:15 PM](#)

MR. FAUSKE reminded the committee that AGDC will be asking other people for their information and it's difficult to determine what AGDC considers confidential proprietary, privileged, and trade secret information versus what a company does. When one enters into a confidentiality agreement, one gives his/her word that without further reference to the company the information won't be divulged. However, the nature of the work AGDC will be doing will bring the information to the legislature via the report. This language attempts to expedite the process of moving the work forward as it's due July 1. He expressed the need to avoid ending up in a room with attorneys trying to define the terms proprietary, privileged, and trade secret information, which is what occurred in the ENSTAR Natural Gas Company situation. In such a situation every little nuance has to be protected and there ends up being a 20-some page agreement. Again, he reminded the committee that AGDC doesn't

have the information it needs. "I swear to you I won't give your information away, is what I'm trying to get to," he remarked.

[1:50:41 PM](#)

REPRESENTATIVE P. WILSON related her belief that AGDC could do the aforementioned, even without this language in HB 189.

MR. VASSAR replied yes, AGDC could negotiate a 20-some page agreement. However, the amount of time spent agreeing on what the parties agree on is time that could've been spent preparing the report. The point is that time is valuable, particularly in this circumstance. Furthermore, when one meets with these companies, one meets with an "army" and it takes lots of time to negotiate matters. He then noted his agreement with Representative Dick's earlier comments regarding the fact that while the information these companies hold may not be proprietary or trade secret information, they have spent a lot of money to obtain the information and aren't willing to [allow it to be public]. However, sometimes they will create a safe room where the companies allow others to view the information but not have the information. The aforementioned is a difficult way in which to work on a report.

[1:52:52 PM](#)

CO-CHAIR SEATON inquired as to whether the sponsor would be comfortable having this provision sunset, since it seems to really address only this report.

[1:53:40 PM](#)

REPRESENTATIVE MUNOZ asked if it's the intention to provide the information being protected with the confidentiality agreement at the point of an open season, in the report to the legislature, or does it remain confidential after the reporting period.

MR. VASSAR replied no, adding that the expectation is that the confidentiality of the information would continue to be protected. However, Mr. Vassar related that he isn't sure of AGDC's role after the report is submitted and remarked that it will be up to the legislature to determine what future role AGDC has after the report. If AGDC doesn't have a role after the report, he assumed that it would return the information to those from whom it was obtained.

[1:56:00 PM](#)

REPRESENTATIVE DICK opined that a sunset would seem to solve the whole problem.

CO-CHAIR SEATON announced that he has obtained information from the sponsor that a sunset clause would be acceptable.

[1:56:38 PM](#)

The committee took a brief at-ease.

[1:56:58 PM](#)

REPRESENTATIVE GARDNER asked if there is any history of disclosed information that was deemed proprietary, privileged, or trade secret information by one party but was ordered by a court or other entity to be released.

MR. VASSAR responded not to his knowledge in Alaska. However, he reminded the committee that Alaska doesn't have a lot of case law history given its youth. Still, he related his expectation that for information subject to a confidentiality agreement that is proprietary or trade secret, the Alaska Supreme Court would honor and protect it. He related his understanding that there hasn't been an obligation to disclose by the Alaska Supreme court in such a situation. The question, he reminded the committee, being addressed is what information is proprietary and trade secret information. If all parties understood and agreed that a particular piece of paper contained proprietary information, then he didn't doubt that the Alaska Supreme Court would protect that.

[1:58:47 PM](#)

REPRESENTATIVE GARDNER inquired as to the consequences to the state or agency for an unauthorized disclosure under current law versus the proposed legislation.

MR. VASSAR answered that the consequences, which would be unpleasant, would be the same either way. He anticipated that violation [unauthorized disclosure] of information that inherently has value or has value due to the time, effort, and funds put forth by the entity to gather that information would result in a lawsuit.

CO-CHAIR SEATON interjected that there are other consequences, specifically to the individual who released the information, as well. In response to Representative Gardner, Co-Chair Seaton clarified that the aforementioned doesn't change [with HB 189].

