

**ALASKA STATE LEGISLATURE
HOUSE JUDICIARY STANDING COMMITTEE**

June 2, 2006
10:30 a.m.

MEMBERS PRESENT

Representative Lesil McGuire, Chair
Representative Tom Anderson
Representative John Coghill
Representative Pete Kott
Representative Peggy Wilson
Representative Les Gara
Representative Max Gruenberg

MEMBERS ABSENT

All members present

OTHER LEGISLATORS PRESENT

Representative Nancy Dahlstrom

COMMITTEE CALENDAR

HOUSE BILL NO. 2003

"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."

- HEARD AND HELD

HOUSE BILL NO. 2002

"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."

- SCHEDULED BUT NOT HEARD

PREVIOUS COMMITTEE ACTION

BILL: HB 2003

SHORT TITLE: NATURAL GAS PIPELINE CORPORATION

SPONSOR(S): RULES BY REQUEST OF THE GOVERNOR

05/31/06	(H)	READ THE FIRST TIME - REFERRALS
05/31/06	(H)	JUD, FIN
06/02/06	(H)	JUD AT 10:00 AM CAPITOL 120

WITNESS REGISTER

STEVEN B. PORTER, Deputy Commissioner
Office of the Commissioner
Department of Revenue (DOR)
Juneau, Alaska

POSITION STATEMENT: Presented a general overview of HB 2003 on behalf of the administration, and responded to questions.

LOUISIANA W. CUTLER, Attorney at Law
Preston Gates & Ellis, LLP
Anchorage, Alaska

POSITION STATEMENT: Presented a sectional analysis of HB 2003 on behalf of the administration, and responded to questions.

ACTION NARRATIVE

CHAIR LESIL MCGUIRE called the House Judiciary Standing Committee meeting to order at [10:30:49 AM](#). Representatives McGuire, Coghill, Kott, Gara, and Gruenberg were present at the call to order. Representatives Anderson and Wilson arrived as the meeting was in progress. Representative Dahlstrom was also in attendance.

HB 2003 - NATURAL GAS PIPELINE CORPORATION

[10:30:52 AM](#)

CHAIR MCGUIRE announced that the only order of business would be HOUSE BILL NO. 2003, "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."

REPRESENTATIVE GARA spoke briefly on another topic.

10:32:24 AM

STEVEN B. PORTER, Deputy Commissioner, Office of the Commissioner, Department of Revenue (DOR), relayed that he would be providing a general overview of HB 2003 and that Ms. Cutler would be providing details of individual sections.

10:33:10 AM

LOUISIANA W. CUTLER, Attorney at Law, Preston Gates & Ellis, LLP, in response to questions, distributed a copy of the governor's transmittal letter, which contained a bit of a sectional analysis, and offered to create a formal sectional analysis for later distribution to members.

REPRESENTATIVE GARA questioned whether the legislature's consultants have provided the legislature with any memorandums regarding HB 2003.

[There was brief discussion regarding other legislation.]

MS. CUTLER indicated that the [consulting firm] of Greenberg Traurig, LLP, has provided such a memorandum to her law firm, which would be willing to work with the consulting firm regarding the concerns outlined in that memorandum, which was written by Phillip C. Gildan on May 23, 2006, to Joe Balash, staff to the Legislative Budget and Audit Committee.

MR. PORTER added that once that was done, he and Ms. Cutler could bring back amendments intended to address any remaining concerns that the consulting firm had.

[Members expressed a desire to speak directly with the consultants and Mr. Balash.]

MR. PORTER went on to explain that HB 2003 will create an Alaska Natural Gas Pipeline Corporation ("ANGPC") that will hold and

finance an ownership interest in an Alaska gas pipeline and that will participate in the decision-making aspects of moving such a project forward, thus allowing Alaska to become a corporate partner - in a proposed Pipeline Project Mainline Limited Liability Company (LLC) Entity ("Mainline LLC") - with the three corporations involved in the Alaska Stranded Gas Fiscal Contract ("ASGF Contract"): BP Exploration (Alaska) Inc.; ConocoPhillips Alaska, Inc.; and ExxonMobil Alaska Production, Inc. Even though the ANGPC will be a public corporation, the goal is to make it is much like a private entity, and as commercial an entity, as possible because, from a decision-making standpoint, the four corporations must function as a single entity in order to move a project of this magnitude forward, and, via the ANGPC, the state will ensure that it is effectively positioned to look after the public's interest while still being part of a very commercial entity.

[10:41:38 AM](#)

MR. PORTER said that furthermore, the aforementioned Mainline LLC must be as stable as possible so that all four partners will know with whom they are working for at least the next 10 years or, if possible, for the life of the project. To this end, the ANGPC will have a stable board consisting of two commissioners - one from the Department of Revenue (DOR), and one from the Department of Transportation & Public Facilities (DOT&PF) - and five board members with staggered six-year terms who can only be dismissed for cause, with the purpose being to create a financial entity rather than a political entity. The ANGPC will be exempt from the Open Meetings Act so as to be able to respond quickly to its Mainline LLC partners on particular issues that arise, but the intent, nonetheless, is for the ANGPC board to have regular public meetings in order to keep the public informed, and, to that end, will set up policies and procedures for conducting such meetings.

MR. PORTER said:

Another thing that we've found, in negotiating with private corporations, is [that] in their world, everything is confidential unless they decide to make it public. In our world, everything is public unless we decide to make it confidential. And that's a bit of a conflict, ... [and] the private entities ... are struggling with how to deal with that relationship. So what we have recommended is that we ... [be] subject to the Public Records Act but that we have

specific exemptions, and we've listed them ... [in proposed AS 41.42.520(a)].

MS. CUTLER mentioned that HB 2003 contains exemptions to both the Public Records Act and the Open Meetings Act, and that she would be providing more details of those exemptions during her presentation of the bill's individual sections.

MR. PORTER indicated that HB 2003 will create an environment wherein the information that private corporations normally keep private will stay private, and the information that the state normally keeps public will stay public; thus, by partnering with the state, the private corporations won't lose the confidentiality rights that they normally have. In response to a question, he relayed that the Mainline LLC will own the pipeline itself and that the ANGPC will be the [state-owned] corporation that is the Alaska partner in the Mainline LLC.

[There was a brief discussion regarding what types of statutes are currently listed in Title 41.]

[10:48:47 AM](#)

MR. PORTER mentioned that if the ANGPC is established but then changed in the future, "the producers" - the other three corporations/owners of the [Mainline LLC] - want to ensure that their contractual benefits will be maintained. For example, should the legislature decide in the future that the ANGPC no longer has any confidentiality rights and that all information should be made public, this would result in a materially adverse change to the ANGPC's ability to perform its functions as a partner in the Mainline LLC; therefore, HB 2003 provides that any such change could result in the ANGPC's losing its voting rights or its rights to receive confidential information.

REPRESENTATIVE GRUENBERG, noting that private corporations can easily change their internal structure via a resolution by its board of directors, asked what protection the state will have under HB 2003 should one of the other partners effect a substantial change to itself.

MR. PORTER said that issue had been discussed, and offered his belief that the fact that the other three corporations can only transfer to certain types of entities will "kind of" protect the state. All four partners should have the same type of confidentiality obligations, he opined, and so the only question that could arise would be whether a partner violated its

confidentiality responsibilities; under HB 2003, the penalties for doing so would be the same regardless of which partner it was. He seemed to indicate that the state won't be penalized unless state statutes are changed in the future such that the ANGPC will no longer be able to meet its confidentiality obligations as set out in the contract.

