

**ALASKA STATE LEGISLATURE
SENATE RESOURCES STANDING COMMITTEE**

March 23, 2015

3:30 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

CONFIRMATION HEARING

Attorney General

Craig Richards

- CONFIRMATION ADVANCED

Alaska Gasline Development Corporation Board

Hugh Short

- CONFIRMATION ADVANCED

PREVIOUS COMMITTEE ACTION

No previous action to record

WITNESS REGISTER

CRAIG RICHARDS

Department of Law (DOL)

Anchorage, Alaska

POSITION STATEMENT: Attorney General Designee.

HUGH SHORT, Appointee

Board of Directors

Alaska Gasline Development Corporation
Bethel, Alaska

POSITION STATEMENT: Testified as appointee to the Alaska Gasline Development Corporation (AGDC) Board of Directors.

JEFF LANDFIELD, representing himself
Anchorage, Alaska

POSITION STATEMENT: Commented on a possible conflict of interest for Mr. Short.

ACTION NARRATIVE

[3:30:22 PM](#)

CHAIR CATHY GIESSEL called the Senate Resources Standing Committee meeting to order at 3:30 p.m. Present at the call to order were Senators Costello, Stedman, Wielechowski, and Chair Giessel.

CONFIRMATION HEARING **Attorney General, Craig Richards**

[3:31:04 PM](#)

CHAIR GIESSEL announced the committee would take up confirmation of the Attorney General and welcomed Craig Richards to the witness table. She asked him to reflect on confidentiality agreements in relation to a January Journal of Commerce article related to the Alaska Gasline Development Corporation (AGDC).

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SENATOR COGHILL joined the committee.

CRAIG RICHARDS, Attorney General Designee, Department of Law (DOL), Anchorage, Alaska, replied that he didn't remember the specifics of the article, but he remembered the conversation with its author, Mr. Bradner, and there are a number of ways to handle review of confidential information. The conversation was about what approach should be taken in terms of identifying legitimately confidential information versus information available to an agency that doesn't need to be confidential and, therefore, public policy suggests should be available to the public.

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SENATOR MICCICHE joined the committee.

ATTORNEY GENERAL RICHARDS said as a baseline he liked to use the Department of Natural Resources (DNR), because everyone is

familiar with it. It has a statute (Alaska Lands Act: AS 38.05) that says essentially information that resource developers - oil, mining companies, etc. - provide to the DNR is public except for an enumerated class of information: cost estimates, geophysical data, financial data, business income information, geotechnical work, and things that have some proprietary value or might cause companies some competitive commercial harm if they were to go into the public domain. DNR classifies data based upon the statutory scheme to determine whether that kind of information should be treated as confidential or public.

The conversations he has had with Ken Vassar, Dan Fauske, Jerry Juday and Frank Richards (with AGDC) have been about the feasibility of AGDC going to that system rather than one that uses blanket confidentiality.

3:36:02 PM

SENATOR STOLTZE joined the committee.

CHAIR GIESSEL said that Mr. Richards and Mr. Walker were working for the City of Valdez and part of the contentious Trans Alaska Pipeline System (TAPS) evaluation lawsuit, and it seems like it would be difficult to defend the state in that kind of a case now that he is on the other side of the table. She asked how he would manage those kinds of past private sector experiences and now be perhaps advocating on the other side of the issue.

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ATTORNEY GENERAL RICHARDS replied that generally a lawyer's training is to work for his client and do what is in his best interest. He is very proud of the work he did for the City of Valdez; it was a good outcome for his client, but if he had been hired by the other side he would have worked as diligently and maybe with the same level of success. That is what a lawyer does. As the Attorney General, Mr. Richards said, he will represent the State of Alaska wholeheartedly and not his former client.

CHAIR GIESSEL said in his testimony on February 8, 2012, Mr. Richards dealt with the duty to produce concept and asked him to explain his definition of when something would be economic enough to require that duty to produce.

ATTORNEY GENERAL RICHARDS responded that he didn't remember his comments from that day and hoped his answer would be consistent, but the duty to produce is a legal doctrine developed in the early part of the 20th Century under American common law.

Essentially the question before courts was when you have an oil and gas company that has a lease granted to it by a landowner and that company and the landowner disagree about whether or not something should be developed. The law basically had to wrestle with the fact of what standard of care an oil and gas company owes a landowner. Three options were debated: the first one was an oil and gas company doesn't owe any duty of care other than the express terms of the contract and it can behave in a self-interested manner. The other end of the spectrum was the idea that some jurisdictions wrestled with earlier, and in some cases adopted, was that the oil and gas company is really a trustee for the landowner and he owes a fiduciary duty of care to the landowner just like a trustee managing financial assets for a beneficiary owes a fiduciary obligation.

