

**ALASKA STATE LEGISLATURE
HOUSE SPECIAL COMMITTEE ON OIL AND GAS**

April 5, 2002

9:15 a.m.

MEMBERS PRESENT

Representative Hugh Fate, Vice Chair
Representative Fred Dyson
Representative Mike Chenault
Representative Vic Kohring

MEMBERS ABSENT

Representative Scott Ogan, Chair
Representative Gretchen Guess
Representative Reggie Joule

COMMITTEE CALENDAR

HOUSE BILL NO. 302

"An Act establishing the Alaska Gas Corporation, a public corporation, and providing for its structure, management, responsibilities, and operation, and requiring the development of a project plan to evaluate whether construction and operation of a natural gas transmission pipeline project by the corporation is feasible."

- MOVED HB 302 OUT OF COMMITTEE

PREVIOUS ACTION

BILL: HB 302

SHORT TITLE:ALASKA GAS CORPORATION

SPONSOR(S): REPRESENTATIVE(S)WHITAKER

Jrn-Date	Jrn-Page		Action
01/14/02	1953	(H)	PREFILE RELEASED 1/4/02
01/14/02	1953	(H)	READ THE FIRST TIME - REFERRALS
01/14/02	1953	(H)	O&G, RES, FIN
04/01/02		(H)	O&G AT 9:00 AM CAPITOL 124
04/01/02		(H)	-- Meeting Canceled --
04/05/02		(H)	O&G AT 8:00 AM CAPITOL 124

WITNESS REGISTER

REPRESENTATIVE JIM WHITAKER
Alaska State Legislature
Capitol Building, Room 411
Juneau, Alaska 99801
POSITION STATEMENT: Sponsor of HB 302.

WILSON L. CONDON, Commissioner
Department of Revenue
P.O. Box 110400
Juneau, Alaska 99811-0400
POSITION STATEMENT: Contrasted HB 302 with the proposed
initiative and HB 410.

JACK CHENOWETH, Assistant Revisor of Statutes
Legislative Legal Counsel
Legislative Legal and Research Services
Legislative Affairs Agency
State Capitol
Juneau, Alaska 99801-1182
POSITION STATEMENT: Answered questions regarding the similarity
of HB 302 to the proposed initiative.

ACTION NARRATIVE

TAPE 02-21, SIDE A
Number 0001

VICE CHAIR FATE called the House Special Committee on Oil and Gas meeting back to order at 9:15 a.m. Representatives Fate, Dyson, Chenault, and Kohring were present at the call back to order. [For minutes on the overview regarding oil and gas incentives, see the 8:06 a.m. minutes for this date.]

HB 302-ALASKA GAS CORPORATION

[Contains discussion of HB 410]

Number 0027

VICE CHAIR FATE announced that the committee would hear HOUSE BILL NO. 302, "An Act establishing the Alaska Gas Corporation, a public corporation, and providing for its structure, management, responsibilities, and operation, and requiring the development of a project plan to evaluate whether construction and operation of a natural gas transmission pipeline project by the corporation is feasible."

VICE CHAIR FATE informed members of his intention, because of the critical need to expedite a gas pipeline, to move the bill from committee that day.

Number 0059

REPRESENTATIVE JIM WHITAKER, Alaska State Legislature, sponsor, acknowledged that HB 302 is controversial because it embodies both constitutional and philosophical issues. He said his intention that morning wasn't to dwell on those broad issues, however, but on an initiative [Initiative 01GSLN, the "All-Alaskan Gasline Initiative"] that probably will be placed on the next ballot.

REPRESENTATIVE WHITAKER explained that the initiative troubles him because it is route-specific regarding an Alaskan gas project, restricting the route to one that goes from the North Slope to Valdez, which [would require] conversion of natural gas to liquefied natural gas (LNG). However, that isn't the preferred alternative of many of the players. He suggested it would be foolish of the legislature to allow such a significant muddying of the waters.