MS. CUTLER added that her understanding is that the producers feel that they, as private entities - particularly assuming that they are organized under the corporation laws of Delaware - feel that they need to have as much stability as possible when dealing with a public corporation such as the one being established via this legislation. She surmised that the legislature also understands the importance of having stability. And although addressing issues of confidentiality is one of the main motivations for seeking certain protections, it is not the only one.

MR. PORTER offered his belief that the three private corporations would be amenable to being subject to the aforementioned penalties - losing voting rights or rights to receive confidential information - because they would never change their corporate bylaws such that all their information becomes public.

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MS. CUTLER, in response to a question, said that that particular language is located on page 11, lines 2-9, under proposed AS 41.42.210(a)(22), which reads:

(22) except for a statutory change made by initiative or in response to a final nonappealable court order, to agree that as part of an agreement to form an owner entity of the project that its voting rights and its access to confidential information otherwise provided for under the terms of the agreement may be restricted if this chapter is amended or another statute is enacted, and that law has a material adverse effect on the corporation's ability to perform its obligations under such an agreement; however, the corporation may not agree to any terms that attempt to limit the legislature's authority to exercise police powers of the state;

MR. PORTER mentioned that the bill also contains provisions dealing with indemnification; provisions exempting the ANGPC

from the state's procurement code - though the ANGPC's budget would be subject to legislative appropriation; and provisions pertaining to cash reserve funds. He indicated that the equity of the ANGPC will be funded via a general fund appropriation and "a project financing" with federal loan guarantees; such will allow for the financing of the project with the other three entities, though each might ultimately do "member-level financing," which will necessitate the state having a certain level of flexibility with regard to various financing methodologies.

MR. PORTER noted that [the ANGPC] will have the right to create subsidiaries for the purposes of managing the ANGPC's responsibilities. For example, under the project itself, several entities such as a gas treatment plant (GTP), an "upstream theater pipeline," or an entity that would own the portion of the gas pipeline that passes through Canada might need to be created as separate corporations with the same owner - that owner being the ANGPC.

REPRESENTATIVE GRUENBERG asked whose laws would control the Canadian portion of Alaska's gas pipeline: would it be Alaska state law, federal law, Canadian law, or specific Canadian provincial or territorial law. He also raised the issue of [renvoi], indicating that the question may become one of "who decides who decides."

REPRESENTATIVE GARA noted that the administration is proposing that the Mainline LLC be governed by Delaware law.

MS. CUTLER relayed that she and other members of her law firm are the principal drafters of the provisions of HB 2003 that pertain to the ANGPC. She explained that the ANGPC will be the public corporation - similar to the Alaska Housing Finance Corporation (AHFC), the Alaska Industrial Development and Export Authority (AIDEA), the Alaska Railroad Corporation (ARRC), the Alaska Permanent Fund Corporation (APFC) - that will perform various functions for state government separate and independent from state government so that liabilities and revenues [resulting from the project] are insulated from the general fund (GF). The ANGPC will hold a membership interest in the Mainline LLC, resulting in a 20 percent equity interest in the whole pipeline project. Furthermore, the ANGPC may hold interest, either directly or through its subsidiaries, in other aspects of the project. Via the ANGPC, the state will build, manage, and operate the physical function of the pipeline; the ANGPC,

however, will not be responsible for selling any "gas in-kind" it might receive.

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MS. CUTLER said the "findings section" of the legislation is important because it will lay out the reasoning behind establishing the ANGPC to begin with; so, notwithstanding any dislike the legislature may have for such provisions, [her firm] feels that it is important to provide "findings" which support the purpose of the ANGPC, because such language could play a role in any future litigation engendered by the project.

REPRESENTATIVE GRUENBERG observed that courts generally don't think that legislative findings carry much weight. So if these findings are to carry the same weight in court as court findings, they must have evidentiary backing and the record must contain that information. Furthermore if the findings in the bill are meant to be cited by a court in any ensuing litigation, the legislation ought to specifically say that the legislature intends the findings to be accorded particular and unusual weight for specific reasons, and then list those reasons. Otherwise, a court might well dismiss the legislative findings.

REPRESENTATIVE GARA acknowledged that findings are often merely the "findings" of a bill's sponsor and not actually anything [that can be proven]. He characterized a lot of the findings in HB 2003 as debatable, and thus he is inclined to just get rid of them; for example, finding (9) claims that it is in the best interest of the state to acquire an ownership interest in a gas pipeline and that participating in the financing of such a pipeline will maximize benefits to Alaskans, and he is not sure that all legislators would agree with that finding, considering it, as well as some of the other findings, to be more opinion than fact. Therefore, he remarked, he would prefer to not make findings more binding on the courts.

REPRESENTATIVE GRUENBERG clarified that his thought is that each finding should be addressed/explained by Ms. Cutler and then the committee can decide whether to eliminate it or retain it.

CHAIR McGUIRE asked whether it is the governor's position that HB 2003 needs to contain the findings currently listed.

MS. CUTLER expressed a preference for continuing to include all of the findings so as to demonstrate the rationale behind establishing the ANGPC. She suggested that legislative findings

don't necessarily have to be factual, but acknowledged that it would be good if a majority of the legislature believed that acquiring an ownership interest in the gas pipeline would be in the best interest of the state.

[11:16:32 AM](#)

CHAIR McGUIRE remarked that when it comes right down to it, the important issue for the legislature to address is the establishment of the ANGPC, noting that many legislators may feel that findings are "fluff" and could as easily be expressed in the form of a press release or a sponsor statement. She suggested that Ms. Cutler consider whether keeping all the findings in the bill is worth having to take the time to justify each finding to the point where a majority of the committee is satisfied with retaining it.

MS. CUTLER acknowledged that point, but reiterated that her firm feels it is important to articulate the reasoning behind establishing the ANGPC, specifically that it is in the best interest of the state to acquire an ownership interest and to go out and finance a portion of the pipeline and to participate in the construction of the project.

REPRESENTATIVE GARA pointed out that finding (9) also claims that it will be in the best interest of the state to take gas in-kind rather than tax it, and yet the legislature's consultants have stated that doing so will likely result in less money for the state. He said that he doesn't want debatable findings included in the bill, and that he doesn't think the findings are that important to the bill, particularly if the legislature doesn't really believe in them.

MS. CUTLER then referred to Section 2, which inserts a new Chapter 42 into Title 41. Specifically, proposed AS 41.42.010 establishes the ANGPC and contains typical public corporation language, which ensures that it is both an instrumentality of the state and legally separate from the state. Proposed AS 41.42.015 contains typical dissolution language, though one difference is that the ANGPC cannot be dissolved as long as it has bond notes or other kinds of financing or contractual obligations outstanding.

REPRESENTATIVE GARA noted that proposed AS 41.42.010 specifies that the ANGPC gets to set the pay for its members, and relayed that he is concerned about that because he doesn't want a state-

owned corporation to be able pay huge sums to its own board members.

MS. CUTLER clarified that [proposed 41.42.040] establishes an honorarium of \$400 for each day or part of a day [of work] for the public board members, and provides for payment of per diem. She reiterated that the language in proposed AS 41.42.010 is typical with respect to the state's other public corporations. In response to further comments, she also clarified that the ANGPC will be setting the pay scale for the executive director and staff, and pointed out that the ANGPC's operating budget will still be subject to legislative approval.

