

**ALASKA STATE LEGISLATURE
HOUSE RESOURCES STANDING COMMITTEE**

May 7, 2003

1:40 p.m.

MEMBERS PRESENT

Representative Hugh Fate, Chair
Representative Beverly Masek, Vice Chair
Representative Carl Gatto
Representative Cheryll Heinze
Representative Bob Lynn
Representative Carl Morgan
Representative Kelly Wolf
Representative David Guttenberg
Representative Beth Kerttula

MEMBERS ABSENT

All members present

COMMITTEE CALENDAR

CONFIRMATION HEARINGS

Board of Fisheries

Floyd F. Bouse, D.D.S. - Fairbanks
Robert (Ed) Dersham - Anchor Point

- CONFIRMATION(S) ADVANCED

HOUSE BILL NO. 267

"An Act relating to the Alaska Railroad; authorizing the Alaska Railroad Corporation to provide financing for the acquisition, construction, improvement, maintenance, equipping, or operation of facilities for the transportation of natural gas resources within and outside the state by others; authorizing the Alaska Railroad Corporation to issue bonds to finance those facilities; and providing for an effective date."

- MOVED HB 267 OUT OF COMMITTEE

HOUSE BILL NO. 277

"An Act relating to the powers of the Regulatory Commission of Alaska in regard to intrastate pipeline transportation services and pipeline facilities, to the rate of interest for funds to be

paid by pipeline shippers or carriers at the end of a suspension of tariff filing, and to the prospective application of increased standards on regulated pipeline utilities; allowing the commission to accept rates set in conformity with a settlement agreement between the state and one or more pipeline carriers and to enforce the terms of a settlement agreement in regard to intrastate rates; and providing for an effective date."

- HEARD AND HELD

HOUSE BILL NO. 246

"An Act relating to the limitation on upland acreage that a person may take or hold under oil and gas leases; and providing for an effective date."

- SCHEDULED BUT NOT HEARD

PREVIOUS ACTION

BILL: HB 267

SHORT TITLE: AK RAILROAD BONDS FOR NAT. GAS TRANSPORT

SPONSOR(S): REPRESENTATIVE(S) KOHRING

Jrn-Date	Jrn-Page		Action
04/15/03	0985	(H)	READ THE FIRST TIME - REFERRALS
04/15/03	0985	(H)	O&G, RES, FIN
04/16/03	1018	(H)	COSPONSOR(S): CRAWFORD
04/24/03		(H)	O&G AT 3:15 PM CAPITOL 124
04/24/03		(H)	Moved Out of Committee MINUTE(O&G)
04/25/03	1126	(H)	O&G RPT 5DP 1NR
04/25/03	1126	(H)	DP: HOLM, MCGUIRE, FATE, CRAWFORD,
04/25/03	1126	(H)	KOHRING; NR: KERTTULA
04/25/03	1126	(H)	FN1: (CED)
04/25/03	1138	(H)	COSPONSOR(S): HOLM
05/07/03		(H)	RES AT 8:00 AM CAPITOL 124
05/07/03		(H)	Hearing Postponed to 1:30 PM
05/07/03		(H)	RES AT 1:30 PM CAPITOL 124

BILL: HB 277

SHORT TITLE: PIPELINE UTILITIES REGULATION

SPONSOR(S): REPRESENTATIVE(S) DAHLSTROM

Jrn-Date	Jrn-Page	Action
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04/17/03	1026	(H)	READ THE FIRST TIME - REFERRALS
04/17/03	1026	(H)	O&G, L&C
04/22/03		(H)	O&G AT 3:15 PM CAPITOL 124
04/22/03		(H)	-- Meeting Canceled --
04/23/03	1081	(H)	COSPONSOR(S): KOHRING
04/24/03	1108	(H)	RES REFERRAL ADDED AFTER O&G
04/24/03		(H)	O&G AT 3:15 PM CAPITOL 124
04/24/03		(H)	Heard & Held
04/24/03		(H)	MINUTE(O&G)
04/29/03		(H)	O&G AT 3:15 PM CAPITOL 124
04/29/03		(H)	Scheduled But Not Heard
05/01/03		(H)	O&G AT 3:15 PM CAPITOL 124
05/01/03		(H)	Moved CSHB 277(O&G) Out of Committee
05/01/03		(H)	MINUTE(O&G)
05/02/03		(H)	L&C AT 3:15 PM CAPITOL 17
05/02/03		(H)	Scheduled But Not Heard
05/02/03		(H)	RES AT 1:00 PM CAPITOL 124
05/02/03		(H)	<Pending Referral> -- Meeting Canceled --
05/05/03	1316	(H)	O&G RPT CS(O&G) NT 1DP 6NR
05/05/03	1316	(H)	DP: KOHRING; NR: HOLM, ROKEBERG, FATE, KERTTULA, CRAWFORD, MCGUIRE
05/05/03	1316	(H)	FNS: FORTHCOMING
05/06/03	1372	(H)	FN1: ZERO(REV) RECEIVED
05/06/03	1372	(H)	FN2: ZERO(DNR) RECEIVED
05/07/03		(H)	RES AT 8:00 AM CAPITOL 124 Hearing Postponed to 1:30 PM
05/07/03		(H)	RES AT 1:30 PM CAPITOL 124

WITNESS REGISTER

FLOYD F. BOUSE, D.D.S., Appointee
to the Board of Fisheries
Fairbanks, Alaska

POSITION STATEMENT: Testified as appointee to the Board of
Fisheries.

ROBERT (ED) DERSHAM, Appointee
to the Board of Fisheries
Anchor Point, Alaska

POSITION STATEMENT: Testified as appointee to the Board of
Fisheries.

REPRESENTATIVE VIC KOHRING

Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Testified as sponsor of HB 267.

BILL O'LEARY, Vice President, Finance
Alaska Railroad Corporation (ARRC)
Department of Community & Economic Development
Anchorage, Alaska

POSITION STATEMENT: As ARRC's chief executive officer,
responded to questions on HB 267.

WENDY LINDSKOOG, Director of External Affairs
Alaska Railroad Corporation (ARRC)
Department of Community & Economic Development
Anchorage, Alaska

POSITION STATEMENT: During hearing on HB 267, testified that
ARRC supports the use of its tax-exempt bonding authority for a
gas pipeline project; answered questions.

PAUL FUHS, Lobbyist
for Yukon Pacific Corporation
Anchorage, Alaska

POSITION STATEMENT: Testified on HB 267 and answered questions.

RANDOLPH L. JONES, JR., Attorney at Law
Conner & Winters, PC
Tulsa, Oklahoma

POSITION STATEMENT: Representing Williams Alaska Petroleum,
Inc., expressed concerns about the effects of HB 277.

REPRESENTATIVE NANCY DAHLSTROM
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Testified as sponsor of HB 277; stated
support for the proposed committee substitute (CS) dated
5/6/2003.

JANICE GREGG LEVY, Assistant Attorney General
Oil, Gas & Mining Section
Civil Division (Juneau)
Department of Law
Juneau, Alaska

POSITION STATEMENT: Explained the proposed CS for HB 277 dated
5/6/2003; answered questions.

DAVE HARBOUR, Chairman
Regulatory Commission of Alaska (RCA)

Department of Community and Economic Development (DCED)
Anchorage, Alaska

POSITION STATEMENT: Expressed concerns about HB 277, including that it makes the process less streamlined and provides some regulatory certainty for a few, but at the expense of others.

JERRY GALLAGHER, Manager
Government Relations
ConocoPhillips Alaska, Inc.
Anchorage, Alaska

POSITION STATEMENT: Testified in support of the proposed CS for HB 277 dated 5/6/2003.

JIM DECKER, Senior Counsel
BP Pipelines (Alaska) Inc.
Anchorage, Alaska

POSITION STATEMENT: Testified in support of HB 277; offered general support for the proposed CS dated 5/6/2003, but expressed some concerns.

MARK HANLEY, Public Affairs Manager, Alaska
Anadarko Petroleum Corporation
Anchorage, Alaska

POSITION STATEMENT: Testified on HB 277, emphasizing the need for reasonable rates and access; said the bill creates certainty for some at the expense of others.

GENE BURDEN, Senior Vice President of Government Relations
Tesoro Petroleum Corporation
Anchorage, Alaska

POSITION STATEMENT: Testified in opposition to HB 277; emphasized the need for fair and reasonable rates.

ACTION NARRATIVE

TAPE 03-38, SIDE A

Number 0001

CHAIR HUGH FATE called the House Resources Standing Committee meeting, which had been recessed at 9:21 a.m., back to order at 1:40 p.m. Representatives Fate, Gatto, Morgan, and Wolf were present at the call to order. Representatives Masek, Heinze, Lynn, Guttenberg, and Kerttula arrived as the meeting was in progress.

Number 0175

CHAIR FATE announced at 1:41 p.m. that the committee would take an at-ease until a quorum was present.

[Due to technical difficulties, the following wasn't tape recorded but was reconstructed from the committee secretary's log notes.]

CHAIR FATE called the meeting back to order at 1:46 p.m. [Representatives Masek, Lynn, and Kerttula had joined the meeting and thus there was a quorum.]

CONFIRMATION HEARINGS

Board of Fisheries

CHAIR FATE announced that the first order of business would be consideration of the appointments of Floyd F. Bouse and Robert (Ed) Dersham to the Board of Fisheries. He asked Dr. Bouse to explain why he wishes to be on the board.

FLOYD F. BOUSE, D.D.S., Appointee to the Board of Fisheries, began by saying he has attended several Board of Fisheries meetings, petitioning on issues he's been involved in.

[Tape recording began at this point.]

Number 0180

DR. BOUSE noted that he has been to Cordova, Valdez, and villages up and down the Copper River; has a long-time interest in the process and the issue of fisheries; did sport-fish guiding for some years, though not since 1998; and was asked by some people he respects to submit his name for this position.

CHAIR FATE announced a possible conflict of interest because he may have been one of those people.

Number 0287

REPRESENTATIVE WOLF, citing figures from the tourism industry, said approximately 1.6 million visitors come to Alaska annually. He asked, "Where do you stand on natural stock enhancement using the same genetic brood stock?"

DR. BOUSE replied:

I'm not sure what connection that has to tourism, but I can tell you ... my feelings about enhancement of the fisheries: I'm all for it, as long as it doesn't create a problem. In other words, I don't want things to be a curse in disguise. Some of our hatchery projects have gone along really well, and some haven't. So I think we have to be very careful about understanding which ones have had any negative impact on the wild stocks ... that we have to protect.

