

**ALASKA STATE LEGISLATURE  
SENATE RESOURCES STANDING COMMITTEE**

April 2, 2003

3:35 p.m.

**MEMBERS PRESENT**

Senator Scott Ogan, Chair  
Senator Thomas Wagoner, Vice Chair  
Senator Ralph Seekins  
Senator Ben Stevens  
Senator Kim Elton  
Senator Georgianna Lincoln

**MEMBERS ABSENT**

Senator Fred Dyson

**COMMITTEE CALENDAR**

CS FOR HOUSE BILL NO. 16(FIN) am  
"An Act amending, for purposes of the Alaska Stranded Gas Development Act, the standards applicable to determining whether a proposed new investment constitutes a qualified project, the standards used to determine whether a person or group qualifies as a project sponsor or project sponsor group, and the deadline for applications relating to the development of contracts for payments in lieu of taxes and for royalty adjustments that may be submitted for consideration, and modifying the conditions bearing on the use of independent contractors to evaluate applications or to develop contract terms; providing statements of intent for the Act relating to use of project labor agreements and to reopening of contracts; and providing for an effective date."

MOVED SCS CSHB 16(RES) OUT OF COMMITTEE

SENATE JOINT RESOLUTION NO. 12

Supporting the halibut by-catch utilization project of the Alaska Food Coalition.

MOVED CSSJR 12(RES) OUT OF COMMITTEE

**PREVIOUS ACTION**

HB 16 - See Resources minutes dated 3/31/03.

SJR 12 - No previous action to record.

**WITNESS REGISTER**

Representative Hugh Fate  
Alaska State Capitol  
Juneau, AK 99801-1182  
**POSITION STATEMENT:** Sponsor of HB 16

Mr. Dave McDowell  
Director of External Affairs  
BP Alaska Gas  
**POSITION STATEMENT:** Supports SCS CSHB 16(RES)

Mr. Robbie Schilhab  
Alaska Gas Development Manager  
Exxon-Mobil  
**POSITION STATEMENT:** Supports SCS CSHB 16(RES)

Mr. Kevin Banks  
Division of Oil and Gas  
Department of Natural Resources  
400 Willoughby Ave.  
Juneau, AK 99801-1724  
**POSITION STATEMENT:** Answered questions about SCS CSHB 16(RES)

Mr. Mark Myers  
Director, Division of Oil and Gas  
Department of Natural Resources  
550 W 7th Ave.  
Anchorage, AK 99501  
**POSITION STATEMENT:** Supports SCS CSHB 16(RES)

Senator Gary Stevens  
Alaska State Capitol  
Juneau, AK 99801-1182  
**POSITION STATEMENT:** Sponsor of SJR 12

Mr. Trevor Jones  
1944 E. Rezanof  
Kodiak, AK 99615  
**POSITION STATEMENT:** Supports CSSJR 12(RES)

Ms. Susannah Morgan  
Food Bank of Alaska  
2121 Spar Ave.  
Anchorage, AK 99501  
**POSITION STATEMENT:** Supports CSSJR 12(RES)

Sister Noreen  
3424 E 15th Ave.  
Anchorage, AK 99508  
**POSITION STATEMENT:** Supports CSSJR 12(RES)

Ms. Sara Jackson  
3710 E 20th  
Anchorage, AK 99503  
**POSITION STATEMENT:** Supports CSSJR 12(RES)

**ACTION NARRATIVE**

**TAPE 03-22, SIDE A**

Number 0001

**CHAIR SCOTT OGAN** called the Senate Resources Standing Committee meeting to order at 3:35 p.m. Senators Wagoner, Seekins, Elton, Stevens and Ogan were present. Senator Dyson was absent on state business.

**HB 16-STRANDED GAS DEVELOPMENT ACT AMENDMENTS**

CHAIR OGAN informed members that a proposed committee substitute had been prepared. He noted a new Sec. 43.82.100(1)(A), which reads: "the transportation of North Slope natural gas by natural gas pipeline to one or more markets, together with any associated processor treatment;" on page 2.

