

**ALASKA STATE LEGISLATURE
HOUSE JUDICIARY STANDING COMMITTEE**

June 3, 2006
12:27 p.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 Paul Seaton
Representative David Guttenberg
Representative Ethan Berkowitz

Senator Ralph Seekins

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."

- MOVED CSHB 2003(JUD) OUT OF COMMITTEE

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: HB2003

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
06/02/06	(H)	Heard & Held
06/02/06	(H)	MINUTE(JUD)
06/03/06	(H)	JUD AT 11:15 AM CAPITOL 120

WITNESS REGISTER

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

POSITION STATEMENT: On behalf of the administration, continued with a sectional analysis of HB 2003 and responded to questions.

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

POSITION STATEMENT: On behalf of the administration, responded to questions during discussion of HB 2003.

PHILLIP C. GILDAN, Attorney at Law
Greenberg Traurig, LLP
West Palm Beach, Florida

POSITION STATEMENT: Provided comments and suggestions for change during discussion of HB 2003, and responded to questions.

TAMARA COOK, Director
Legislative Legal and Research Services
Legislative Affairs Agency (LAA)
Juneau, Alaska

POSITION STATEMENT: Responded to questions during discussion of proposed amendments to HB 2003.

DENNIS DeWITT, Special Staff Assistant
Capitol Office
Office of the Governor
Juneau, Alaska

POSITION STATEMENT: Responded to questions during discussion of proposed amendments to HB 2003.

NICHOLAS J. SPILIOTES, Attorney at Law
Morrison & Foerster, LLP
Washington, D.C.

POSITION STATEMENT: Responded to questions during discussion of proposed amendments to HB 2003.

ACTION NARRATIVE

CHAIR LESIL MCGUIRE called the House Judiciary Standing Committee meeting, which had been recessed on 6/2/06, back to order at [12:27:25 PM](#). Representatives McGuire, Coghill, Gruenberg, Wilson, Kott, and Gara were present at the call to order. Representative Anderson arrived as the meeting was in progress. Representative Seaton was also in attendance.

HB 2003 - NATURAL GAS PIPELINE CORPORATION

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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."

[12:29:00 PM](#)

LOUISIANA W. CUTLER, Attorney at Law, Preston Gates & Ellis, LLP, relayed that in Article 5 of HB 2003, proposed AS 41.42.520 provides that the Alaska Natural Gas Pipeline Corporation

("ANGPC") is subject to the Public Records Act though with certain explicit exceptions outlined on page 21, lines 7-20:

- (1) information pertaining to the particulars of the business or affairs of an owner entity of the project, including, without limitation, tax returns, financial statements, and business plans;
- (2) information containing a trade secret or other proprietary information of the corporation or of an owner entity of the project;
- (3) information that is confidential or privileged under the laws of the state, whether at common law or by statute or court rule;
- (4) information that is required to be kept confidential under an agreement with an owner entity of the project, or with other participants in an owner entity of the project;
- (5) information that would affect the competitive position of the corporation or an owner entity of the project;
- (6) information of the corporation or an owner entity of the project that has commercial value that might be significantly diminished by public disclosure.

MS. CUTLER relayed that proposed AS 41.42.520(b) specifies that the Public Records Act doesn't apply to an owner entity of the gas pipeline project unless the ANGPC wholly owns that entity. Proposed AS 41.42.520(c) in part outlines the circumstances under which confidential information can be disclosed:

- (1) for the purpose of an official law enforcement investigation;
- (2) when its production is required by an administrative or court order;
- (3) when its production is required for a confidential briefing of the governor, the legislature, or a legislative committee;
- (4) when its production is required to lenders or potential lenders to the corporation or an affiliated entity of the corporation, underwriters, guarantors, or insurers; and
- (5) in the case of a public offering of bonds, if such disclosure is required by law or market practice and all other owner entities of the project receive prior notice of the disclosure.

MS. CUTLER mentioned that producing confidential information as stipulated in paragraph (4) does not mean that that information will then become public information. She pointed out that page

21, line 31, currently says, "and (5)", but she would like to see it changed to say "or (5)"; such an amendment will clarify that information can be disclosed for any one of the aforementioned purposes rather than needing all five purposes present.

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REPRESENTATIVE GRUENBERG made a motion to adopt Amendment 1, to change "and (5)" on page 21, line 31, to "or (5)". There being no objection, Amendment 1 was adopted.

MS. CUTLER explained that proposed AS 41.42.520(c) also stipulates that the information disclosed under it remains an exception to the right of inspection of public records under AS 40.25.110 and AS 40.25.120, and that except for information used in the case of a public offering for bonds, a person receiving information shall maintain the confidentiality of the information. She pointed out that for bond issuances, there are going to be some reporting requirements regarding information that would otherwise be considered confidential. She mentioned that proposed AS 41.42.520(d) contains typical language stipulating that the publication of statistics and other information is allowed as long as it is done in a manner that doesn't breach confidentiality.

REPRESENTATIVE GRUENBERG raised the issue of requiring compliance with Alaska law for all members of the proposed Pipeline Project Mainline Limited Liability Company (LLC) Entity ("Mainline LLC"). He asked whether HB 2003 currently specifies that the agreement between the entities forming the Mainline LLC must include a provision requiring that Alaska law controls to the extent that it's not prohibited by some other law.

MS. CUTLER said the administration would not be in favor of such a provision and none such is included in the bill at this time.

REPRESENTATIVE GRUENBERG asked what is to prevent the other partners in the Mainline LLC from saying they are not bound by [the bill].

MS. CUTLER again explained that HB 2003 simply creates the ANGPC, the public corporation through which the state will take its membership interest in the Mainline LLC, but does not regulate the Mainline LLC itself, though the bill does include a few provisions that would apply to the Mainline LLC; for example, the indemnification provision and the provisions

stipulating that the Open Meetings Act and the Public Records Act won't apply to the Mainline LLC.

REPRESENTATIVE GRUENBERG noted that language in proposed AS 41.42.530 refers to other owner entities and thus would seem to govern any disclosures in the state.

MS. CUTLER clarified that this language is merely stipulating that information in the possession of the ANGPC or another state entity that pertains to the particulars of the business or affairs of an owner entity in the project will remain confidential. She again pointed out that proposed AS 41.42.520(b) specifies that the Public Records Act does not apply to information in the possession of an owner entity of the project. In response to a comment, she noted that the Mainline LLC agreement will also contain confidentiality provisions.

REPRESENTATIVE GRUENBERG surmised that proposed AS 41.42.520(a) won't prevent a third party such as a reporter from disclosing the information outlined therein.

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STEVEN B. PORTER, Deputy Commissioner, Office of the Commissioner, Department of Revenue (DOR), concurred; one must view this legislation as the state's grant of authority and rights to an entity it's creating, and therefore does not govern third party actions. Furthermore, if the four partners in the Mainline LLC together determine that something that is otherwise confidential can be made public, nothing in HB 2003 prevents them from doing so.

REPRESENTATIVE GRUENBERG opined that proposed AS 41.42.520(a)(5) would seem to make everything confidential, and could confer standing that any owner entity of the Mainline LLC could demand, even of third parties, that something be kept secret. It also leaves open the question of who decides whether certain information would affect the competitive position of an owner entity. He characterized this language as too broad.

MR. PORTER said that language is very common in the industry.