My ... position is, it's an absolute priority: protect wild-stock fish to maintain the properly established biological escapement goals ... in river management systems. And so the hatcheries are wonderful; they've made a lot of money for a lot of people and put a lot more fish ... in the rivers for everyone. But they've created some problems along the way. I think we have to maintain the hatchery systems, but be very careful about which ones ... we keep producing - and some may have to be shut down. There are some causing problems throughout the state, I understand.

Number 0435

REPRESENTATIVE WOLF explained that he was tying tourism to it because nearly 300,000 nonresident fishing licenses are issued yearly. He then asked, "Where do you stand on nonindigenous predator control of freshwater fish?" He indicated there will be legislation introduced; said this is an issue relating to northern pike on the Kenai Peninsula and in the [Matanuska-Susitna area]; and said he wants to know where board members stand with regard to trying to control "live transportation of fish, which is currently illegal in the state of Alaska by unlicensed individuals."

DR. BOUSE replied:

My reaction would be to tried to prohibit ... that as much as we can. We'd have to look at the resource and see if it could stand ... a new species of fish being introduced. But pike are notorious for being ... deadly predators. And I understand, down ... around Palmer and that area, down on the Kenai, they've got pike coming into systems where they're not supposed to be. ... I would guess we'll be looking at systems where we'd have to try to eliminate them if we

possibly can. If they're going to be a detriment to things like rainbow trout or salmon stocks, they would just have to go.

Now, on the other hand, we have pike in systems like ... the Chatanika River here in Fairbanks where they're a natural part of the system and the salmon seem to make it through the gauntlet of pikes. So we'd have to look at whether they've been introduced into the wrong place. And if they're causing damage, ... I would guess they'd have to be eliminated.

On the other hand, you find places where pike could be introduced to create tourism. So we'd have to run that past the staff; we'd have to run that past the sport fish ... and the biologist staff to see what the status of that fishery is, where it's been, and where it's going, ... if we get pike involved.

Number 0623

REPRESENTATIVE WOLF said he appreciated the response, but a fisheries biologist had explained to him, when questioned about northern pike on the Kvichak River in the Bristol Bay region, "Look at the watershed, the volume of fish returning to that system, and then compare them to the Kenai River." It's a huge difference, he said.

Number 0670

REPRESENTATIVE GUTTENBERG asked Dr. Bouse to comment on the Chitina dip net fishery, in which he himself participates.

DR. BOUSE responded that it is a trek his family makes one to three times a year because they enjoy fishing there; it has been part of the family fishing experience since 1985, and he'd learned from a now elderly man who started fishing there in the 1960s. Noting that it's an important source of fish for him and very important to thousands of Alaskans, Dr. Bouse said he appreciates the opportunity to take part in it and looks forward to trying to protect it if possible. In response to questions from Representative Masek about his previous travel to rural areas, he explained that it strictly related to dentistry and a state contract for research on Bush access to health care; he also mentioned the [federal] Public Health Service.

CHAIR FATE asked whether there were further questions of Dr. Bouse and then asked Mr. Dersham to testify.

Number 0900

ROBERT (ED) DERSHAM, Appointee to the Board of Fisheries, noted that he'd served six years on the board and had submitted his name for consideration for another term. He told members:

During the six years, I've become a big fan of our public process in Alaska to deal with issues of fish and game. I have quite a bit of experience with the Western Association of Fish and Wildlife Agencies and am able to compare our process with the other states, and I think ours ... is definitely the (indisc.--coughing) public process of any Western state; that goes all the way back to the delegation that the legislature made that created the boards of fish and game ... and the criteria and policies that have been developed over the years such as the allocation criteria and the different policies ... for consideration of emergency petitions and agenda-change requests and on into ..., more recently, our use of a subcommittee system for board meetings.

I've ... got a lot of experience utilizing the policies and procedures of the board. And ... we're looking at having five new board members now, so ... I agreed to submit myself to be considered for another term because I feel I can ... be helpful in keeping the process moving along and help the new board members ... get up to speed with that.

Number 1011

REPRESENTATIVE WOLF asked, under this new administration, how things can move forward without looking at the past administration, to bring "our Cook Inlet together."

MR. DERSHAM said he'd gone through four board meetings with four newly appointed members, whom he thinks highly of; he offered his assessment that none of those four has a personal agenda to push and that all want to work to "conserve and develop the fisheries of Alaska." In that regard, he expressed confidence that it will work out well: the more that members listen without preconceived notions about the final determination of certain issues, the better things work. As far as specifics

relating to Cook Inlet, he said the issues are tough and must be dealt with one at a time, with the most input and thus the best decisions possible.

Number 1181

REPRESENTATIVE WOLF asked where Mr. Dersham stands on controlling the transportation of live pike and "restocking by bucket biology."

MR. DERSHAM replied that this is a very emotional issue, depending on what part of the state or piece of water is being discussed; there are a lot of strong opinions. He reported that the Western Association of Fish and Wildlife Agencies did a project for which one question related to people's feelings about pike; there was such a wide range of responses across Alaska that it became a "poster boy of presentation" at a meeting to show how different the attitudes are statewide on this issue. Noting that the Kenai Peninsula is beginning to have some problems with pike and doesn't have anyplace where pike have been established "in the purposes of the fisheries," he added, "So I don't think pike have any place on the Kenai Peninsula." Other than that, he said, it must be dealt with on a case-by-case basis because [pike] certainly can wreak havoc, particularly with silver salmon stocks.

Number 1324

REPRESENTATIVE WOLF agreed. He brought attention to issues in Cook Inlet that arise when there are numerous user groups including commercial, sport, and personal use. He asked, "Where would you stand on some natural, same-genetic-stock enhancements producing some dead-end fisheries, something like what we have in Homer Lagoon, but off of one of our Lower Peninsula streams?"

MR. DERSHAM responded that it must be addressed one case at a time; in a general sense, though, he supports enhancement wherever possible and has been a supporter of enhancement wherever it appears to be viable and not harmful to the resource.

Number 1370

REPRESENTATIVE GATTO asked Mr. Dersham, as a board member, what method he would use to eliminate a nonindigenous species in a given area.

MR. DERSHAM replied:

Just for example, with pike, we've dealt with proposals ... and the department where, in certain closed systems, they were able to use rotenone. ... In other places, we've considered ... such things as increased bag limits or mandatory retention or even legalized crossbows for pike - but that ... was kind of an issue ... of stunted pike in a few lakes where [we] allowed that; it wasn't trying to wipe out the species. But we just ... try to take each case based on the nature of the system and ... the advice we get from the department, and then of our public input. And so we're pretty flexible.

Number 1458

REPRESENTATIVE WOLF remarked that rotenone doesn't have a 100 percent kill rate for northern pike, as shown by some studies.

MR. DERSHAM said that's not surprising, since they're tough.

CHAIR FATE asked whether there were further questions. He thanked the appointees and closed testimony.

Number 1516

CHAIR FATE informed members that he would pass around a sheet for them to sign. [No motion was made, but the confirmations of Dr. Bouse and Mr. Dersham were treated as advanced from the House Resources Standing Committee.]

The committee took a brief at-ease at 2:05 p.m.

HB 267-AK RAILROAD BONDS FOR NAT.GAS TRANSPORT

CHAIR FATE announced that the next order of business would be HOUSE BILL NO. 267, "An Act relating to the Alaska Railroad; authorizing the Alaska Railroad Corporation to provide financing for the acquisition, construction, improvement, maintenance, equipping, or operation of facilities for the transportation of natural gas resources within and outside the state by others; authorizing the Alaska Railroad Corporation to issue bonds to finance those facilities; and providing for an effective date."

Number 1571

REPRESENTATIVE VIC KOHRING, Alaska State Legislature, sponsor, explained that HB 267 authorizes the board of the Alaska Railroad Corporation (ARRC) to provide tax-exempt bonds as a financing source to encourage construction of a gas pipeline. It would make the monies available for private industry to borrow, providing cheap financing because of the current low interest rates and the fact that these are tax-exempt bonds. Commending Chair Fate's work on HB 116, a major piece of the puzzle, he referred to work in Congress on an energy package and expressed hope that it will include various permit authorizations and so forth for a gas pipeline. Noting that the big question is whether this pipeline will be deemed financially feasible by those that would build and own it, he said [HB 267] is a very important step in getting that gas pipeline built.

REPRESENTATIVE KOHRING explained that these bonds, if issued, would be "nonrecourse debt," the responsibility of those that borrow the money, not ARRC or the State of Alaska; no state assets would be "liened" to repay it, and neither ARRC nor the state would own the pipeline, which would be owned by private companies that would build, own, and operate it. The bond proceeds would finance its acquisition, construction, improvement, maintenance, equipping, and operation. This bill authorizes ARRC to issue up to \$17 billion in bonds for construction of the pipeline, which is estimated to cost as much as \$30 billion; the amount can be increased if the legislature so chooses, but Representative Kohring said he'd been told \$17 billion would provide the lion's share and enable the industry to have some pretty cheap financing to make the project viable. He said there is no ceiling to the debt that could be incurred, as far as he'd been told.

Number 1780

REPRESENTATIVE KOHRING brought attention to correspondence in committee packets from George K. Baum & Company in response to Representative John Harris, co-chair of the House Finance Committee, which offers the analysis that this is feasible. With regard to support from the industry and a potential pipeline owner, packets also contain a letter from ConocoPhillips Alaska, Inc., which he said has testified previously in support of this legislation. As to ARRC's ability to issue tax-exempt bonds, this authority was granted in 1983 by Congress when the State of Alaska acquired the railroad from the federal government, he said, noting that Congress reaffirmed that authority in the tax-reform Act of 1986.

Number 1849

REPRESENTATIVE GATTO said he supports this, but several months ago had heard it would be \$20 billion each to build, operate, and finance it, for a total of \$60 billion. He observed that Representative Kohring had talked about \$30 billion, which would raise it to \$70 billion if the other numbers were correct. Noting that at some point there will be more spent than can be generated, he asked at what point this isn't worth doing.

REPRESENTATIVE KOHRING deferred to testifiers including Paul Fuhs [lobbyist for Yukon Pacific Corporation].

CHAIR FATE also requested clarification from Mr. Fuhs. Challenging the figures mentioned by Representative Gatto, he said there will be different costs for different [proposed] segments, and the \$20 billion mentioned was from Prudhoe Bay to Chicago, not even to a hub in Alberta, Canada.