He told members that he and the bill sponsor had a lengthy discussion about paragraph (C), which relates to any other technology. The issue is the commercialization of North Slope gas through a transmission line down to the Lower 48 or tidewater, which this bill allows. The concern was that playing with that language could compromise the possibility of using LNG for the petrochemical industry in the state. He and the sponsor agreed to [the new] language because if this [act] is expanded to other projects, the legislature will be in the loop.

REPRESENTATIVE FATE acknowledged that he and Chair Ogan worked on the change in the committee substitute and the only change is the addition of the North Slope. That addition should not, in the opinion of legal counsel Jack Chenoweth, prevent other gas from flowing through the pipe if that gas were available. He said this is the same bill that he presented to the committee before, with that one exception. He believes this bill is still a "clean" bill. He urged the committee to support the measure.

CHAIR OGAN announced the committee would take public testimony and that Senator Lincoln was present.

MR. DAVE MCDOWELL, Director of External Affairs for BP's Alaska Gas Business, gave the following testimony.

As you know, significant time and effort and money has been dedicated to develop a viable gas pipeline project and to commercialize Alaska's enormous gas resource. Through 2002 and continuing on into this year, BP has undertaken further technology and design optimization work in an effort to reduce the cost of this \$20 billion project. However, technical work alone won't be sufficient to make an Alaska gas pipeline a reality.

Before a project can proceed to the next expensive stage, three key government actions are needed: a clear and predictable regulatory process with the Canadian government and First Nations; a clear and predictable state fiscal framework for gas in Alaska; and third, the passage of important U.S. federal legislation. While success is needed on all three fronts, the one thing Alaska itself can do to advance an Alaska gas pipeline is to work with industry to develop a fiscal framework that provides confidence that the rules of the game are clear and certain. Achieving a mutually agreed framework will also send a powerful signal to Washington, D.C. that Alaska is ready to see a project advance.

That's why we believe reauthorizing the stranded gas act by HB 16 is a good idea. HB 16 can provide a framework that supports negotiation toward a clear and predictable fiscal regime in the State of Alaska and, as such, it will help to support forward progress on North Slope gas commercialization. And, of course, under any circumstance, agreements worked with the state require legislative review and approval.

We do believe it's important that the bill retain its focus and simplicity as it moves through the legislative process. Otherwise there's a potential risk that the bill becomes burdened with extraneous provisions.

In closing, I'd like to say we're encouraged by the priority and attention this bill has received so far. We hope that it continues and we stand ready to work productively with the state toward a clear and certain fiscal regime that will support North Slope gas commercialization. Thanks for the opportunity, Mr. Chairman. We'd be happy to take questions if there are any.

CHAIR OGAN told Mr. McDowell that this bill is a high priority and is being expedited through the legislative process. The legislature has been told that a negotiating team will be ready to go at an early date. The bill crosses party lines. The legislature hopes the producers negotiate in good faith and do everything possible to get North Slope gas commercialized. He thanked Mr. McDowell for his testimony.

MR. MCDOWELL thanked the Chair and committee members for making this legislation a priority.

SENATOR ELTON moved to adopt the proposed committee substitute (Version W) for HB 16(FIN) am.

There being no objection, CHAIR OGAN announced that Version W was adopted.

MR. ROBBIE SCHILHAB, the Alaska Gas Development Manager for Exxon Mobil Production Company, told members:

Alaska North Slope gas is an important asset for Exxon Mobil with a gross known resource of 35 trillion cubic feet (TCF). Exxon Mobil owns over one-third of the gas and is the largest gas interest owner on the North Slope. We've been diligently working for over 30 years to commercialize this gas since discovery in 1968, spending more than \$150 million on this effort.

Exxon Mobil appreciates the interest of the Alaska Legislature in considering legislation that can help progress commercialization of North Slope gas. Exxon Mobil supports legislation that reauthorizes the stranded gas act with provisions to allow its use for all potential technologies. The act allows project sponsors in the state to establish a fiscal contract that defines how Alaska revenues will be determined in a manner that would be simple to apply and would

minimize the possibility of costly disputes and litigation.