[2:01:12 PM](#)

CO-CHAIR SEATON informed everyone that a conceptual amendment to repeal paragraph (13) on December 31, 2011 will be offered upon the conclusion of public testimony. He then opened public testimony. Upon determining no one wished to testify, closed public testimony.

[2:01:56 PM](#)

CO-CHAIR SEATON moved that the committee adopt Conceptual Amendment 1, as follows:

Page 4, lines 16-18;

Repeal paragraph (13) on December 31, 2011

There being no objection, Conceptual Amendment 1 was adopted.

[2:02:56 PM](#)

REPRESENTATIVE GARDNER expressed concern that she has been unable to speak to Mr. Heinze or have a statement from ANGDA regarding HB 189.

CO-CHAIR SEATON said that he believes Mr. Heinze knew HB 189 was going to come before the committee as it has been scheduled.

[2:03:33 PM](#)

REPRESENTATIVE P. WILSON moved to report HB 189, as amended, out of committee with individual recommendations and the accompanying zero fiscal note. There being no objection, CSHB 189(RES) was reported from the House Resources Standing Committee.

HB 146-LAND TRANSFER FROM STATE AND ALASKA RR

[2:04:13 PM](#)

CO-CHAIR SEATON announced that the next order of business would be HOUSE BILL NO. 146, "An Act authorizing the transfer of land from the State of Alaska and the Alaska Railroad Corporation to

property owners along the Eielson Spur Line; and providing for an effective date."

[2:04:51 PM](#)

CO-CHAIR SEATON moved to adopt CSHB 146, Version 27-LS0505\M, Kane, 2/10/11, as the working document.

REPRESENTATIVE P. WILSON objected.

[2:05:01 PM](#)

RICK VANDERKOLK, Staff, Representative Tammie Wilson, Alaska State Legislature, pointed out that the change encompassed in Version M can be found on page 2, line 18. He explained that language was intended to deal with different abutting owners on each side of a right-of-way. The original legislation implied that the right-of-way could be conveyed to another person other than the adjoining land owner, which Version M corrects. He characterized it as a technical change.

[2:05:56 PM](#)

REPRESENTATIVE P. WILSON asked if Section 2 of Version M is entirely new.

MR. VANDERKOLK replied no, just the language change on page 2, line 18.

CO-CHAIR SEATON clarified that Section 2 is adding a new section, and therefore no existing law is being changed rather changes were made to the proposed new language.

MR. VANDERKOLK noted his agreement.

[2:07:03 PM](#)

MR. VANDERKOLK informed the committee that in 2003 Congress repealed the right-of-way reversion provision in the Alaska Railroad Transfer Act (ARTA). This legislation, he explained, reinstates the mechanism for landowners along the Eielson Spur to receive ownership of their property after the easement is no longer in use. He emphasized that HB 146 is only for landowners along the Eielson Spur. He then related that the Alaska Railroad Corporation (ARRC) supports this amendment [to ARTA] and the committee packet includes a letter from the ARRC Board chairman. Mr. VanderKolk explained that in 2000 ARRC requested

assistance from Alaska's congressional delegation and questions arose from the first rail alignments as some of the spur lines hadn't been used since 1985. The simplest solution at that time was to repeal section 1209 of ARTA. However, an unintended consequence of the repeal was that the reversionary property rights the abutting owners had was repealed in 2003, which was realized by some property owners in 2006. The aforementioned was brought to the attention of ARRC, which supports HB 146.

[2:08:48 PM](#)

CO-CHAIR SEATON inquired as to why [section 1209 of ARTA] was repealed.

MR. VANDERKOLK clarified that there were some alignment title issues that had to be addressed.

[2:09:33 PM](#)

REPRESENTATIVE GARDNER asked if the land is supposed to revert to the previous owner or is land that is no longer in use and merely abuts the landowner's land given to the landowner.

MR. VANDERKOLK answered that the legislation intends to return the landowner's previous rights in the event that all entities discontinue use of the right-of-way.

[2:09:56 PM](#)

REPRESENTATIVE GARDNER inquired as to how the ARRC acquired the right-of-way from the original landowners.

