Explanation of Amendment WA.2 to CSSB 305(FIN) (title am)

This amendment repeals the 5% net profit tax cap on gas sold in-state for thirty days following the immediate effective date of the act. After thirty days the 5% in-state tax cap is reenacted.

The reason for the temporary repeal of the in-state cap is that if a producer bids North Slope gas at the initial season and the tax regime is challenged in federal court by buyers once gas flows because their price is higher based on the differential taxation given to Alaska use gas, I believe this would be a violation of the Commerce Clause of the US Constitution. I believe that they would propose the remedy of lowering the export tax rate to the same as the in-state use rate. I think there is a good probability that the federal court would order that proposed remedy instead of allowing the State to repeal the in-state rate at that time as cases are decided on the facts at time of suit not later remedies.

This could mean that the state revenue from the gasline would be almost nothing and would be fixed for the first 10 years of gas flow by the May 1 2010 'contract term' in AGIA if for the gas bid at the start of the first binding open season. Since almost no gas is being sold off the North Slope now, repeal of this provision would not increase anyone's current taxes on gas but would eliminate a huge potential future revenue decrease which is the intent of the bill.