While a pipeline project is the most promising option to date, it is not currently commercially viable. Even though that is the case today, we believe it is important to put the framework in place now.

Regardless of the option or options that are ultimately chosen to commercialize the gas, achieving fiscal certainty will be an important step in progressing the project. The risks resulting from such a large investment with a long payout period make it imperative that the sponsors have the opportunity to work with the state to establish a stable and appropriate fiscal system. Exxon Mobil recommends that the legislature avoid placing any additional requirements or hurdles in this legislation. As we said earlier, let's keep it clean. Any project to commercialize North Slope gas will be a marginal project economically due to the distance from markets. Therefore, any mandates or additional requirements should be avoided as they could increase costs and hamper or delay a project becoming commercially viable.

Exxon Mobil supports the passage of HB 16 as a positive step in the commercialization of North Slope gas. We're also simultaneously pursuing the passage of U.S. federal enabling legislation that will provide the regulatory framework for securing the necessary federal permits. Again, thank you Mr. Chairman for allowing me to comment on this bill today. I'd be happy to answer any questions you might have.

SENATOR SEEKINS noted that Mr. Schilhab said the North Slope gas delivery system is not economically viable now and asked what will make a project commercially viable.

MR. SCHILHAB said several factors could make a project economically viable. The sponsors and owners of the gas continue to work toward those ends, primarily in the area of reducing capital costs. They are looking at construction techniques and new materials to find breakthroughs to reduce the overall capital costs. He said they have also talked about reducing the rent, which comes in many forms. That could be done in the area of the government framework: getting the permit process in place

and getting certainty in the fiscal terms they would operate under to help reduce the risk.

SENATOR SEEKINS asked what the risk factor is.

MR. SCHILHAB said there are numerous risks, both political and fiscal, to this project as it is a large undertaking. If the project is built based on the royalty and taxation scheme in place today, any changes down the road would create a big risk because the investor will not know what the cash flow or tax bill will be. In addition to the fiscal risk, building a high-pressure pipeline over the required distance brings risks that involve construction techniques and materials.

SENATOR SEEKINS said he has not been able to get a handle on what challenges must be overcome to make this project commercially viable and is been unable to make an independent evaluation without knowing the risks.

CHAIR OGAN told members that last year the Joint Natural Gas Pipeline Committee spent about \$500,000 on consultants and held hours and hours of hearings on this issue but that committee never produced a final work product. The committee never got any definitive numbers from the producers because that information was proprietary. He said he has no doubt, from looking at the bigger picture of the price of gas and expense of the project, that the legislature has to be mindful that some incentives are necessary from the federal government in the form of a floor price, otherwise the well head value could be negative. He then commented that one of the state's concerns is access by other producers who might not be primary owners of this pipeline. The state has issued leases on the North Slope for the first time to develop gas. The producers have invested a considerable amount of money and they are not entirely certain they will have access to the pipeline to sell that gas.

MR. SCHILHAB said the committee should feel some comfort from the fact that the pipeline would be regulated by the Federal Energy Regulatory Commission (FERC). Once this pipeline project goes forward, the owners of the pipeline would file applications with FERC and go through the open season process. During the open season period, any company that wants to ship gas on that pipeline can nominate its gas. That procedure is overseen by FERC and is non-discriminatory. Those companies would enter into contracts with the pipeline owner.

CHAIR OGAN questioned whether FERC directly regulates open seasons or whether open seasons are based on an understanding and agreement between the producers and the people who have gas.

MR. SCHILHAB said in the normal run of things, FERC would not regulate the open season. However, the enabling legislation that is part of the federal energy bill contains a provision saying that FERC would script the way the open season process would work for this particular project.

CHAIR OGAN said that is assuming the federal legislation passes and the provision remains in the bill.

MR. SCHILHAB agreed but said if that provision does not remain in the bill, FERC will still have oversight in that it would have to issue the permit of necessity and public convenience. If FERC felt discrimination was involved during an open season, it could step forward and use its power over issuing permits.