Number 0278

WILSON L. CONDON, Commissioner, Department of Revenue (DOR), came forward to testify. He explained major differences among HB 302, the proposed initiative, and HB 410, sponsored by [the House Special Committee on Oil and Gas, which is chaired by] Representative Ogan. First, HB 302 is available for whatever project will work best for taking North Slope gas to market; by contrast, the initiative and HB 410 both restrict the activity of the organization they would establish to the promotion and development of a project that would take gas to Prince William Sound, turn it into LNG, and market it somewhere. Second, there is no "target date" in HB 302, whereas the initiative and HB 410 both have the objective of getting gas to market by 2007, which has consequences regarding what must be done right now.

COMMISSIONER CONDON explained the third difference. Under HB 302, responsibility for the upfront feasibility studies that a publicly owned project would require are assigned to the Joint Committee on Natural Gas Pipelines; consequently, the DOR's [zero] fiscal note for HB 302 is very different from that for HB 410, since the department has read both the initiative and HB 410 to put that responsibility on the DOR until a corporation is actually set up and functioning. "We were concerned about the

2007 date as a target date for completing the project, which necessarily means you need to plan to spend lots of money relatively soon, in our judgment," he explained. "Under Representative Whitaker's bill, that judgment's really left in the hands of the joint committee, and the responsibility of getting that work done - or at least getting it started - is assigned to them."

COMMISSIONER CONDON referred to Representative Whitaker's mention of possible constitutional controversy and said, "I don't think that we're disobeying the command of the constitution in terms of the way we're conducting ourselves right now, but that's a philosophical discussion that we don't need to get into."

Number 0636

REPRESENTATIVE DYSON brought attention to a paragraph in the analysis section of the DOR's fiscal note that begins, "Because a legislative committee would pay for and manage the feasibility study" He asked which committee that refers to.

COMMISSIONER CONDON clarified that it is the Joint Committee on Natural Gas Pipelines.

Number 0686

VICE CHAIR FATE requested that Representative Whitaker discuss the prospect of a legal challenge regarding the similarities of HB 302 and the [initiative].

REPRESENTATIVE WHITAKER deferred to Jack Chenoweth, who had provided the legal opinion [a memorandum dated January 21, 2002] contained in the bill packet.

Number 0760

JACK CHENOWETH, Assistant Revisor of Statutes, Legislative Legal Counsel, Legislative Legal and Research Services, Legislative Affairs Agency, came forward to testify, noting that he was both the drafter of HB 302 and the author of the opinion referenced by Representative Whitaker. With regard to the similarity between the bill and the initiative, Mr. Chenoweth said he's assuming, as the sponsor is, that the signatures have been counted and are sufficient, and that the initiative is certified for the November general-election ballot. He pointed out that whether a bill passed by the legislature displaces an initiative

is a matter for the lieutenant governor to decide; it isn't a decision that he or the legislature can make.

MR. CHENOWETH then explained that in the written opinion he'd provided, he'd tried to identify what he regarded as the significant differences between HB 302 and the initiative, and to discuss them in terms of whether they are so significantly different that the lieutenant governor necessarily would have to say they are not substantially the same. He told members that he doesn't think any of the points identified by either himself or Commissioner Condon, in his testimony, necessarily compel a conclusion that the two are not substantially the same. He went on to say:

I think the lieutenant governor could find that adoption of a bill in this form, or substantially similar to it, is substantially the same as the initiative, as presented, and could displace the initiative from the November ballot if this bill is enacted.

I realize that there are differences in the magnitude and the direction of the project as described in the initiative from what is described here in the bill. But I think that's a function of time and the passage of time and of activity taking place outside of Alaska, particularly in the Congress. And I think that ... you, the legislature, have latitude to develop a bill, with an eye on the initiative, ... and that you have a lot of latitude as you develop that bill.

Number 0920

MR. CHENOWETH pointed out that discussed in his memorandum is the leading case in this area, Warren v. Boucher, which is about 25 years old. He brought attention to the first two full paragraphs on page 3 of the memo, noting that these are the significant ones and "generally point to the fact that if the subject matter is very technical, very large in size, then the legislature has more latitude to shape legislation and have that legislation accepted as being substantially the same as the initiative as presented." He further said:

I think that this is a very good example of where the legislature does enjoy that kind of ... latitude. This is a project that, according to the

administration - at least, according to a bill that they have submitted - asks for the permission for the Alaska Railroad Corporation to issue as much as \$17 billion of financing to support ... a gas line project that runs down ... from Prudhoe Bay to the Interior, and then out ... to connect to the domestic North American transportation system. And that is ... large by anyone's ... measure.