REPRESENTATIVE KOHRING mentioned estimates from \$20 billion to \$30 billion for construction costs if it goes "the Canadian route - Alaska down to Tok and down into Canada towards Chicago." If it were built down the existing pipeline corridor, he said he'd heard perhaps \$12 billion. He expressed hope that eventually there'd be spur lines in Alaska to meet increased energy demands.

Number 1991

REPRESENTATIVE WOLF stated support for the whole concept. Since ARRC is owned by the state, however, he asked whether selling these bonds would tie this to Title 36 such that builders of the pipeline would have to pay the prevailing wage, which for commercial projects is over \$38 an hour for a carpenter.

REPRESENTATIVE KOHRING deferred to ARRC personnel.

Number 2062

BILL O'LEARY, Vice President, Finance, Alaska Railroad Corporation (ARRC), Department of Community & Economic Development, noting that he is the chief financial officer for ARRC, said it isn't in his purview. He conveyed his initial inclination, however, that it wouldn't be subject to a prevailing wage [requirement] under Title 36 because it wouldn't be considered public construction. He said he would defer to

ARRC's legal staff for a more definitive answer, and could get back to the committee on that, if so desired.

REPRESENTATIVE WOLF asked that Mr. O'Leary provide an answer at least to Representative Wolf's office.

Number 2134

REPRESENTATIVE GUTTENBERG asked about the state's ability to "put some policy into these bonds" with regard to an Alaska-hire priority, for example.

MR. O'LEARY said he believed that was attempted in last year's similar legislation, which to his belief was amended with Alaska-hire provisions and so forth. However, he said that isn't something normally done through a bond indenture or anything of that nature. He suggested it has more to do with a legislative approach than the actual sale of bonds.

REPRESENTATIVE GUTTENBERG asked whether there was a legal opinion on the state's ability to do that.

CHAIR FATE said there was.

Number 2218

REPRESENTATIVE GATTO asked what happens if there is a default on the bonds and who becomes the responsible party.

MR. O'LEARY answered that these bonds are planned to be sold as a nonrecourse obligation. The full faith and credit of neither ARRC nor the State of Alaska would be behind the bonds; the underlying credit would be that of the "producers" or whomever ARRC would have the contractual arrangement with for the actual construction and operation of the gas line. If there were a default, it would not come back to the assets of the state or ARRC, to his understanding of how this is envisioned.

REPRESENTATIVE GATTO said he interprets that as "risk capital."

MR. O'LEARY responded, "It's certainly the risk that would be factored in when the bonds are being priced and being sold in the market, yes."

REPRESENTATIVE KOHRING indicated the legislation somewhat addresses that issue by calling for the railroad board, which would actually decide to whom they'd issue the proceeds of the

bonds, to first have to obtain adequate assurance that a project sponsor is able to repay the bonds; to determine that any contract or lease is sufficient to pay the bonds as scheduled; and to ensure that reserves are maintained for all payments and to pay all costs necessary to secure those bonds.

Number 2333

WENDY LINDSKOOG, Director of External Affairs, Alaska Railroad Corporation, Department of Community & Economic Development, told members:

The railroad does support the use of our tax-exempt bonding authority for a gas pipeline project. We feel ... if that's a good tool that helps the project go forward, then great. Part of our mission is to support economic development for the state, so we do feel that falls within our mission.

MS. LINDSKOOG, in response to a question from Representative Guttenberg, said a similar bill was introduced last year as a stand-alone bill and was combined with HB 519, the bill referenced just a few minutes ago. That is where a lot of the policy issues were combined with the actual use of the tax-exempt bonding. "As it turned out last year, I think we were the smallest part of that bill, really," she added.

Number 2406

PAUL FUHS, Lobbyist for Yukon Pacific Corporation (YPC), noting that YPC had provided information which Representative John Harris had requested on project economics, informed members that this attachment [in packets] includes wellhead prices and construction costs for a line that would follow the [oil] pipeline corridor to Valdez. He said, "There are two projects out there, as you know. This bill is nonspecific. It could go to either one, whichever finds economic partners and is going to move forward."

MR. FUHS referred to correspondence in packets from George K. Baum & Company. Noting that it says the bonds for the project could be issued if the ARRC vehicle were available, Mr. Fuhs remarked, "They think it's quite important to the project." He pointed out that a spreadsheet from that company compares the difference between having and not having the railroad bonding; he said the difference of almost 2 percent on the rate of return is pretty substantial on a project this size. Mr. Fuhs also

indicated George K. Baum & Company had analyzed the Alaska Natural Gas Development Authority established by Proposition 3. "They also indicated that it would facilitate that," he said.

MR. FUHS addressed potential revenues for the state. He opined that no other project out there could help meet some of the budget shortfalls. Although [developing the Arctic National Wildlife Refuge (ANWR)] would be good for revenues, he said, "It's not much for, really, private employment. It's ... not all that much activity." He indicated the spreadsheet shows that with a privately owned [gas pipeline], \$350 million to \$400 million a year [would come to the state]; with a development authority, the return to the state could be as high as \$1 billion a year.

Number 2535

MR. FUHS turned attention to previous questions and said:

First, last year with the legislation in terms of Alaska hire, it wasn't put as "Alaska hire." It was put as "project labor agreements with the unions," and that was not adopted. ... The supreme court determined that Alaska-hire laws that discriminated were against the constitution.

However, the way that you can do it through bonding - and we did it through AIDEA [Alaska Industrial Development and Export Authority] with the Red Dog Mine - if you do it as an incentive, the more people that you hire, that your interest rate is tied to it, you can do it that way. And that's what we did with the Red Dog Mine, and that's ... one reason why there's a very, very high percentage of Alaskan and local hire, actually, in the Kotzebue area, was because of the way that bonding was put together. ...

Most of the last pipeline was built with a project labor agreement. Our company thinks that's the best way to go. You go for "no strike" clauses, you go for efficiencies and interjurisdictional work, ... you get the qualified people, and you don't have work stoppages.

Number 2558

MR. FUHS responded to Representative Gatto's earlier question by saying those numbers aren't that far off. He noted that financing costs when a person buys a house may double the amount owed, for example. Although \$20 billion may be the cost of building the project, it will be another \$20 billion by the time the debt is paid off plus interest over 20 or 30 years. In addition, there are costs to operate, maintain, and repair it.

REPRESENTATIVE GATTO said "20, 20, 20" was just easy to remember, but it leads to the question of at what point "30, 30, 30" or "40, 40, 40" would be okay. He again asked whether there is a number for the point at which it wouldn't be worth it.

MR. FUHS replied:

Well, the numbers that are in our information here, as far as I know, are the only economic data that's ever been put out on any project. And we haven't really seen data on the Canadian project, the Alcan pipeline project. Maybe some of the other members have seen it, but it's never been presented to the public.

But one thing that you've got with this nonrecourse financing is, because it's not general obligation debt, in order to sell those bonds you have to have a bonding company that has enough faith in your project and the returns that they're going to risk their reputation to go out and sell those bonds - because if they fail, it's going to be a black eye on that company.

The other thing is, the investors are going to look on it and say, "Hey, there's no deep pockets behind this; we really have to believe in the revenues of the project." So ... you have two stops along the way of somebody who's actually putting their money and reputation on the line, that if the economics aren't there, those bonds will not be sold.

Number 2657

CHAIR FATE referred to Mr. Fuhs's discussion of possible lines and asked, "What if both lines are financed and the projects go forward: does that require one bonding package, or is that going to require more than one bonding package for the separate lines?"

MR. FUHS answered that it depends how the project is structured. Somebody could want to do both a line to Valdez and one through Canada. Or somebody could want to do one line, and someone else could want to do a second line. If there were different sponsors, there would be different bonding packages. There might be a need to revisit this and increase the levels that would be available if there were going to be a "Y" line.

CHAIR FATE asked whether there is discretion. In other words, can they pick and choose? For example, if they reach capacity in bonding of the Canadian route, there wouldn't be much left over for the Valdez intertie and the pipeline to tidewater. He asked how they would do that, and acknowledged perhaps he should ask ARRC personnel. He added:

The thought occurs to me as we get closer and closer to actually building a pipeline, and as the authority under [Proposition] 3 becomes closer and closer to realization - I've already had answers from FERC [Federal Energy Regulatory Commission] as to how they will handle ... the interplay between the three authorities, RCA [Regulatory Commission of Alaska], FERC, and the new [Proposition] 3 authority, ... which they answered - but this leaves me ... to wonder how that could be coordinated, providing that the Alaska Railroad were ... actually asked to come forth with bonding capacity. I don't know the answer - that's why ... I'm asking - whether they would ... prioritize that ... because of the bigger pipeline.

MR. O'LEARY replied that for any projects where the railroad bonding authority would be used, most certainly ARRC would be very interested in ensuring that there were checks and balances and that the projects were viable. Although there is no stated limit to the amount of bonds ARRC could issue, there is sort of a de facto limit as to what investors will invest in. At some point, if too many projects seemed to overlap, there could be a problem with marketing the bonds.

Number 2820

MR. FUHS noted that the bill authorizes a certain amount. If more were needed later because of a fortunate occurrence such that both lines would be [built], the amount could be amended. He pointed out that ARRC has a "federal tax loophole" but no authority to issue the bonds; the legislation therefore gives the railroad the power to issue the bonds. "As a result, you

are transferring the power to make those decisions to the Alaska Railroad board," he said. "And if there is any prioritizing to be done or whatever, you're really authorizing the railroad board to make those decisions."

Number 2856

REPRESENTATIVE GATTO asked whether the board is appointed or at least confirmed by the legislature.

MS. LINDSKOOG replied that the board is appointed by the governor but isn't confirmed by the legislature.

REPRESENTATIVE GATTO expressed concern that the legislature is out of the loop, therefore, as far as the decisions of the board, and is transferring its authority to the railroad.

CHAIR FATE remarked that [ARRC] is quasi-private because it is run as a private industry, which he said is good.

Number 2926

REPRESENTATIVE MASEK moved to report HB 267 out of committee with individual recommendations and the accompanying fiscal notes and correspondence; she asked for unanimous consent.

REPRESENTATIVE GATTO objected.

TAPE 03-38, SIDE B

[The following is only partially on tape and was reconstructed from the committee secretary's roll call sheet.]

A roll call vote was taken. Representatives Kerttula, Masek, Lynn, Morgan, Wolf, Guttenberg, and Fate voted in favor of reporting HB 267 from committee. Representative Gatto voted against it. Representative Heinze was absent. Therefore, HB 267 was reported out of the House Resources Standing Committee by a vote of 7-1.

