

SENATE JOURNAL
ALASKA STATE LEGISLATURE
TWENTY-FOURTH LEGISLATURE
SECOND SPECIAL SESSION

Juneau, Alaska

Wednesday

May 31, 2006

Twenty-second Day

Pursuant to adjournment the Senate was called to order by President Stevens at 3:07 p.m.

The roll showed twelve members present. Senators Davis, Guess, Hoffman were excused from a call of the Senate. Senators Dyson, French, Olson, Therriault, Wilken were absent.

Senator Gary Stevens moved and asked unanimous consent that Senators Dyson, French, Therriault, Wilken be excused from a call of the Senate today. Without objection, Senators Dyson, French, Therriault, Wilken were excused.

The prayer was offered by the Chaplain, Lindy Stoops. Senator Bunde moved and asked unanimous consent that the prayer be spread. Without objection, it was so ordered.

Lord, make us instruments of Your peace.
Where there is hatred, let us show love;
where there is injury, pardon;
where there is discord, union;
where there is doubt, faith;
where there is despair, hope;
where there is darkness, light;
where there is sadness, joy.

Grant that we may not so much seek to be consoled
as to console;
to be understood as to understand;
to be loved as to love.

For it is in giving that we receive;
it is in pardoning that we are pardoned;
and it is in dying that we are born to eternal life.

Amen.

(Prayer of St. Francis of Assisi)

Senator Huggins led the Senate in the Pledge of Allegiance.

Certification

Senator Gary Stevens moved and asked unanimous consent that the journals for the fourteenth through twenty-first legislative days be approved as certified by the Secretary. Without objection, it was so ordered.

Introduction and Reference of Senate Resolutions

SR 201

SENATE RESOLUTION NO. 201 BY THE SENATE RULES COMMITTEE,

Establishing a Senate Special Committee on Natural
Gas Development.

was read the first time and held on the Secretary's desk.

Introduction and Reference of Senate Bills

SB 2002

SENATE BILL NO. 2002 BY THE SENATE RULES COMMITTEE
BY REQUEST OF THE GOVERNOR, entitled:

"An Act conferring original jurisdiction on the
Alaska Supreme Court for the purpose of providing
judicial review of a contract executed under the
Alaska Stranded Gas Development Act, and setting

the time in which a contract developed under that Act, or a statute of limitations regarding that contract, must be legally challenged; and providing for an effective date."

was read the first time and referred to the Judiciary Committee.

The following fiscal information was published today:

Fiscal Note No. 1, zero, Department of Revenue

Fiscal Note No. 2, zero, Department of Natural Resources

Governor's transmittal letter dated May 31:

Dear President Stevens:

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill conferring original jurisdiction on the Alaska Supreme Court for the purpose of providing judicial review of a contract executed under the Alaska Stranded Gas Development Act, and setting the time in which a contract developed under that Act, or a statute of limitations regarding that contract, must be legally challenged.

This bill would give the Alaska Supreme Court original and exclusive jurisdiction to hear a challenge to a fiscal contract under the Alaska Stranded Gas Development Act (AS 43.82). This bill would also shorten from 120 to 60 days the period during which such a challenge must be filed.

The bill's provisions are intended to allow for prompt and direct resolution of any challenge to a stranded gas fiscal contract or its authorizing law. Pending lawsuits cause uncertainty in the minds of project developers. It is in everyone's interests to have in place a process that expedites ultimate resolution of such challenges and thereby eliminates uncertainty about the validity and enforceability of an authorizing law or the terms of a fiscal contract.

I urge your prompt and favorable action on this measure.

Sincerely yours,

/s/

Frank H. Murkowski
Governor

SB 2003

SENATE BILL NO. 2003 BY THE SENATE RULES COMMITTEE
BY REQUEST OF THE GOVERNOR, entitled:

"An Act establishing the Alaska Natural Gas Pipeline Corporation to finance, own, and manage the state's interest in the Alaska North Slope natural gas pipeline project and relating to that corporation and to subsidiary entities of that corporation; relating to owner entities of the Alaska North Slope natural gas pipeline project, including provisions concerning Alaska North Slope natural gas pipeline project indemnities; establishing the gas pipeline project cash reserves fund in the corporation and establishing the Alaska natural gas pipeline construction loan fund in the Department of Revenue; making conforming amendments; and providing for an effective date."

was read the first time and held on the Secretary's desk.

The following fiscal information was published today:

Fiscal Note No. 1, Department of Revenue

Fiscal Note No. 2, zero, Department of Natural Resources

Governor's transmittal letter dated May 31:

Dear President Stevens:

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill that would establish the Alaska Natural Gas Pipeline Corporation (Alaska Pipe) to finance, own, and manage an interest in the Alaska North Slope natural gas pipeline project (project) on behalf of the state.