The remaining portions of the bill that go to other questions about structuring the corporation, confirming the members of the board, and things of that sort, I think, are secondary issues. I do think that as you take a look at how you're going to support efforts to bring gas to market, that you are in a position to make a decision as to where it is likely going to be marketed, and draw your legislation accordingly.

And I think that ... the lieutenant governor could find that ... your end product is substantially the same as the initiative, and displace the initiative from the November general-election ballot. I'm not saying she will; I'm saying that there's nothing that's in this bill that ... compels her to do otherwise.

Number 1070

REPRESENTATIVE DYSON surmised that the authors of the initiative will not be pleased to have it removed from the ballot and therefore will challenge this in court. He asked: If the lieutenant governor were to rule that this bill supersedes the initiative, what would the timeframe and process be under which a court challenge could be brought?

MR. CHENOWETH noted that the statutes weren't in front of him, but recalled that an action would have to be commenced in superior court within 30 days after a final determination of the lieutenant governor.

Number 1156

REPRESENTATIVE DYSON asked whether the court is mandated to give its decision within a time that would allow the [initiative] to be placed on the ballot.

MR. CHENOWETH replied:

Not that I know of. And in fact, if it's a close question, if it turns out that the lieutenant governor says that whatever bill is passed does displace the initiative and ... the sponsors of the initiative ... don't like that decision and challenge it - ... and I can concede that they might be able to present the arguments and make it a close question - my sense is that the court probably would put a hold on the lieutenant governor's decision, ... if they couldn't determine this in advance, ... and allow it to go on the ballot and sort it all out later on. If they eventually decide that Lieutenant Governor Ulmer's decision to displace the initiative was correct, the results would be set aside. If they decide that there are points that she didn't consider properly, and that she should have allowed it to be on the ballot, the results would stand as certified.

Number 1260

REPRESENTATIVE DYSON moved to report HB 302 from committee with individual recommendations and the "interesting" zero fiscal note.

VICE CHAIR FATE asked whether there was any objection. [There was no audible response, but Representative Kohring raised his hand].

Number 1283

REPRESENTATIVE KOHRING explained that his objection regards the state government's getting involved in the potential construction of a gas pipeline; he said he assumes this would be a forerunner to that. He acknowledged the sponsor's intent in part to preempt a ballot initiative, but suggested the legislature shouldn't be too preoccupied with that. He indicated he doesn't believe having a government-constructed and government-owned pipeline is the proper way to go. He expanded on his explanation:

I just philosophically disagree with the issue of building a pipeline, and if you could point to the past history of government's involvement of constructing and owning and maintaining capital projects, you'll see that we have a very poor track

record. ... I point to things like the Seward grain terminal, the Point MacKenzie dairies in my area, [the] Delta barley farm project, and others. And they've proven to be quite massive boondoggles, unfortunately, at the expense ... of the public, with their dollars that have been wasted on these projects.

And I really do appreciate the sponsor's efforts, and I know his intent is honorable as far as trying to get the ... gas fields developed and get dollars into the treasury, and that's certainly a laudable goal. I just question the wisdom of the state being involved in a project of this nature.

REPRESENTATIVE KOHRING suggested that government involvement should be looked at throughout the country, and that market conditions should be used [as an indicator] regarding whether it is feasible to proceed. "My fear is that we'll end up investing billions of dollars in a gas line and the public is [going] to end up footing the bill, whether it works or not," he added. He requested to hear from the sponsor.

Number 1440

REPRESENTATIVE WHITAKER replied as follows:

In response, we could have that broad philosophical debate. I'm prepared to do that, Mr. Chairman, if it's your desire to do so.