The committee took an at-ease at 2:33 p.m.

HB 277-PIPELINE UTILITIES REGULATION

[Contains discussion of HB 267]

CHAIR FATE announced that the last order of business would be HOUSE BILL NO. 277, "An Act relating to the powers of the Regulatory Commission of Alaska in regard to intrastate pipeline transportation services and pipeline facilities, to the rate of interest for funds to be paid by pipeline shippers or carriers at the end of a suspension of tariff filing, and to the prospective application of increased standards on regulated pipeline utilities; allowing the commission to accept rates set in conformity with a settlement agreement between the state and one or more pipeline carriers and to enforce the terms of a settlement agreement in regard to intrastate rates; and providing for an effective date." [Before the committee was CSHB 277(O&G), which the sponsor statement addressed; in packets was a proposed committee substitute (CS).]

Number 2922

REPRESENTATIVE MASEK moved to adopt the proposed CS, Version CSHB 277(RES) bil.doc, 5/6/2003, as a work draft. There being no objection, the proposed CS dated 5/6/2003 was before the committee.

Number 2833

RANDOLPH L. JONES, JR., Attorney at Law, Conner & Winters, PC, representing Williams Alaska Petroleum, Inc. ("Williams"), noted that he'd started in 1981 when MAPCO acquired Earth Resources; he said he's been representing the North Pole refinery as a shipper on the Trans-Alaska Pipeline System (TAPS) since 1981. Prior to that, he worked for El Paso Natural Gas Company ("El Paso"). He told members that in the 1970s he looked at all the federal and state regulatory and statutory issues that could arise with respect to El Paso's proposed natural gas pipeline from the North Slope to Valdez and then shipping it as LNG [liquefied natural gas] to California. In addition, in the 1970s, while with El Paso, he worked with Sohio on the project to convert one of El Paso's natural gas pipelines to a crude-oil pipeline for transportation from Long Beach to Texas.

MR. JONES conveyed Jeff Cook's apology for being unable to testify this day and offered some facts on his behalf. First, he said the North Pole refinery is the state's largest. It processes approximately 215,000 barrels a day of ANS [Alaska North Slope] crude oil, of which it retains 70,000-80,000 barrels of refined petroleum product. Approximately 60 percent of that is jet fuel; up to 18 percent is naphtha that may be exported; and the remainder is gasoline, diesel, heating oil,

asphalt, and number 4 fuel oil, which the Golden Valley Electric Authority uses to generate electricity. He said Williams provides approximately 60 percent of the jet fuel consumed in Alaska. The refinery expansion these past few years has primarily gone to producing more jet fuel so that it is produced within Alaska, rather than imported from other locations.

MR. JONES referred to HB 267, just discussed, and noted that Williams is the largest customer of the Alaska Railroad Corporation (ARRC); approximately 60 percent of its revenue comes from shipments by Williams of petroleum products going from Fairbanks to the Anchorage terminal. Since 1978, the North Pole refinery has purchased over 300 million barrels of state royalty oil, valued at about \$5 billion. Williams currently employs slightly over 500 employees in Alaska and spends just under \$1 billion a year for payroll, crude oil, electricity, and so forth.

Number 2639

MR. JONES turned attention to HB 277 and said this proposed legislation seems to stem from the perception that the Regulatory Commission of Alaska (RCA) has failed to do its job and has stepped into areas where it shouldn't tread, and that this was left either to the domain of FERC [Federal Energy Regulatory Commission] or to be unregulated. He said, however:

It's important to note what the United States court of appeals for the District of Columbia stated in 1987 when it ruled in the Arctic Slope Regional Corporation vs. FERC appeal of FERC's approval of the TSM [TAPS settlement methodology] settlement agreement between the State of Alaska and the TAPS carriers, which set the TSM methodology for calculating the maximum interstate rate on TAPS. The court stated, "Thus any such rates are subject to challenge by nonsettling parties such as Arctic, as well as any other nonsignatory" - end quote.

It's important to note that the shippers, Williams and Tesoro, [which] had brought the rate case challenging the TSM rates for 1997 ... through 2000 for intrastate shipments, were nonsignatories to that agreement. In fact, Williams, which was MAPCO at that time, had settled the "Quality Bank" case in 1984 and it also, as part of that settlement, established the "rolled-in barrel-mile" methodology for determining the

intrastate rates from Pump Station [No.] 1 to refinery connections. As part of that settlement, MAPCO was required to withdraw from the interstate rate case. It did provide that if MAPCO's - and now Williams' - interests were ever affected, they would have a right to come forward and challenge those rates.

The court also stated that FERC made several things abundantly clear: "FERC's approval of the settlement did not, in any manner, determine that the rates established under it are or will be just and reasonable, that the settlement would be of no precedential value in future rate challenges" - end quote. And, in addition, perhaps looking into the crystal ball and trying to predict the future, the court stated, "There is another factor as well. The reasonableness of rates to be charged into the 1990s and beyond can hardly be evaluated exclusively on the basis of a factual record that draws to a close in 1982" - end quote.

Number 2519

MR. JONES continued:

So what happened when the shippers came forward, challenged TSM rates? The RCA set three easy standards that the TAPS carriers had to meet. And I should note that the State of Alaska, as a signatory to the TSM settlement agreement, has an obligation to defend that agreement and, in fact, supported the TAPS carriers during the rate case.

Number 2420

MR. JONES noted that Sections 1-3 of the bill affect DR&R [dismantlement, removal, and restoration] and said:

There's been concern, and there's a removal of facilities. ... Statements in testimony [have] been, it's not the RCA's place to really regulate DR&R, that's for DNR to do. But in looking at it, it's important to keep in mind that the TAPS carriers recently, in a filing with the RCA, noted [that] ... TAPS crosses approximately 53 percent [federal] land, and the other 47 percent would be state, Native lands, and also private land. But the way the funds would be

distributed from the rates, over 90 percent of the DR&R funds [would be] generated by interstate tariffs, and only less than 10 percent by intrastate tariffs.

So, in looking at that, the important thing is, really, all the DR&R is going to take place within the state of Alaska. This isn't a case where a pipeline's going through multiple states. The state has the interest in seeing that DR&R is accomplished on all lands within the state. And the best agency to do that is an independent agency like the RCA. It can oversee all of the rates. There is no federal regulation of DR&R. The Interstate Commerce Act does not cover it, and FERC doesn't have statutory jurisdiction to deal with DR&R. So the logical entity to fill that void would be the RCA.

Number 2392

MR. JONES continued:

HB 277 goes to limit the RCA to strictly intrastate matters, and not to step in and fill voids where there is no regulation. And with respect to DR&R, that would be to the detriment of the state. It would seem that the state would want an independent state agency making sure that all of the funds collected from shippers were available to make sure that DR&R occurred appropriately and correctly over all the lands. And knowing the timeframe, Mr. Chair, I will stop at that point; I figure others will address other parts of the legislation.

MR. JONES, in response to Chair Kohring, affirmed that he had the previous bill versions as well as the proposed CS dated 5/6/2003.

Number 2329

REPRESENTATIVE NANCY DAHLSTROM, Alaska State Legislature, sponsor, explained that HB 277 addresses concerns related to pipeline utility regulation. She offered her belief that the changes it proposes are critical and "advocate for clarity and future certainty." Stating support for the changes in the proposed CS, she urged members to look at the bill objectively, listen to testimony, and ask tough questions to see whether or

not appropriate changes need to be made in order to do the right thing for the state.

CHAIR FATE requested that the Department of Law give an overview of the changes made in the proposed CS from the original bill.

Number 2137

JANICE GREGG LEVY, Assistant Attorney General; Oil, Gas & Mining Section; Civil Division (Juneau); Department of Law, discussed the proposed CS as follows:

Section 1 is an addition from the original House Bill 277. And this provision would provide that the commissioner of DNR [Department of Natural Resources] is the individual who coordinates and oversees the performance of the obligations and compliance with the terms of the lease that, in fact, his agency issues, including the right-of-way leases for pipelines. And that would include overseeing obligations of DR&R - or dismantlement, removal, and restoration. ...

We have always believed that the commissioner of DNR has that authority; that's the entity that enters into our leases. But ... just for clarity's sake, because we are removing similar language from the RCA statute - or that's what this bill would do - we want to make sure that there's no confusion, that ... the obligation to do this does reside within state government. And that's where the administration believes it is properly placed.

And maybe just as a response to something that Mr. Jones said a few minutes ago, the administration has thought a lot about where the responsibility for overseeing DR&R would properly reside within state government. And we would just agree with the notion that it belongs with a body that primarily regulates pipeline rates and pipeline service.

We think it's more appropriate for that entity that owns our lands, that leases our lands, that determines what provisions go into the leases to protect the state - that's the proper entity to enforce the lease. And we have mechanisms. If there's a breach of contract, a nonperformance, we go to court; there's not a problem there. And ... the regulatory body with

the expertise over the lands ought to be the one that oversees the obligations. So that's our thoughts on Section 1.

Number 1981

MS. LEVY addressed Section 2 as follows:

In Section 2, the original language of House Bill 277, ... where it said, "shall regulate pipeline and pipeline carriers in the state", ... it deleted that language and then just inserted that it would regulate ... pipeline transportation service. This raised some concerns by shippers and some within state government. And we thought it would be appropriate to clarify that the commission would continue to regulate pipelines and pipeline carriers, but, again, only to the extent that it's applicable to the intrastate transportation services. This is also the section that deletes, in subsection (a)(2), the performance of obligations under and compliance with state leases. ... I think I just adequately explained that in Section 1.

MS. LEVY addressed Section 3 as follows:

Section 3 is, I believe, the exact same language that appeared in the original House Bill 277 to clarify that the commission does not have jurisdiction over the implementation of DR&R, or over amounts collected from interstate shippers for DR&R, but makes very clear that it does have jurisdiction over amounts collected in the pipeline carriers' intrastate rates - that's the last phrase. And I think that's absolutely critical and important, that RCA is certainly the appropriate commission to determine what, if any, should be collected from intrastate shippers for performance of DR&R that applies to the intrastate service.

Number 1847

REPRESENTATIVE KERTTULA offered her understanding under the bill that the RCA has intrastate-rate authority over DR&R, that interstate authority remains with FERC, and that DNR would have authority for the actual DR&R itself when it happens.