The courts decided ultimately over a number of decades and most jurisdictions adopted a middle ground position called the "reasonably prudent operator standard." It is comparable to the cousin of the reasonable man in torts which is that an oil and gas operator owes a level of care to the landowner that a reasonably prudent operator would owe. That is how the duty of care got defined and there is a whole lot of case law, mostly consistent, about when a reasonably prudent operator would undertake a project. The standard that is most commonly accepted is if they have a reasonable expectation of profit taking. So, if you are an oil company and there is a reasonable expectation of profit to develop any project on a lease, then you have a legal obligation to the landowner to undertake that development project.

CHAIR GIESSEL asked who decides if there is a reasonable expectation of profit in Alaska.

ATTORNEY GENERAL RICHARDS replied that the BLM lease form provides for that dispute occurring before the Superior Court of the State of Alaska, presumably in a jury trial. Although if it's big oil litigation people would probably want to go with a judge. But who knows?

CHAIR GIESSEL asked if he would be involved in representing the state's position on something like that.

ATTORNEY GENERAL RICHARDS answered that no one is currently talking about bringing a duty to develop suit, but if they did, as the Attorney General, he would be representing whatever the state's interest is.

CHAIR GIESSEL asked if he would typically assign that to an assistant attorney general.

He answered that one of a number of attorneys within the oil, gas and mining section that represent the DNR almost professionally would be used. He would be in the court room, however.

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SENATOR WIELECHOWSKI asked him to talk about what the rules of professional conduct say on the issue of conflicts with government employees.

ATTORNEY GENERAL RICHARDS replied that he didn't exactly know what rule he was talking about, but a broad sweep of his understanding of the rules of professional conduct as they apply to attorneys is that you do have a client and as the government attorney the client is usually the client agency, but ultimately it's the people of the State of Alaska.

SENATOR WIELECHOWSKI asked him to talk generally what the rules are about him representing a client he previously represented.

ATTORNEY GENERAL RICHARDS replied that the rules of professional conduct for all lawyers is that you can't work on a substantially related matter that you previously represented a client on adversely. The only scenario that does not apply to is if effectively everyone involved - new client and old client - agree to waive a conflict of interest.

SENATOR WIELECHOWSKI said when he represented the City of Valdez the state was involved and had a very similar position in defending the value of TAPS, but they came up with different values. It turned out that the Supreme Court said the state actually undervalued the TAPS, and he asked him to talk the positions of the state and Valdez and if he was directly in opposition to the state at that time.

ATTORNEY GENERAL RICHARDS replied that there were a number of complex issues, the primary one being whether TAPS was valued on its cost of replacement or on an income approach based upon the tariff revenues that the pipeline collects. On that position, the state and the municipalities were almost wholly aligned. But then the question came up of valuing it on the cost to build today less depreciation and the formula to do that. Going into that formula is thousands and thousands of inputs, some high level some small, and the state and the municipalities were

mostly aligned there, although there were some disagreements on what contingency factors should be included; the state was at one number and the municipalities were at another.

The one area that the municipalities disagreed with the state on was how to calculate depreciation in terms of the existing versus a hypothetical replacement facility. They were 70 percent aligned, but the state had a different approach for one or two contentious issues.

SENATOR WIELECHOWSKI said ultimately the court decided that it was worth \$10 billion and the state had advocated for \$7 billion. He asked how much more in property taxes the state would have had to pay had the state's position prevailed.

ATTORNEY GENERAL RICHARDS answered with the caveat that what they would have to pay is different than what the state would not have collected. It is not clear that the lost revenue would have been captured at a local level, as half of the assessment goes to the Unorganized Borough. The total amount of property taxes collected is 20 mils under AS 43.56.010, 2 percent of the value of the property. So, roughly for every \$1 billion in assessment there is \$20 million in taxes. Of the \$200 million that is the difference in the parties' litigation position half of that goes to the state and half to the municipalities.

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SENATOR WIELECHOWSKI said on the issue of conflict of interest that some fine attorney generals in the past - Attorney General Burns from Fairbanks and Attorney General Geraghty - had multiple clients and asked him how they dealt with the issue of conflicts in representing their clients, one of which was Golden Valley Electric.

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SENATOR WIELECHOWSKI replied it is his understanding that they handle their conflicts in the same manner as he does; effectively they identified within the Department of Law who their former clients were that had matters that were adverse to the state and delegated their authority over those cases to someone else within the Department of Law. He delegated his authority to Martin Schulz who is the section head of oil and gas and mining.

SENATOR WIELECHOWSKI asked if his position on the issue of duty to produce for a company taking out a lease on a property is "black letter law" or some minority opinion.

ATTORNEY GENERAL RICHARDS answered that position is "definitely black letter law" in every single oil and gas taxing jurisdiction that he is aware of. The implementation of the law has some jurisdictional uniqueness to it in different ways. But the notion that a duty of care is owed by an oil and gas lessee to the landowner to develop if there is an expectation of profit is universal.

SENATOR MICCICHE asked what would be the definition of "reasonable profit."

