ALASKA STATE LEGISLATURE
SENATE RESOURCES STANDING COMMITTEE
January 26, 2015
3:32 p.m.

MEMBERS PRESENT

Senator Cathy Giessel, Chair
Senator Mia Costello, Vice Chair
Senator John Coghill
Senator Peter Micciche
Senator Bert Stedman
Senator Bill Stoltze
Senator Bill Wielechowski

MEMBERS ABSENT

All members present

COMMITTEE CALENDAR

Overview of Confidentiality Procedures in State Agencies

-HEARD

PREVIOUS COMMITTEE ACTION

No previous action to record

WITNESS REGISTER

CHAD HUTCHISON, Staff to Senator Coghill
Alaska State Legislature
Juneau, Alaska
POSITION STATEMENT: Gave an overview of confidentiality procedures in both the executive and legislative branches of government.

RANDALL HOFFBECK, Acting Commissioner
Department of Revenue (DOR)
Anchorage, Alaska
POSITION STATEMENT: Briefed committee on how confidentiality is applied in the DOR.

CATHY FOERSTER, Engineering Commissioner and Chair
Alaska Oil and Gas Conservation Commission (AOGCC)
Anchorage, Alaska

POSITION STATEMENT: Briefed committee on how the AOGCC handles confidentiality issues.

PAUL DECKER, Interim Acting Director
Division of Oil and Gas
Department of Natural Resources (DNR)
Juneau, Alaska
POSITION STATEMENT: Explained how confidentiality issues are addressed in the DNR.

NIKOS TSAFOS, Partner
enalytica
Legislative Consultant
Juneau, Alaska
POSITION STATEMENT: Explained how confidentiality is used from a consultant's point of view.

JANAK MAYER, Partner
enalytica
Legislative Consultant
Juneau, Alaska
POSITION STATEMENT: Explained how confidentiality is used from a consultant's point of view.

ACTION NARRATIVE

3:32:19 PM
CHAIR CATHY GIESSEL called the Senate Resources Standing Committee meeting to order at 3:32 p.m. Present at the call to order were Senators Micciche, Costello, Stedman, Wielechowski, Coghill, Stoltze, and Chair Giessel.

OVERVIEW ON CONFIDENTIALITY PROCEDURES IN STATE AGENCIES

CHAIR GIESSEL said the purpose of the hearing was about confidentiality procedures in state agencies and welcomed Chad Hutchison.

3:33:13 PM
CHAD HUTCHISON, Staff to Senator Coghill, Alaska State Legislature, Juneau, Alaska, said he would give an overview on confidentiality procedures in both the executive and legislative branches of government. He would talk about who is involved with these agreements, what's in the agreements, when they occur and why, and why they are important from the perspective of Alaska State government. He would also provide a brief history of confidentiality agreements (CA) in Alaska.

MR. HUCHISON said a confidentiality agreement is an agreement between parties where information of a proprietary nature is disclosed between the parties and is not to be disclosed to the public or a third party. Examples of proprietary information include confidential data, research, books, trade secrets, business operations, strategic materials, and things like that.

Sometimes a confidential agreement goes forward between parties just to see if the transaction itself can go forward.

3:35:29 PM
What else may also be included in confidentiality agreements? The parties investigation of assets including locations, "return clauses (if the deal does not go through the proprietary information is returned to the parties as soon as practical)," and discussions relating to future transactions like press releases and public announcements.

3:36:04 PM
MR. HUTCHISON noted that he prepared this presentation. He continued that other elements included in a confidentiality agreement are damage provisions related to injuries and the recoverable steps, whether injunctive relief may or not be available, and if there is a dispute, what sort of alternative resolution may occur and which court has relevant jurisdiction. They also sometimes include assignment clauses between the parties.

Confidentiality agreements are important, because the intent is to have an honest assessment between the parties as it relates to some of these transactions going forward. For example, in the oil industry there may be disclosures of transportation costs and valuation practices that may be valuable for other competitors to know.

