

determination and the determination was done correctly. I assume that that's the burden because the burden is on the person doing the condemnation and so they would have to be able to prove that and then it becomes a matter of did they exceed their 150 percent or not.

SENATOR ASHFORD: And what, what...I guess I'm looking at it from the standpoint of the state in trying to mitigate the wetland deprivation, I guess, and I bring a condemnation action and the defense that would be imposed would be that the state has exceeded 150 percent of its composite amount and that therefore, that this condemnation cannot occur. I could see that as a defense being raised in a condemnation action. Would that be a fair assessment?

SENATOR KRISTENSEN: Well I think that that's probably an available defense and that's the reason the department would have to be on notice that they're...if they are getting up to that limit, that that's something they've got to take into consideration with the size and that's the reason, that's the exact reason I think Senator Lamb and Senator Wickersham and I had some concern for the size restriction because we did want to restrict the size in some manner.

SENATOR ASHFORD: And how...but even if the department, I mean the department's interpretation as to whether it's gotten up to 150 percent of the reasonably anticipated, or reasonably expected amount of land to be necessary to mitigate, would still be an open question because the reasonably anticipated language, wouldn't that be open for interpretation?

SENATOR KRISTENSEN: It's probably open for a quantitative determination. That's the reason that they, if the department wanted to protect themselves, they'd probably make that determination ahead of time so they could say here's what we reasonably expect will occur and then if for some reason there is...

SENATOR ASHFORD: Well would they notify...is this a taking that occurs in one lump taking?

SENATOR KRISTENSEN: Well, no, there can be takings, several takings. This just allows them if they want to make a bank. It would be foolish to have one large bank for the entire state because it probably won't qualify for many other areas and so