Under the proposed Alaska Stranded Gas Fiscal Contract developed in accordance with the Alaska Stranded Gas Development Act (SGDA) (AS 43.82), the state proposes to acquire a 20 percent equity interest in the project with the remainder financed by affiliates of ExxonMobil Alaska, Incorporated, ConocoPhillips Alaska, Incorporated, and BP Exploration Alaska, Incorporated, the qualified sponsors of the project. The project would include a number of segments, including a large diameter pipeline from the Alaska North Slope to Alberta, Canada (with the possibility of an extension to the Lower 48), a gas treatment plant, and various gas transmission lines. The state and the qualified sponsors or their affiliates would establish limited liability companies (LLCs) or other appropriate entities to own each of the various segments of the project. Alaska Pipe would finance, own, and manage a proportionate membership interest in these owner entities.

Section 1 of the bill proposes that the Legislature make various findings that describe the critical importance of this project to the people of this state and to the nation, that explain why it is in the state's interest to participate in the project as an equity owner, and that identify the benefits that would accrue to the state from the successful development of the state's enormous gas resources. These latter benefits include increases in tax and royalty revenue, stimulation of oil and gas exploration on the Alaska North Slope, and creation of jobs and opportunities for greater in-state access to natural gas. It is hoped that these benefits will provide a sound basis for long-term growth of the state's economy.

Section 2 of the bill adds a new chapter to AS 41 that establishes Alaska Pipe as a "public corporation and instrumentality of the State of Alaska" within the Department of Revenue (AS 41.42). The corporation is structured to operate as an entity that is exempt from federal income taxation. AS 41.42 states the purposes and powers of the corporation, and otherwise provides terms that govern the administration of Alaska Pipe. Many of these provisions are similar to those of Alaska's other public corporations, including the Alaska Permanent Fund Corporation and the Alaska Railroad Corporation. However, other provisions are tailored to the unique role Alaska Pipe is expected to play in facilitating this truly historic project.

The board of Alaska Pipe will be comprised of the commissioner of the Department of Revenue and the commissioner of the Department of Transportation and Public Facilities, as well as five public members. AS 41.42.020(a). The public members must have experience and recognized competence in either finance, investments, business management, or the oil or gas industries. AS 41.42.020(a). Public members would serve six-year terms and may only be removed for cause. AS 41.42.020(c); AS 41.42.045. This combination of required expertise, extended terms, and restrictions on removal are intended to help assure that Alaska Pipe is well managed and can effectively represent the state's interest in the complex commercial environment in which it will have to operate.

AS 41.42.210 provides Alaska Pipe with a broad spectrum of corporate powers that are necessary, or may be necessary, to carry out its mission. The corporation is authorized to finance and acquire an ownership interest in the project in the United States or Canada, to issue bonds, to borrow money, and to negotiate with the United States government to secure federal loan guarantees, if appropriate. The corporation is authorized to pledge its revenue and assets to secure the payment of bonds or other obligations, and to enter into agreements necessary to establish entities, *e.g.*, LLCs, that will own portions of the project.

AS 41.42.220 would authorize Alaska Pipe to incorporate subsidiaries to carry out the purposes of AS 41.42. These entities would likely be for-profit corporations organized under the law of Alaska or of another state, or under the applicable laws of Canada. At this time, it is contemplated that at least one Canadian corporation would be established to hold Alaska Pipe's interest in a Canadian limited liability partnership that would build and own the Canadian segment of the mainline. If authorized by Alaska Pipe, these subsidiaries would also be able to borrow money for the project or for their operations to the same extent as any other private corporation.

The state's total equity contribution to the different project LLCs is estimated to be \$1.0 billion at this time. The state currently plans to finance this amount with a combination of appropriations directly or indirectly to Alaska Pipe, and the issuance of revenue bonds by Alaska Pipe. Article 3 of AS 41.42 contains revenue bonding authority that is

fairly typical of other state public corporations, *e.g.*, the Alaska Housing Finance Corporation and the Alaska Industrial Development and Export Authority. Alaska Pipe would have the authority to issue what the market refers to as "moral obligation" revenue bonds. AS 41.42.320. Such bonds are supported by the establishment of a capital reserves account, which provides an added measure of security for the debt service on the bonds. The Alaska Pipe board would annually notify the Legislature of the status of the capital reserve account. AS 41.42.320(d). If a deficiency is reported, the Legislature may appropriate money to restore the capital reserve account but it is not compelled to do so. This "moral obligation" approach can only be invoked if the corporation finds that it will enhance the marketability of the bonds.

AS 41.42.340 specifies that any bonds issued by the corporation are not the indebtedness of the state, but are solely payable from the revenue and assets of the corporation. The state does pledge to the owners of the bonds that the state will not limit or alter the rights and powers of the corporation and that it will not impair the rights and remedies of bondholders until the bonds are fully paid. AS 41.42.350.