3:38:07 PM
Confidentiality in the State of Alaska is addressed by AS 40.25.110(a) that says "unless specifically provided otherwise, public records of all public agencies are open to inspection."

The second level of analysis is found more in AS 40.25.120 that is used after balancing the right to public access with the privacy rights guaranteed in the State Constitution and the need for government officials to engage in policy deliberation without undue influence. So, this statute outlines a number of

exceptions to public records requirements that include trade secrets, proprietary information, and so forth.

All in all, Mr. Hutchison said, of the 47 statute titles, at least 34 of them include some provision that relates to confidential agreements. Seven statutes allow or require the executive or legislative branches and their employees to enter into confidentiality agreements, which he would describe more about later. They are:

> AS 31.25.090(f-g) – the Alaska Gasline Development Corporation (AGDC),
> AS 37.10.220(b)(4) – the Alaska Retirement Management Board whenever they look at financial investment decisions going forward,
> AS 38.05.020 (b)(12) – the Department of Natural Resources (DNR) (the AK LNG Project),
> AS 40.25.100 – the Department of Revenue (DOR) as it relates to the tax information of individual taxpayers, the exception being you can't have aggregate tax information,
> AS 40.25.120 (a)(13-14) – AGDC,
> AS 43.05.095(c) – Department of Revenue (DOR) relating to indirect expenditure reports that are submitted to the Senate Finance Committee on July 1 of the first regular session, and
> AS 43.98.060 – DNR/DOR, the Oil and Gas Competitiveness Review Board that takes into how confidentiality agreements are related account activity and investment information.

MR. HUTCHISON said two additional statutes are related to information on the North Slope Gasline construction: AS 43.82.310 – DNR/DOR Stranded Gas Development Act and AS 43.90.160 – DOR Alaska Gasline Inducement Act; both apply to applications whether it be for development of a contract or for the Alaska Gasline Inducement Act (AGIA) license, itself.

CHAIR GIESSEL said he didn't call out AOGCC.

MR. HUTCHISON said this list is not intended to be exhaustive.

CHAIR GIESSEL said the Alaska Railroad Corporation (ARRC) also has a lot of proprietary information.

MR. HUTCHISON said confidentiality agreements had been used when the AGIA applications occurred.

3:42:52 PM
SENATOR WIELECHOWSKI said that was "completely inaccurate." AS 43.90.160 says: "information that the commissioners have determined is proprietary or a trade secret under AS 43.90.150 may not be made public even after notice is published." AS 43.90.150 in AGIA said:

> At the request of the applicant, information submitted under this chapter, that the applicant...identifies and demonstrates its proprietary or as a trade secret it's confidential and not subject to public disclosure under AS 43.25....After the license is awarded all information submitted all information submitted and not determined by commissioners to be proprietary shall be made public.

So under AGIA, if a company believes that information is proprietary, the burden is on them to prove it and if the commissioners determine that it is indeed proprietary or a trade secret, then it's confidential. That is very different than what was done under SB 138, the gasline bill. SB 138, section 24, AS 38.05.020(b)(12) says the commissioner:

> May enter into confidentiality agreements to maintain the confidentiality of information related to contract negotiations and contract implementation associated with the North Slope natural gas project.

SENATOR WIELECHOWSKI explained the commissioner is allowed to say that anything related to contract negotiations or implementation can be confidential. That' virtually everything, which is a problem that many have with the confidentiality provision of SB 138: it's way too broad. It gives the commissioner the sole right to say if it's confidential or not as opposed to the applicant demonstrating the information is proprietary or a trade secret.

MR. HUTCHISON agreed there was a different structure but he was using it as an example to help people understand the different confidentiality agreements that have occurred throughout the state's history.

3:46:15 PM
SENATOR MICCICHE said he wasn't disagreeing with Senator Wielechowski, but he believed the final line in AGIA confidentiality allowed the commissioners to deem something as

confidential, which results in essentially the same outcome as in SB 138.

SENATOR WIELECHOWSKI responded that SB 138 basically says the commissioner has the right to declare all information "related to contract negotiations and contract implementation," which is virtually everything: email, phone calls, and documents.