REPRESENTATIVE GRUENBERG acknowledged that point, but questioned whether it constitutes good public policy.

MR. PORTER mentioned that the Alaska Stranded Gas Development Act has similar language. When dealing with private parties,

their competitive positions must be protected; furthermore, as an owner entity of the Mainline LLC, the state - through the ANGPC - may be negotiating with contractors and other third parties, and therefore information vital to the state's competitive position must also be held confidential.

REPRESENTATIVE GRUENBERG pointed out, however, that in some sense, the other three owner entities may be competitors of the state and the ANGPC, and that language is saying that information about the other three owner entities can't be disclosed even if it means that the ANGPC - and therefore the state - would be harmed.

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MR. PORTER clarified that the language is not preventing the partners of the Mainline LLC from disclosing information amongst themselves. All the partners of the Mainline LLC will have access to all the information, even confidential information.

REPRESENTATIVE GRUENBERG asked whether the agreement referred to in proposed AS 41.42.520(a)(4) could be between a third party and one of the owner entities.

MR. PORTER indicated that it could be.

REPRESENTATIVE GRUENBERG surmised, then, that information which would otherwise be disclosed under state law could be kept confidential simply because one of the owner entities and a third party deem that it should be, thus unilaterally trumping state law.

MS. CUTLER characterized that as an overstatement, adding that proposed paragraph (4) can't be read in isolation but must instead be read in context with subsection (a); the ANGPC, as an owner entity in the Mainline LLC agreement, will have rights to confidential information and must therefore maintain confidentiality. Entering into an agreement with an owner entity of the Mainline LLC does not mean that confidential information automatically becomes part of the public record just because the Mainline LLC has as one of its owners the ANGPC.

MR. PORTER explained that if certain information is already public, two entities cannot simply agree to make it confidential, but if an owner entity and a third party enter into an agreement and then share confidential information with the ANGPC, that information will remain confidential.

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REPRESENTATIVE GARA surmised that nothing in the bill regulates the information held by the Mainline LLC.

MS. CUTLER concurred.

MR. PORTER clarified that public information held by the Mainline LLC remains public, and confidential information remains confidential; existing law is not changed in that regard, and merely going into partnership with a state-owned public corporation won't change that.

REPRESENTATIVE GARA opined that the bill ought to contain a provision that would allow [the legislature] to access [confidential] information held by the Mainline LLC. He also opined that proposed AS 41.42.520(a)(4) will allow an owner entity of the Mainline LLC to keep illegal activities confidential.

MR. PORTER offered his understanding that criminal acts cannot be kept secret, and assured the committee that that is not the intent of that language - should the ANGPC become aware of illegal acts, it will disclose them.

REPRESENTATIVE GARA argued that as written, that language would allow information about illegal acts to be kept confidential.

MS. CUTLER echoed that that is not the intent, and reiterated that proposed AS 41.42.520(c) stipulates that information that is considered confidential may be disclosed for the purpose of an official law enforcement investigation. She offered her understanding that in virtually every joint venture, there are typical provisions in confidentiality agreements, and evidence of illegal acts is not considered to be confidential. She indicated that her firm would be amenable to considering an amendment clarifying that point.

REPRESENTATIVE GARA offered his belief that law enforcement agencies won't be investigating possible breaches of contractual duties. He suggested that language on page 21, line 5, be changed to say that the information is confidential to the extent that it doesn't involve illegal conduct. He also offered his belief that the language in proposed AS 41.42.520(a)(1) - information pertaining to the particulars of the business or affairs of an owner entity of the project, including, without

imitation, tax returns, financial statements, and business plans - is "everything relating to that business"; in other words, none of the information that the ANGPC has access to is going to be accessible to the public. He indicated that it would be acceptable to him to limit the public's access to tax returns and business plans, but he has a problem with limiting the public's access to information that could be considered as pertaining to the affairs or particulars of a business.

MR. PORTER, in response to a question, offered his belief that there is a conceptual difference between proposed AS 41.42.520(a)(1) and proposed AS 41.42.520(a)(5), and recommended that both provisions be kept in the bill.

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CHAIR McGUIRE noted that Article 6 contains definitions.

MS. CUTLER indicated that Section 3 of HB 2003 exempts the ANGPC, any subsidiary entities ("Ancillary LLCs") of the ANGPC, and any owner entity of the project from the procurement code; that Sections 4 and 5 make changes that will exempt the ANGPC and any Ancillary LLCs from the prohibitions outlined in AS 37.10.085 - that the state or political subdivisions can't make a subscription to the capital stock of a corporation, lend its credit for the use of a corporation, or borrow money for the use of a corporation; and that Section 6 - Article 7 - establishes an Alaska natural gas pipeline construction loan fund in the DOR. This fund will provide the ANGPC another option with which to meet its financial obligations. For example, if it is determined that it makes sense for the state to loan money directly to the ANGPC [or to an Ancillary LLC], this fund could be utilized.

REPRESENTATIVE GRUENBERG asked whether Article 7 is establishing a dedicated fund, which is unconstitutional.

MS. CUTLER said it wasn't a dedicated fund according to her view.

MR. PORTER added that it could be viewed in the same manner as the state's education fund.

MS. CUTLER relayed that Section 7 of HB 2003 makes the staff of the ANGPC board exempt service employees; that Sections 8 and 9 pertain to financial disclosures [of staff]; that Section 10 pertains to the Alaska Executive Branch Ethics Act [and boards

of Ancillary LLCs]; that Section 11 exempts [the information described in proposed AS 41.42.520] from the Public Records Act; and that Sections 12 and 13 "deal with an issue that has arisen with respect to how [the ANGPC] and the other members of the [Mainline LLC] will essentially pay for the inevitable negligence and other forms of liability that will occur in a project of this magnitude."

REPRESENTATIVE GRUENBERG asked why, via Section 10, the administration is proposing to exempt the boards of Ancillary LLCs from the Alaska Executive Branch Ethics Act.

MS. CUTLER said it is because there may be different ethics requirements for boards of Ancillary LLCs established in other jurisdictions, such as Canada, and Canadian counsel has a great deal of concern that the State be able to take advantage of having the laws of Canada apply to those Ancillary LLCs.

REPRESENTATIVE GRUENBERG pointed out, however, that as currently written, Section 10 is just a carte blanche exemption - leaving the boards of Ancillary LLCs subject to no law with regard to ethics.

MR. PORTER, in response to a request, pointed out that Ancillary LLCs would be wholly owned subsidiaries of the ANGPC, as if they were staff to the ANGPC, and the ANGPC will have absolute control and authority over the membership of those [boards of directors], which will have a responsibility to the ANGPC. Also, nothing exempts the Ancillary LLCs and their boards from existing laws governing illegal activities. Furthermore, if an Ancillary LLC is formed in Canada, it will be subject to Canadian law, including Canadian ethics laws, though they may be slightly different than Alaska's. He offered his understanding that the ANGPC will probably own all the interests in Alaska.

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REPRESENTATIVE GARA expressed a concern that exempting the boards of Ancillary LLCs might result in them making decisions and taking actions that benefit their personal businesses, and opined that it is not accurate to simply say that those boards will be subject to the laws of other jurisdictions. He asked that the ethics laws of Canada be provided to him. He added, "If we're going to give somebody the privilege of a probably substantial salary to run an important state project, I don't think it's too much to ask of them to be subject to our laws relating to ethics."