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REPRESENTATIVE NANCY DAHLSTROM, Alaska State Legislature, offered her understanding that the Senate intends to amend the provision pertaining to the honorarium rates and per diem, and intends to clarify whether a board member would receive money if participating in meetings via teleconference.

REPRESENTATIVE GRUENBERG noted that proposed AS 41.42.015 specifies that the board may dissolve the ANGPC but that the dissolution is not effective until the legislature confirms it.

MS. CUTLER reiterated that that is a typical provision for public corporations. In response to a question, she said the intention is that the ANGPC would never be left without a board.

MS. CUTLER referred to proposed AS 41.42.020, which pertains to the membership of the board of directors, and in response to a question noted that subsection (b) specifies that the commissioners listed in subsection (a)(1) and (2) may, in writing, appoint designees if they find they are unable to attend a meeting.

REPRESENTATIVE GRUENBERG expressed a preference for allowing a commissioner to appoint a permanent designee, rather than requiring a commissioner to provide something in writing authorizing a designee every time he/she can't attend a meeting. He suggested adding the words, "or the commissioner's designee" to proposed AS 41.42.020(a)(1) and proposed AS 41.42.020(a)(2).

MR. PORTER agreed to investigate what the language looks like for other public corporations that allow for permanent designees.

MS. CUTLER went on to mention that the five public members of the board of directors will be chosen from the private sector and will be expected to have recognized competence and wide expertise in the oil and gas industries or the finance, investments, or other business management related fields. The goal is to have board members that really understand the oil and gas industry and the financing of mega projects, and it is extremely important that this board be as successful as possible in an apolitical fashion and in an appropriately independent manner; she reiterated that board members can only be dismissed for cause and will be appointed for six-year staggered terms so as to provide stability.

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REPRESENTATIVE WILSON turned attention to proposed AS 41.42.020(c), which references AS 39.05.055(3), and asked whether that latter statute specifies that board members shall be non-political. She noted that proposed AS 41.42.020 doesn't appear to specify such. "How is it going to happen if it's not in there," she asked.

MS. CUTLER clarified that AS 39.05.055(3) pertains to the staggering of a board's initial members, and acknowledged that she's not ever seen the term "apolitical" used in statute as a criteria for board membership.

MR. PORTER noted that proposed AS 41.42.020(a)(3)(A) says in part:

- (a) The corporation shall be governed by a board of directors consisting of ...
- (3) five public members appointed by the governor who
- (A) do not hold any other state or federal office, position, or employment, either elective or appointive, except as a member of the armed forces of either the United States or this state;

MS. CUTLER said that she was using the term "apolitical" in a broader sense, and suggested that having members serve very long terms and specifying that they can only be dismissed for cause is likely to result in board members making decisions in an apolitical fashion. She also suggested that not having board members confirmed by the legislature is one of the attributes of a board that is expected to function independently.

MR. PORTER, in response to a question, surmised that the key factor in whether someone is appointed is whether he/she will have the desired expertise, rather than whether he/she is specifically apolitical.

REPRESENTATIVE KOTT referred to the language in proposed AS 41.42.020(a)(3)(A) that says a public board member could serve as a member of the armed forces of either the United States or Alaska, and asked whether it would create a conflict if a public member of the board were also a member of the Air National Guard, for example, and thus able to draw both a state per diem check and a federal pay check.

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MS. CUTLER said she would research that issue further, but mentioned that this language was merely copied from other statutes.

REPRESENTATIVE GARA suggested that perhaps there should be a requirement that a public board member not have donated to a particular party or gubernatorial candidate in the previous 10 years, or a requirement that a public board member not be an employee of or have a contract with any of the other Mainline LLC partners. He also mentioned that a state employee might have much to offer as a public board member but would be precluded from doing so under the bill's current language.

REPRESENTATIVE GRUENBERG suggested that they remove the language that would allow a member of the armed forces to serve on the ANGPC's board of directors, characterizing it as inappropriate to have active duty military personnel serving on this kind of board, particularly given that active duty military personnel already have important responsibilities to fulfill. He also noted that the term, "recognized competence and wide experience" is a subjective term open to interpretation by the governor.

MS. CUTLER acknowledged that point, but posited that if someone was appointed but did have those qualifications, the argument could be made that there had been a violation of the statute.

REPRESENTATIVE GRUENBERG asked whether those holding local office should also be excluded from the board.

MS. CUTLER said that would be a policy call for the legislature to make.

REPRESENTATIVE GRUENBERG asked why the legislature shouldn't confirm appointees to this board. He also questioned whether doing so would be constitutional.

MS. CUTLER noted that the AHFC, the AIDEA, and the APFC do not require legislative confirmation, though the Alaska Natural Gas Development Authority (ANGDA) and the ARRC do, so that too is a policy call.

MR. PORTER, in response to a question, explained that they'd looked at different models, and had simply decided to choose one that didn't require legislative confirmation.

REPRESENTATIVE DAHLSTROM too noted that if active duty military personnel were appointed as board members, they might get deployed and thus wouldn't be able to participate in board meetings, even via teleconference.

MR. PORTER, in response to a question, offered his understanding that the designees referenced in proposed AS 41.42.020(b) could be appointed in advance. In response to another question, he relayed that the thought was that a seven-member board was of sufficient size to be both effective and retain enough expertise.

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MS. CUTLER turned attention to proposed AS 41.42.030 and explained that it pertains to the actual meetings of the board, and described the quorum requirements listed therein as typical. She said that although the board is required to meet at least four times a year, she expects that it will meet more often than that, particularly during the project's inception. She referred to proposed AS 41.42.030(b)-(d) and said these provisions are intended to ensure that the board is able to function efficiently; proposed AS 41.42.030(b)-(d) read:

- (b) The board shall meet at the call of its chair.
- (c) The board may meet and conduct business by teleconference. A meeting conducted by the board by teleconference has the same legal effect as a meeting in person.
- (d) AS 44.62.310 - AS 44.62.312 do not apply to meetings of the corporation. The board shall adopt a policy and procedures for conducting one or more of its meetings in public each year.

MS. CUTLER assured the committee that proposed AS 41.42.030(d), the Open Meetings Act exemption, is not intended to keep from the public information that should be shared, and that the board will be adopting policies and procedures for conducting one or more of its meetings in public every year; additionally, the Legislative Budget and Audit Committee has audit authority over the ANGPC, the ANGPC's operating budget is subject to legislative approval, and an annual report is required. She indicated that some of the technical requirements of the Open Meetings Act could create problems; for example, one such requirement is that reasonable notice be given, and yet the courts have never expressly determined what such entails. Instead the courts have only indicated that what constitutes "reasonable" notice will depend on the how complicated or controversial an issue is. Given that the ANGPC will be dealing with some pretty big decisions, even if the proposed bill specifies a specific notice period, it could still potentially run afoul of the Open Meetings Act.

MS. CUTLER said that additionally, the Open Meetings Act requires that notice be given in accordance with the entity's regular practice, and for the ANGPC, this may vary as the project progresses. For example, during the construction phase of the project, in order to satisfy its obligations to the Mainline LLC, the ANGPC may need to meet very frequently and on very short notice. She acknowledged that [this exemption for the Open Meetings Act] is an unusual feature for a public corporation, though the ARRC has similar language. With regard to the issue of executive sessions, although the Open Meetings Act allows public corporations to go into executive session, the courts have not been particularly clear about what issues can be dealt with in executive session.