ATTORNEY GENERAL RICHARDS answered that each state is different, but basically it is in terms of a positive present value for a project. These cases often come up in the context of one or two wells on a ranch in Texas and the landowner thinks a third well would pay. He gets a geologist and economist and takes it to the oil company, and for whatever reason the oil company doesn't want to do that. Then the landowner sues the oil company to get a court order to drill the well and pay them for the lost royalty for the amount of time in which they refused to drill the well.

SENATOR MICCICHE said his question is about the North Slope Borough and the City of Valdez exceeding the tax cap. The letter from the Tax Division to the state assessor dated August 24, 2012, said the North Slope Borough may owe about \$49.7 million and the City of Valdez may owe about \$56.7 million, and he was on the side of the City of Valdez in opposition to the state's standing on exceeding that tax cap. He asked if he will be righter now or was he righter then.

ATTORNEY GENERAL RICHARDS replied he is not handling that case; it was specifically delegated. He'll defend his client's position. At the time his client's position was that the money wasn't owed, and he delegated the case to Martin Schulz.

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SENATOR MICCICHE asked if he is committed to collecting the money now that he is representing the state, if the finding ends up remaining consistent that the entities owe \$106 million.

ATTORNEY GENERAL RICHARDS answered, "If the courts make a ruling, of course I'll follow it."

SENATOR MICCICHE said Mr. Richards may have to recuse himself in some situations and asked how Alaskans hold the confirmed

Attorney General accountable in situations where he has to pass off the decision of someone that perhaps doesn't have a conflict like Assistant Attorney General Schulz.

ATTORNEY GENERAL RICHARDS replied that he wasn't sure that Mr. Schulz having that delegated authority is really any different than if there was no delegation because there was no conflict. At the end of the day, the Attorney General's Office has a level of independence from the governor's office and this body to make decisions based on what is good for the State of Alaska. It is his expectation that any attorney handling any case in the Department of Law will make those decisions accordingly.

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SENATOR MICCICHE said he talks about independence, but it's hard for a non-attorney to understand that relationship. Governor Walker was his mentor, so they know there is very little risk that Mr. Richard's opinions are not going to match his. With the two of them being aligned on the Port Authority some people think it would be very difficult for Alaskans to get an independent view, just simply because of the 12 years of history. He wanted to hear Mr. Richards recognize the perception of a conflict and explain why they can expect independence from his office as opposed to the executive office.

ATTORNEY GENERAL RICHARDS said he struggled with calling it a "conflict," because to him that term is a legal or ethical concept. In the context of his relationship with the Governor or the Alaska Gasline Port Authority, there is no legal or ethical conflict, but rather a shared experience. They come from similar backgrounds. The commissioner and deputy commissioner of DNR have their background through the AGIA process and many others have related industry backgrounds. There is a broad breadth of experience and different points of view being brought to the specific issue of gas pipeline development.

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CHAIR GIESSEL said she appreciated the phrase he used, "shared experience," because they all are citizen legislators. She commented that Mr. Whitaker had opined that some legislators have a conflict of interest and has forcefully vilified members when, in fact, they have the same shared experience that he just described.

SENATOR MICCICHE asked how Mr. Richards reconciles defending Valdez on the tax cap to supporting the state.

ATTORNEY GENERAL RICHARDS said he would do his best to articulate his thoughts on that. People would be surprised to know how impersonal his representing Valdez was. At the end of the day, it was zealous advocacy, and he will apply the same level of zealous advocacy for his new client, the people of the State of Alaska. For most lawyers that is not an awkward thing. For example, several district attorneys used to be public defenders and there are public defenders that used to be district attorneys.

SENATOR WIELECHOWSKI asked him to explain his legal obligation to zealously represent clients.

ATTORNEY GENERAL RICHARDS replied that as a lawyer you have an ethical obligation to zealously defend your client. He added that attorneys coming into the Attorney General's position often have worked against the state; the state is the largest economic driver except for maybe the federal government. Government must function and the way that the state has decided to handle these ethical situations is to use the delegation system in consultation with the State ethics supervisor and the Bar Association supervisor.

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SENATOR STOLTZE asked what his position is on the two cases involving the United Cook Inlet Driftnet Association (UCIDA) litigation to close personal use fisheries and to bring in federal management.

ATTORNEY GENERAL RICHARDS replied that he is familiar with the case summaries and the state's position has been, is and will continue to be that the state is in the best position to manage even the federal waters in all three instances where the federal government has basically allowed state management including in Cook Inlet.

Currently the D.C. Circuit has ruled for state management and not for the challengers; it's before the Ninth Circuit now and a briefing schedule is being set up.

CHAIR GIESSEL asked under what conditions he would recommend a revocation of an oil or gas lease.