SENATOR MICCICHE said the end result is the same if the commissioner can determine that something is proprietary or a trade secret. The AGIA license doesn't have sideboards.

MR. HUTCHISON added that almost all of the confidentiality agreements have different provisions and he wanted to make sure they understood the historical context. He continued that in 1999, legislators were required to sign confidentiality agreements prior to receiving briefings from the Knowles Administration on the BP-ARCO merger. Why? Because it contained proprietary corporate information and state and federal tax issues. In 2005, state officials/employees were required to sign confidentiality agreements for access to oil and gas market reports by Wood MacKenzie, Ltd.

3:49:15 PM
SENATOR STEDMAN commented that he signed that document, but he didn't know why they were required to sign it, because he didn't recall anything that had any real value they didn't have access to under ACES or anything they worked with on this subject matter. His perspective was that they need to be careful about signing confidentiality agreements.

3:50:11 PM
MR. HUTCHISON said they researched different non-statutory confidentiality agreements in the executive branch's interaction with some of the private sector entities. The first sampling deals with DNR and includes in the appendices its “request for proposal” procedures, a “nondisclosure and confidentiality” section that forbids contractors from disseminating confidential information. It delineates the types of information covered.

The Department of Health and Social Services (DHSS) similarly requires business associates in the private sector that receive protected health information to sign an agreement that delineates how information is handled. Included in the agreement are numerous provisions outlining confidentiality requirements.

The Department of Public Safety (DPS) and Council on Domestic Violence and Sexual Assault require “assurances” from grant recipients among which is a requirement that the grantee will protect “program participant confidentiality and maintain policies and procedures to guarantee program participant confidentiality.”

3:52:22 PM
RANDALL HOFFBECK, Acting Commissioner, Department of Revenue (DOR), Anchorage, Alaska, said much of the department is secure workspace. Many employees handle confidential taxpayer information. Most of this relates to the Tax Division, but Child Support Enforcement and Permanent Fund Division also have confidentiality, and they all receive annual training in it.

3:54:28 PM
One of the department's primary missions is to collect, administer, and audit Alaska's tax revenues. Another mission is to forecast and report revenues. This largely involves data collected via the first mission. Some data is offered voluntarily, because industry knows the department will keep it confidential as required by law.

3:55:10 PM
He said that confidentiality is largely statute driven. AS. 43.05.230 states, "It is unlawful for a current or former officer, employee, or agent of the state to divulge the amount of income or the particulars set out or disclosed in a report or return made under this title . . ."

AS 40.25.1900(a) states in part “Information in the possession of the Department of Revenue that discloses the particulars of the business or affairs of a taxpayer or other person is not a matter of public record . . .”

AS 43.20.021(a) adopts the Internal Revenue Code by reference, including sections regarding confidentiality of taxpayer data

3:56:23 PM
Consequences for releasing confidential data and not releasing it are in AS 43.05.230(f) that provides "a willful violation of…this section...is punishable by a fine of not more than $5,000, or by imprisonment of not more than two years, or by both.”

However, AS 11.56.820(a)(2) provides that a “person commits the crime of tampering with public records in the second degree if

the person . . . knowingly . . . suppresses, conceals, removes, or otherwise impairs the . . . availability of a public record, knowing that the person lacks the authority to do so." (a Class A Misdemeanor).

3:57:36 PM
Information can be disclosed includes exceptions in AS 43.05.230:

- Investigations, Appeals, Child Support proceedings
- DNR (tax return data for audit functions); DEC and ADF&G (fisheries business tax filer info)
- Sharing with Federal or other state governments if they can prove they have appropriate safeguards
- Information in a tobacco, alcohol, mining, business, or fisheries license is public

Other specific exceptions that relate to oil and gas, but are in the general Depart of Revenue statutes, AS 43.05.230:

- The name of each person claiming a credit, and the amount of the credit for each gas storage facility, is public information (from HB 280, in 2010)
- The name of each person electing to pay production taxes under the tax as gas ("TAG") method, and the amount of gas produced for each lease or property is public information (from SB 138, in 2014)

Less specifically, there are exceptions to taxpayer confidentiality in the Oil and Gas Production Tax Statutes (AS 43.55.890):

- Data aggregated among three or more producers or explorers to prevent individual identification
- We routinely aggregate and release large amounts of data in this manner: tax collections, credits, production volumes, tax rates, values, transportation costs, lease expenditures, etc.