MS. CUTLER reiterated that the proposed exemption to the Open Meetings Act is not intended to keep information from the public; rather, the board will adopt policies and procedures regarding when meetings will be open to the public and when they won't, but won't be tied to the restrictions imposed by the Open Meetings Act and the court's interpretations of that Act.

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REPRESENTATIVE GARA asked Ms. Cutler to consider drafting language that would allow members of the public to request information from the board. He sought assurance that nothing in HB 2003 or the ASGF Contract will allow the board to change the

state's rights and duties as listed in the Mainline LLC [agreement] without some sort of state oversight.

MR. PORTER said the board can do nothing to change the ASGF Contract, which will outline the state's ownership rights regarding royalties and taxes; however, with regard to the Mainline LLC agreement, there will be points in time when the board of the ANGPC, which, again, is a partner in the Mainline LLC, will have to make decisions regarding ownership issues. For example, should the state ultimately want to have less ownership/equity interest in the project, the board must retain the flexibility to effect such a change.

REPRESENTATIVE GARA said that since the state is taking on 20 percent of the risk, he wants to ensure that the state gets the maximum it can from the sale of any interest. He asked who gets to make the final decision regarding the sale of such interest.

MR. PORTER said the ANGPC's board would make that decision.

MS. CUTLER mentioned that HB 2003 doesn't explicitly say that, but the state's interest in the project will be held by the ANGPC, and so the board is the entity that will be making those types of decisions, not the governor. She posited that if ever the board does decide to sell part [or all] of the state's interest, there will be hearings regarding that process. Again, the idea behind the bill is to set up a separate and independent corporation that will perform "this function" on behalf of the state; therefore, the decisions will be made by the board of that corporation.

[12:01:22 PM](#)

MS. CUTLER mentioned that language on page 22, lines 12-13, states that neither the ANGPC nor an owner entity of the project is subject to the Open Meetings Act.

REPRESENTATIVE DAHLSTROM relayed she has concerns with regard to board members of the ANGPC being able to vote via teleconference, and noted that the bill doesn't specify any residency requirements for the public members of the ANGPC board.

CHAIR MCGUIRE announced that the committee would recess for lunch.

[1:19:10 PM](#)

CHAIR MCGUIRE called the House Judiciary Standing Committee meeting back to order. Representatives McGuire, Kott, Wilson, Gruenberg, and Coghill were present at the call back to order. Representative Gara arrived as the reconvened meeting was in progress. Representative Dahlstrom was also in attendance.

MS. CUTLER, in response to earlier comments, acknowledged that HB 2003 does allow meetings to be conducted by teleconference.

MR. PORTER mentioned that Senate committee members had concerns about just one or two board members controlling the decision-making process. However, what must be remembered is that the ANGPC board won't be making decisions on its own; instead, there will essentially be four separate boards making decisions jointly with each other. Another thing to consider is that technology has advanced to the point that meetings can be successfully conducted without participants necessarily being in the same location; furthermore, there could be the issue of members needing to be able to meet and vote on issues very quickly but not being able to travel to a particular meeting location, though the latter would be the preference.

MS. CUTLER, on the issue of the bill's lack of residency requirements, said that any Canadian subsidiary entity of the Mainline LLC might impose Canadian residency requirements and therefore it might be best to not stipulate that every member of the ANGPC's board be a U.S. citizen. She also offered her belief that there are no constitutional requirements of such, but noted that some other state-owned corporations specify that there be a geographical balance among board members or that at least some - or certain - members be [Alaska] residents or, as does HB 2003, that members simply have expertise in certain fields.

REPRESENTATIVE DAHLSTROM acknowledged that perhaps there are only a handful of persons in the world with the necessary expertise and thus the board might not necessarily consist solely of Alaskan or even U.S. citizens.

MR. PORTER said the focus thus far has been on the expertise members ought to have, but the administration is assuming that it would be seeking Alaskans as board members, though it might be good to have a board member "with some Canadian expertise."

REPRESENTATIVE DAHLSTROM said she would prefer to have that issue clarified in the bill.

MR. PORTER asked that some flexibility be provided so as to be able to obtain the needed expertise - for example, perhaps specify that not all five public member need to be Alaskans.

1:29:14 PM

MS. CUTLER then referred to proposed AS 41.42.035 - regarding minutes of meetings - and characterized it as a typical provision; it simply requires that the board keep minutes of each meeting, distribute copies to the governor and the Legislative Budget and Audit Committee, and make copies available to the public, though it does specifically provide that information deemed confidential under proposed AS 41.42.520 shall be redacted. She said that proposed AS 41.42.040 contains language regarding honorariums, and transportation and per diem allowances. She offered her understanding that members who participate in meetings via teleconference would receive the honorarium, adding, however, that she would be doing further research on that issue. Members will also get transportation and per diem as currently provided for in AS 39.20.180.

MS. CUTLER explained that proposed AS 41.42.045 pertains to removal of the ANGPC's public board members and the filling of any vacancies on the board.

REPRESENTATIVE GARA, referring back to proposed AS 41.42.035, noted that there is no requirement that tape recordings of the board's meetings be kept.

MS. CUTLER said she is not aware of any legal problem with including such a requirement in the bill.

REPRESENTATIVE KOTT asked why the honorarium amount is \$400.

MS. CUTLER offered her recollection that they merely picked the same amount that the APFC specifies for its board members.

REPRESENTATIVE KOTT mentioned that the ARRC board members also receive that amount.

MS. CUTLER indicated that the goal was to establish a substantial enough honorarium so as to attract individuals that would be willing to serve on a board that has a lot of work to do.

MS. CUTLER then relayed that proposed AS 41.42.050 contains typical language authorizing the board to delegate the ANGPC's administration to an executive director. The last sentence in proposed AS 41.42.050 - which says, "The board may delegate to its executive director, officers, and agents of the corporation those powers and duties as it considers necessary or desirable" - is intended to provide the board with the authority to delegate appropriate powers and duties to the executive director and staff. For example, because the Mainline LLC is going to have a management committee as well as other committees, and because the board won't be working every day, the representative to the management committee or some of the other committees could actually be the executive director or a higher-level staff member.

[1:35:20 PM](#)

MS. CUTLER then referred to proposed AS 41.42.060 and explained that it requires the ANGPC board to employ an executive director - he/she would be an "at will" employee of the board - and authorize him/her to employ other staff, all of whom would serve "at will" to the executive director. Such staff, as is typical, could not be members of the board and would be exempt employees.

REPRESENTATIVE KOTT surmised, then, that such employees would essentially be employees of the state.

MR. PORTER concurred.

MS. CUTLER, in response to a question, relayed that the executive director would in effect be the chief executive officer (CEO).

REPRESENTATIVE GARA pondered whether the state - via the governor or commissioner - should have the right to say who the executive director is.

MR. PORTER said such would be highly unusual, adding that the individuals with the expertise - the ANGPC board members - are in the best position to determine whom they could best work with and who would best suit their requirements.

REPRESENTATIVE COGHILL surmised that the ANGPC board could act quickly should any action against an executive director be necessary.

MR. PORTER opined that although the personnel funding is currently available, it is really the responsibility of the ANGPC board to pick its own executive director and his/her responsibility to in turn pick his/her own staff.

CHAIR MCGUIRE agreed, noting that if an executive director is at odds with the board it will result in a dysfunctional situation.