MR. VANDERKOLK deferred to the ARRC attorney.

[2:11:03 PM](#)

BILL HUPPRICH, Vice President, General Counsel, Alaska Railroad Corporation, explained that this matter goes back to the 1914 act that authorized the construction of the Alaska Railroad. Pursuant to that act, the federal government reserved a 200-foot right-of-way for the construction of railroads, telegraph, and telephone lines across all federally owned land in Alaska. At that time, every acre of land in Alaska was owned by the federal government. Construction of the railroad began in 1916 and was completed in 1921. Then World War II occurred and in 1947 the U.S. Army decided that a railroad needed to be constructed from the terminus of the original railroad at Fairbanks to what is

now known as Eielson Air Force Base. By that time several folks had homesteaded along the proposed railroad route. The homesteading documents and eventual patents for the land included a reservation for a 200-foot right-of-way for the Alaska Railroad. Based on that reservation, when the U.S. Army constructed the Eielson branch, it exercised that right and didn't have to pay any of the homesteaders along the right-of-way for any land.

[2:13:20 PM](#)

CO-CHAIR SEATON returned the gavel to Co-Chair Feige.

[2:13:44 PM](#)

REPRESENTATIVE P. WILSON related her understanding that this isn't all of the land owned by ARRC, but only the Eielson Spur line that hasn't been used by ARRC for 18 continuous years. She further related her understanding that the landowner would also have to request return of the land.

MR. VANDERKOLK said that is correct.

[2:14:36 PM](#)

REPRESENTATIVE MUNOZ inquired as to what happens in a situation in which the land has been sold numerous times since the original act.

MR. VANDERKOLK answered that he believes the current owner abutting the right-of-way will [receive the right-of-way land].

[2:15:07 PM](#)

REPRESENTATIVE GARDNER inquired as to why HB 146 should only apply to the Eielson Spur [right-of-way land].

MR. VANDERKOLK deferred to Mr. Hupprich.

MR. HUPPRICH explained that it only applies to the Eielson Spur because that branch is unique as it wasn't constructed until 1947 at which time there were a handful of homesteaders on the Eielson branch. The aforementioned situation is unique to the Eielson Spur and is unlike any other area of the railroad, which stretches from Seward to Fairbanks. When construction was completed in 1921, there were no other landowners that had patents to the land along the railroad right-of-way. However,

by 1947 people were starting to move into the state and along the Eielson Spur there were five to six homesteaders.

[2:17:02 PM](#)

CO-CHAIR FEIGE pointed out that there are existing railroad rights-of-way, specifically along the Matanuska River, although the tracks were taken up years ago. He asked if HB 146 would apply to those properties along those existing rights-of-way.

MR. HUPPRICH replied no, and specified that HB 146 is written to only apply to the Eielson Spur.

[2:17:47 PM](#)

REPRESENTATIVE HERRON asked if the military used the Eielson Spur right-of-way to move artillery and tanks to training sites in the Tanana Valley. He then asked whether the military needs that right-of-way any longer.

MR. HUPPRICH clarified that the right-of-way is owned by ARRC, not the U.S. military. The ARRC routinely runs trains into Fort Wainwright and Eielson Air Force Base for various reasons, including to bring coal into the bases for the coal-fired plants and to move the Stryker Brigade. Therefore, the [rail service] is still needed for military purposes.

[2:19:37 PM](#)

CO-CHAIR FEIGE announced that HB 146 would be held over.

[2:19:48 PM](#)

The committee took an at-ease from 2:19 p.m. to 2:20 p.m.

HJR 21-OPPOSING FEDERAL WILD LAND DESIGNATION

[2:20:35 PM](#)

CO-CHAIR FEIGE announced that the next order of business would be HOUSE JOINT RESOLUTION NO. 21, Urging the Secretary of the United States Department of the Interior to withdraw a secretarial order that creates a wild land classification and to administer federal lands in the state in accordance with existing statutes and agency guidelines; and urging the United States Congress to prohibit the use of appropriated funds by the

United States Department of the Interior and the Bureau of Land Management to implement, administer, or enforce the secretarial order.