MR. PORTER clarified that the boards of directors will not be receiving substantial salaries.

MS. CUTLER acknowledged Representative Gara's concern; reiterated that this provision was developed on the advice of the state's Canadian counsel; and agreed to ask Canadian counsel for more information [regarding Canadian ethics laws].

REPRESENTATIVE GARA asked whether an [executive director] - who could be receiving a substantial salary from the state - would be considered part of the governing body under Section 10.

MS. CUTLER said she would research that issue.

REPRESENTATIVE GRUENBERG opined that the bill's current language is so broad that it will allow "other things" to occur, and that the language ought to be narrowed with some sideboards or control, particularly given that the public is so sensitive to ethics issues. He said that he would like to have this issue resolved with the help Ms. Cutler and Mr. Porter, specifically that they consider the worst case scenario and strive to prevent it via a change in the language.

MS. CUTLER acknowledged Representative Gruenberg's concern.

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MS. CUTLER returned attention to Sections 12 and 13, and said it attempts to make the project exempt from AS 45.45.900 and any [similar] common law doctrine, because there is case law, in addition to AS 45.45.900, that holds that indemnification agreements in construction contracts are against public policy. The current statute, she posited, was designed with much smaller projects in mind. With a project of this magnitude, however, and with the typical model that is used for building pipelines and other large construction projects around the world, normally the operators are indemnified and the parties indemnify each other, and this is intended to save everyone money. In a project of such magnitude, there is going to be liability - this project is expected to employ 10,000 people - things are going to happen, mistakes are going to be made, and there won't just be mistakes occurring - there will also be gross negligence and willful misconduct. Such things are inevitable in a project of this size, and so what folks can do to prepare themselves is for either the operator to get all the insurance that's required - but then members will pay the operator more - or for each

member, as a part of its capital contribution to the Mainline LLC, to pay the cost of any negligence, willful misconduct, or [reckless] behavior. Sections 12 and 13 provide the statutory authority required to do the latter.

MS. CUTLER said the hope is that this statutory authority is drafted broadly enough to cover any language that's included in the Mainline LLC agreement, language that will govern "this particular relationship between the parties." However, the intent is for this authority to also cover all possibilities, one of which could include the operator not always being the entity that has all the people needed to do all the jobs. For example, it could be that one of the other members has employees with particular expertise in a particular field, and it could be better, more efficient, or cheaper for that member's employees - either via contract or via "subordinating" - to perform a particular function. These provisions, which she characterized as necessary, are designed to allow all parties, regardless of who actually fulfills a function, to be indemnified by all the other parties, so that the inevitable instances of negligence, willful misconduct, mistakes, et cetera can be dealt with.

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REPRESENTATIVE GARA offered his recollection that if the state were to indemnify another party, it is essentially saying that the state will pay for that party's costs incurred due to negligence, willful misconduct, recklessness, or other illegal activities. He asked why the state should indemnify the members of the Mainline LLC from such behavior, and whether Section 13 would indemnify an entity from any taxes it owes.

MR. PORTER explained that the State is normally in a position of hiring contractors to do particular jobs for it, but for the proposed pipeline project, the State will actually be the contractor's partner and thus participating in a different role. Where normally the contractor hired to do a job would buy insurance and charge its partner more money, the state now - as a partner - has the choice of either going that route and being charged overhead by the operator, or sharing equally with all the other owners in all additional risk. Again, via the language of Sections 12 and 13, the state is choosing the latter route. In response to a question, he offered his understanding that all the partners will be required to indemnify all the other partners.

MS. CUTLER clarified that the bill itself doesn't require such; instead it simply provides the authority that allows the Mainline LLC agreement to contain a requirement that all partners indemnify all the other partners. In response to a further question, she assured the committee that the intent is to have the Mainline LLC agreement contain such a requirement; furthermore, every entity involved in the project, not just the four partners in the Mainline LLC, will be required to indemnify every other entity.

REPRESENTATIVE GARA pointed out, though, that the language in the bill itself only says every entity may indemnify all other entities; whether such will actually be required in the Mainline LLC agreement is as yet unknown.

MS. CUTLER and MR. PORTER concurred.

CHAIR McGUIRE mentioned that the legislature's consultants will be available later in the meeting to answer questions.

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REPRESENTATIVE GARA sought assurance that the aforementioned indemnification would not be applied to the tax liability from a proposed reserves tax.

MS. CUTLER said it wouldn't.

REPRESENTATIVE GARA questioned, however, whether a reserves tax would fit under the language of, "any and all liability ... of any kind or character" found in proposed AS 45.45.905(a).

MS. CUTLER cautioned that that language should be read in the context of the sentence as a whole:

An owner entity that constructs, owns, or operates the Alaska North Slope natural gas pipeline project, or any portion of the project, or disposes of gas from the field to a gas treatment plant or that pipeline, or any person or entity that holds an ownership interest in such an owner entity, may agree, in whole or in part, to indemnify, defend, release, and hold harmless from any and all liability or damages of any kind or character, including any degree of negligence or other misconduct, whether sole or partial, direct or imputed from any other person, arising from or relating to construction, establishment, ownership,

operation, or any other use or activity relating to constructing or operating the project, the following:

MS. CUTLER characterized this language as typical indemnity language, adding that it relates to a particular thing, that being, "construction, establishment, ownership, operation, or any other use or activity relating to constructing or operating the project", and thus won't address anything outside of constructing or operating the project. It is not the intent of this language to indemnify "the producers" - the other three corporations/owners of the [Mainline LLC] - from the aforementioned proposed reserves tax, she reiterated.

REPRESENTATIVE GARA asked whether the administration would be amenable to having language inserted that stipulates that this provision won't apply to state tax or royalty liability.

MR. PORTER characterized the current language as straightforward, and opined that it would be inappropriate and an example of poor draftsmanship to insert exclusions into it.

REPRESENTATIVE GARA indicated that he remains concerned with the current language of proposed AS 45.45.905(a).

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MS. CUTLER relayed that she does not have any written comments from the legislature's consultants regarding this provision of the bill.

REPRESENTATIVE GARA said he is referring to the May 23, 2006, memorandum written by Phillip C. Gildan [of the consulting firm of Greenberg Traurig, LLP], specifically the comments on page 2, paragraph 3.

MS. CUTLER clarified that she is familiar with those comments, but had thought that Representative Gara was indicating that the consultants were suggesting different language for the bill.

REPRESENTATIVE GRUENBERG surmised that the indemnification provision would indemnify willful misconduct.

MS. CUTLER concurred.

REPRESENTATIVE GRUENBERG suggested to Ms. Cutler that the language in proposed AS 45.45.905(a) may go beyond "what you're trying to cover."

MS. CUTLER agreed to research that issue further.

CHAIR McGUIRE announced that the committee would recess for lunch.

2:51:44 PM

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

2:52:40 PM

REPRESENTATIVE GARA, referring to both the aforementioned memorandum and others by Greenberg Traurig, LLP, asked Mr. Gildan to express his concerns with HB 2003.

PHILLIP C. GILDAN, Attorney at Law, Greenberg Traurig, LLP, relayed that his consulting firm has very few concerns with the bill, but he'd wanted to ensure that the ANGPC has the requisite flexibility to address all of the various needs likely to arise once the Mainline LLC is established, and to that end, [his June 2, 2006, memorandums, beginning on page 3,] contain suggested changes to Section 2 of the bill as well as a new proposed subsection (c) for AS 42.06.230. He mentioned that his suggested changes are also intended to provide clarity regarding the intent of the legislation.