REPRESENTATIVE GARA opined that they should insert language that would provide the state with additional oversight in the hiring of the executive director.

MR. PORTER suggested that as a practical matter, the administration might make recommendations regarding who the first executive director ought to be, but it will still fall to the ANGPC board to make the final determination regarding who it hires for that position, since it should be someone the board can work with.

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MS. CUTLER pointed out that there will be two commissioners on the board anyway, [and so they can provide input on that issue from the State's perspective].

REPRESENTATIVE KOTT asked whether there are any other boards or commissions that are allowed to establish the pay scale of its employees, and whether there is currently an upper limit on pay for the staff of the ANGPC board. He expressed concern that the executive director could end up being paid more than a commissioner.

MR. PORTER said the latter could very well happen because [the state] generally doesn't offer wages commensurate with what one with sufficient expertise could get working for the private sector, and the board needs to hire someone of professional quality and pay him/her sufficiently because he/she will be representing the state in negotiations with the aforementioned producers. He noted that the Alaska Natural Gas Development Authority (ANGDA) board also sets its executive director's salary, and that [that amount] is submitted to the legislature via the DOR and is subject to legislative approval via the budget process. The same would be true of the ANGPC's executive director's salary recommendation, and so the legislature will have the final say regarding what the board's staff is getting paid.

MS. CUTLER also pointed out that language in proposed AS 41.42.060(b) specifies that the value of the compensation paid to the executive director cannot exceed the value of the services he/she provides to the board.

REPRESENTATIVE KOTT remarked, however, that if the executive director is hired while the legislature is not in session, it is unlikely that the legislature, during the next session's budgetary process, would cut that salary even if it were too high. On a previous topic, he noted that his staff has conducted some research and has found that the AHFC board members do receive the honorarium when participating in meetings via teleconference.

REPRESENTATIVE WILSON surmised that the board will have to pay quite a bit in order to draw someone of the quality necessary to serve as its executive director.

REPRESENTATIVE COGHILL asked whether the phrase, "the value of the consideration provided to the corporation" is standard language, and how the value of that will be determined.

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MS. CUTLER said it is not necessarily standard language, though it is language that was recommended by other members of her firm.

REPRESENTATIVE COGHILL indicated that the question of how that value will be determined must still be addressed, and suggested that they add language that would do so.

REPRESENTATIVE GARA opined that it is unlikely that the amount of an executive director's salary would be challenged on the basis that it doesn't meet the statutory requirement that it equal the value of the service provided; in other words, once the salary is set by the board, that will be it. He relayed, therefore, that he will be offering an amendment that will require State oversight when setting both the board's salary and the staff's salary - oversight provided by perhaps the commissioner of the DOR.

REPRESENTATIVE COGHILL said such an amendment would in essence be providing veto power to one of the board members.

CHAIR McGUIRE opined that any question of whether someone is overcompensated ought to be addressed by the legislature, and

expressed concern with providing the commissioner of the DOR with special powers, particularly given that he/she is meant to be a member of the board.

MR. PORTER, in response to a question, indicated that it is anticipated that the executive director would serve both as the board's administrator and as the project manager; furthermore, he/she would most likely serve as the State's representative on the Mainline LLC's management committee, and therefore would have to have substantial amount of expertise and ability to lead "the staff and the team forward."

MS. CUTLER indicated that the language regarding how the ANGPC's board chooses its executive director and how he/she chooses other staff is similar to the language currently governing the APFC board. She expressed the hope that the salary authorized by the board will be sufficient to attract a competent individual.

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MS. CUTLER, turning attention to proposed AS 41.42.070, explained that the attorney general would act as the ANGPC's legal advisor and would hire legal firms as necessary to provide any additional expertise that's needed. Proposed AS 41.42.080 contains typical language, she remarked, and states that board members and the executive director are subject to the financial disclosure provisions of AS 39.50, and that if they or any other member of the staff acquire, own, or control any kind of an interest - direct or indirect - in any kind of an entity that has anything to do with the pipeline project, then they are required to disclose such interest; such disclosure will become a matter of public record and will be included in the board's minutes.

MS. CUTLER relayed that proposed AS 41.42.200 outlines the purposes of the ANGPC, and that proposed AS 41.42.210 outlines the ANGPC's powers - both typical powers and powers specific to the ANGPC. And although some of the specific powers outlined may seem overly specific, they will ensure that the ANGPC has the flexibility it needs to function as it should over the many years of the project. Furthermore, "power" (24) acts as a "catchall power" in that it would allow the ANGPC to "act in any manner, or perform any function, necessary or incidental, to effectuate other powers enumerated in or necessarily implied by this chapter"; the purpose of this power is to ensure that any

necessary actions can be taken in the future to deal with as yet unforeseen circumstances.

MS. CUTLER, referring to some of the other specific powers, explained that they will ensure that the ANGPC will be able to obtain an ownership interest in the project; operate the project; issue bonds or incur other forms of financing obligations as necessary; obtain, sell, or lease interest in property, including its ownership interest in the project, when, in the judgment of the ANGPC, doing so is necessary to further its purposes; enter into agreements with other countries/governments; apply for permits and licenses; enter into any contracts or agreements to carry out the project and perform all of its obligations under any such; obtain lines of credit and borrow money; purchase insurance; enter into indemnification or confidentiality agreements; and accept money or gifts from other entities.

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MS. CUTLER referred to power (22) and explained that it is intended to provide stability by assuring the potential partners that the ANGPC may lose some of its voting rights or access to confidential information if another statute is enacted by the legislature that can be shown to have an adverse effect on the ANGPC's ability to perform its obligations. However, power (22) specifies that the ANGPC may not agree to any terms that attempt to limit the legislature's authority to exercise police powers.

MR. PORTER opined that a similar change in statute via the initiative process ought to be viewed the same as a change made via statute; therefore, perhaps the language of power (22) ought to be changed to reflect that point.

MS. CUTLER referred to power (23) and explained that it allows the ANGPC to authorize any payments or distributions owed to it to be paid to anyone it specifies in furtherance of the satisfaction of its obligations. For example, if the ANGPC issues revenue bonds, it could instruct that the dividend stream from the Mainline LLC go directly to the payoff of those bonds, thus making them more marketable. She offered her understanding that this concept is not new, though under HB 2003, it can also be applied to any other project and financing costs - not just bonds.

MR. PORTER noted that power (23) will essentially allow the Mainline LLC to deduct its operating costs from any dividends

submitted to the state. In response to comments, he relayed that the bill also creates some structure upon which the state can negotiate the Mainline LLC; in other words, some of the clauses in HB 2003 may well also end up in the Mainline LLC agreement.

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REPRESENTATIVE GARA asked whether a draft Mainline LLC agreement exists yet.

MR. PORTER indicated that the formulation of that agreement is still in progress, and as soon as a final template is arrived at it will be submitted to the legislature and the public.

REPRESENTATIVE GARA expressed concern that the bill would in essence allow the ANGPC to accept the Mainline LLC agreement even if it contains clauses that the legislature doesn't approve of.

MR. PORTER remarked that it won't be possible to legislate every detail of a potential Mainline LLC agreement; instead the state hopes to arrive at a final draft template upon which the state will then negotiate five or six agreements.

REPRESENTATIVE GARA opined that the legislature ought to be able to review that draft template before it completes work on legislation establishing the ANGPC and its powers.