2:20:46 PM

REPRESENTATIVE KELLER, speaking as one of the co-sponsors of HJR 21, began by relating his belief that Alaska is, again, under attack by federal bureaucrats. He then provided the committee with a map entitled "Who Owns/Manages Alaska?", which shows the percentage of ownership of the state between the U.S. government, State of Alaska, and private ownership. He reminded members of the enactment of the Alaska National Interest Lands Conservation Act (ANILCA) and the Alaska Native Claims Settlement Act (ANCSA), which was a compromise.

2:22:53 PM

REPRESENTATIVE KELLER then directed attention to page 1, line 12 of HJR 21, which directs the Bureau of Land Management (BLM) to inventory all managed land for wilderness characteristics. He told the committee that in a question and answer session with the BLM it charged that Alaska had not inventoried all of its lands. However, that was exactly the purpose of the ANILCA process. He then highlighted that the term "Wild Lands" is a new designation that's not well defined. Representative Keller opined that one of the most frustrating parts of Secretarial Order No. 3310 was that there was no consultation with the state. Although there were hints that this new designation would be forthcoming, ultimately the governor only had hours to respond. He then directed attention to page 2, lines 6-7 of HJR 21, which specifies that U.S. Secretary Salazar failed to recognize that only Congress can designate lands as wilderness. As page 2, lines 11-12, specify ANILCA has already formally designated 57 million acres of Alaska's land as wilderness. Furthermore, enactment of ANILCA clearly states that there were sufficient federal wilderness land holdings in Alaska, which is related on page 2, lines 13-17, of HJR 21. The language on page 2, lines 18-21, points out that after the passage of ANILCA Alaska's land was extensively inventoried, reviewed, and classified for its wilderness value, although perhaps not to the extent now desired by the federal government. He highlighted the language on page 2, lines 22-24, which specifies that Secretarial Order No. 3310 has reversed a 30-year policy of BLM to conduct no further wilderness reviews in the state. The language on page 2, lines 25-31, points out that the Secretarial Order 3310 charges BLM to inventory the lands in the National

Petroleum Reserve-Alaska (NPR-A), which he opined is in direct defiance of the U.S. code as is specified in the language on page 3, lines 1-5. If the NPR-A received a wilderness designation, it could lead to a shut down and restriction of access to that land. He then explained that the language on page 2, lines 13-17, creates a presumption. The remaining language on page 3, lines 18 through page 4, line 1, asks the U.S. Secretary of Interior to withdraw Secretarial Order 3310 and failing the aforementioned requests that Congress prohibit the funding for the order. The state has taken a strong stance [against] Secretarial Order 3310 as the governor has written a letter and Senator John Coghill has actually testified in Washington, D.C., [against this order].

[2:29:46 PM](#)

REPRESENTATIVE KELLER informed the committee that the state BLM director pointed out to the citizens' advisory commission on federal access that during this inventory he doesn't have any jurisdiction over lands suggested as having wilderness characteristics, rather any disputes over such a [designation] would be before U.S. Secretary Salazar. Therefore, it isolates the BLM director from any local pressure. Representative Keller opined that HJR 21 is an important resolution that clearly states on the record that Alaska is operating under the law that exists. He then told the committee that the citizens' advisory commission on federal access hears many concerns with regard to access, which seems to be an ongoing problem.

[2:31:25 PM](#)

REPRESENTATIVE HERRON recalled that in the early 2000s an out of court settlement resulted in the withdrawal of the wilderness policy. Therefore, there hasn't been a policy since 2003/2004. Representative Herron stated that he isn't opposed to HJR 21, although [the state] essentially hasn't had a wilderness policy the last six to seven years.

REPRESENTATIVE KELLER clarified that he was referring to the federal law. He opined that the fact the BLM doesn't have a wilderness policy in place isn't relevant to HJR 21.