MR. GILDAN relayed that some of his suggestions include adding six more "powers" to proposed AS 41.42.210; adding a proposed AS 41.42.090 to provide for the appointment of corporation representatives and ensure that they have more pre-established authority; and rewriting proposed AS 41.42.220(c) and (d) to provide that members of the governing body of Ancillary LLCs be the members of the board of the ANGPC so as to maintain the administration's chain of command and control and so as to provide for continuity with regard to board membership. On the latter point, though, providing an exception for a Canadian entity might be appropriate, he acknowledged. Another suggested change would be the addition of a proposed AS 41.42.450 which would - in subsection (a) - specify that in the event of a conflict between proposed AS 41.42 and existing AS 43.82, that AS 43.82 would prevail; he noted, however, that the

administration has made cogent arguments regarding why it may not want to deal with that issue in advance.

MR. GILDAN indicated that his proposed AS 41.42.450(b) and (c) would narrow the definition of dispute and clarify what would be covered under HB 2003, because he wanted to ensure that the "dispute resolution processes were coordinated among and between the two ... entities and the various contracts" so as to avoid "forum shopping" or races to file disputes. He also indicated that the new proposed subsection (c) for AS 42.06.230 would allow the ANGPC to operate without running afoul of the Regulatory Commission of Alaska (RCA); although this provision may not be necessary, he wanted to ensure that any conflict with the RCA wouldn't handcuff or delay the project.

MR. GILDAN concluded by saying that all of his concerns are addressed via his suggested changes.

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REPRESENTATIVE GARA, referring to paragraph 3 of page 2 of the aforementioned May 23 memorandum, again relayed that he still has concerns that the indemnity provisions in Sections 12 and 13 will allow the producers to indemnify themselves from a proposed reserves tax that is due be voted on in the general election. He asked whether these provisions could be interpreted such that the producers would be indemnified from any tax liabilities owed, or such that the state would be forced to reimburse the producers for any taxes they pay.

MR. GILDAN said that there is the possibility that the Mainline LLC agreement might contain language that could indirectly create such a situation, but noted that such a concern might be more directly attributable to HB 2004; he suggested that the legislature may want to include some form of limitations on the indemnification provisions. He offered his belief that typical indemnification provisions don't indemnify an entity for its intentional or criminal actions. Another option might be to place a cap on either the amount or the type of damages that indemnification would apply to.

REPRESENTATIVE GARA asked Mr. Gildan to help draft language that would ensure that the state won't be required to reimburse a producer for taxes or royalties owed to the state.

MR. GILDAN suggested adding language to page 28 such that the [ANGPC] would indemnify the Mainline LLC and any entities that

it creates but not any of the other owners of the Mainline LLC. He acknowledged, however, that such a change might be too broad.

REPRESENTATIVE GARA said he could accept indemnifying entities for negligence relating to construction and operation, but since the language, "all liability ... of any kind or character" is so broad, he want's to clarify that no one has a right to indemnity from tax or royalty payments to the state.

MR. GILDAN suggested adding the language: "however, no indemnity shall extend to tax losses".

REPRESENTATIVE GARA suggested instead: "no indemnity shall be extended for tax or royalty payments". He asked Mr. Gildan to comment on whether the proposed indemnification provisions are really necessary.

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MR. GILDAN said that indemnity as an equitable remedy is very useful in the right situation, and that joint indemnities work well, particularly if there are proper limits to the indemnity and as long as one party isn't indemnifying another party for criminal penalties incurred.

REPRESENTATIVE GARA suggested adding to page 28, line 5, the language, "indemnity for these things or other non-criminal misconduct"; this would eliminate indemnification for criminal conduct.

MR. GILDAN suggested precluding indemnification for intentional actions also.

REPRESENTATIVE GARA suggested, then, providing indemnification for, "other non-criminal or unintentional conduct".

MR. GILDAN ventured that such language might help.

REPRESENTATIVE GARA surmised, then, that Mr. Gildan is suggesting that indemnification be provided for everything except intentional misconduct and criminal conduct.

MR. GILDAN concurred.

REPRESENTATIVE GARA expressed comfort with such a change.

[3:19:31 PM](#)

REPRESENTATIVE GARA [referring to Section 10] relayed to Mr. Gildan that he has concerns about exempting the governing boards of Ancillary LLCs from the state's ethics Act. He questioned whether that exemption would also apply to the executive directors [or staff] of the Ancillary LLCs.

MR. GILDAN opined that that exemption should apply only to the boards, and surmised that as written, it does just that.

REPRESENTATIVE GARA asked whether board members ought to be subject to the state's ethics Act.

MR. GILDAN, acknowledging that he is not familiar with the Alaska Executive Branch Ethics Act, said that in certain instances, particularly those involving proprietary corporations, one would want to provide for the flexibility to appoint board members who have the necessary expertise, but sometimes there are elements of an ethics Act that would prohibit one from recruiting the best people, so exempting board members from an ethics Act can ensure that that flexibility is maintained. Also, generally there will be other provisions in an operating agreement that specify one can't enter into "self dealing" agreements. He offered his belief that in this instance, the benefits of being able to appoint the most qualified people as board members warrants an exemption from the state's ethics Act.

REPRESENTATIVE GARA indicated that he would be offering an amendment intended to insure that the ANGPC board members don't have financial ties to the oil companies, and questioned whether Ancillary LLC board members ought to be restricted in the same way.

MR. GILDAN referred to his suggested change to subsections (c) and (d) of proposed AS 41.42.220, and reiterated that it would provide that the ANGPC board members be the Ancillary LLC board members, though, again, there might need to be an exception to that requirement with respect to any Canadian Ancillary LLC.

[3:25:21 PM](#)

REPRESENTATIVE GARA suggested adding to that proposed change language along the lines of, "unless the laws of another sovereign require otherwise".

MR. GILDAN concurred.

REPRESENTATIVE GARA questioned whether requiring the ANGPC board members to be the board members of all the Ancillary LLCs would be practical.

MR. GILDAN opined that it would be practical, remarked that other entities already do something similar, and noted that he'd included language stipulating that the corporate entity remains intact notwithstanding the interlocking board and that having an interlocking board shall not be cause for piercing the corporate veil or disregarding that legal entity.

MR. GILDAN, in response to a question, offered his belief that as the bill is currently written, the ANGPC would be subject to the jurisdiction of the RCA, and his suggestion to add a new subsection (c) to AS 42.06.230 is intended to provide the ANGPC with the flexibility to address its own issues without the RCA looking over its shoulder.

REPRESENTATIVE GARA mentioned that he'd like to ensure that the ANGPC's revenue is exempt from federal taxes.

[3:29:59 PM](#)

MR. GILDAN indicated that he is not aware of anything missing from the bill that could further that end. In response to a question regarding the bill's proposal to exempt the ANGPC from the Open Meetings Act, relayed that he had merely flagged that point in his comments because although there are good policy reasons for doing so, there are also "lots of cons" to doing so. For example, in operating a proprietary business for the state as is being proposed via HB 2003, there are very good reasons for not having the same open meeting and public record requirements as would normally apply to a government entity; however, on the flip side of that is that there will be less transparency. He acknowledged, though, that the bill does attempt to address that issue by requiring that at least some meetings occur in the public realm. He said he has no specific recommendations for change regarding that issue, and surmised that it is addressed sufficiently in the bill, though perhaps more flexibility ought to be provided for as well.