ATTORNEY GENERAL RICHARDS answered that revocations don't occur through the duty to develop process. It would be part of litigation filed by the State of Alaska against an oil and gas company as part the remedy requested in the trial. He explained

that different states handle the revocation of leases in different manners for duty to develop. The model that is most common is Texas. Texas traditionally, if you have a duty to develop suit or market or exploration issue, you go through the litigation and the judge or the jury determines that the duty was breached. Generally forfeiture is used as a conditional decree for development or marketing. Normally, if you were to go through the legal process and get a ruling: if oil company X should have drilled well Y and they didn't, then the order will say you have to drill well Y within one year and if you don't, your lease will be forfeit.

CHAIR GIESSEL asked if DNR told him they believed an oil company actually would make a profit and wanted to revoke their lease, would he have some legal advice for them as to whether they would likely win that case or not.

ATTORNEY GENERAL RICHARDS answered that his role as Attorney General would be to supervise the attorneys that are handling the case and certainly to provide advice as to the merit of their case in terms of potential litigation. A case like that would be heavily developed with experts on marketing, engineers, geologists and such, but at the end of the day, a case really comes down to how strong the geology is.

CHAIR GIESSEL asked what level of net present value (NPV) is a bar for determining that something would have been profitable.

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ATTORNEY GENERAL RICHARDS answered that typically an NPV of zero would probably not be litigated. The reasonably prudent operator standard would be applied to get the discount rate in whatever region the case involves.

CHAIR GIESSEL asked if he would advocate for a gas reserves tax.

ATTORNEY GENERAL RICHARDS answered that his job as Attorney General is not to advocate for anything. A gas reserves tax is legal, because Alaska has had them in the past, but he didn't know if they were good policy.

SENATOR STEDMAN asked if he would have supported Governor Murkowski's effort to take industry to task over Pt. Thomson.

ATTORNEY GENERAL RICHARDS replied that he would have supported the DNR in his representation of that client agency and provided the advice to move forward with the suit.

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SENATOR STEDMAN asked why the other side of the table shouldn't be worried about a successful attorney being Attorney General.

ATTORNEY GENERAL RICHARDS answered that his background and experience in oil and gas litigation is a real positive. He has a lot of experience with oil and gas in the State of Alaska, about the oil and gas industry on the North Slope, in particular, and in terms of a lawyer. He has a deep body of knowledge that will be useful in working with the oil, gas and mining section and the cases that they have both with and against the oil companies. These cases that go in all kinds of directions. The quality bank litigation in general has the TAPS owners suing each other; in the tariff litigation the state and independents sue the TAPS owners; and in valuation cases TAPS owners are suing the municipalities with the state kind of on their side. In environmental cases, the state is generally with the oil companies suing the federal government. The different combinations is just the nature of a very complex, high economic, high dollar-value development.

SENATOR STEDMAN said he didn't care what side of an issue a particular attorney represented; he wants to the attorney who is a winner for the people of Alaska.

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SENATOR MICCICHE asked about his anti-trust finding for the sale of Pentex Sale to Alaska Industrial Development and Export Authority (AIDEA), and said he is struggling with his call.

ATTORNEY GENERAL RICHARDS responded that the Department of Law hadn't taken a position in terms of anti-trust grounds. It had taken a position in terms of rate making issues. A quick sketch of the timeframe was that about a year ago, the litigation came before the RCA about whether or not the liquefaction plant should be rate regulated like the distribution stream upstream. The state took the position that it should or at least the economics should be looked into. Shortly before he came into office, FNG created Titan as a subsidiary and then moved to have it sold. They did this before the question was decided about whether or not the facility itself should be rate regulated and provide cost based service. The position of the Attorney General's Office has been for some time that it should be cost based service or at least that should be explored by the RCA, and that the sale should not go forward until that determination

is made. Those decisions were made before the FNG/AIDEA sale was contemplated.

SENATOR MICCICHE said he wants the very best AG the state can find. He wants him to be a successful attorney and if he had been an oil company attorney that had been successful against the state regularly he would have been much more concerned. The difference in this case is that he was a small town mayor in Soldotna and when Soldotna issues come up it's difficult to not be somewhat parochial about his hometown. He asked how Mr. Richards would shake that sort of more parochial view even though he has a new client now.

ATTORNEY GENERAL RICHARDS responded that to him the question of whether or not the LNG plant should be rate regulated is fairly academic and needs to be answered. In the law of rate making it occurs all the time. In terms of the bigger picture, getting gas to Fairbanks is what they are really talking about and he is a Fairbanks kid. He wants to help all state government achieve that goal, assuming that is what they want to do.

SENATOR STEDMAN said as a principal in his law firm Mr. Richards was responsible for meeting payroll for his entire staff and being an attorney general is different because he has a fixed client. He asked Mr. Richards how he envisions taking his private experience and driving it down into the work ethic of the department to keep the crew motivated as if it were a private law firm that had to meet payroll with production.