I can point out that while the state is probably not well prepared to maintain, operate, or build a project of this nature, it is appropriate that the state facilitate a project of this nature through ownership, in much the same way that the state facilitates commerce through ownership of roads, airports, and ports. A pipeline transportation system is, at its basis, a transportation system. And it is not inappropriate, under any economic model, for the state to own a basic transportation infrastructure.

Having said that, and not wanting to go a lot deeper, if that satisfies the concerns of Representative Kohring, I would prefer to leave it there, although I am prepared to go deeper if that is the wish of the committee.

Number 1537

VICE CHAIR FATE requested confirmation that HB 302 doesn't demand the state's involvement any more than the [initiative] would regarding construction of a pipeline.

REPRESENTATIVE WHITAKER said it is probably less. He explained:

The intent of the bill is to restrict the state's involvement to ownership, in much the same manner that the state's involvement in the management of the permanent fund is restricted to an ownership role. I would not envision a state bureaucratic entity. I do envision a very small ownership function.

Number 1600

VICE CHAIR FATE stated his understanding that in speaking of an ownership function, Representative Whitaker meant "an equity interest in the pipeline, in the transportation system itself."

REPRESENTATIVE WHITAKER responded, "Either equity or outright ownership, and that is, the function of determination as to the state's ownership role will be related to any number of economic analyses."

VICE CHAIR FATE asked, "Would the corporation ... be the entity that makes that determination?"

REPRESENTATIVE WHITAKER said yes.

Number 1623

REPRESENTATIVE DYSON voiced support for the bill, noting that he also shares Representative Kohring's reservations about public involvement in private enterprise. He explained that, indeed, he thinks of this [pipeline] as transportation, and further believes there ought to be on the table at least a consideration of having the pipeline be a common carrier, which would greatly assuage many minor leaseholders' concerns about access to get their products to market. He said he also realizes it's difficult for the private sector to "get all the things to the table to ... build a project." He mentioned the possibility that a tax-free structure and the state's borrowing power might help to make the project more viable.

REPRESENTATIVE DYSON offered his belief that marketing LNG to the Pacific Rim and the West Coast needs to be a part of whole project. He said the limited scope of the initiative and its tendency to preclude other options is of great concern to him, however. He also said his first choice is to have a "hub" somewhere in the Interior "that lets all options go forward, ... depending on their economic viability."

Number 1736

REPRESENTATIVE DYSON told members that Upper Cook Inlet, the area he represents, will have gas shortages beginning in 2009 or 2010. Unless there are major developed gas sources there, the fertilizer plant in Nikiski and LNG exports will be curtailed. For him, he said, being able to run a "stub" line to Cook Inlet in the future is "absolutely a nonnegotiable." He added, "I'm not interested in any solutions that preclude half the population of the state and the economic development of that area to be truncated." He said that is another reason for his support [of the bill].

Number 1783

REPRESENTATIVE DYSON offered to withdraw his motion if there weren't enough votes to move the bill from committee.

Number 1803

VICE CHAIR FATE called an at-ease at 9:38 a.m. He called the meeting back to order at 9:42 a.m.

REPRESENTATIVE KOHRING announced that he still had concerns about the ultimate result of this effort, but also recognized that without the legislation, the initiative would still exist and could "result in even worse things." He suggested there would be ample opportunity to voice concerns in other committees of referral. He reiterated his concern that this legislation is a forerunner of building a pipeline, which he believes should be strictly market-based. He also offered his belief that if the market currently were demanding that a pipeline be built, the industry would step forth to do it.

Number 1866

REPRESENTATIVE KOHRING withdrew his objection, noting that he would add his [individual recommendation to the committee report].

[There was confusion over the existing motion; the ultimate result was a restating of the motion to move the bill from committee with an "interesting" zero fiscal note.]

Number 1912

VICE CHAIR FATE asked whether there was any objection. There being no objection, HB 302 was moved out of the House Special Committee on Oil and Gas.

ADJOURNMENT

Number 1926

There being no further business before the committee, the House Special Committee on Oil and Gas meeting was adjourned at 9:43 a.m. [For minutes on the overview regarding oil and gas incentives, see the 8:06 a.m. minutes for this date.]