MS. LEVY affirmed that, but added:

There's been some statements made that the FERC has no authority over DR&R and so this leaves a big gap within the state and that this is a concern. And, in fact, the FERC does not regulate the performance of DR&R, and I think that's what you were just referring to, the actual taking down of the facilities, the restoration of the land. However, it does have authority over the rates that are collected from interstate shippers to do that. So who does oversee the DR&R performance on federal lands? And the answer is, of course, the [U.S.] Department of the Interior, who entered into the lease. So this brings the state consistent with the FERC practice.

Number 1730

MS. LEVY continued:

So, then, the only remaining question is, "Well, what about over lands that are not owned by the state or the federal government, that are instead private lands?" And, again, the answer is, the landowner, first of all, never had to permit the pipeline to cross the private land. But if the landowner agreed to that, it probably did so with terms that would assure that the performance of these environmental obligations would not fall to the landowner but to the lessee to whom they were leasing this land. So I guess the thought is, the administration believes the less restrictive and more flexible mechanism should be employed to ensure the contractual obligations are performed.

And then, trying to think of all the possibilities, ... suppose you have a private landowner who did not provide that there was a DR&R obligation. Well, what's left is state and federal environmental laws and regulations. And we all know that those exist and that cleanup is required, in any event, by the last user, by the owner. And so, ... to provide that that is to be implemented or overseen by yet another regulatory body is not only inefficient, it could lead to conflicts as to what is actually required. ...

I would see this as really an improvement in clarity. Everything is covered. Those who own the land have

the absolute right and authority to enforce the terms of their private real estate contracts with the pipeline carriers, and we turn to the RCA for whether or not monies can be collected for them to perform those obligations.

Number 1640

REPRESENTATIVE KERTTULA asked, when shippers file their rates, whether it is easy to understand what amount is for DR&R as well as what is interstate versus intrastate.

MS. LEVY replied:

It's easy to tell what's interstate and what's intrastate because ... both rates have been filed. And they go to the carrier with their resource and say, "Please ship this interstate or intrastate." So that's determined by the shipper, so they know the rates they're paying. ...

I know that on Cook Inlet pipeline, the RCA had identified a certain amount ... that could be collected for DR&R. I think in TAPS over the last number of years, this has been incorporated into the tariff overall. ... If the question is, can we determine, ultimately, what has been collected for DR&R, I think the answer is yes. There might be some disputes about it, but the RCA certainly has the authority to hear any of those discussions and to determine, based on the evidence presented, what, in fact, has been collected.

REPRESENTATIVE KERTTULA suggested it really doesn't matter how much was collected, because even if it costs more, they have the duty under the lease or right-of-way to take it down, clean it up, and take care of it. She asked whether that is correct.

MS. LEVY answered in the affirmative.

Number 1517

REPRESENTATIVE GUTTENBERG asked whether DR&R that has been collected is kept in a physical place, is in a trust or fund, or is covered under a bond.

MS. LEVY replied:

The answer is, it depends on what was ordered by the regulatory body. In the case of TAPS, up until this point, neither FERC nor RCA ordered any kind of an external fund or accounting, or even an internal fund ... where the monies sit. On some other pipelines, at one time, originally, I believe Cook Inlet pipeline was ordered to put money in escrow ... or in an external fund; then, on reconsideration, it was allowed that it could account for the monies ... internally but keep books that identified those amounts. So the regulatory body has the authority to determine how that money will be taken care of.

Number 1429

MS. LEVY addressed Section 4, saying the addition to HB 277 that the administration supports is the last sentence, which read [beginning on page 4, line 30]:

However, nothing in this section limits the powers of the commission to consider both interstate and intrastate cost requirements as needed to determine what costs may be recovered by a pipeline carrier through intrastate rates [SET OUT IN THIS CHAPTER EXCEPT TO THE EXTENT TO THE EXTENT THEY ARE PREEMPTED BY FEDERAL LAW].

MS. LEVY noted that the preceding sentence said the commission may not consider revenue collected on interstate transportation when evaluating intrastate rates. She explained:

The reason for that is - under the administration's view and our understanding of both state and federal practice - the FERC, in determining what can be collected on the interstate side, doesn't do it based on what the RCA allows to be collected, ... nor should the reverse be true - the RCA should not determine what can be collected based on what's being done on the interstate side.

The proper way is for the regulator to consider what the overall costs are, and that requires you to look at the total costs [incurred] - all of the operation and maintenance of the company's pipeline - and then allocate the amount that's appropriate to either the interstate or intrastate ...; it's 5 percent, it's 8

percent, 10 percent - that's the amount that should be borne by those shippers.

So you need to know the total cost requirements, so that's what the last sentence provides. You don't need to know what was collected on the other side, although it is a matter of public record. And the reason for that is, ...for example, if the RCA were to say, "Well, you need to collect a million dollars, but we see you collected too much on the interstate side, so we're going to reduce what you can collect over here" - we think the right mechanism, if someone thinks there's been too much collected on the interstate side, the right way is go to FERC, complain to them. That is respectful of the dual ... jurisdiction that exists on these pipelines.

Number 1280

REPRESENTATIVE GUTTENBERG referred to Section 4, [page 4] lines 28-31. He said:

This is not dealing with ... a complainant going to FERC. Aren't you just saying that they cannot consider it in evaluating the rates? They can't look at it at all? Wouldn't there ... possibly be some consideration that they need to look at as far as what the interstate is when they're looking at the intrastate?

MS. LEVY asked, "Why would they need to know what's being collected on the interstate side?"

REPRESENTATIVE GUTTENBERG replied, "Well, I'm asking you that."

MS. LEVY answered:

Well, I guess, from the administration's standpoint, they don't need to know that. They just need to know what amount of overall costs should be collected from the intrastate shippers. And, for example, maybe the interstate side doesn't allow them to collect enough. We don't want them to shift that burden over to intrastate shippers. In fact, there's federal law that says ... one side shouldn't be subsidizing the other side.

Number 1210

REPRESENTATIVE GUTTENBERG suggested, "But here you're going farther than that. You're saying they cannot even consider it."

MS. LEVY responded:

When evaluating intrastate rates, that ... shouldn't be the basis for determining what an appropriate intrastate rate is. The basis is, what are the needs, what's the cost of service on the intrastate side. ... What you need to know is: what was the cost of building the pipeline? But you don't need to know how much you got from interstate shippers in income and revenues; you just need to know what the overall costs are and then say, "Here's the fair amount to be borne by our in-state shippers."

REPRESENTATIVE GUTTENBERG commented that he doesn't think they necessarily need to know how much was collected, but possibly need to know the methodology for how that number was derived.

Number 1102

REPRESENTATIVE GATTO referred to Representative Guttenberg's concern and the language cited above [Section 4, beginning on page 4, line 30]. He asked whether Ms. Levy was saying that both are considered, but that because too little is obtained for one doesn't mean the cost can be shifted to the other.

MS. LEVY said that's right, if she understood correctly. Suggesting perhaps some language improvement is in order, she highlighted an important distinction between revenues collected and what pipeline cost requirements are: "It's appropriate to consider all of the costs; it's not appropriate to consider the revenues from the interstate side." She asked if that helped.

REPRESENTATIVE GATTO said no, but acknowledged Ms. Levy's point that perhaps the language needs to be clearer.

Number 0978

REPRESENTATIVE KERTTULA continued with Section 4, asking why the revenue wouldn't be evidence of what the proper costs were.

MS. LEVY replied:

If the pipeline costs \$1,000 to build and that was the investment, ... and let's say 90 percent of the shipments are interstate and 10 percent are intrastate, then you'd think that the interstate shippers should bear \$900 and the intrastate shippers should bear \$10. Now, what I'm saying is, the cost was important for the commission to know. They needed to know the total cost so that they could say, "Ah, 10 percent must be borne by the intrastate shippers; the rates ... will allow them to collect \$10."

They don't need to know the revenues collected on the interstate side, because even if the FERC had only allowed them to collect \$800, that doesn't mean that the RCA should increase the intrastate shipper's burden by another \$100. It doesn't matter what the FERC actually ended up setting or requiring, because it shouldn't adjust the intrastate side. All we need to know is what the cost was and how much should be allocated to those shippers. If FERC didn't allow the interstate enough or, alternatively, too much, the remedy is for the complaining shipper or the complaining carrier to go to the FERC for that 90 percent.

REPRESENTATIVE KERTTULA said it still seems perhaps the revenue is some evidence of what the true costs were. She indicated a desire to move on, however.

Number 0795

MS. LEVY discussed Section 5 as follows:

Section 5 is really intended to try to address concerns that the pipeline carrier be allowed to configure its equipment and hardware in a way that best provides the service, and that if it chooses to [replace] some equipment, to remove something and add something else, that it ought to be able to do so. ... They have an incentive to operate efficiently, and we want to promote that.

At the same time, the original language raised a concern that ... a shipper or the state might not have the opportunity to come in and say, "Gee, what you're doing may permanently reduce capacity or changes our transportation service." And so, we added ...

language here to clarify that, under those circumstances, the carrier still has to go to the commission. If they're permanently reducing capacity, if they're reducing transportation services, they've got to go to the commission.

Number 0696

MS. LEVY turned attention to Section 6 and said:

Section 6 addresses the interest rate and, as I know ... Chair Harbour from the RCA has said, this is an area appropriate for a policy decision by the legislature. The administration would support the interest rate that's set here as five percentage points above the 12th Federal Reserve District discount rate in effect on each year for which payments are due. And that language was used so that there would be one interest rate that applied due to the year in which the order came out.

Sometimes, as you all know, this rate litigation takes many years. Interest rates might have gone up and down. And it seemed appropriate to us that the interest rates be determined under this mechanism for each of those years, and the interest rate would apply to those charges.

Number 0588

MS. LEVY addressed Section 7 as follows:

Section 7, in the original language, was unclear to a number of folks. And the administration determined that it could support and does support a statement that an order setting rates [would] not affect rates that were being charged before the date that the protest or complaint was filed. We believe that's what the existing statutes say. We've argued that to the commission, and I hope they agree with us. But I think all the parties agree that, if it said that, it didn't say it real clearly, and so ... this would be an improvement in language to clarify that ... once a carrier is on notice that its rates are being challenged, then that's the date that triggers the time for which relief could be provided.

Number 0505

REPRESENTATIVE KERTTULA asked how far back a challenge can go.

MS. LEVY replied:

It can vary, but the protest usually is made promptly within a tariff filing, within 15 or 30 days - and I'm sorry I don't have the statutes in front of me to tell you exactly. The commission can initiate an investigation at any time. And a complaint can be brought at any time, but ... it's only prospective in its relief, but, again, prospective from the date of the complaint or protest under this language.