MR. RICHARDS answered that the DOL is pretty well run now. The one area in which his experience can be helpful is in coordinating some of the litigation teams in the complex areas to maximize the state's likelihood of victory and efficient use of resources. One adjustment would be to use more paralegals and then he hoped to encourage mentoring the younger attorneys.

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CHAIR GIESSEL came back to AKLNG and said he wrote a January 2014 op-ed piece in which he said SB 138 is an end run around the Constitution, because the state is taking production taxes in the form of actual molecules. What did he mean exactly and did he still hold that view?

ATTORNEY GENERAL RICHARDS answered that his constitutional concerns weren't (and still aren't) related to taking tax as gas but rather the fiscal certainty piece. Article 9, Section 1, of the State Constitution says the state cannot contract away its

power to tax. The concern he had was that the state was going to do just that in a Murkowski-like contract. His concerns are a little alleviated, because he feels comfortable that if that is where they arrive, a constitutional amendment would be needed. He will eventually be part of the negotiations and understand the deal and be able to see whether or not he feels the proposals do require a constitutional amendment.

SENATOR WIELECHOWSKI said that the constitutionality position has been taken by many attorneys (legislative, executive branch, independent attorneys) for the last decade.

ATTORNEY GENERAL RICHARDS replied that a number of attorneys have taken the position that at least the Stranded Gas Development Act contract as adopted would have been unconstitutional without an amendment.

CHAIR GIESSEL said in House Judiciary he cited a white paper by former Attorney General Botelho related to the Chinese Wall and asked if he had been collaborating with him and if he will be advising him going forward.

ATTORNEY GENERAL RICHARDS answered that it was in a 1995 Attorney General's opinion and he didn't meet Mr. Botelho until a couple of months ago. He has gotten to be friends, but Mr. Botelho has left the administration and he didn't foresee any role he will have in the Department of Law.

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CHAIR GIESSEL switched to the subject of mining and said in Southwest Alaska there is a large mineral deposit called the Pebble deposit and now that company is challenging the EPA's preemptive ruling. If they are successful, would he be able to defend the state in asking the EPA to step down.

ATTORNEY GENERAL RICHARDS replied yes. He didn't think the 404(c) veto was legal and it was an abuse of discretion. The state had previously filed a lawsuit to support the federal position, but that was kicked out as untimely until the Pebble decision was made. The nature of the suit was that it violated the Statehood Compact. If that challenge would be brought again and Pebble hadn't won on other grounds, he wouldn't have any difficulty in bringing a challenge.

SENATOR STOLTZE asked what role he has on behalf of the Mental Health Trust (MHT) beneficiaries in the proposed Chuitna mining

development that the DOL brokered as part of the Mental Health Trust settlement.

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ATTORNEY GENERAL RICHARDS answered that his view is that his job as attorney general is to encourage legal resource development consistent with agency policy. Mental Health Trust takes their obligations very seriously and needs to develop its resources to collect the funds to help Alaskans, and he would be diligent in helping them do that.

SENATOR STOLTZE asked if that included being pro-active and if he sees an enhanced responsibility to come to the aid of those beneficiaries.

ATTORNEY GENERAL RICHARDS said he wants to help the MHT develop its resources to help its folks. He wasn't sure what Senator Stoltze meant about being pro-active outside of that capacity.

SENATOR STOLTZE asked if he wants guidance from the legislature.

ATTORNEY GENERAL RICHARDS replied that would be helpful.

[4:29:30 PM](#)

CHAIR GIESSEL said U.S. Senator Dan Sullivan touched on the topic of EPA's overreach into Alaska, mostly with the Clean Water Act, but another aspect of that is the proposed 111(d) rule of the Clean Air Act that the state is seeking a waiver on. If the EPA does not grant a waiver and the new rules are so egregious that utility rates go up, legislators would look to the Department of Law to push back. The governor has expressed reluctance to enter into lawsuits against the federal government and she asked how that constrains him or if he acts more independently.

ATTORNEY GENERAL RICHARDS replied that when one is the attorney general one acts in consultation with all of the agency clients. The state is already challenging the legality of the regulations and supporting a Michigan case coming up in the next couple of weeks.

CHAIR GIESSEL asked if the Governor's advice is to enter the lawsuit affects his decision or not.

ATTORNEY GENERAL RICHARDS answered that he would be independent but in consultation with the agencies, and the governor is a large one. At the end of the day, the office is independent and

the decisions are made independently by the Attorney General, in terms of the bringing, the handling and the disposing of litigation.

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SENATOR COGHILL said the Governor is one of the biggest landlords in the United State who has to also deal with BLM and the Department of Parks and Forestry, and they wield almost equal authority. The latest one is the National Park Service trying to stop Alaska predator control along the borders of the parks where traditional hunting and trapping has taken place. He asked how he was going to proceed on that.