REPRESENTATIVE GARA referred to proposed AS 41.42.520, which outlines the types of information that the Public Records Act won't apply to, remarked that generally his preference is to always give the public access to information, and asked Mr. Gildan to comment on that issue.

MR. GILDAN pointed out that the types of information listed in that provision generally are exempted from public records Acts, but suggested that the legislature ought to make sure that there is some mechanism in place to determine whether particular information really counts as one of the listed types.

REPRESENTATIVE GARA said he wants to ensure that conduct which violates Alaska law won't be kept from the public via the use of that provision.

[3:35:36 PM](#)

MR. GILDAN surmised that including a caveat to that effect would be reasonable and won't change the intent of the provision. He offered his belief that as that provision is currently written, only those items that are proper and legal and above board will be exempted from the Public Records Act.

REPRESENTATIVE GARA opined that the first listed exception - proposed AS 41.42.520(a)(1) - seems to be written very broadly, so much so that it might be interpreted to mean "everything" relating to the business.

MR. GILDAN acknowledged that the current language is broad, but remarked that it would be difficult to tighten up that language and still ensure that confidential information remain so. He pointed out that although the provision exempts certain information from public disclosure, the ANGPC, as a state corporation, should have a duty and responsibility to make as much information as possible available to the public.

REPRESENTATIVE GARA acknowledged that ideally it should work that way.

MR. GILDAN also pointed out that the state's attorney general will be the ANGPC's legal counsel and as such will have access to the types of information listed.

MS. CUTLER said her firm agrees with Mr. Gildan that it is a policy call whether to exempt the ANGPC from the state's Open Meetings Act, and appreciates his comment that the drafters have done a pretty good job with the language in question. Her firm does not agree, however, with Mr. Gildan's comments regarding Section 13, and would prefer not to mix up the indemnification already provided for therein with the royalty and reserves tax issue raised by Representative Gara; instead the royalty and

reserves tax issue would be better addressed via the Alaska Stranded Gas Fiscal Contract ("ASGF Contract"). The indemnification provision is intended to deal with the need to move the project forward and indemnify entities in the context of construction agreements, and is not intended to embrace the reserves tax issue, but by specifically stating that that provision is not intended to be used to indemnify a tax liability, it may bring that reserves tax issue into HB 2003, something her firm would prefer didn't happen.

[3:44:33 PM](#)

REPRESENTATIVE GARA questioned why they shouldn't simply clarify the issue of the reserves tax in HB 2003.

MS. CUTLER suggested that there is a difference of opinion between the administration and Representative Gara regarding the reserves tax initiative, and reiterated her belief that the administration doesn't want the initiative issue brought into the bill and is not appropriately addressed in the context of the bill.

REPRESENTATIVE GARA repeated his question.

CHAIR MCGUIRE surmised that the sponsors simply are not amenable to including language drafted in the negative stating all the things that the bill is not meant to do.

MS. CUTLER, with regard to the comments by Mr. Gildan regarding not indemnifying criminal conduct and intentional actions, offered her understanding that the bill's current language is indeed intended to indemnify the parties for more than just simple negligence, particularly given that in a workforce of 10,000 people, someone could do something that is grossly negligent. She pointed out that the language of the indemnification provision says in part, "any degree of negligence or other misconduct, whether sole or partial, direct or imputed from any other person, arising from or relating to ...", adding that she will check to see if that language is intended to cover criminal misconduct, though she believes it is.

MS. CUTLER added that if there is a bad act that occurs with respect to the line workers on the pipeline, that is something that everyone will have to pay for anyway, and so the best way to deal with such potential situations is through the mechanism outlined in the bill. She offered her understanding that there

will be a two-tiered approach: for higher level personnel, there would not be indemnification for really bad acts such as fraud or embezzlement, but for lower level personnel there could indeed be indemnification for some bad conduct.

[3:50:43 PM](#)

MR. GILDAN remarked that that two-tiered approach makes sense, adding that his concern pertains to crimes and intentional acts committed by upper level personnel, whereas bad acts undertaken by lower level personnel are just part of doing business. He offered his hope that there is a mechanism for addressing this issue as she described.

MS. CUTLER, acknowledging that HB 2003 is just the authorizing legislation, reiterated that it is the administration's intent to provide such a mechanism, and indicated that the sponsor would be amenable to an amendment to that effect.

REPRESENTATIVE GARA asked why they would not simply authorize self insurance to cover the potential risks associated with the project.

MS. CUTLER again pointed out that the bill governs the ANGPC and not the Mainline LLC, which would have the authority to get insurance; the language in the bill is simply meant to allow for indemnification but does not stipulate how that indemnification will be paid for.

CHAIR McGUIRE surmised that such indemnification is standard. What is unique in this situation is that it is the state entering into an LLC, and the provisions of the bill are simply meant to provide guidance for the state as it undertakes that role.

MS. CUTLER concurred.

[3:55:22 PM](#)

MS. CUTLER, with regard to the additional powers proposed by Mr. Gildan in his May 23 memorandum, offered her belief that "powers" (25), (26), (27), and (28) are already dealt with via the other powers already listed in proposed AS 41.42.210, but noted that the sponsor would be amenable, with certain caveats, to including the additional wording if the committee would prefer doing so. The caveat with regard to suggested power (25) is that the state's eminent domain laws will need to be

researched to ensure that there isn't a conflict. The caveat with regard to suggested power (28) is that most of the statutes that deal with public corporations don't specifically [highlight] the option to hire independent counsel, and so the sponsor would prefer that the status quo be maintained, that being that the attorney general will act as the ANGPC's counsel and then it will be up to him/her to hire independent counsel.

MS. CUTLER said that [she and the sponsor] would prefer not to include suggested power (29) in the bill because of a concern that it will limit power (24).

MR. GILDAN said he would be comfortable with removing power (29) from his recommendations, and that he concurs with Ms. Cutler's comments regarding power (28) and the attorney general.

MS. CUTLER, referring to power (30) as articulated in Mr. Gildan's June 2 memorandum, relayed that she and the sponsor would prefer not to include it at all in the bill, since as yet the statute referenced therein doesn't exist because the legislation proposing it is still pending. If either HB 2003 doesn't pass, or the ANGPC isn't ready by the time the Mainline LLC agreement or any Ancillary LLC agreements are ready to be signed, then - in the first instance - the commissioner of the DOR, with the concurrence of the commissioner of the Department of Natural Resources (DNR), could sign the ASGF Contract on behalf of the state and the ANGPC would have to implement it, or - in the second instance - there might be a need for a modified quorum requirement if only part of the ANGPC board was functioning so that the project could still implemented. She elaborated:

We don't think that without power (30) those two things can't happen as long as they're in the other bill, and, second of all, ... it's obviously our position that the collateral agreements, although it's fully the intent of the administration to share them with the legislature, it's not our intent that those amendments require legislative approval, and therefore we would not necessarily be in agreement with including power (30) here at all. I recognize that's completely a policy call as to whether or not the legislature is going to approve those agreements or not; we also believe there's a potential separation of powers issue here because we do think that that's within the administration's bailiwick, and that the collateral agreements are different from the [ASGF

Contract] and the reasons for which there will be legislative approval of the [ASGF Contract]. So that's our position with respect to power (30).