CHAIR OGAN said that is not the impression he got from the FERC Chairman who he met with last week. He said it is his understanding that is a contractual relationship between the owners of the pipeline and the producers. He said it's an issue the legislature will continue to monitor. The legislature is interested in encouraging gas development as something other than a byproduct of oil exploration.

SENATOR ELTON clarified that he meant to say CSHB 16(RES) rather than CSHB 16(FIN)am in his earlier motion to adopt the proposed committee substitute. He noted that Chair Ogan correctly identified CSHB 16(RES) as Version W.

CHAIR OGAN said with no objection, the correction was noted. He then said he wanted to establish, for the record, that the committee has received a legal opinion from Jack Chenoweth, legal counsel, who stated:

In my judgment, as long as the project principally involves movement of the North Slope natural gas to market, the pipeline contemplated could be used also to transport gas from other sources.

He asked Mr. Banks if he concurs with the opinion.

MR. KEVIN BANKS, Division of Oil and Gas, Department of Natural Resources (DNR), said the division's principal concern is that

North Slope gas certainly would include gas produced from the foothills. He stated:

I think your concurrence with that opinion - it seems to me that if most of the gas flowing in this pipeline is coming from the North Slope, that production from other sources along the route could be also included and that HB 16 would allow us to negotiate those kinds of terms if need be.

CHAIR OGAN indicated that he and the bill sponsor hope the language that allows other gas to be put into the pipeline might spur interest in gas development along the pipeline route, or from the Cook Inlet area if there was a big find there or anywhere else. He asked Mr. Banks if he concurs.

MR. BANKS said he believes that would be the best alternative for the state and agrees that is the way to treat the expression "principally involved."

CHAIR OGAN thanked Mr. Banks. He then asked who would be on the negotiating team.

MR. MARK MYERS, Director of the Division of Oil and Gas, DNR, said he shares the committee's curiosity. He then said he concurs with the comments made earlier. He believes adding the North Slope phrase is fine and believes HB 16 is still a great bill.

SENATOR SEEKINS said one of his campaign promises was to do whatever he could to get the God-given natural resources in Alaska to market to put new money into the economy, and he does not care where the resources come from. He said if a project in Ketchikan qualified, he would want to provide these incentives to get those resources to market as soon as possible. Therefore, while he does not object to the bill, he does not care what area of the state the natural gas comes from. He believes this kind of an incentive should be applied across the entire state to get any project going.

CHAIR OGAN said he believes it is important that the legislative branch retain its policy-making authority on a case-by-case basis because this bill has far reaching implications. It allows the commissioner of the Department of Revenue to preempt local law and local taxation. The municipalities have signed off on this particular issue for this project. He fears if the legislation is too broad, the commissioner will have that

authority for any project anywhere. He believes the legislature should make sure the affected communities have the opportunity to publicly weigh in and that the legislature needs to make a conscious decision to delegate the authority to the executive branch.

SENATOR SEEKINS said he understands that and would plan to make a conscious effort to take a look at any project that surfaces between now and the sunset date [2005]. He believes in opening the door to consideration of projects anywhere in the state.

CHAIR OGAN said the door could be easily opened by simply extending the sunset date but he wants to make sure these projects are done with the local governments' concurrence.

SENATOR LINCOLN said she reads the legislation to open the door wide. She cited Mr. Chenoweth's memo, which reads, "A proposed project is not expected to serve exclusively as the means to move North Slope stranded gas and should have some latitude so as to the sources of natural gases that may eventually be transported." She said it opens it up beyond the North Slope but identifies the North Slope as the primary area.

SENATOR SEEKINS replied, "If the door's open, call it open." He repeated he is not criticizing the legislation, he is just clarifying his philosophy.

CHAIR OGAN thought it was fair to say that a company that found gas in the Mat-Su or Kenai would not be able to connect to the gas line under this bill. That is a separate issue that he would be happy to consider with the concurrence of the affected communities because it affects their taxing powers.