Article 4 of AS 41.42 establishes a cash reserves fund, which initially will be made up of any appropriations made to Alaska Pipe by the Legislature. The money in the fund can be used to meet capital call requirements and otherwise guarantee or secure debt incurred by the corporation. AS 41.42.400. The article also clarifies which laws of general application to state agencies apply to this new public corporation. For example, Alaska Pipe is exempted from the State Procurement Code under AS 41.42.430, its operating budget but not its capital budget is subject to the Executive Budget Act under AS 41.42.410, and it is largely exempt from laws relating to public works, fiscal procedures, and management of public funds under AS 41.42.440.

Article 5 of AS 41.42 relates to financial statements, reporting requirements, and the applicability of the Public Records Act to the corporation. The corporation is required to provide quarterly and annual financial statements to the governor and the Legislative Budget and Audit Committee. AS 41.42.500. The corporation can be audited by the committee. In addition to the financial information, the

corporation is to prepare an annual report on the operations of the corporation. AS 41.42.510. Although the corporation is subject to the Public Records Act, AS 41.42.520 provides broad exemptions from disclosure relating to proprietary and other commercial information. These broader exemptions from public disclosure are modeled upon similar provisions in the Alaska Stranded Gas Development Act (AS 43.82). The open meetings laws of the state do not apply to the corporation. AS 41.42.530. However, the corporation is required to conduct at least one meeting a year in public. AS 41.42.030.

Section 6 of the bill would establish the Alaska natural gas pipeline construction loan fund in the Department of Revenue. This fund would consist of money appropriated to it by the Legislature. The Legislature may choose to finance all or part of Alaska Pipe's equity obligations by loans from this fund. The construction loan program would be administered by the commissioner of the Department of Revenue, who is given broad discretion to fashion appropriate terms and conditions of the loans. Specifically, depending upon the final ownership structure in Canada, our Canadian advisors have indicated that there may be tax advantages in Canada if any loans to Alaska Pipe's Canadian subsidiaries are made directly by the state and not through Alaska Pipe.

Sections 12 and 13 of the bill establish a narrow exception to the rule barring indemnification agreements covering a party's own negligence or misconduct in construction contracts and precludes any potential application of the common law doctrine barring enforcement of indemnification agreements that might serve to increase the risk of negligence by a party that owes a duty to the public. This exception would allow an entity that constructs, owns, or operates the project, or any portion of the project, to indemnify an operator and the members of a limited liability company, including Alaska Pipe, for losses caused by those parties' own negligence or misconduct. Similar indemnities are made available to affiliated entities that either lend employees to the operator to work on the project or that provide technical consulting services to the operator to facilitate the project. The primary reason for such an approach is to hold down the costs charged by the operator to the owner entity and consequently the members.

Section 7 of the bill clarifies that officers and employees of the corporation are in the exempt service. Sections 8 and 9 of the bill specify that the board members and staff of the corporation are public officials for purposes of the financial disclosure laws. Section 10 of the bill provides that board members of Alaska Pipe will be subject to the Alaska Ethics Act, except that board members of Alaska Pipe's subsidiaries are not subject to the Act unless they are also members of the board of Alaska Pipe.

I urge your support of this important legislation.

Sincerely yours,

/s/

Frank H. Murkowski
Governor

SB 2004

SENATE BILL NO. 2004 BY THE SENATE RULES COMMITTEE
BY REQUEST OF THE GOVERNOR, entitled:

"An Act relating to the Alaska Stranded Gas Development Act, including clarifications or provision of additional authority for the development of stranded gas fiscal contract terms; making a conforming amendment to the Revised Uniform Arbitration Act; relating to municipal impact money received under the terms of a stranded gas fiscal contract; and providing for an effective date."

was read the first time and held on the Secretary's desk.

The following fiscal information was published today:

Fiscal Note No. 1, indeterminate, Department of Natural
Resources

Fiscal Note No. 2, zero, Department of Revenue

Governor's transmittal letter dated May 31:

Dear President Stevens:

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill amending the Alaska Stranded Gas Development Act (AS 43.82) (SGDA) to clarify or provide additional authority for the development of stranded gas fiscal contract terms.

When the SGDA was originally passed in 1998, the Legislature had in mind a very different kind of state involvement than is presently written into the proposed fiscal contract now under preliminary review by the Legislature. The original intent was to authorize the development of a contract that could reduce the tax burdens on a project. Under the proposed fiscal contract, the state would become a part owner of a large-diameter gas pipeline with a design capacity to transport approximately 4 billion cubic feet per day of stranded gas from the Alaska North Slope to markets in Canada and the Lower 48 states. The proposed fiscal contract would create obligations to make payments in lieu of taxes that are roughly equivalent to the taxes in effect for the 2005 tax period.