4:02:09 PM

MS. CUTLER referred to Mr. Gildan's suggested change regarding proposed AS 41.42.090 - corporation representative - and said that [her firm and the sponsor] chose to deal with this issue via proposed AS 41.42.050 and the use of an executive director. She characterized the approach in the bill as broader and simpler than what Mr. Gildan is proposing, but noted that if the committee feels it is important to spell out the details as is done in proposed AS 41.42.090, then [her firm and the sponsor] would be willing to mesh the two. One of her concerns, she relayed, is that Mr. Gildan's recommendation may not give the board the ability to appoint a staff member as its representative, and, whether it does or doesn't, she doesn't want there to be confusion in the legislation because it will probably be the model envisioned - that the executive director or one of the staff of the ANGPC would be the representative to the management committee or other committees, though the bill doesn't currently say that; so, again, she would be willing to see how the two proposals could fit together if that's the desire.

MS. CUTLER referred to Mr. Gildan's recommendation to rewrite proposed AS 41.42.220(c) and (d) to provide that members of the governing body of Ancillary LLCs be the members of the board of the ANGPC, and said that she has not been able to reach [the state's] Canadian counsel yet, and although perhaps some of the "simple fixes that were discussed" would be okay, she would still prefer to leave the language in the bill as is for the time being and get Canadian counsel's input before changing it.

MS. CUTLER referred to Mr. Gildan's recommendation to add a proposed AS 41.42.450(a)-(c), and noted that they have agreed that proposed subsection (a) is no longer required. With regard to proposed subsection (b), she relayed, it is not currently the intent to have the same alternative dispute-resolution mechanism provided for in the Mainline LLC agreement as is provided for in the ASGF Contract, and therefore [she and the sponsor] are not in favor of the language in proposed subsection (b); furthermore, [she and the sponsor] do not agree with Mr. Gildan that language in the ASGF Contract already covers the Mainline LLC agreement, and therefore would prefer that dispute resolution mechanisms be dealt with in the context of the

individual agreements. What is designed for the ASGF Contract is somewhat unusual and specific to the unique circumstances of the ASGF Contract, and thus not necessarily transferable to all the other agreements.

MS. CUTLER, with regard to Mr. Gildan's proposed AS 41.42.450(c), remarked that it is [her firm and the sponsor's] view that using Delaware law and requiring the members of the Mainline LLC to comply with the duties imposed by Delaware law will favor Alaska as a minority interest holder. She pointed out that having Delaware law apply to the members of the Mainline LLC will not affect the ANGPC's duty to the state of Alaska or the ANGPC's duty of care to the people of Alaska; instead, Delaware law will define the ANGPC's duty of care to the other members of the Mainline LLC, and that duty of care will be more minimal than it would be under Alaska law. A more minimal duty of care can often benefit the minority interest holder because it will be able to vote in a way that favors its own interest, over the interests of the larger entity as a whole, without being sued.

MS. CUTLER went on to say:

As we keep stressing here, this is a proprietary and commercial venture that the state is getting involved in. As the chair pointed out, that's what makes all of this so difficult, because we're used to thinking of ourselves in a public role, which we obviously are still in here - obviously we have duties to the public - but we're trying to be involved in essentially a private commercial venture. And again, because we're the minority interest holder, this could be helpful to us. There are various provisions that are under negotiation in the [Mainline LLC] agreement where ... [the ANGPC] has the ability to block a vote, and with the minimal duty of care, there's ... less likely the possibility that if you do block then somehow you can be sued for not having fulfilled your duties to the entity as a whole. My understanding is, [there are] over 150,000 LLCs that are organized under the law of Delaware, so Delaware law is a well known entity when it comes to operating LLCs, and I'm not aware that this is always ... used to perpetrate some sort of fraud or some sort of bad act. That is not the intent here; the intent is to protect the state of Alaska and its ability to do everything it can, under the [Mainline LLC] agreement, to make sure that [the

ANGPC] is taken care of, again, because it is a minority interest holder.

MS. CUTLER referred to Mr. Gildan's recommendation to remove the ANGPC from the jurisdiction of the RCA, and said that [she and the sponsor] are not sure that that issue needs to be dealt with via HB 2004, particularly given that the issue is being dealt with in the ASGF Contract. She offered her belief that Mr. Gildan was merely making broad suggestion regarding jurisdiction. Furthermore, the Mainline LLC will fall under the jurisdiction of the Federal Energy Regulatory Commission (FERC).

MS. CUTLER said she would want to see any proposed language change designed to make sure that the ANGPC's exemption from the Public Records Act won't apply in instances of fraud or [other crimes], but doesn't have a problem with such a change in concept.

[4:12:01 PM](#)

REPRESENTATIVE GARA, referring to Mr. Gildan's May 22, 2006, memorandum regarding the issue of allowing Delaware law to govern the Mainline LLC, noted that it says in part:

... decisions by Delaware courts on business entity issues more often favor management/majority owners over minority owners. ... Without the duty of care that the Alaska Act provides, a manager or managing members controlling an entity could act in their own self interest and contrary to the interest of the entity's business,

REPRESENTATIVE GARA asked Mr. Gildan whether those points are still of concern.

MR. GILDAN, referring to Ms. Cutler's comments that Delaware law would favor the state as a minority interest holder, pointed out that it would work the same way in favor of a majority interest holder - a majority interest holder could, for example, take an action contrary to the state's interest without being penalized. Therefore, the question from a policy perspective is: Who is more likely to take an action in its own self interest contrary to the project or the Mainline LLC as a whole? Alaska, or one of the other Mainline LLC partners? If the legislature believes that it wouldn't be Alaska, then the state would be better served by Alaska law. He opined that all the Mainline LLC partners should have a duty to the project and a duty to make

sure that it goes forward regardless of whether doing so is contrary to an individual partner's self interest.

4:16:51 PM

REPRESENTATIVE GRUENBERG made a motion to adopt Amendment 2, which read [original punctuation provided]:

page 4 line 31 after "revenue" insert "or the commissioner's designee"

page 5 line 1 after "public facilities" insert "or the commissioner's designee"

page 5 lines 11-16 delete all of subsection "(b)"

Make conforming amendments as necessary

REPRESENTATIVE ANDERSON objected.

REPRESENTATIVE GRUENBERG asked members to [compare] Amendment 2 with Amendment 3, which read [original punctuation provided]:

Pg. 5 line 14

delete: The designee appointed under this subsection is a member of the board at the meeting designated in the instrument

renumber accordingly

REPRESENTATIVE GRUENBERG characterized Amendment 2 as broader than Amendment 3, noting that it would eliminate the need for proposed AS 41.42.020(b).

REPRESENTATIVE KOTT said he favors the approach of Amendment 3 because part of the language currently in proposed subsection (b) allows a commissioner to appoint either a deputy commissioner or an assistant commissioner as a designee, adding that he takes some comfort that the designee won't be anyone below that level and that the commissioner has to file an instrument with the board stating who his/her designee is.

REPRESENTATIVE GRUENBERG pointed out, however, that proposed subsection (b) seems to require that a commissioner file an instrument for each meeting that he/she was going to miss. He said he would have no problem changing Amendment 2 to specify

that the designation must be in writing and that a designee must be either a deputy commissioner or an assistant commissioner.