SENATOR WAGONER moved SCS CSHB16(RES) from committee with individual recommendations and its attached fiscal notes.

CHAIR OGAN announced that with no objection, the motion carried. He then announced a five minute at-ease.

#### **SJR 12-SUPPORTING HALIBUT BYCATCH PROJECT**

SENATOR GARY STEVENS, sponsor of SJR 12, explained to members that he introduced this resolution at the request of the Alaska Food Coalition. SJR 12 is a plan to support the Coalition's request to the National Marine Fisheries Service (NMFS) to use halibut by-catch for the Coalition's food bank. This plan is remarkable in that fishermen and processors stepped forward and

offered to provide community service for no personal benefit. He explained that trawl fishermen are currently prohibited from keeping halibut caught accidentally in the course of catching pollock. The fishermen are required, by federal law, to dump the halibut by-catch back into the sea. Certain processors have indicated a willingness to process that halibut by-catch at no charge and provide it for charitable uses.

SENATOR GARY STEVENS told members the Alaska Food Coalition has the funds available to freeze, store and transport this halibut to many parts of Alaska. If SJR 12 passes, the resolution will be sent to the NMFS and the North Pacific Fisheries Management Council (NPFMC). The Coalition has applied to those agencies for a prohibited species donation permit to use halibut by-catch. He pointed out that vessels must have an official observer on board to participate in this program.

SENATOR GARY STEVENS told members he has a proposed amendment that was requested by the industry. SJR 12 contains the word "wasted." The industry would prefer not to use that word because it implies that fishermen are wasting the fish when they are required by law to dump it back into the sea. The amendment replaces the word "wasted" with "at sea discarded".

SENATOR ELTON asked how many halibut survive.

SENATOR GARY STEVENS said he believes most are dead by the time they are brought aboard.

SENATOR ELTON questioned whether the first resolve clause of SJR 12 should specify halibut by-catch that has expired to clarify that any live halibut are tossed back into the sea.

SENATOR BEN STEVENS told members that fishermen are not allowed to keep halibut by-catch without the prohibited species donation permit so a small longliner vessel without an observer would have to discard by-catch at sea.

SENATOR ELTON said he assumes the point of the first resolve clause is that live halibut must be thrown back and not kept just because it could be donated to the food bank.

SENATOR BEN STEVENS said he believes the operators will have to use discretion and that most operators would throw the by-catch overboard if there is any chance of survival.

CHAIR OGAN asked if they are required to.

SENATOR BEN STEVENS said they are required to throw the by-catch back regardless of whether it is dead or alive unless they have the permit.

SENATOR ELTON said he would like to see the first resolve clause clarify that live halibut cannot be kept to donate to the food bank program.

SENATOR BEN STEVENS pointed out that the word "dead" is used in line 6. He said he understands Senator Elton's point, but it is illegal to keep any halibut without a permit.

CHAIR OGAN asked if a fisherman with a permit is required to throw back live halibut.

SENATOR BEN STEVENS said the prohibited species donation program is only related to dead fish.

SENATOR GARY STEVENS said it is not the intent of SJR 12 to keep live halibut.

SENATOR SEEKINS suggested inserting the word "dead" before "halibut" on page 1, line 16.

SENATOR BEN STEVENS suggested adding Senator Seekins' suggested language change to Amendment 1 when it is offered.

SENATOR SEEKINS moved to adopt Amendment 1, which reads as follows.

**A M E N D M E N T 1**

OFFERED IN SENATE RESOURCES

BY SENATOR SEEKINS

TO: SJR 12, DRAFT VERSION A

1. On page 1, line 6, after "halibut" delete "wastefully"
2. On page 1, line 10, replace "wasted" with "at sea discarded"
3. On page 1, line 16, after "otherwise", replace "a wasted" with "an unutilized"
4. Renumber accordingly.

SENATOR LINCOLN objected and asked if Senator Seekins' suggested language was included in Amendment 1.

CHAIR OGAN said it was not.

SENATOR LINCOLN withdrew her objection.