MR. PORTER opined that the ANGPC ought to have been created two years ago so that it could now be negotiating the Mainline LLC agreement, and pointed out that nothing in the bill says that the ANGPC must sign the template agreement. Once a template is arrived at, the ANGPC will sit down, under direction from the legislature, and renegotiate [a final] Mainline LLC agreement; although this process will take some time, it is the ANGPC's responsibility to do it's own negotiating on behalf of the state, but it must first be established.

REPRESENTATIVE GARA offered his understanding that the ANGPC, as a minority owner, won't be able to stop the other three partners from doing something that they three all agree upon. He asked whether the legislature will end up having to approve the proposed ASGF Contract - because certain deadlines elapse - before it gets a chance to see, and perhaps change, the draft Mainline LLC agreement.

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MR. PORTER said he would research that issue, adding that the intent all along has been to get the ANGPC and its board set up so that its members can review the [draft] Mainline LLC agreement and the proposed ASGF Contract, and get fully up to speed and make decisions regarding whether to sign the agreement as it exists or whether to renegotiate its terms. If the ANGPC and its board is not set up in a timely fashion, conforming amendments will be considered that would provide the commissioners with the authority to move forward with the project.

CHAIR McGUIRE expressed a preference for going the route of establishing the ANGPC and its board, and asked when the aforementioned alternative would be triggered.

MR. PORTER indicated that there is still a window of opportunity for the ANGPC and its board to be set up if HB 2003 is passed in the next few days; currently the administration is working on setting up board members so that they may choose an executive director who in turn can be briefed on the contract so as to have a working knowledge of the project. He posited that any board members chosen will have the expertise and experience needed to start working on the project right away. Ideally several of the Mainline LLC agreements necessary to move the project forward will be ready to be signed at the same time that the proposed ASGF Contract is ready to be signed; this will allow the project to move forward immediately, but it also requires that the state continue negotiating on the Mainline LLC agreements in the meantime. Otherwise the process will be delayed until the state, in whatever form, has sufficient time to execute those agreements.

CHAIR McGUIRE expressed her hope that the committee can focus on the merits of the ANGPC and what the committee thinks it should look like, and that to the extent that the committee would like to make amendments regarding how the board is set up or how much its members or staff are paid, that the committee would be ready to start amending the bill. To the extent that members oppose the proposed ASGF Contract as a whole or have opinions on the Mainline LLC agreements, she suggested that members will have further opportunity to voice those concerns, particularly given that this bill must still go to the House Finance Committee.

[Following was a brief discussion regarding how the committee intended to proceed over then next few days.]

The committee took an at-ease from 2:22 p.m. to 2:35 p.m.

MS. CUTLER, with regard to public corporations taking membership interests in LLCs, pointed out that the APFC already does so, though she acknowledged that that is not the same as what's being proposed via HB 2003. The legal structure being proposed is to set up a separate and independent public corporation that will hold the state's interest and manage the state's interest in the project, and that it will be the board of that public corporation that will hold the membership interest in the Mainline LLC and will therefore be the entity making the decisions regarding whether to agree to the forthcoming Mainline LLC agreement. She reminded members that there is precedent for this concept though it is a bit different simply because of the magnitude of the project and what will be required to complete it.

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MS. CUTLER, with regard to the question of whether legislative confirmation of the ANGPC's board members would be constitutional, said that she has just been told that there is a court case which held that at least under some circumstances, legislative confirmation can be unconstitutional if the [Alaska State] Constitution doesn't expressly provide for it. In response to a request, she indicated that she would attempt to provide the committee with something in writing on this issue.

REPRESENTATIVE GRUENBERG questioned whether there will be tax consequences of proceeding as HB 2003 proposes.

MS. CUTLER said that whether the ANGPC will obtain a tax exempt ruling from the Internal Revenue Service (IRS) is unknown, but her understanding is that the intent is for the ANGPC to seek just that.

MR. PORTER noted that the [ANGPC] probably won't be able to create a tax exempt organization in Canada, and so to the extent that there is a Canadian tax liability, the [ANGPC] will be taxed.

REPRESENTATIVE GRUENBERG asked whether it would be possible to insert a tax rebate provision in any agreement developed with Canada.

REPRESENTATIVE GARA asked whether there is anything proposed in the bill - with regard to setting up the ANGPC - that they ought to do differently so as to get a favorable ruling on the tax consequences on the bill.

MS. CUTLER said her firm tried to draft the bill with that in mind, attempting to put the ANGPC in the best light for tax purposes, though it is not assured that the ANGPC will receive a tax exempt ruling. She indicated that [her firm] would be willing to consider any additional suggestions that Legislative Legal and Research Services could provide.

REPRESENTATIVE GARA expressed a preference for having more input from tax experts regarding whether the bill should be changed so that a tax exempt ruling is more likely.

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MS. CUTLER then referred to proposed AS 41.42.220, and noted that it would authorize the ANGPC to establish wholly owned subsidiary entities ("Ancillary LLCs") for the purpose of owning, financing, or operating any portion of the project in order to carry out the ANGPC's purposes. These Ancillary LLCs may be either profit or nonprofit entities and may be established in jurisdictions outside of Alaska, though they must be set up in a manner that is consistent with the purposes of [proposed AS 41.42]. Ancillary LLCs may be necessary - and in the state's best interest or in the project's best interest - for the portion of the project that runs through Canada, for the GTP, for a "liquids extraction plant," for feeder lines, and for perhaps other elements of the project.

MS. CUTLER said that Ancillary LLCs will be doing the actual work, but would be set up and controlled by the ANGPC board, which would determine the powers and assets of the Ancillary LLCs and would choose, with the governor's consent, the members of their boards; furthermore, Ancillary LLC board members would serve at the pleasure of the ANGPC board. Under this concept, the ANGPC will be the entity, legally, that controls the entire project. She mentioned that the State's Canadian counsel has advised the State that there might be particular things about Canadian law, in a particular jurisdiction or province, that would require a board to be set up in a certain way, and so for this reason the language in the bill governing the set up of any Ancillary LLC and its board does not look exactly like the language pertaining to the set up of the ANGPC and its board. However, the bill does specify that certain provisions -

principally those found in Article 4 of the bill, proposed AS 41.42.400 through proposed AS 41.42.440 - do apply to any Ancillary LLC established under "this chapter."

MS. CUTLER relayed that "this is one area" [of the bill] about which her firm is very interested in speaking with the legislature's consultants, because her firm doesn't necessarily agree with suggestions made the consultants. "We're going to be dealing with different jurisdictions, and we need to give these [Ancillary LLCs] the flexibility to meet the requirements of the law of those jurisdictions, and so that is why this is set up flexibly and not as strictly as some might suggest it should be," she remarked. In response to a question, she indicated that her firm would particularly like to discuss the issue of [Ancillary LLCs] with the legislature's consultants.

REPRESENTATIVE GARA asked whether compromise language such as "shall be organized under Alaska law except where necessary" would be sufficient to alleviate concerns regarding what jurisdiction the [Ancillary LLCs] fall under, while still providing for some flexibility. He also expressed a preference for the ANGPC to be organized under Alaska law rather than Delaware law, because, according to the legislature's consultants, Delaware law is less protective of minority shareholder rights.

MS. CUTLER clarified that it's the Mainline LLC, not the ANGPC, that would be organized under Delaware law.

CHAIR McGUIRE said the ANGPC would be organized under Alaska law.