ATTORNEY GENERAL RICHARDS said the issue is before the Department of Law; they filed extensive comments opposing the proposed regulations that are the change in policy. They are using predator control as a bit of a guise to backdoor larger management issues. In the process they are doing it through rules other than ANILCA, which removes their obligation to consult under ANILCA with the state before rules are published, because obviously you can have a lot more impact on rules if you can get into the process and provide comments before the initial versions are published.

SENATOR COGHILL said he was encouraged that Attorney General Richards said he would zealously defend the state's position and this is one case where the state needs to be on its A game to defend. Alaskans struggle with grasping Article 8 of the State's Constitution. Alaskans should be treated equally and there should be good management schemes to get there. He asked the attorney general if he had thought through how he will work with Alaskans on this issue.

ATTORNEY GENERAL RICHARDS replied that he is becoming aware of that area and is jumping in with both feet.

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SENATOR COSTELLO asked with the state pushing back on the 111(d) rule would it be ill advised for the legislature to apply for a waiver from that program that the administration is saying the EPA doesn't have the authority to mandate.

ATTORNEY GENERAL RICHARDS answered that he would have to look at the specifics in detail, but often there are ways to preserve the right to make legal challenges to a program while doing what you have to in the meantime.

SENATOR COSTELLO asked how he would respond to Alaskans who say they don't really get him, because he has had to delegate some of his caseload to others.

ATTORNEY GENERAL RICHARDS answered that almost every other AG coming into the position has had to do the same thing. The difference between his delegations is that the cases are more high profile than any other AGs have had. Those delegations relate to four or five specific cases that have been ongoing for a long time. The attorneys that have the delegations are the same attorneys that have been handling them for a long time. In those limited areas the state is in very good hands, and it's a relatively small part of the job. He also thinks the experience he had from handling those cases more than outweighs the loss of value to the state in not having the AG win a couple of particular cases.

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CHAIR GIESSEL opened public testimony. Finding none, she closed public testimony. She thanked Attorney General Richards for coming back to the committee and respectfully acknowledged his very successful career.

CONFIRMATION HEARING

Alaska Gasline Development Corporation Board

[4:40:24 PM](#)

CHAIR GIESSEL announced the confirmation hearing for Hugh Short to the Alaska Gasline Development Corporation Board. She asked Mr. Short to give the committee a brief overview of his qualifications and experience to serve on the Alaska Gasline Development Corporation Board (AGDC).

HUGH SHORT, Appointee, Alaska Gasline Development Corporation Board of Directors, said the economic future of the State of Alaska is in a precarious situation with the dramatic drop in oil prices globally and he thanked them for their leadership. As a board member of AGDC he would take his responsibilities series and his top six priorities would include:

1. To produce competitively priced reliable in-state gas
2. The commercialization of North Slope gas resource through the sale of LNG to global markets and access for instate demand
3. Creating jobs for Alaskans in the exploration, development, production and transportation of natural gas
4. Increasing opportunities for the Alaska based businesses
5. Providing additional revenues to the state of Alaska

6. Building infrastructure for the development of onshore and offshore oil and gas exploration and production

MR. SHORT said if those sound familiar, they are from the Heads Of Agreement (HOA), and they are very good goals for board members to follow.

4:42:30 PM

He served a career in business in finance most recently as the CEO and chairman of Pt Capital family of companies. Pt Capital is in the midst of building a private equity firm that focuses on investments in small to mid-market companies in Alaska, Canada, Iceland and Greenland. It is a first for Alaska, as traditional private equity (PE) in Alaska has been through PE firms from outside the state. He built this company, anchored by one of the largest sovereign wealth funds globally, with one of the most pristine reputations for investment and surrounded by other well-regarded investors.

Additionally, his subsidiary, Pt Securities, is the most northern Financial Industry Regulatory Authority (FINRA) regulated, Securities and Exchange Commission-registered broker/dealer investment bank in North America. Pt Securities works with small to mid-market companies that have needs to raise capital and debt for the growth and development of their business. Both of these services are first to market companies that have been created to help spur the further development of a strong financial services sector in the State of Alaska.

He has been chairman of the Board of the Alaska Industrial Development and Export Authority (AIDEA) for two years. It has more than \$530 million in capital and associated contributions by partners. In addition, the Board has approved due diligence on another \$295 million in infrastructure development projects that include the first investments in oil drill rigs in Alaska.

MR. SHORT said as chairman of the Board of the Alaska Energy Authority (AEA), concurrent to his chairmanship at AIDEA, he is responsible for the implementation of the Susitna-Watana Hydroelectric Project that could generate 50 percent of the current Railbelt electric demand or 2.8 million megawatt hours of annual energy. As proposed, Susitna-Watana includes the construction of a dam, reservoir, and related facilities in a remote part of the Susitna River. Transmission lines connecting into the existing Railbelt transmission system and an access road will also be constructed.