ACTING COMMISSIONER HOFFBECK stated that the department requests and receives a lot of taxpayer data including their plans and projections that are necessary to do their job. In many cases companies are not required to provide this but they do so because of how department personnel treat the data. One of the first things he did when he started working with the DOR is request all the confidentiality agreements and their policies and procedures for vetting confidential data, and it is being

reviewed right now to make sure of having the right balance between releasing information to the public and keeping confidential what taxpayers feel is important.

4:00:17 PM
CHAIR GIESSEL asked if a legislator wanted to review the tax information and agreed to sign the confidentiality agreement, could he do that.

ACTING COMMISSIONER HOFFBECK replied that he wasn't sure, but would find out.

SENATOR STOLTZE said he didn't know what would constitute a release of information. For instance, what if a legislator had served on the ARCO/BP merger and made pronouncements during a tax debate one way or another, because of information he read in a confidential manner.

ACTING COMMISSIONER HOFFBECK responded that he remembered that the department was able to make determinations based on confidential data during the construction of TransAlaska Pipeline System (TAPS), but they couldn't release specifics of that data. But he couldn't see how his example could in any way reveal commercial data underlying his decision.

SENATOR STOLTZE wanted that clarified by the counsels of the DOR and the Attorney General's office.

SENATOR COGHILL commented said many legislators worked hard to keep people's personal information was kept safe by the government.

4:04:36 PM
CATHY FOERSTER, Engineering Commissioner and Chair, Alaska Oil and Gas Conservation Commission (AOGCC), said the commission is responsible for regulating oil, gas, and geothermal exploration, development and production operations throughout the State of Alaska. They oversee all drilling and well work on all state lands and state waters. It also ensures that custody transfer metering is done accurately.

The AOGCC receives a large volume of information from operators every day. Most of this information is stored in the AOGCC’s non-confidential well file system and also posted on the AOGCC website, both of which are open and available to the public. However, the AOGCC frequently receives information that it is required by statute to keep confidential.

The most common example of data that the AOGCC is required to keep confidential relates to exploratory wells. The statutes clearly say that required reports and information that relate to an exploratory or stratigraphic test well and those portions of an application for a permit to drill a well that contains proprietary information shall be kept confidential for 24 months unless the owner of the well gives written permission to release the data and information earlier. The exact wording can be found at AS 31.05.35(c).

4:07:19 PM
Another example is data that an operator is not required by statute to provide but that they voluntarily provide. Again the statutes are very clear. They say that information not required by statute but voluntarily filed with the commission shall be kept confidential if the person filing the information so requests. The exact wording can be found at AS 31.05.035(d).

So what sorts of information would an operator volunteer and want to hold confidential? The answer to this question is not spelled out in the statutes but it is still pretty clear. An operator often wants to share interpretive or company-proprietary information so that the commission can understand the operator's reasoning behind a request or action. Examples are a structure or net pay map or a structural cross-section. Another example is a reservoir simulation model – its construction, its input data and assumptions, and its output. All of these examples involve technical interpretation and the use of a company's proprietary tools and technology.

Specifically, MS. FOERSTER said AS 31.05.035(d) has been used to treat as confidential voluntarily provided information – i.e., data and information neither required nor requested by the AOGCC. Since both Prudhoe Bay and Point Thomson are oil fields, no gas may be removed from either without an offtake allowable determination by the AOGCC. This requirement is in place to ensure that waste does not occur because, in general, removing gas from an oil field before all the oil has been produced generally results in loss of some of the oil. For AOGCC to make the offtake allowable determination the operator of the field must demonstrate that hydrocarbon losses will not occur. This demonstration typically involves complicated geologic and engineering analysis, and for both Prudhoe Bay and Point Thomson, that is definitely the case.