MS. CUTLER concurred. She offered her hope that the Mainline LLC agreement that is in the process of being negotiated will become the template for all the various segments of the project. Currently, however, [it specifically pertains] to the portion of the project that is the main pipeline in Alaska. Furthermore, it is anticipated that other agreements will be necessary in order to acquire an interest in other aforementioned segments of the project. She reiterated her argument that flexibility for the Ancillary LLCs will be necessary, particularly if jurisdictional issues come into play. Also, there are many business-related issues to consider when deciding where to incorporate an entity, and so the decision regarding where to incorporate [an Ancillary LLC] will need to be made by the ANGPC in conjunction with its partners in the Mainline LLC.

MS. CUTLER suggested that the language offered by Representative Gara may not necessarily be the most appropriate, but if this issue is of concern to a majority of the committee, her firm will try to come up with suitable language, perhaps something along the lines of, "unless conflicts with the laws of the resident jurisdiction". Canadian counsel has the concern, she relayed, that the state might be put in a position of not being able to take advantage of incorporation in Canada. And in the interest of making [the ANGPC] a flexible entity, the drafters have deliberately not provided for interlocking directorships.

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REPRESENTATIVE GRUENBERG referred to language on page 11, line 18, and suggested that the term "wholly owned subsidiary entities" ought to be made more flexible in case there is a need for something that isn't wholly owned or isn't a subsidiary. He also suggested that proposed AS 41.42.220 shouldn't limit the organizational jurisdictions of the Ancillary LLCs to just Canada and the United States. He then referred to the language of proposed AS 41.42.220(c) and observed that it gives the ANGPC board members total carte blanche over the Ancillary LLCs' boards. He expressed concern that this provision won't provide the state with enough oversight of any Ancillary LLCs.

MR. PORTER pointed out that the ANGPC, via the bill, will have already been given total authority to manage the entire project as it sees fit, and proposed AS 41.42.220 merely allows the ANGPC to establish other entities as necessary to fulfill its responsibilities.

REPRESENTATIVE GRUENBERG indicated that he is a little wary of allowing such to occur because the Ancillary LLCs could neither be controlled by nor have to report to the legislature.

MS. CUTLER relayed that Canadian counsel [wanted to ensure] that the boards of Ancillary LLCs would be selected by the ANGPC board, and that her firm had legal concerns because Article III, Section 22, of the Alaska State Constitution says in part: "All executive and administrative offices, departments, and agencies of the state government and their respective functions, powers, and duties shall be allocated by law among and within not more than twenty principal departments, so as to group them as far as practicable according to major purposes." There is case law stating that public corporations are appropriately public under the Alaska State Constitution, and her firm wanted to be able to argue that subsidiary entities established under HB 2003 would

be under the purview of Alaska's executive branch, but Canadian counsel has warned that Canadian law requires the principal board to appoint the board of a subsidiary. Therefore the language currently in proposed AS 41.42.220 is intended to address both concerns. She indicated that the goal is to have the ANGPC exhibit control over all Ancillary LLCs so as to preclude the development of any "rogue" entity.

MS. CUTLER, in response to questions, said it is expected that the governor will give his/her consent of Ancillary LLC board members in writing, and offered her belief that the ANGPC will have the authority to establish [its own internal operating procedures].

CHAIR MCGUIRE relayed that she is attempting to arrange for the legislature's consultants to be available at a later meeting to discuss issues of concern to members, one of those concerns being that HB 2003 merely authorizes a handoff of power and responsibility to entities that the State will have no control over. She offered her belief, though, that the language on page 11, line 23, which says, "in a manner that is consistent with the purposes of this chapter" will link any Ancillary LLCs with the ANGPC.

REPRESENTATIVE GARA asked Ms. Cutler to draft an amendment to proposed AS 41.42.220 such that any Ancillary LLCs would be organized under "Alaska law except where necessary to proceed with the project or minimize tax liabilities to the state".

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MS. CUTLER then referred to Article 3 of the bill - the financial provisions - and said it allows the ANGPC to issue bonds and enter into other forms of financing obligations as necessary. She offered her belief that it contains language similar to other public corporations of the state, adding that the expectation is that most financing will occur through straight revenue bonds or revenue bonds "with the state's moral obligation." She noted that language on pages 22 and 23 defines "financing obligations" and essentially provides for things other than bonds.

MS. CUTLER, in response to a question about dividends being returned directly to the state, referred to her earlier comments regarding power (23) outlined in proposed AS 41.42.210.

REPRESENTATIVE GRUENBERG asked whether certificates of participation ought to be included in the aforementioned definition.

MS. CUTLER surmised that such would be covered under "interim certificates" and "grant anticipation notes", but said she would research that issue further.

REPRESENTATIVE GARA asked whether the language on page 16, line 26, would allow the ANGPC to sell all or part of the state's interest in the pipeline for a price that perhaps the legislature wouldn't be happy with.

MS. CUTLER said that that language is standard for "validity of pledge" provisions regarding bonds, and simply clarifies that if the revenues from this project are already pledged to a bond issue, and then the ANGPC later decides to sell the state's interest, the ANGPC would not be prohibited from doing so unless the sale is restricted by the actual pledge itself through the trust agreement.

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REPRESENTATIVE GARA said he wants to ensure that somewhere in the bill is a provision that will preclude the ANGPC board from selling the state's assets for a price that the state wouldn't agree to.

MS. CUTLER said that the bill contains no such provision; similar to the APFC - which doesn't get permission from either the administration or the legislature before selling or buying assets - the ANGPC is completely separate and independent from the state in that regard.

REPRESENTATIVE GARA said that concerns him.

REPRESENTATIVE WILSON suggested adding language to the bill such that the legislature would be informed of any potential action that would adversely affect the state's revenue.

MS. CUTLER, in response to questions regarding vacancies on the ANGPC board, pointed out that language on page 6, lines 29-31, allows the governor to "promptly make an appointment to fill a vacancy on the board", and that such authority is not limited to the public members, though she acknowledged that perhaps the latter point could be made clearer in the bill.

CHAIR McGUIRE returned to the issue of the ANGPC selling the state's assets, and suggested that perhaps the validity of pledge provision could be narrowed to ensure that the entirety of the state's interest could not be sold without some sort of state approval.

MR. PORTER acknowledged that point.

CHAIR McGUIRE referred to the APFC board and pointed out that there has always been a tension between it and the legislature regarding how much latitude should be given and how much control should be retained when deciding what should be done with the state's assets.

MS. CUTLER, in response to a question, offered her belief that the language in Article 3 is standard language except for the term, "or other financing obligations". Referring to language on page 15, lines 9-11, she said that one would only want to establish capital reserve funds if it will enhance the marketability of bonds or other financing obligations.

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MS. CUTLER went on to explain that Article 4 of the bill, proposed AS 41.42.400 through proposed AS 41.42.440 - details the operations of the ANGPC. Specifically, proposed AS 41.42.400 establishes a gas pipeline project cash reserves fund consisting of appropriations from the legislature and money or other assets transferred to it by the ANGPC. She characterized the language of this provision as typical language similar to that governing the state's other public corporations. Assets in this fund may be pledged to pay bonds, get lines of credit, or otherwise meet "capital call" or other financial requirements of the ANGPC. All payments out of this fund must be reported to the legislature and governor. She relayed that proposed AS 41.42.410 pertains to the ANGPC's operating budget; that proposed AS 41.42.420 contains typical language and is aimed at addressing tax exempt status concerns; and that proposed AS 41.42.430 specifies that the State Procurement Code won't apply to the ANGPC or "an owner entity of the project".