SENATOR BEN STEVENS moved to amend Amendment 1 by adding:

On page 1, line 16, insert "dead" between "the" and "halibut".

SENATOR GARY STEVENS suggested the words "recently deceased" but concurred with the amended amendment.

SENATOR LINCOLN objected because she planned to offer an amendment as well and was not sure whether to offer it as another amendment to Amendment 1.

CHAIR OGAN asked Senator Lincoln if her amendment had any affect on Amendment 1.

SENATOR LINCOLN said it did not.

CHAIR OGAN asked her to offer it separately.

SENATOR LINCOLN removed her objection.

CHAIR OGAN announced the motion to adopt the amendment to Amendment 1 carried.

SENATOR LINCOLN noted that Senator Gary Stevens' sponsor statement says that SJR 12 will only apply to halibut by-catch on vessels with observers but she does not see that limitation anywhere in the resolution. She asked if that is a requirement of the prohibited species donation permit.

SENATOR GARY STEVENS explained that a food bank from Seattle currently has a prohibited species donation permit for Bering Sea halibut. No other agencies have such a permit. That permit is only for vessels with observers. He believes that NMFS will ensure when it offers a permit that the by-catch must come from vessels with observers.

SENATOR LINCOLN said she would not be offering an amendment in that case.

SENATOR BEN STEVENS pointed out that the answer to both of the committee's questions about the process can be found on page 3 of a document entitled, "Prohibited Species Donation Program

Proposal and Application of the Alaska Food Coalition" in members' packets.

TAPE 03-21, SIDE B

CHAIR OGAN asked how the fish will be distributed.

SENATOR GARY STEVENS said the Kodiak Food Bank is located at the Kodiak Baptist Mission. When people come in, the food bank provides them with halibut filets. The food bank will also ship the halibut to other communities that want them. He said the Alaska Food Coalition is a statewide system. He believes the fish will be processed in Kodiak because that is where the processors who offered to do so are located. However, if the program can be moved to more communities, it would be even more accessible.

CHAIR OGAN clarified that the committee adopted the amendment to Amendment 1 but not Amendment 1. He asked if there was objection to adopting Amendment 1 as amended. There being none, CHAIR OGAN announced that was adopted too.

SENATOR SEEKINS told members he spoke with the Fairbanks Food Bank earlier, which supports this resolution. The Fairbanks Food Bank will be one of the distribution points through the Alaska Food Coalition.

CHAIR OGAN stated on a recent visit he was very impressed with the kindness of the people and with the processors in Kodiak. He then took public testimony.

MR. TREVOR JONES, representing the Alaska Food Coalition, affirmed that the Coalition's proposal requires that halibut come from vessels with observers only. He said the amendment will not hurt the resolution at all, however "by-catch" by definition is dead fish. He offered to answer questions.

MS. SUSANNAH MORGAN, Executive Director of the Food Bank of Alaska and an officer in the Alaska Food Coalition, told members that the Coalition has a 15,000-foot warehouse that meets all health and safety codes in Anchorage. The fish would be transported from Kodiak to Anchorage and distributed from there.

SISTER NOREEN, St. Frances House, a food pantry in Anchorage, stated support for SJR 12 and thanked members for their consideration of the measure. She said many of the people served by the St. Frances House will benefit from this proposal.

MS. SARA JACKSON, program manager for St. Frances House, expressed her appreciation to Senator Gary Stevens and all of the people who are supporting SJR 12. She said her organization is seeing more hungry people and fewer resources so this resolution will be very helpful.

SENATOR WAGONER suggested asking NMFS to permit this program for two years so that legislation will not be required again next year.

SENATOR GARY STEVENS said the resolution only states support for the permit approval and that the rest of the application process is out of the legislature's hands.

There being no further public testimony, SENATOR WAGONER moved CSSJR 12(RES) from committee.

SENATOR ELTON objected to say that he is in awe of the people who are behind this program. He then removed his objection and the motion carried.

#

There being no further business to come before the committee, CHAIR OGAN adjourned the meeting at 4:37 p.m.