In 2005, the AOGCC began preparing for that inevitable “ask” by gathering that technical and analytical information, all of which the operators hold as proprietary and confidential. Thus as part of the process, AOGCC technical staff signed confidentiality agreements with both the Prudhoe Bay and the Point Thomson operators.

Obviously, confidentiality does not apply to information submitted as part of a public process. That said, AOGCC regulations regarding hearings clarify that, if disclosure of otherwise confidential information is required for the commission to make a decision, the commission will protect that data’s confidentiality by viewing it in-camera and redacting it from the public record.

4:10:13 PM
CHAIR GIESSEL asked if the commission holds executive sessions.

MS. FOERSTER replied they don't have executive meetings; they go into a deliberative process after a hearing. They try to avoid gathering except in the public record so they don't violate the Public Records Act. Their decisions are based on what has come in through the public process and then individual deliberations. Staff synthesizes information from the hearings, makes it easy to understand, and makes recommendations. Each commissioner can call in the staff and ask for further clarification. Sometimes the staff will revise its recommendation and sometimes the commissioner will "get it." They try really hard to not violate the Public Records Act.

CHAIR GIESSEL said she was trying to visualize receiving confidential information about gas and oil and asked when they receive this information if the companies come to the commission and convene a meeting in executive session.

4:13:19 PM
MS. FOERSTER answered that two things happen: one, the technical staff signed those confidentiality agreements, so they meet and use all the data that they have complied through those studies to formulate their recommendations to the commission.

For instance, for the gas off-take issue an engineer and a geologist will sign CAs and go through the details of BP's or ExxonMobil reservoir stimulation model, the technical staff will understand the input and agree that the construction of the model uses good engineering practices, that the geologic description is valid, and that all of the input assumptions that

went into the model make sense based on the data; then they will run different cases. This information won't be shared with the commissioners, because they didn't sign the CA, but then the recommendations will be based on the data in their heads. But before getting to a decision, there would be a public hearing in which the commissioner would require the operator to present as much information for the public record as is possible. If there is information that is proprietary or a trade secret the commission will hold an "in camera session." During that session they may say something is not proprietary and if they want it to be used to consider their decision it will have to be on the public record. Otherwise, it's not being considered. This happens in hearings all the time. For regular questions the commissioners will each sit in their office and ask questions separately, but for legal questions, all three commissioners listen to their assistant attorney general at one time.

4:17:28 PM
SENATOR WIELECHOWSKI asked if it was fair to say that at the heart the commission is trying to protect trade secrets and proprietary information.

MS. FOERSTER replied yes; and data the company has acquired that gives it a competitive edge - an exploratory well, for example - is because that company spent millions of dollars drilling the well and acquiring that data. There may be unleased acreage around it and the investment they have made gives them a competitive edge that the statutes recognize shouldn't be handed out for free.

4:18:20 PM
SENATOR STOLTZE asked about a new appointment to the commission.

MS. FOERSTER said they got a new commissioner on Thursday, Mike Gallagher. She hadn't read his bio, but recalled that he grew up and went to college in Michigan and heard money could be made in Alaska, so he and his buddy got jobs on the TAPS. When it was done, he did maintenance on it. When he retired he got bored and came back to work and then was asked by the governor to serve on the AOGCC.

4:20:50 PM
PAUL DECKER, Interim Acting Director, Division of Oil and Gas (DOG), Department of Natural Resources (DNR), Juneau, Alaska, said he is a petroleum geologist and that most of the division's records are public. Only limited kinds of information are maintained as confidential and only when confidentiality is

explicitly provided for by law. Confidentiality is not presumed just because someone stamped it that way; the legislature has provided some direction on the idea that keeping things confidential allows them to gather more data than they would ordinarily be able to obtain. On the other hand, more disclosure promotes greater transparency and better insight into the operation of the state and why decisions were made.