[2:32:58 PM](#)

JIM POUND, Staff, Representative Wes Keller, Alaska State Legislature, pointed out that 43 U.S.C. (a) 1782 still requires the Secretary of Interior to review certain things from time-to-

time. However, the requirement that a wilderness designation can only be accomplished by Congress remains and Secretarial Order 3310 doesn't meet that requirement.

REPRESENTATIVE HERRON concurred.

[2:33:33 PM](#)

REPRESENTATIVE GARDNER noted that during energy week in Washington, D.C., many Alaskan legislators met with the U.S. Department of Interior to explain that to Alaskans a wild land designation means that resources on that land can't be developed, although the department insists that isn't the case. However, [department staff] couldn't articulate any benefit to the state if this policy is passed.

REPRESENTATIVE KELLER added that the justification presented by the BLM had nothing to do with the benefit to Alaskans, but rather was the need to preserve more lands to ensure people can experience isolation in the wilderness.

[2:35:16 PM](#)

REPRESENTATIVE MUNOZ asked if other states have been subjected to this review from BLM.

REPRESENTATIVE KELLER recalled that Utah and Wyoming are upset by this policy as well. He offered that where ever there is a lot of BLM land it is an issue.

[2:35:55 PM](#)

REPRESENTATIVE HERRON said he is going to support HJR 21, but pointed out that in [BLM] documents wild lands must contain management actions to achieve protection. Therefore, most likely the land would be closed [to any resource development]. Representative Herron then remarked that BLM would be hard pressed to have a permitting process for anything that would be of benefit to Alaska. In conclusion, he suggested that HJR 21 should include "WHEREAS" clauses that list other states with the same problem.

REPRESENTATIVE KELLER, in response to Representative Herron and Co-Chair Feige, said that he didn't know which states to include in the resolution. However, he related his understanding that Wyoming and Utah would likely be listed.

CO-CHAIR FEIGE said that he had been provided a resolution from the Nevada Association of Counties and the Wyoming County Commissioners Association, both of which expressed opposition to the wild lands policy of BLM.

REPRESENTATIVE KELLER said he didn't have a problem including such language, but said he wasn't sure those are the only two entities [in opposition to the wild lands policy of BLM].

CO-CHAIR SEATON commented that he was unsure whether the resolution should address these other county associations in two different states.

CO-CHAIR FEIGE opined that the resolution should speak for Alaska with a loud voice.

[2:38:37 PM](#)

REPRESENTATIVE MUNOZ moved to report HJR 21 out of committee with individual recommendations and the accompanying zero fiscal note. There being no objection, it was so ordered.

[2:39:24 PM](#)

The committee took an at-ease from 2:39 p.m. to 2:41 p.m.

HB 89-EXTRACTION OF BEDLOAD MATERIAL

[2:41:09 PM](#)

CO-CHAIR FEIGE announced that the final order of business would be HOUSE BILL NO. 89, "An Act authorizing the commissioner of natural resources to offer bedload material for disposal for flood control purposes in exchange for a percentage of the profit from the sale of that material." [Before the committee was CSHB 89, Version 27-LS0334\B, Bullock, 3/11/11, as amended and adopted as the working document at the March 14, 2011, hearing.]

[2:41:21 PM](#)

CO-CHAIR SEATON clarified that the site specific flood mitigation plan approved by the commissioner is not drawn up by the commissioner, rather it's done by a local flood district or the municipality. The site specific flood mitigation plans are a function of the locality not a function of the commissioner. Co-Chair Seaton also clarified that the amendment adopted

calling for plans to be reviewed by a professional engineer with relevant experience would include experience as a stream hydrologist. The commissioner will determine what relevant experience is necessary for a particular project in a particular flood mitigation plan, and therefore it could vary.

[2:43:07 PM](#)

REPRESENTATIVE MUNOZ moved to report CSHB 89, Version 27-LS0334\B, Bullock, 3/11/11, as amended, out of committee with individual recommendations and the accompanying fiscal notes. There being no objection, CSHB 89(RES) was reported from the House Resources Standing Committee.

[2:44:17 PM](#)

ADJOURNMENT

There being no further business before the committee, the House Resources Standing Committee meeting was adjourned at 2:44 p.m.