He said the AEA is in the early stages of a long complex permitting process with the Federal Energy Regulatory Commission (FERC) with an anticipated cost of \$5.19 billion. When he took over as chair for both AEA and AIDEA, performance evaluations had not been completed in a few years for both executive directors. He found that unacceptable and immediately began to work with staff to implement important management tools. They tied key performance metrics to overall organizational goals and focused the work of the board on large strategic items that drove results.

MR. SHORT said as president and CEO of Alaska Growth Capital, Alaska's only business and industry development corporation (which he left in 2013), he was responsible for the deployment of over \$240 million worth of capital and financing for the acquisition and construction of a telecommunications network for GCI, utilizing creative finance tools to ensure the best possible cost of capital to support the high cost Arctic rural build out. These remote communication towers create state-of-the-art communication networks, improving health care, economic opportunities and improving the life safety of many in rural Alaska.

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In addition to this, he was responsible for the financing and capital needs of businesses that worked in Alaska's oil, mining, tourism, retail, logistics and transportation industries. These companies form the support foundation of the core natural resource exploration and production that drives Alaska's economy. In a state that is so dependent on access to lands and resources, the financial support of Alaska Growth Capital was and continues to be vital to the business operations of many companies that otherwise would not be able to access capital.

On a personal note, Mr. Short said, his Inupiat mother, Mildred Schwarz, was born in Moses Point in 1942. His father, Hugh Short, Sr., who turns 90 this year, immigrated to Alaska in 1956 from northern British Columbia. He was born in Bethel and served as mayor of the community for two years. He lives in Girdwood now with his wife and three daughters. As a board member for the AGDC he would work to ensure that the business is squarely focused on commercializing Alaska's gas, not on politics. He has a track record of focusing on ensuring that the state does not make bad business decisions and creates opportunity and jobs for those that live here. He offered to take questions.

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CHAIR GIESSEL said she was reading from the AGDC statutes, AS 31.25.020 governing body:

Public members of the board shall be appointed by the governor and are subject to confirmation by the legislature. When appointing a public member to the board the governor shall consider the individual's expertise and experience in natural gas pipeline construction, operation and marketing, finance, large project management, and other expertise and experience that is relevant for the purpose, powers and duties of the corporation.

SENATOR COGHILL thanked him for stepping up remarking that he had quite an interesting career and had seen AGDC percolating along for some time, and asked if he had any first impressions into this project coming from other projects he had worked on.

MR. SHORT answered there are "tailwinds and headwinds in this project." The tailwinds are that the commercialization of Alaska's natural gas in 2020/22/24 from a geological and production perspective of the fields is very timely. The amount of pressure reduction from the wells has gone from about 4,400 psi down to 3,300 psi. The amount of gas liquids going through the pipeline has gone from a high in 1996/97 of about 95,000 barrels equivalent down to about 30,000 barrels equivalent. People are seeing a very quick depletion of the effectiveness of re-injecting gas and the effectiveness of injecting water into the wells. What has driven the major oil companies, our partners, and the state together along with TransCanada is the realization that from an alignment perspective and other perspectives, it makes a lot of sense for us to sell our gas on the market now - for Prudhoe Bay, Kuparuk, and Pt. Thomson, the three fields that in many ways are at their life cycle where our gas actually makes sense to get to market.

The headwinds: last week he was in Asia and had lunch with a very reputable ship builder that has 35 LNG transport vessels under contract; 15 of which are going to the Arctic, not Alaska's Arctic but Yamal [LNG in Russia]. These are ice breaking LNG transport vessels. In addition to that they are constructing 12 or 15 vessels for Mozambique which is coming on line with 10 million tons of LNG. Finally, gas has gone from \$13 mcf on the spot market in Asia a year ago down to \$7 today. So, from a headwinds perspective, this is not a commodity friendly market in which to have conversations around long term production. The good news is that the project is in the pre-FEED

stage, and going to the FEED stage forwards to the likelihood that the project makes a lot of sense from a risk/reward perspective.

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SENATOR COGHILL said that was a good first impressions and asked if he had developed a perspective on moving forward with AKLNG.

MR. SHORT answered that he had just been to one meeting, but he had cultivated a reading list to become a good board member. Governor Walker and he have had initial vetting conversations about how his background could help in this process. He was appointed to AIDEA and AEA by Governor Parnell and did not support either governor financially. He has managed to maintain a business perspective when dealing with the state's assets and if he gets the honor and pleasure of serving on this board it will be with a business perspective.

MR. SHORT said he voted in favor of the resolution that allows executive staff to come up with a rough estimate of the cost of going from a 600 asmi to 900 asmi grade pipe. The transcript of his first meeting will show that he asked very tough questions of management and about whether their resolution was violating any contracts or laws or anything negotiated previously. The answer clearly was no. He thought it was a prudent thing to do and hoped to have preliminary results in April. Anything he does for AGDC will not jeopardize the AKLNG, because of the tailwinds behind us and more alignment of incentives between us and the partners than we have ever had before. There is a high likelihood that we will be able to have a shot at success as an investment group to bring it to market.