The Alaska Public Records Act, AS 40.25, agency records are public documents unless otherwise stated. DNR's primary confidentiality statute is AS 38.05.035(a)(8) that specifically lists six categories of information that are to be kept confidential upon request: the names of nominators or applicants for land disposals (if someone wants to obtain an exploration license or nominate a certain area for lease sale), the names of bidders and bid values that ultimately submit sealed bids (lease sales and exploration licenses that can become competitive bid), any and all geological, geophysical and engineering (GG&E) data, financial data, right-of-way applications (not often in the DOG), and information about public agency land planning.

4:24:37 PM
MR. DECKER explained that the DOR has provisions for sharing bits of information with DNR, specifically oil and gas when it comes to adjudicating tax credits: for example, the exploration tax credits under AS 43.55.025 and .023 where the program is offered through the DOR statutes, but part of the responsibility for adjudicating those credits is to make sure that DNR actually gets the data that is to be submitted and eventually made public. AS 43.05.230 makes sure DNR gets the data.

Other confidentiality statutes apply to the Division of Oil and Gas (DOG): royalty audits and Royalty Board issues.

4:25:24 PM
As a practical matter, almost all of the confidential data the division is GG&E data or financial information. GG&G data would be submitted under the terms of the lease and exploration license obligations, as well as any seismic data (maintains confidentiality in perpetuity) or other data acquired through a miscellaneous land use permits (MLUP), and unit and participating area applications. In addition to the DOR tax credit AS 43.55 provisions, there is also an older incentive credit program under AS 38.05.180(i) that did have some action but no wells drilled or seismic acquired for more than 15 years. Financial information would be things like financials submitted to assure that a company is good for its DRR obligations on

their leases, or if a company would like to ask for royalty modification, DOR tax filings and supplemental reports submitted to commercial analysts to understand the companies better, major projects that are forward-looking that are not actually up for a decision to rule on yet (for example, the gas pipeline projects over the years), auditing issues like net profit share lease audits (making sure they understand the field cost deductions before asserting that their leases have gone into payout), and royalty sales contracts and invoices.

4:28:52 PM
MR. DECKER explained the value of confidentiality is that it allows the division to amass and interpret vast amount of data that is absolutely critical to understanding resources throughout the State (the subsurface geology as well as commercial information about the commercial landscape) and that would have been impossible for the State to generate and understand the resources. The commercial environment has to do with the royalty modification and viability of projects, the DR&R liability, and simply making sure that the State through the auditing process is getting the full value of its share of royalty and net profit share.

He said sometimes this information comes to them voluntarily, because the operators are aware that the division can maintain confidentiality. So, protecting that confidentiality is critical to them.

4:30:43 PM
He explained that various types of confidential data arrive in the DOG from different sources for various reasons and are stored and used by different sections within the division. As an example, seismic data submitted under the DOG permit requirements (multiple land use permit requirements) is granted permanent confidentiality by default. It is used exclusively by the geophysicists and geologists of the Resource Evaluation Section to understand the subsurface.

The life cycle is such that the data comes in from the operator, it's inventoried through a data base, indexed, carefully stored and archived including all the many different kinds of components and file types within that data. The copy is made off to the secure network where it can get used, while the original digital media is stored in their highly confidential secure vault.

4:32:04 PM

SENATOR WIELECHOWSKI asked if the confidential seismic studies that the state still pays 80-90 percent in credits for being kept confidential.

MR. DECKER replied that was an important distinction. In this particular example, he was using MLUP seismic that has contributed to most of the data acquired over years. But the tax credits under .023 and .025 very clearly call for release of the seismic data eventually; most have a 10-year confidentiality period. The newer Frontier Basin tax credits (Middle Earth credits approved in 2012) carry a much higher percent of the State's investment in credits. Because that was such a generous support the legislature made the confidentiality period on those credits two years.

4:33:49 PM
In this example, he explained that the data are loaded, quality-checked, prepared for the interpretation software where the geophysicists can actually work with the information. The data is then interpreted and subsurface maps are made with it; it is also integrated and reconciled with previously acquired data that might for various reasons have a slightly different story that might cause some angst. These confidential interpretations inform their technical recommendations on things like lease sales, unitization applications, and any decision about reservoir lands. Whether it impacts the actual operator that submitted that data set or not, that data can be used confidentially for the greater good. This kind of data would be permanently retained within the division and it is truly useful forever in some way or another.