REPRESENTATIVE GRUENBERG [made a motion to] conceptually amend Amendment 2 such that the designation must be in writing via an instrument filed with the board, and that the designee must be a deputy commissioner or assistant commissioner. [Amendment 2 as treated as amended.]

REPRESENTATIVE KOTT opined that simply deleting the last sentence in proposed AS 41.42.020(b) accomplishes the same thing. Without removing that last sentence, then the instrument must be filed for each meeting the commissioner can't attend, he surmised.

REPRESENTATIVE GRUENBERG said his intent is for the instrument naming the designee to just be on file so that it doesn't have to be submitted for each meeting.

REPRESENTATIVE KOTT again pointed out that the last sentence, which would be deleted via Amendment 3, uses the phrase, "a member of the board at the meeting designated in the instrument".

MS. CUTLER indicated that either Amendment 2, as amended, or Amendment 3 would be acceptable.

REPRESENTATIVE WILSON said she would like the last sentence of proposed AS 41.42.020(b) to be removed.

REPRESENTATIVE KOTT noted that both amendments would do so.

[4:25:05 PM](#)

TAMARA COOK, Director, Legislative Legal and Research Services, Legislative Affairs Agency (LAA), relayed that as long as the committee's intent is clear, Legislative Legal and Research Services can come up with the appropriate language.

REPRESENTATIVE COGHILL expressed a preference for Amendment 3, characterizing its proposed change as cleaner.

REPRESENTATIVE GRUENBERG withdrew Amendment 2, as amended.

REPRESENTATIVE KOTT made a motion to adopt Amendment 3 [text provided previously]. There being no objection, Amendment 3 was adopted.

4:26:22 PM

REPRESENTATIVE GRUENBERG made a motion to adopt Amendment 4, which read [original punctuation provided]:

page 4 line 11 add a new "(b)"

"All board members shall be Alaskan residents."

renumber following subsections.

REPRESENTATIVE WILSON objected and made a motion to amend Amendment 4 such that the language being inserted would say, "All board members, with the exception of one, shall be Alaskan residents." Such a change would allow for the appointment of someone with the appropriate expertise even if he/she is not an Alaskan resident.

MS. CUTLER said that the administration's position is that it would like to have as much flexibility as possible in order to find board members with the appropriate expertise.

REPRESENTATIVE KOTT pointed out that there might also be a need to have a Canadian serve on the board, and so he is not sure that he wants to restrict the board to only one non Alaskan resident.

MS. CUTLER indicated that the administration has that same concern - the administration wants the flexibility to get the best people.

REPRESENTATIVE WILSON concurred, and acknowledged that perhaps her amendment to Amendment 4 might still be too limiting. [Her amendment to Amendment 4 was treated as withdrawn.]

REPRESENTATIVE KOTT suggested using the phrase, "majority of the board".

REPRESENTATIVE GRUENBERG expressed acceptance of that language.

CHAIR McGUIRE offered her understanding that the Senate "went with three Alaska residents."

REPRESENTATIVE KOTT reiterated his suggestion.

MS. CUTLER indicated that using the phrase, "a majority of the board" would be fine.

REPRESENTATIVE GRUENBERG concurred.

4:29:27 PM

CHAIR McGUIRE ascertained that the amendment to Amendment 4 would specify that a majority of the board members shall be Alaskan residents.

REPRESENTATIVE COGHILL objected for the purpose of discussion, and questioned how "resident" would be defined.

REPRESENTATIVE KOTT asked whether there is a difference between a "resident" and a "citizen".

REPRESENTATIVE GRUENBERG indicated that he wouldn't be limiting the term, "resident".

CHAIR McGUIRE observed that this point could raise constitutional issues.

REPRESENTATIVE COGHILL removed his objection.

CHAIR McGUIRE indicated that the amendment to Amendment 4 was adopted.

REPRESENTATIVE COGHILL [made a motion to amend] Amendment 4, as amended, such that it applied to page 5 rather than page 4. There being no objection, Amendment 4, as amended, was again amended.

CHAIR McGUIRE asked whether there were any objections to Amendment 4, as amended [twice]. There being none, Amendment 4, as amended, was adopted.

REPRESENTATIVE KOTT made a motion to adopt Amendment 5, which read [original punctuation provided]:

Pg 5 line 4

delete: except as a member of the armed forces of
either the United States or this state

renumber accordingly

REPRESENTATIVE KOTT opined that such individuals should also be precluded from serving on the ANGPC board, since they could be deployed, thus leaving the board short of members.

REPRESENTATIVE ANDERSON objected.

MS. CUTLER indicated that the sponsor doesn't have any problem with Amendment 5. She asked whether there might be any constitutional issues raised by it.

MS. COOK said not that she is aware of.

REPRESENTATIVE ANDERSON removed his objection.

CHAIR MCGUIRE asked whether there were any further objections to Amendment 5. There being none, Amendment 5 was adopted.

[4:33:23 PM](#)

REPRESENTATIVE KOTT made a motion to adopt Amendment 6, which read [original punctuation provided]:

Page 5

delete lines 6 and 7

replace with: have extensive experience in one or more of the following

renumber accordingly

REPRESENTATIVE KOTT explained that Amendment 6 would rewrite proposed AS 41.42.020((a)(3)(B)). He said he has some concerns over how the current language of, "recognized competence and wide experience" would be defined. He opined that if a person has extensive experience, then he/she is, in fact, competent, and that they oughtn't leave room for someone to argue over whether that person is "recognized."

CHAIR MCGUIRE asked whether there were any objections to Amendment 6. There being none, Amendment 6 was adopted.

[Members briefly mentioned a language change that had already been adopted as Amendment 1.]

REPRESENTATIVE GRUENBERG asked whether the board of the ANGPC should be confirmed by the legislature.

MS. CUTLER offered her understanding that Ms. Cook has issued an opinion that doing so would not be constitutional.

REPRESENTATIVE GRUENBERG said he would withdraw that [concept] for the moment.

[4:35:56 PM](#)

REPRESENTATIVE GARA [made a motion to adopt Conceptual Amendment 7], that no [public] member [of the ANGPC board] may have current employment, either directly or on a contract basis, with a company affiliated with one of the [other Mainline LLC] members or with a company that primarily performs oil field service work.

MS. CUTLER sought verification that Representative Gara did not mean to exclude retirees of the aforementioned companies.

REPRESENTATIVE GARA said he would like to exclude those that are either currently working for such companies or have worked for them within the prior two years.

MS. CUTLER relayed that she would like to speak with Mr. Porter about this issue before providing the committee with a position on [Conceptual Amendment 7].

CHAIR MCGUIRE noted that this issue could also be addressed in the House Finance Committee.

REPRESENTATIVE GARA expressed a preference for addressing it in the House Judiciary Standing Committee.

MS. COOK relayed that she could include a "prior two year" test in the wording of [Conceptual Amendment 7].

REPRESENTATIVE COGHILL pointed out that legislators are precluded from acting as lobbyists for only one year after they are no longer legislators.

REPRESENTATIVE GRUENBERG opined that there should also be a stipulation that a former board member can't begin working for such a company immediately after his/her service on the board.

REPRESENTATIVE ANDERSON noted that for legislators, the year begins when their term of office expires, not just from the date they leave office.