MR. PORTER predicted that the other three corporations of the Mainline LLC wouldn't be able to meet the requirements of the State Procurement Code anyway.

MS. CUTLER relayed that AS 41.42.440 outlines which other statutes would not apply to the ANGPC unless proposed AS 41.42 specifically provides otherwise.

REPRESENTATIVE GRUENBERG noted that language on page 18, line 30, specifically provides that AS 37.10.070 would apply to the ANGPC, and suggested, therefore, that the language on page 19, lines 28-29, be altered to clarify that point. He also asked whether AS 37.10.070 is currently written in such a way as to satisfy what will be needed with regard to the ANGPC.

MR. PORTER said it is.

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MS. CUTLER said that AS 37.10.070 was specifically not included as an exception in proposed AS 41.42.440 because the idea is that the fund will be managed according to AS 37.10.070 but will not be considered residual funds in the treasury.

MS. CUTLER turned attention to Article 5, which pertains to financial information and control, reporting requirements, public information, and confidential information. She relayed that proposed AS 41.42.500, which she characterized as a typical provision, would allow the Legislative Budget and Audit Committee to audit the ANGPC and requires the ANGPC to provide quarterly financial statements on or before a certain day in the year. Proposed AS 41.42.510 - regarding reports and publications - was "cribbed" from the APFC, she remarked, adding her belief that everyone is proud of the APFC's report, and so the idea was to create something similar for the ANGPC in order that it could keep the public informed of its progress in an easily-understood format. The drafters deliberately did not use the phrase "newspaper of general circulation" because that has a particular meaning in case law but does not mean that something would necessarily be published in a newspaper that Alaskans in small communities would get.

REPRESENTATIVE GARA opined that the public ought to have access to information about how the Mainline LLC is conducting itself, not just to information about the ANGPC. Language on page 20, line 15-17, says that the Legislative Budget and Audit Committee may not audit or evaluate the expenditures, operations, or performance of an entity that is not wholly owned by the ANGPC. He suggested, therefore, inserting language that would mandate that the state receive an independent audit of the [Mainline LLC].

MR. PORTER pointed out that the partners of the Mainline LLC always have the right to audit each other, and that a portion of the information garnered from any such audit would be made available to the public, though not the entire audit. So an audit can be conducted, but it must be done by the ANGPC acting on behalf of the state.

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REPRESENTATIVE GARA suggested that they include a provision stipulating that the ANGPC shall ask for an independent audit of the [Mainline LLC] every two years and that the results of that audit shall be made available to the public except for items that should remain confidential.

MR. PORTER indicated that it has been difficult coming up with language that will ensure that the public gets the information it ought to while also ensuring that the producers' trade secrets are kept confidential.

REPRESENTATIVE GARA suggested simply including references to the portions of the bill that specify the items that must remain confidential.

MS. CUTLER said they would take those suggestions under consideration, but asked members to keep in mind that the state has other public corporations that have engaged in outside investments with private companies, and while those public corporations can be audited by the Legislative Budget and Audit Committee and have a similar right to audit the management of those outside investments, not every detail that is revealed by such audits is necessarily made public; furthermore, the Legislative Budget and Audit Committee doesn't have the right to audit those private companies, and the language in HB 2003 is simply setting up something similar for the ANGPC as it engages in a partnership with the producers by way of the Mainline LLC.

MR. PORTER concurred, adding that information about a private corporation doesn't automatically become public simply because it does business with a public corporation of the state.

MS. CUTLER and MR. PORTER, in response to questions, reiterated that the ANGPC and any of its wholly owned subsidiaries can be audited by the Legislative Budget and Audit Committee, but that the Legislative Budget and Audit Committee won't have the right to audit the other partners in the Mainline LLC, and that

although the ANGPC can audit its partners in the Mainline LLC, not all information garnered from such audits will be made public.

MS. CUTLER offered her understanding that Representative Gara is simply suggesting the ANGPC request an audit of its partners in the Mainline LLC every two years.

MR. PORTER, in response to a question, said there should be a provision in the Mainline LLC agreement that would allow the ANGPC to share certain confidential information with the Legislative Budget and Audit Committee, though perhaps confidentiality statements might have to be signed. Furthermore, the ANGPC, as much as it can, will make information public via a "financing statement."

MS. CUTLER noted that the confidentiality provisions of HB 2003 stipulate that confidential information may be shared with the entire legislature and not just the Legislative Budget and Audit Committee, because the legislature must be able to make decisions regarding appropriations.

REPRESENTATIVE GRUENBERG expressed concern with the provision that precludes the Legislative Budget and Audit Committee from conducting audits of entities that are not wholly owned by the ANGPC.

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REPRESENTATIVE GARA said he is comfortable with that provision as long as some auditor that owes a duty to the state can conduct an audit of entities not wholly owned by the ANGPC - in this instance it would be an audit conducted by the ANGPC, which does owe a duty to the state. He again mentioned that he wants to add language stipulating that a substantial portion of the information garnered from any audits conducted by the ANGPC of the Mainline LLC shall be made available to the public.

MR. PORTER clarified that proposed AS 41.42.520(c)(3) stipulates that certain confidential information may be disclosed when its production is required for a confidential briefing of the governor, the legislature, or a legislative committee.

REPRESENTATIVE GRUENBERG asked whether the bill limits the power of the Legislative Budget and Audit Committee and other committees to issue subpoenas.

MR. PORTER offered his belief that HB 2003 actually enhances the power of the legislature to receive confidential information from the ANGPC and the Mainline LLC via the ANGPC; the next stage would be to then provide a financial summary of that confidential information to the public, and that is the intent.

REPRESENTATIVE GRUENBERG observed that the language on page 20, lines 15-17, would seem to divest the Legislative Budget and Audit Committee of its ability to evaluate operations or performances of entities not wholly owned by the ANGPC.

MR. PORTER pointed out that the Legislative Budget and Audit Committee never had that ability; instead, the ANGPC will have that ability and can therefore keep the Legislative Budget and Audit Committee apprised such that the Legislative Budget and Audit Committee can fulfill its duties to the state. In other words, the Legislative Budget and Audit Committee has a relationship with the ANGPC but not with the Mainline LLC or other entities not wholly owned by the ANGPC, and so it is the ANGPC that is responsible for providing information about the Mainline LLC to the Legislative Budget and Audit Committee.

REPRESENTATIVE GRUENBERG opined that the term "newspaper" as it is used in proposed AS 41.42.510 ought to be defined in some way.

MS. CUTLER observed that doing so would be a policy call.

MR. PORTER explained that they sought to use broad language so as to have the report be as accessible to as many people as possible. He offered his understanding that the report will also be made available on a web site.

MS. CUTLER said she has reviewed the language regarding audits and evaluations as they pertain to the APFC, and has surmised that it too emphasizes the fact that just because the state does business with or invests in a private company, that does not mean that the Legislative Budget and Audit Committee is allowed to [directly] audit or evaluate that private company.

REPRESENTATIVE GRUENBERG asked whether the statute pertaining to the APFC speaks to the issue of publishing its report in newspapers.

MS. CUTLER said she would research that issue further, but believes that that statute uses the term, "newspaper of general circulation".

[HB 2003 was held over.]

ADJOURNMENT

3:59:03 PM

The House Judiciary Standing Committee was recessed at 3:59 p.m. to a call of the chair. [The meeting was reconvened on June 3, 2006.]