REPRESENTATIVE KERTTULA asked, "So basically what happens is, the rate set doesn't take effect and you file the protest, and that's why it's prospective." She requested confirmation that it isn't going backward.

MS. LEVY responded, "It's not going backward. The only thing that would be going backward is, if it took four years to get an order, the order would be applied backward to the date of the protest or complaint."

Number 0386

MS. LEVY continued, turning attention to Section 8:

This is a new section added since the original House Bill 277. The administration believes this is an important provision that clarifies which agency is in charge of filing pipeline tariff complaints before the regulatory bodies, and that is the Department of Law. And this would just simply codify the existing practice that's gone on since the time we've had pipelines in this state.

We also would encourage addition of the language that the attorney general would consult with the affected agencies because, as you know, Department of Revenue is affected - their production taxes are determined in part on the netback value. ... Certainly, the royalties under the Department of Natural Resources [are affected]. And this would clarify that that process ... is the one that applies.

Number 0268

MS. LEVY addressed Section 9 as follows:

Section 9 is the applicability section. This would provide that the provisions of the Act apply to matters that are ... proceeding before the RCA on or after the effective date of this Act. And that would make clear that it does not apply to Order 151, which is on appeal to the superior court at this time. So it's not an attempt to undo what was set out in Order 151.

REPRESENTATIVE KERTTULA sought confirmation that it would impact currently pending cases if they were filed even before that order was given.

MS. LEVY said that's right. She concluded by noting that Section 10 provides for an immediate effective date.

Number 0041

CHAIR FATE recessed the hearing at 3:25 p.m. to a call of the chair.

TAPE 03-39, SIDE A

Number 0001

CHAIR FATE reconvened the hearing at 8:30 p.m. Present were Representatives Fate, Gatto, Heinze, Morgan, and Wolf; Representatives Lynn, Kerttula, and Guttenberg arrived shortly thereafter.

The committee took a brief at-ease at 8:31 p.m.

Number 0098

DAVE HARBOUR, Chairman, Regulatory Commission of Alaska, Department of Community and Economic Development (DCED), noted that he would submit formal written testimony but would speak at this hearing personally to give a brief overview of the bill. He then informed members that in January, a not-well-publicized act took place: RCA executed a memorandum of understanding [MOU] with FERC that provides additional clarity with respect to resource development and transportation in Alaska. He read from that MOU as follows:

The parties recognize that the conduct of their responsibilities has and will in the future require them to examine, regulate, or otherwise oversee the same facilities or activities. The parties further recognize the coordination of their efforts can result in increased efficiency and cost savings to both the public and regulated entities. In view of their concurrent regulatory responsibilities for TAPS and other Alaska pipelines, the parties contemplate that joint or concurrent hearings may be advisable. The parties further ... contemplate that absent joint or concurrent hearings, the two agencies will coordinate the timing of related decision making, et cetera.

Number 0445

MR. HARBOUR offered that since 1972, Alaska has had regulatory certainty with respect to pipelines by virtue of the age of the pipeline Act. He related his feeling that many of the proposed amendments to the commission's jurisdiction over DR&R appear to be driven by a concern that the RCA would add DR&R obligations to those already agreed to between the carriers and the state, the U.S. Department of the Interior, and private landowners. He went on to say:

Although the RCA ... authority may seem like it's broad under the pipeline Act, as your predecessors the framers intended, I believe that the commission only - and I can emphasize these two points more importantly than any other tonight - I believe that the commission asserts two areas of jurisdiction: (1) to ensure that sufficient money is collected and available to complete the DR&R obligations already agreed to by the carriers with the state, the [U.S. Department of the Interior], and private landowners; and (2) to ensure that the DR&R is in fact completed according to those agreements before permission is granted by the RCA to abandon a pipeline.

Number 0582

MR. HARBOUR noted that RCA now handles dismantlement, removal and restoration at several times during the life of a pipeline. In setting initial rates, DR&R is a cost that must be recovered in rates. The commission sets rates to ensure that adequate DR&R is collected through tariff rates, and that the costs are spread fairly among shippers throughout the life of the

pipeline. He also pointed out that setting rates for DR&R is unlike rate setting for almost all other aspects of the pipeline. He explained:

When setting rates, you can quickly understand and document the costs of labor and of vehicles and materials and facilities and those sorts of things. DR&R, however, is a moving target. The regulatory agency is obliged to work with the stakeholders to determine what the actual cost of dismantlement, removal, and restoration is expected to be way out there at the end of the life of the pipeline, and then update that for ratemaking purposes on a regular basis as ... tariff changes and rates are requested. ... And it's the only body that's in a position to do that properly.

Number 0705

MR. HARBOUR discussed changes that would occur under the proposed CS, as follows:

First, our jurisdiction over DR&R of pipeline facilities is practically removed. Second, by not allowing the commission to consider the amount of DR&R collected in interstate rates of a pipeline that transports both within the state and for export, the bill makes it impossible for the commission to assure that ... intrastate rates include just and reasonable amounts for DR&R. And third, it removes but ... does not resolve a number of ambiguities in [AS] 42.06.400. ...

The commission's jurisdiction ... right now is defined in AS 42.06 and conforms to that of other regulatory agencies. The legislature intended that the Alaska Pipeline Act allow an objective, nonpolitical commission to have broad regulatory responsibility. [AS] 42.06.245, one of the portions of the Act scheduled by this proposal for change, says, quote, "nothing limits the powers of the commission set out in this chapter except to the extent they are preempted by federal law."

When considering the passage of [AS] 42.06.245, [then Senator] Groh ... and his colleagues - the framers, members of the legislative committee that proposed the

Act - said the state attempted to regulate to the maximum extent possible but would have neither the power nor ability if preempted by federal law.

Number 0859

MR. HARBOUR turned to the issue of fiscal clarity and said:

I'm going to conclude here by addressing the issue of fiscal clarity. I talked about it a minute ago with respect to our work with the FERC. One of the speakers before [the House Special Committee on Oil and Gas] on May 1, representing one of the oil companies, made a statement that he supports this bill because it helps correct many serious flaws that currently exist in the Alaska Pipeline Act. He went on to say ... these flaws are so significant, they need to be addressed to ensure investment in risky projects like the Alaska natural gas pipeline.

These are popular subjects to discuss, Mr. Chairman. I'm going to suggest to you that I can probably convince members, if there's time and interest sufficient, that ... it [doesn't perform] that objective. It makes cosmetic improvements, some of which are helpful, but ignores a number of other improvements that we - with the cooperation of industry - would like to work on in the interim and recommend as consensus legislation to the legislature and the governor ... for competent treatment next year. It creates a huge amount of uncertainty for others.

Number 0988

MR. HARBOUR continued:

I want to give you an example on this certainty. In the last year and a half or so - particularly, earlier when the Alaska gas producers pipeline team was seriously investing in the feasibility of an Alaska gas pipeline, in frequent presentations - they pointed out that four criteria were essential for a gas pipeline. One was federal enabling legislation that would enable any competent, qualified party to come in and apply for such a permit - not just the earlier franchisee, ... "the Foothills Group."

Number two, they proposed that federal incentives were required and, as we speak tonight, in Congress those incentives are being considered, namely, a floor price guarantee for gas, et cetera. Thirdly, the producers asked for certainty in Canada on rights-of-way, particularly with regard to First Nation issues and aboriginal rights-of-way. And tonight, those are still issues. Fourthly, they requested fiscal certainty in Alaska.

Number 1072

MR. HARBOUR continued:

In my career with the oil industry over the years with groups like the Resource Development Council and others, we often discussed fiscal certainty. ... We never discussed fiscal certainty for some in the industry at the expense of others.

We also discussed, frequently, regulatory reform and improvement - streamlining. Earlier this evening, on the floor, members were talking about streamlining the regulatory process. The effect of this bill would be to "unstreamline" the process and provide some regulatory certainty for a few at the expense of others.

Number 1150

MR. HARBOUR acknowledged that the Alaska Pipeline Act isn't perfect. Noting that over the years there have been amendments, some of which "provide some ambiguity that we have to deal with at the commission level," he agreed that changes and improvements can be made - but not this type of change.

MR. HARBOUR concluded by saying the RCA process itself isn't flawed. He told the committee:

As an objective new member coming in about three months ago and evaluating the process, I would like to report to you tonight that ... the commissioners on this commission have been doing precisely the work that you expect them to do in an objective, nonpolitical way, making their decisions based on the

record before them that all of these distinguished opponents and advocates bring before us every day.

CHAIR FATE deferred questions to the next meeting and asked that Mr. Harbour stay on teleconference.

Number 1263

JERRY GALLAGHER, Manager, Government Relations, ConocoPhillips Alaska, Inc. ("ConocoPhillips"), noted that he was pinch-hitting for Graham Vanhegan, vice president and general counsel. Mr. Gallagher thanked Chair Fate and Representative Dahlstrom for putting these issues on the table. Stating ConocoPhillips' support for the proposed CS, he informed members that he would testify about perceived misconceptions. He said:

We do not believe that this bill overturns RCA decisions. This bill looks to the future. This bill does not legislatively approve TAPS settlement agreements. And this bill does not remove RCA jurisdiction over establishing intrastate pipeline tariffs. Rather, this bill is about certainty and clarity of the RCA's process. It's about creating an atmosphere in the future where companies, both big and small, are clear about the rules they explore and operate under ... and transport oil and gas.

Number 1394

MR. GALLAGHER continued:

We've also heard that this bill, in some way, seeks to negatively impact the independents, the new entrants - the smaller companies - in our business in Alaska. And that is absolutely not true. ConocoPhillips very much promotes the entry of new players, smaller companies, new people, existing players in Alaska. It's evidenced by our efforts recently, our work with companies like Anadarko, EnCana, Forest Oil, Windstar, [Pioneer] - they're our partners in projects on the North Slope and in Cook Inlet - exploration projects, development projects, projects on state land and on federal land.

I do want to make a couple of limited comments about a few portions of the bill, because it did change in this CS. Section 1 is a new section proposed by the

administration further clarifying the role of the commissioner of natural resources as being responsible for [ensuring] compliance with pipeline leases. ... We believe that's consistent with the intent of earlier versions, and we support it. And we agree with the administration that this current version does not leave gaps in RCA ... in state jurisdiction of the pipeline. The other amendments proposed by the administration - the Sections 2, 3, and 4 - are also acceptable to ConocoPhillips.