After analysis of the economics of the project, it was determined by the state that the best method for inducing the sponsor group to proceed with development was for the state to agree to take an ownership interest and to agree to assume financial responsibility for shipping its gas through the pipeline. It was also considered important that each owner's interest in the project should correspond to the amount of the owner's gas that would be shipped through the pipeline. By taking payment of certain tax obligations in gas rather than money, the state could establish an ownership interest of approximately 20 percent. These key terms would increase the potential profitability of the project in a way that would not require the state to materially reduce public revenue in the future.

The legislative history of the SGDA was clear that the original intent was to provide fiscal certainty only on gas taxes. The sponsor group made a compelling argument that fiscal certainty must extend to taxes on oil as well as on gas. The production of oil goes hand in hand with the production of gas. Because of this connection, any fiscal constraints placed on the exploration or development for oil also have a direct effect on the exploration and development of gas. For this and other reasons, it was agreed that fiscal certainty should be extended to taxes applicable to oil production.

The amendments proposed in this bill are intended to provide express authority in the SGDA for the terms in the proposed fiscal contract. To accomplish this intent, the bill would broaden the scope of the purposes of the SGDA to include fiscal terms relating to oil as well as to gas. The fiscal terms would also extend to a related party, which may include the mainline entity formed to own and operate the gas pipeline and related facilities.

The bill would broaden the scope of subjects that may be negotiated under the SGDA. These new subjects include equity ownership, payment of obligations in gas rather than money, and changes in existing leases and other agreements with the state regarding oil and gas properties.

The bill would expand the types of terms that may be included in a contract. This is accomplished by a provision that would give the commissioner of the Department of Revenue broad discretion to adopt terms that are reasonable and promote the purposes of the SGDA. Terms are also appropriate if they are consistent with the long-term fiscal interests of the state. The authority granted would cover terms in the fiscal contract now under review by the Legislature and the public. These terms include "netting-out" provisions, payment of interest on obligations, ability to provide fiscal terms to others, confidentiality of payment-in-lieu records, state acquisition of pipeline capacity, indemnity given by the state, exemption from a reserves or resource tax, Regulatory Commission of Alaska jurisdiction, audits, and limits on damages.

The bill would expand the scope of authority to adopt contract terms that modify existing law set out in AS 38 concerning oil and gas property. Under existing law, authority extends only to timing and notice requirements applicable to royalties. The bill includes provisions to allow broader powers to adopt terms resolving conflicts between the terms of the contract and provisions in existing oil and gas leases and unit agreements. Under the bill, the terms of the contract prevail over contrary provisions in state leases or unit agreements.

The bill would place a limit of 45 years on the expected term of the contract from the effective date. It is expected that it will take approximately 10 years from the effective date to achieve

commencement of commercial operations. Existing law provides that the term is 35 years from the commencement of commercial operations. The bill also authorizes the contract to provide for a suspension of the running of the term during periods of force majeure.

The bill would provide interim authority for the commissioner of the Department of Revenue to negotiate collateral agreements to form limited liability companies, limited liability partnerships, or any other recognized form of business association that would own or operate any part of the project.

The bill would create an account in the general fund to receive municipal impact payments from the sponsor group and also a fund into which the money will be subsequently appropriated by the Legislature. Once in the fund, the money will be available for grants to economically affected municipalities and certain nonprofit organizations serving the unorganized borough; the grants would be administered by the Department of Commerce, Community, and Economic Development.

I urge your prompt and favorable consideration of this bill.

Sincerely yours,

/s/

Frank H. Murkowski
Governor

Announcements

Announcements are at the end of the journal.

Adjournment

Senator Gary Stevens moved and asked unanimous consent that the Senate stand in adjournment until 11:00 a.m., June 1, 2006. Without objection, the Senate adjourned at 3:12 p.m.

Kirsten Waid
Secretary of the Senate

May 2006

Announcements

Americans with Disabilities Act Notice - Persons with disabilities who require special accommodation or alternative communication formats to access committee meetings may contact the appropriate committee office or the Legislative Information Office in their community. Reasonable advance notice is needed to accommodate the request. For further information, call the ADA Coordinator at 465-3854 Voice/465-4980 TDD.

STANDING COMMITTEES

+ indicates teleconference

= indicates bill previously heard/scheduled

JUDICIARY

Jun 02 Friday Butrovich 205 8:30 AM
 + SB2002 GAS PIPELINE CONTRACT: COURT JURISDICTION

SPECIAL COMMITTEES**SPECIAL COMMITTEE ON NATURAL GAS DEV**

Jun 01 Thursday Senate Finance 532 1:30 PM
 Meeting Pending Formation of Committee &
 Appointment of the Chair

+ SB2003 NATURAL GAS PIPELINE CORPORATION
 <Pending Referral>

+ SB2004 STRANDED GAS DEVELOPMENT ACT AMENDMENTS
 <Pending Referral>