4:34:46 PM
CHAIR GIESSEL said that recently the DNR commissioner determined a Caelus [Energy LLC] royalty modification and asked when their data will have to be given out.

MR. DECKER said his memory of that is not clear; he knew they carefully redacted their application which was stamped entirely confidential in order for it to go out to public comment.

SENATOR WIELECHOWSKI asked if the vast majority of seismic studies is done with credits and if this information shared with the AOGCC.

MR. DECKER replied that most of the seismic data acquired within the last 10-11 years since these credits have been available

would have been acquired under these DOR credit programs and it is not supplied to AOGCC.

SENATOR WIELECHOWSKI said this would be valuable information for the AOGCC to have.

MR. DECKER said he couldn't recall the commission approaching them for access to the seismic data in the 10 years he had been there, but he knew that sometimes the commission approached the companies directly.

MS. FOERSTER added that when an operator needs to show the commission information to help them understand a request, they generally give it to them voluntarily with the understanding that it is protected. During that same 10 years, she couldn't remember a time when the commission needed data from the DNR. If they needed it they would get it from the operator. She stated that the commission didn't need a middle man.

4:38:56 PM
MR. DECKER presented example 2 of how confidential data is used: a North Slope exploration well submitted pursuant to the DOR tax credits (wildcat drilling credits in AS 43.55.025) that would have temporary confidentiality, assuming that it's not on private land (in which case the private land owner would need to give authorization for the data to become public). This data gets inventoried into an index into an archive and is used primarily by the Resource Evaluation Section. This includes all of the well data collected, not only the information that would be required to be submitted to the AOGCC, because the credits are so generous that operators are required to show all of the data. The copy is made to a secure media and retained in the vault; it's loaded, quality checked and prepared for interpretation, a secure backup is made. The data is reviewed and interpreted internally by the experts to help inform technical recommendations for things like lease sales, exploration potential, unit actions, and such. The difference is that this data has to be prepared for release, which has turned out to be quite onerous, and the data would go public after about two years (a 30-day period, plus a 24-month period, plus a 30-day public comment period). It's essentially timed to coincide with the AOGCC's exploration well confidentiality period of two years.

4:41:19 PM
A third example was of financial data obtained for royalty audits under AS 38.05.036 is one where the data would be

permanently confidential. This is used primarily by the Royalty Audit Section. The data is obtained from the lessees during the audit or just before it commences; it's copied and backed up; then it's used to analyze the lessee's confidential sales contracts, invoices, and other information to verify field prices that lessee has experienced and make sure that is reviewed then in context with other producers' similar information. No one sees it all except for the audit staff and it's used for determining the "higher of values" for audit claims (the idea that all operators within a certain region provide the state with a basket of prices and the state obtains the higher value royalty out of that basket of sales). This data is retained indefinitely within the division and is very useful in the future when another audit or appeal comes up.

4:42:48 PM
MR. DECKER'S fourth example was specific to the Caelus Nuna royalty modification in the Oooguruk Unit, the goal being for the Commercial Section to construct an economic model to determine if the project would go forward without royalty modification.

He concluded that only limited kinds of information are maintained as confidential and must be explicitly identified and approved in the statutes. Confidentiality allows the state to benefit from utilizing data without putting its owners at a competitive disadvantage. Most of the confidential data within DOG is either the technical GG&E or financial and comes in a diverse spread of data types. The data is treated with a common theme to ensure that is maintained confidential, but they all have their different needs and different details to their life cycle. The ability to maintain data confidentiality has enable the division to understand the subsurface resources statewide and have led to much better management decisions than they would have been able obtain without those statutory provisions.

4:45:33 PM
SENATOR STOLTZE wanted clarification from the highest pay grade in the administration on confidentiality and what stance they have taken legally or politically.