Number 1500

MR. GALLAGHER addressed Section 6 as follows:

I do have [a] few brief comments on Section 6. Sometimes we end up in litigation. And litigation sometimes ends up in orders and judgments that are due with interest. The interest rate that applies to judgments under the pipeline Act has always been about the same rate that's been applied to other judgments in the state. ... The interest rate ... was a legislative decision in 1978 when the legislature wrote that section of the Act, and we believe the 1997 tort-reform amendments also changed the applicable interest rate on pipeline Act judgments.

However, at this time at the RCA, it is being argued that the interest rates on the pipeline Act orders were not changed. The amendments originally proposed, in earlier versions of this bill, made it clear that the legislature did not single out pipeline companies for ... different treatment from every other business entity. In other words, the rate in the other versions was exactly the same as those rates paid in other judgments that are issued by the state.

... The amendments proposed in this version [page 6, Section 6] don't quite do that. They impose a different rate. The rate imposed here in this version is 5 percent above the federal rate, and the payment mechanism is also being changed. We at ConocoPhillips ... need to fully understand that amendment - we just saw it today, as you did, in the CS - and how that would impact our business, and we're doing that now. But I want to emphasize that ConocoPhillips supports

the [proposed House Resources Standing Committee] CS that is before you and urge you to move this bill.

The committee took an at-ease from 8:51 p.m. to 8:52 p.m.

Number 1676

JIM DECKER, Senior Counsel, BP Pipelines (Alaska) Inc. ("BP"), noted that Al Bolea, president, had asked him to testify in his place. He told members:

BP supports HB 277 because it will help to provide the certainty and clarity needed to invest in the infrastructure necessary for continued oil and gas investment in Alaska, infrastructure like the long-lived Trans-Alaska Pipeline System. This pipeline is the backbone of the oil and gas industry in this state and, in fact, of this state. The bill provides a more efficient state regulatory framework by reducing the degree of overlap and redundant agency oversight, and ensuring that the right regulatory skills are brought to bear.

House Bill 277 helps to facilitate three very large business priorities for BP, priorities that will have enormous benefits to Alaska and to Alaskans. Let me briefly describe them to you. First, preparation for the next agreement on TAPS tariffs: the current tariff agreement for TAPS is open for renewal negotiations effective January of 2007. The administration has asked the TAPS owners to reopen negotiations now. A new agreement will set the stage for future oil transportation on TAPS.

For these new tariff negotiations to be meaningful and productive, all parties must be certain that the agreement will be durable, that it cannot be rescinded or undone at some point in the future. In today's world, certainty does not exist due to deficiencies in the Alaska Pipeline Act. Those deficiencies will preclude a meaningful dialog between the TAPS carriers and the state, in spite of the state's and our strong desire to reach a new tariff agreement.

Number 1869

MR. DECKER continued:

When it was first introduced, House Bill 277 contained provisions that address this specific deficiency. And I would encourage this committee to ensure that the legislation ultimately passed provides certainty that a tariff agreement with the State of Alaska is of lasting value - that it cannot be changed arbitrarily at the behest of those who would opportunistically seek to better their position, as Tesoro and Williams are doing in challenging the existing tariff agreement. Plainly put, we want to ensure that a deal made today will remain a deal tomorrow and for the full term of the tariff agreement.

Also, just to be clear, the legislation ... will not overturn any existing orders of the Regulatory Commission of Alaska relating to the ... existing tariff agreement, nor will it ratify that tariff agreement. But going forward into the future, it's important, in a new tariff agreement, that we have the level of durability that I indicated, and that it not be undone. ...

Number 1936

MR. DECKER continued:

Second, reconfiguration of TAPS: as you know, TAPS has served this state well for almost three decades. The pipeline is sound, and we are looking forward to the next 30 years of operation. But in order to be as efficient and competitive as possible, we need to invest hundreds of millions of dollars in new pump-station technology over the next several years. These new investments will provide lower tariffs as early as 2005.

House Bill 277 facilitates this effort by reducing duplicative agency oversight and enabling a more timely and efficient investment. Currently, the flawed Alaska Pipeline Act language causes the Regulatory Commission of Alaska to exert its authority over areas already administered by the Department of Natural Resources and other Joint Pipeline Office agencies.

Third, an Alaska natural gas project: for many months you've heard about this very big, very expensive, and very risky project, that there are ... a number of things required as prerequisites for it to ... move ahead: capital-cost reduction through new technologies, U.S. federal enabling legislation ... and fiscal incentives to lower risk, continued progress toward an efficient Canadian regulatory environment, and a clear and certain [fiscal] and regulatory regime in Alaska.

This last point is the single most important thing that Alaskans can do to support the delivery of an Alaska gas pipeline. This legislature and the administration delivered an important part of this when it passed the Stranded Gas Act several weeks ago, which provides a framework for [fiscal] negotiation between project sponsors and the state.

Number 2055

MR. DECKER turned attention to the bill:

That said, I will move to some specifics on the [House Resources Standing Committee proposed] committee substitute for HB 277, which BP, like ConocoPhillips, generally supports. At Section 1 and 2, the bill clarifies the role of DNR and the RCA with regard to the state's oil and gas leases and its right-of-way leases. It makes clear that the RCA's jurisdiction is appropriately focused on intrastate issues. At Section 3, it also delineates the RCA's authority with regard to DR&R issues.

Earlier this evening, we heard Chair Harbour comment on concern that if this legislation is put in place, ... the state could not consider DR&R collections that are achieved through interstate tariffs. I would ... refer the committee back to Jan Levy's testimony earlier today in this regard where [Ms. Levy] commented that ... if the RCA should go down this road of considering interstate DR&R collections, it could put itself in a place where -- let's assume that interstate DR&R collections are viewed as insufficient by the RCA. Then, ... is the answer of the RCA to that, "Well, we need to increase DR&R collections in the intrastate"?

If that's done, what you have effected is an intrastate subsidy of interstate oil movement. It's a path, from a policy standpoint, that should not be gone down. Again, I would refer you back to Jan Levy's comments of earlier this afternoon on this point.

Number 2174

MR. DECKER continued:

I would also add to [Ms. Levy's] comments on governmental oversight of the DR&R that, in addition to the Department of Natural Resources, the federal Bureau of Land Management [BLM] will oversee DR&R. Under TAPS agreements with the federal ... Bureau of Land Management, the BLM will oversee DR&R for the entirety of TAPS - federal lands, state lands, and private lands - as a matter of contract. In addition, as [Ms. Levy] referred to, you have Environmental Protection Agency [EPA] oversight and Alaska Department of Environmental Conservation [DEC] oversight with regard to their environmental merit. There is a ... large amount of regulatory oversight of DR&R.

With regard to Representative Guttenberg's question ... of Ms. Levy about financial security to cover the DR&R obligation, I would add again to [Ms. Levy's] comments that there are guarantees in place from each of the TAPS owners to both to the Department of Natural Resources and to the BLM to cover the DR&R obligations. And under the recently renewed federal right-of-way, the federal government will be ... auditing the financial wherewithal of ... those guarantors at least every three years over the next 30-year term. And, again, I would remind you that the federal right-of-way covers DR&R as to the entirety of the line.

Number 2279

MR. DECKER discussed concerns:

At the same time ... we generally support the substitute from the administration, we do have some

concerns ... with the legislation. We would like more clarity around what it means to "permanently reduce capacity" as is referred to at Section 5.

Also, the bill has some ambiguous language in it, which we'd like to see corrected. And I would refer the committee to Section 4. And, frankly, it's the same language that was the subject of a lot of discussion, which pertains to allocation of costs between inter- and intrastate service. This is something that this committee grappled with for some time this afternoon and, frankly, we've grappled with it too. The explanation that Ms. Levy ... gave, I thought, was quite good. But I think the language could use a bit of work.

Number 2335

MR. DECKER continued discussing concerns:

Finally, the interest rate on refunds at Section 6 should be the same rate that is applicable to judgments. This is the same thing you've just heard from ConocoPhillips. There's no reason to differentiate ... an interest rate that would be ascribed to a refund from an interest rate that would be due on a judgment.

There's also another technical point. The way the substitute legislation would provide for an interest rate is by ... replicating, within the statute, interest language. And I think that is not a good idea. I think the better way to do it is by referring to the statute elsewhere in the law, outside of the Alaska Pipeline Act, which provides for interest. By doing that, we will have the use of case law behind that statute in an Alaska Pipeline Act context. Otherwise, if you replicate interest provisions directly in the statute, ... the legislature and ... those who are regulated under the Alaska Pipeline Act could be cut off from those authorities.

Number 2435

MARK HANLEY, Public Affairs Manager, Alaska; Anadarko Petroleum Corporation, noting that his company is a large independent, told members the following:

The big issue for Anadarko is reasonable rates. We really want to have reasonable rates. The cost of shipping oil down a pipeline impacts the economics of our prospects. We want to look for oil. The more it costs us, the less economic our prospects are. ... And we see the RCA as the agency who guarantees that shippers and ratepayers have reasonable rates, so we look at them as someone who protects that ability [and] evaluates the issues that are out there to ensure those rates are reasonable.

I would also say that access is a very big issue for us. And some of you have heard me talk about access to a gas line that may be built. I would say access even to an oil line is very important to us. In many respects, if you look through the statutes, the RCA has the authority and the responsibility to make interconnection policies ... and decisions on those kind of issues. So for us, again, as a non-pipeline owner, getting access to those facilities is very important, and the RCA has an important role to play.

Number 2556

MR. HANLEY continued:

We are, as you heard earlier, ... partners with some of the companies who've testified here and, in fact, I would say ConocoPhillips is a very good partner of ours. We're very happy about their generally aggressive approach to exploration, which matches ours. We are exploring with them in NPR-A [National Petroleum Reserve-Alaska]. ... But there comes a difference. We're partners in exploration; we are not partners in the pipeline. We do have part of the Alpine pipeline, but largely, the trans-Alaska pipeline, ... we're not an owner of that. So in this case, we are different from them. ... For instance, if the costs are [shifted] to the transportation sector in excessive rates, we don't get to recoup it through ... increased transportation recoveries, as would our partner ConocoPhillips.

And, in fact, as I pointed out in other testimony, there is a bit of an incentive to have excessive transportation rates, because the way the state's

royalty is paid, ... the way you get back to wellhead is to deduct those transportation costs. So essentially, in rough terms, out of every dollar in transportation costs that are above just and reasonable, the state is paying 25 cents on the dollar. So not only can someone make an immediate 25 percent profit on excessive rates, but they get a competitive advantage over companies that can't collect those monies through those transportation costs because we're not pipeline owners.