SENATOR COGHILL commented that they are depending on him to do that and are leaning heavily on him for his business perspective.

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SENATOR MICCICHE said in looking at the \$7 commodity price that fluctuates wildly that any decision on a natural gas pipeline 20 years ago would have been the right decision today. He asked Mr. Short how he reconciled today's commodity price with the time value of money and the long term value of Alaska's LNG.

MR. SHORT answered that it's a question that the partners need to approach very seriously. It's highly likely when getting to a FEED decision in 2016 that the economic environment for the price of LNG will be similar to today. In going from pre-FEED to

FEED and ultimately to FID, the state needs to look at who the market is and their appetite for Alaska's field. Alaska will be coming to market with one of the world's largest liquefaction plants (20 million tons of LNG), three times bigger than the average liquefaction facility in the world. With that amount of resource, Alaska can create markets and have economies of scale that ultimately allow attracting/stealing/moving customers away. He said ExxonMobil, BP and ConocoPhillips have brilliant marketing teams. The second factor is how to get the cost of this project to a number that makes sense. The field is very competitive and the Nikiski location is also very competitive; but what is not competitive for the project is the 800-mile pipeline. The partners must come to the point of feeling comfortable with the capital cost of the pipeline and with the overall project management.

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Thirdly, Mr. Short said, this will take a significant amount of work by the state and its partners to be able to pull the trigger. It is a bet on Alaska; on the fact that there is 35 tcf of known reserves. He has seen numbers of 175 tcf just in the North Slope proper. In the Chukchi area he has seen potential numbers of another 150 tcf. One has to take the long term view and his best answer is that there will be a much better cost estimate in six or nine months. Getting to a green light is a very tenuous process, but it is possible.

SENATOR MICCICHE asked: commodity price, competitive price per unit and reserve reliability versus more focus on the other benefits to Alaska. Yes or no?

MR. SHORT answered he was afraid that ASAP is not sustainable on its own. When the 9 bcf facility on the North Slope for the Fairbanks LNG trucking project was contemplated by AIDEA, GVEA said they could take 3-4 bcf and then the market will come. But he was very uncomfortable building that facility because of the subsidy it required in years 1-5; it was substantial to the balance sheet of AIDEA or the State of Alaska. Given the future outlook of state revenues, it will be very difficult to build a gasline without markets that are going to make it sustainable on its own. He would not want to come back to the legislature as an AGDC board member to ask for a 4-year subsidy for operation. He believed that the commodity price is very important in this project and that it would be difficult to subsidize in-state use and make it affordable for the average consumer.

SENATOR MICCICHE asked how his qualifications fulfill the needs for someone who is adequately qualified at AGDC.

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MR. SHORT answered that he is a believer in Susitna Watana that is on its way to FERC. It would be a shame to invest that money and not get a FERC license. It will be an asset that can be used and he hoped it would be finished.

Another project, Healy Clean Coal, sat there for 17 years. AIDEA under his chairmanship was able to cut a deal with GVEA, which ultimately will get that plant to light this summer. From his perspective the investment of \$240-280 million to see it light this summer and provide 50 megawatts of energy to consumers at \$.05 a kilowatt hour is an amazing feat after 17 years of being stuck. He would like to take those skills along with his track record in investment and apply them to this project.

Finally, he would say that he owned a Subway in Bethel, the first fast food restaurant in western Alaska. The "\$5 foot-long" was \$11.99 in 2001. It was a very expensive restaurant to run. He compared his electric prices of \$2,800/mo to his friend's in Anchorage who was paying \$350 or \$400 and trying to see how a business could make it work. The fact that he has run large corporations in rural Alaska and has now created a company that operates on a global scale are skills he brings to the board.

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CHAIR GIESSEL opened public testimony.

JEFF LANDFIELD, representing himself, Anchorage, Alaska, asked if Mr. Short saw a conflict of interest between his position at Pt Capital that is committed to raising funds to do work and infrastructure in the Arctic and having a position on the AGDC board and being exposed to information that would benefit his company.

CHAIR GIESSEL said the committee appreciates his public testimony, but it was not protocol for members of the public to call in and enquire of people testifying before a committee; it is the responsibility of the committee. She would be happy to receive comments about the appointment.

Mr. Landfield responded that was his testimony.

Finding no further questions, Chair Giessel closed public testimony and said in accordance with AS 39.05.080, the

Resources Committee reviewed the following and recommends the appointments be forwarded to a joint session for consideration: Alaska AGDC Board of Directors, Hugh Short and Attorney General, Department of Law, Craig Richards. This does not reflect an intent by any of the members to vote for or against the confirmation of the individuals during any further sessions. There were no objections and it was so ordered.

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CHAIR GIESSEL adjourned the Senate Resources Committee meeting at 5:10 p.m.