CHAIR GIESSEL said the purpose of these presentations is to allow the public to understand how confidentiality is used currently. The next pair of speakers would talk about its use in relation to the LNG projects around the world. But it's really up to the governor as to what he's planning to do with his executive staff.

SENATOR STOLTZE said he has heard there has been a lack of clarity on confidentiality.

4:48:17 PM
NIKOS TSAFOS, Partner, enalytica, introduced himself and said he spent the last 10 years working in the oil and gas industry, mostly as a consultant with special expertise in natural gas. He had probably signed more confidentiality agreements than most people in the room as it is a natural course of business for a consultant.

4:49:13 PM
JANAK MAYER, Partner, enalytica, said this was his fourth legislative session in Juneau working with a range of committees; his expertise is principally in project economics and valuation. He stressed the importance of the division between eventual transparency of agreements once they are finalized and the need for confidentiality during the negotiating process inherent in the conflicting requirements of keeping something secret while wanting to maintain an open democratic state and government. He explained that once an agreement is reached a lot of information is capable of being made available openly to the public and should be.

The need for confidentiality during the negotiating process is not about protecting company proprietary secrets or processes, it's much more about protecting the state's negotiating position. Negotiations are a lot like a game of poker and playing with all your cards showing doesn't work very well. At the moment under SB 138 the administration, principally the commissioners of DNR and DOR, is authorized to negotiate a series of complex contentious difficult agreements on everything from potential fiscal stabilization to off-taking and balancing, geology and marketing. The State needs to think through very carefully what its fundamental interests are: what it is trying to achieve, what it can realistically achieve, what it is absolutely not willing to give up, what things are less important, secondary considerations that might be given away as bargaining chips in order to get other things in return. The State is not negotiating with just one monolith entity, but against a series of different companies, which also have different interests. In some cases the interests align with each other between companies and in some companies have natural interests that align with the State and not with each other. The State needs to think through that alignment and see how it can be used to put pressure on the other companies. So, it

should be clear that the State's best interest is not always served by information being broadly available to the public and, in fact, can be irreparably harmed in terms of what the state can achieve during the negotiating process.

4:53:57 PM
There are two ways to maintain confidentiality during the negotiating process: one is for the administration to go off and do it and come back with a series of agreements that are available to the public, like what was tried under the Stranded Gas Act and the Legislature was blind-sided. The other process would be if the administration could negotiate some things while maintaining a dialogue with legislators about what their assessment of the state's interests are, what can be achieve, what can't, and what might be traded; it's crucial to the democratic process to be able to explain what was given away and why.

4:55:34 PM
MR. TSAFOS commented on confidentiality in LNG projects. Lots of information is known about LNG projects at FID and include:
-Technical: number of wells, routes of pipelines, technical specifications, a footprint;
-Impacts: how projects impact the local communities; what kind of mitigations are being taken to protect the environment;
-Costs: usually a total cost figure and a breakdown of the aggregates;
-Financial: whether companies are taking on any debt or not, the names of the lenders, the tenor, how much they are borrowing from each financiers
-Commercial: the number of contracts and counter parties the LNG project will be selling gas to and for how long, some of the detailed terms about who does the shipping, if the LNG delivery is flexible, if the price is indexed to oil or not, and other terms called S-curves, a measure that limits volatility; sometimes there is an overall contract value (no assumptions). You almost never get the price formula, the most sensitive aspect.

Once projects come online, consultants can look at other data and try to figure it out, but companies will never tell you that you've got it right. If the fiscal system is part of law that applies to all projects you know about that, and if it is part of a negotiation, like a production sharing contract, then it's a mix. Sometimes the public has access to that information, but often not. Sometimes there is public access to a generic

contract in general but not the specific contract that has been signed between the company and the sovereign.

5:01:09 PM
CHAIR GIESSEL asked Mr. Tsafos to come back with last slide on Wednesday because she wanted to respect committee members' time and not get into the habit of running over.

5:02:00 PM
There being no further business to come before the committee, Chair Giessel adjourned the Senate Resources Committee meeting at 5:02 p.m.