Number 2620

MR. HANLEY continued:

Now, in December of last year, the RCA ruled that transportation costs on the trans-Alaska pipeline for intrastate rates were excessive: 57 to 70 percent too high, a dollar to a dollar-fifty a barrel too high. Those kinds of dollars make a significant impact to companies like us. If we're paying those rates and they're too high, it really affects the economics of our fields. So, for us, it is critical that the RCA have the ability to review those rates and determine if they're just and reasonable. ...

MR. HANLEY referred to earlier suggestions that the bill creates an atmosphere whereby companies will have certainty. He disagreed, saying, "We're one of the other companies. We're a new company, and I'm telling you, we have very much concern about this bill. We think it creates uncertainty." He echoed Mr. Harbour's comment that this may create fiscal certainty for some at the expense of others and that it makes the process less streamlined. He added, "Anything that removes the RCA's authority to review those rates is a concern to us, because we see them as protecting not only ratepayers in the state, but shippers like us."

[Chair Fate interjected to suggest that Mr. Burden, calling from a cell phone at an airport, be allowed to testify; Mr. Hanley concurred with continuing his own testimony afterwards.]

Number 2799

GENE BURDEN, Senior Vice President of Government Relations, Tesoro Petroleum Corporation, told members:

Tesoro, Williams, and Anadarko oppose this bill and ... have made that known throughout the process. And it's interesting when you take a look at common denominators in Alaska's development strategy and interest in developing the state - its infrastructure, creating jobs, and a balanced future for the state - that a couple of things always come out. This has come out in economic reports and reviews for years.

One is that Alaska really needs to stimulate value-added businesses, and, two, we need to attract independent exploration-and-production activities to pick up production in fields that may no longer be of interest to the larger oil companies. It's ironic that ... the two largest successful illustrations of value-added - that probably, combined, employ over 1,200 Alaskans - continue to attempt to convey our serious concerns about this legislation, about what it does to diminish the independent authority of the RCA, what it does to raise the prospect of tariffs and issues vital to our businesses and to the State of Alaska, ... and tender those over to the state and to the owners of TAPS to come up with agreements ... or settle issues that impact us all. And it's not just the value-added businesses in E&P [exploration and production]; it's every Alaskan.

Number 2898

MR. BURDEN continued:

And ... I guess, in a sense, this is an issue of fairness. I hear a lot of talk about wanting economic certainty. I would suggest the TAPS owners have had enormous economic certainty since the agreement that they reached in 1987. RCA suggested that they've had economic certainty to the tune of an extra \$10 billion in charges.

... In [the House Special Committee on Oil and Gas] I commented on a common recurring statement that was being made by proponents of this legislation. The representative of BP repeated it tonight and, as Ronald Reagan used to say, "There you go again." The settlement that was reached on TSM expressly provided for Tesoro, Williams, and others to seek just and reasonable rates. ... And to continue to suggest that

... this effort by Tesoro and Williams - I believe the term was "opportunistic" - is just rubbish. ... We need to get beyond misrepresentation of the facts and try to have the opportunity to have dialog on issues that are pertinent ... to what's before this committee.

MR. BURDEN referred to Mr. Harbour's testimony and agreed that there are too many issues that need scrutiny in order to understand the implication for the state to see this hurriedly pushed through. He asked what the rush is. [Not on tape, but reconstructed from the committee secretary's log notes, were Mr. Burden's comments about wanting fair and reasonable rates, and not wanting someone else to be setting those rates.]

TAPE 03-39, SIDE B

Number 2980

MR. BURDEN concluded:

This bill does still provide some backward look, we think, ... that would have an impact on measures already underway or that have been decided by the RCA. ... It's just not a bill whose time ... is here, in our opinion, and we urge the committee to really take a look at this ... and not hastily move this forward. I realize there is tremendous political pressure in regards to this, but the interests of the State of Alaska, and the value-added components of the state as well as the independent E&P companies, are really impacted by the decisions made on this measure.

Number 2882

MR. HANLEY returned to his testimony. He expressed concern about mention of wanting to add back in a section removed in the [House Special Committee on Oil and Gas]. The original bill allowed rates to be set via a settlement agreement between two parties and the attorney general, with no public process, no review, and no appeal; thus people who came in would have to pay those rates. Mr. Hanley explained that, to his company, this was the most onerous section of the bill. He expressed appreciation that it had been removed, but reiterated concern about bringing it back.

Number 2836

MR. HANLEY addressed comments made by the Attorney General Renkes [before the House Special Committee on Oil and Gas]:

I would just like to point out a couple of things. First, Attorney General Renkes testified on behalf of the governor, the DNR, the Department of Revenue, and the Department of Law at the last committee hearing, and I'd just like to read a little bit, if I may, Mr. Chairman. It said Section 9, which was the retroactive interest-rate section, would make the interest provision retroactive to '97.

Some have said the provision is unconstitutional. We don't think that's correct, but we do believe at this time we can't support it, as a matter of fairness. We think the place to address the Order 151, which we were just discussing, is in the appeal process and not through this legislation. And so that section that supposedly made interest rates retroactive, because it did say they were retroactive to August of some time in '97, was taken out.

I will tell you that I think the bill still makes interest rates retroactive. I don't know that that was the intent. I don't think that's what he said - I don't think he said it was fair to do that, but I will tell you, when you apply, in the very last section of the bill, ... it says, "this Act applies to any matters pending before the regulatory commission involving pipelines or a pipeline carrier on the effective date of this Act." So this bill will apply to any matters.

Number 2772

MR. HANLEY continued addressing the attorney general's remarks:

My understanding is that this matter - on whether you pay the 10.5 percent interest that is listed right in the statute essentially now, or the other rate of interest that was adopted during tort reform - is a discussion and a case that is occurring before the RCA right now.

So, if this bill is adopted, I believe that it will impose whatever the interest rate is in this section and tell them that that is the rate; it's an ongoing

case. ... I don't think that was the intent here, because he said he did not believe it was a matter of fairness to retroactively do that, but I believe that that's what this bill does. So I just wanted to raise that as a point of interest.

Number 2745

MR. HANLEY continued :

It's interesting that some of the other companies have suggested they don't want retroactive ratemaking, and yet the provisions of this bill are applying to ... not just the interest rate; any rate case that's pending before this legislation, it will apply to.

Now, if you don't want to be backward looking but forward looking, as people have said, you would say something to the effect that this bill only affects cases filed after the effective date of this bill. And I would suggest to you that if you're going to go backwards, ... you might need to get a list of all the cases and see how they'll be affected by this bill, because you're going to retroactively change those. ... And I don't know that that's what was intended, but I believe that is one of the issues that I think is a concern.

Some people say, "Well, why does Anadarko care? ... That's not your case." Well, ... in the future we would hope that if you go into a case based on the deal at the time - the statutes at the time - and you win a case, that somebody doesn't come to the legislature and try and change the deal retroactively. ... We just think it's a matter of fairness, as well, as the attorney general said, and that these things, if they're going to be applied, we can debate them about the future, but should they apply retroactively to Acts that are ongoing? I don't think so.

Number 2680

MR. HANLEY referred to assertions that the bill improves clarity. He brought attention to Section 2, where it says the commission shall regulate pipelines and pipeline carriers in the state, with new language that reads "but only to the extent applicable to the delivery of intrastate transportation

services". Noting that pipelines and pipeline carriers are defined, he suggested for clarity that intrastate transportation services need to be defined also. He continued:

I would just point out that in the statute, if you look down further on page 3, one of the things that the commission regulates is they require permits for construction, enlargement, connection, and interconnection. I've just posed a question because now they're being told "only intrastate services". If we find oil and we want to connect to a pipeline and we're denied that, under the current system RCA will determine whether that's appropriate or not.

Number 2614

MR. HANLEY continued:

It appears to me, because they can only deal with intrastate services, that we are going to have to tell people that the oil we produce is only going to go intrastate. Otherwise, the commission doesn't have the authority to deal with these interconnection activities.

And I would suggest that, throughout the statute, there are issues about whether two or more gas or oil pipeline facilities should be constructed - these are things that the RCA has the ability to determine, whether it's in the state's best interest to duplicate facilities.

If somebody comes in and says, "I'm only shipping my oil out of state," that's not ... an intrastate service. And I would suggest to you, with this language, ... the argument would be that the commission no longer has the authority, if we're going to guarantee we're shipping our oil out of state. And if that's not the intent, then it needs to be cleared up. But I think it creates a problem in the statute.

...

Number 2570

MR. HANLEY continued:

I would suggest that the issue we're struggling over - and I think other people have suggested does need some work on - revenue collected on interstate transportation: the commission ... can only look at costs, not revenues. And I would suggest to you, it's fairly complicated, and I do think it needs some clarification. ... I think Ms. Levy ... suggested that ... they allocate the correct percentage across intrastate versus interstate, and ... you look at cost.

Well, the interesting thing is, it's one pipe. And the amount for DR&R to remove that pipe - even if everybody agrees with the costs, both on the federal side and the state side - is a specific number. How you allocate that gets pretty interesting. 50 percent of it goes across state lands; should the state have to collect, through intrastate rates, 50 percent of it? I don't think that's the intent, but that's part of the problem if you can't look at some of the rates.

... Mr. Harbour, in his analysis, suggests that with this change in this language, it creates problems for [RCA] and they may have to overcollect intrastate rates. It concerns us. When we read that the chairman of the RCA suggests that this language ... could require them to overcollect intrastate rates, that means that we're going to pay a higher rate than we should. ... When we hear the people that regulate and they say this language is a problem, we think it's a problem.

Number 2471

MR. HANLEY noted that he had other issues that Mr. [Robin] Brena would address. He concluded with the following:

I just want to leave you with the fact that we are a producer. We're not a pipeline owner. ... We feel like the RCA is there to protect the interests of shippers, ratepayers, and even the state in this case, and we think this bill actually goes too far. We think it removes the authority of the RCA to do that protection, and we think that puts us at risk. That means it increases our risk of exploration in the state, and that's why we're concerned.

Number 2410

CHAIR FATE announced that questions would be addressed when the hearing continued on Friday [May 9]. [HB 277 was held over.]

ADJOURNMENT

The House Resources Standing Committee was recessed at 9:30 p.m. [The meeting was reconvened May 9, 2003.]