REPRESENTATIVE KOTT concurred that certain opportunities are not available to legislators for at least a year [after their terms expire].

REPRESENTATIVE GARA, in response to comments, acknowledged that a one-year restriction makes more sense.

CHAIR McGUIRE announced that Conceptual Amendment 7 has been amended such that prospective board members cannot have worked for the aforementioned companies within one year of being appointed to the board.

REPRESENTATIVE WILSON said she would prefer a two-year restriction.

[4:44:15 PM](#)

REPRESENTATIVE KOTT expressed a preference for not having any time restriction; such a restriction could limit the pool of available qualified people. Furthermore, former employees of the aforementioned companies would have nothing to gain by becoming board members. He indicated that perhaps a restriction on seeking employment with such companies after serving on the board might be appropriate, but pointed out that such restriction might raise constitutional issues.

REPRESENTATIVE GRUENBERG asked whether the executive director or other staff of the ANGPC board would also be included under Conceptual Amendment 7, as amended.

REPRESENTATIVE GARA agreed with Representative Kott that there probably doesn't need to be a "cooling off" period before serving on the board. He emphasized that he doesn't want board members to also be working for one of the aforementioned companies at the same time they are serving on the board.

MS. COOK, in response to a question, indicated that she doesn't see any constitutional problem with clarifying that a prospective board member can't be presently employed by certain companies. She questioned whether this restriction would also apply to perspective board members that are state employees.

REPRESENTATIVE GARA said he means to just restrict prospective board members from being employed by one of the private Mainline LLC partners, and pointed out that the bill already precludes state employees from serving on the board.

MS. COOK, on the issue of instituting a "cooling off" period for board members after they have served on the board, asked how such a restriction would be enforced and who would enforce it.

REPRESENTATIVE GRUENBERG noted that language on page 8, lines 8-9, stipulates that the ANGPC board shall, in its bylaws or other governing document, adopt conflict of interest policy and procedures.

MS. COOK pointed out, however, that any such could not be enforced once one is no longer on the board because the board won't have any enforcement powers over former board members.

The committee took an at-ease from 4:49 p.m. to 4:52 p.m.

4:52:18 PM

REPRESENTATIVE GARA made a motion to amend Conceptual Amendment 7, as amended, such that it will only stipulate that one can't serve on the ANGPC board if one is also working for one of the aforementioned companies. [This second amendment to Conceptual Amendment 7, as amended, was treated as adopted.]

REPRESENTATIVE ANDERSON objected [to Conceptual Amendment 7, as amended].

MS. CUTLER said she would prefer that the committee delay its decision regarding Conceptual Amendment 7, as amended, until she has had a chance to speak with Mr. Porter. She expressed concern with including vague language about people [employed by companies that] deal with the other three partners in the Mainline LLC. The sponsor, she relayed, wants to ensure that there are competent people serving on the board, and given that there is now a restriction that a majority of board members must be Alaskan residents, there are only so many people in the state with the required expertise and almost all of them are connected with the oil/gas industry in some fashion.

REPRESENTATIVE GARA clarified that he simply doesn't want people to hold a position on the board at the same time that they hold a position with one of the other Mainline LLC partners.

REPRESENTATIVE GRUENBERG surmised that the public would not want the ANGPC's board members to also be working for one of the other companies at the same time - such would be a serious

conflict of interest. He indicated that he supports Conceptual Amendment 7, as amended.

REPRESENTATIVE KOTT suggested that at some point it might be necessary to draw prospective board members from the pool of people who are working in the industry, though the governor probably ought to only consider appointing people who aren't also working in the industry; furthermore, the governor has the ability to remove a board member for cause if he/she doesn't perform up to the standards set [in the bill]. He suggested leaving the language of the bill as is.

[4:58:27 PM](#)

A roll call vote was taken. Representatives McGuire, Wilson, Gruenberg, and Gara voted in favor of Conceptual Amendment 7, as amended. Representatives Anderson, Coghill, and Kott voted against it. Therefore, Conceptual Amendment 7, as amended, was adopted by a vote of 4-3.

CHAIR MCGUIRE, in response to a question regarding proposed AS 41.42.070, offered her understanding that the attorney general, as legal counsel for the ANGPC, will have the right to hire independent counsel as necessary.

REPRESENTATIVE GRUENBERG opined that there should be a "cooling off" period of at least one year between serving on the board of the ANGPC and going to work for one of the [other Mainline LLC partners].

REPRESENTATIVE GRUENBERG made a motion to adopt Conceptual Amendment 8, to include a provision that states that the board members and the executive director must agree not to work for the industry for at least one year after leaving his/her position with the ANGPC.

REPRESENTATIVE COGHILL pointed out that [such an agreement] would be unenforceable.

REPRESENTATIVE KOTT concurred.

REPRESENTATIVE GARA offered his belief that such an agreement could be enforced via the filing of an injunction, perhaps at least in the case of the executive director.

REPRESENTATIVE KOTT pointed out that [Conceptual Amendment 8] doesn't address the situation of someone working under contract.

MS. CUTLER again reiterated that the administration wants the flexibility to find the most qualified people, and pointed out that Conceptual Amendment 8 wouldn't just restrict people from going to work for the other partners of the Mainline LLC, but rather the entire industry; such a restriction could potentially discourage someone who might otherwise be very interested in working on the project.

CHAIR MCGUIRE said she don't disagree, but pointed out that the policy behind having a "cooling off" period is so that the decisions being made are not going to financially benefit those making the decisions. So although such a restriction in future employment could be difficult to enforce, she agrees with Representative Gruenberg's point regarding the appearance of impropriety.

[5:06:46 PM](#)

REPRESENTATIVE KOTT opined that the bill already addresses such situations and thus any further restrictions are unnecessary.

REPRESENTATIVE GARA made a motion to amend Conceptual Amendment 8 such that the restriction would only apply to the other partners of the Mainline LLC.

REPRESENTATIVE GRUENBERG added: "The partners, their parents, or their subsidiaries." [Conceptual Amendment 8 was treated as amended in this fashion.]

MS. CUTLER pointed out that the ANGPC will be adopting conflict of interest policies, that "the ethics Act" will apply to the board members, and that there is a requirement that one not do something during the course of one's service that will directly [benefit oneself].

MS. COOK concurred that there are some restrictions about the kinds of things one can do when involved in making decisions directly affecting a particular issue, but noted that Conceptual Amendment 8, as amended, seeks to restrict employment after one is no longer involved in the decision-making process.

REPRESENTATIVE GARA remarked that the ethics Act provisions are useful but not perfect; for example, under that Act one can serve two masters as long as one is not trying to benefit both of them. "We just don't want you even serving two masters," he added.

5:10:57 PM

A roll call vote was taken. Representatives Gara and Gruenberg voted in favor of Conceptual Amendment 8, as amended. Representatives Coghill, Wilson, Kott, McGuire, and Anderson voted against it. Therefore, Conceptual Amendment 8, as amended failed by a vote of 2-5.

REPRESENTATIVE WILSON made a motion to rescind the committee's action in adopting Conceptual Amendment 7, as amended. There being no objection, the question of whether to adopt Conceptual Amendment 7, as amended, was again before the committee.

A roll call vote was taken. Representatives Gara, McGuire, and Gruenberg voted in favor of Conceptual Amendment 7, as amended. Representatives Wilson, Kott, Anderson, and Coghill voted against it. Therefore, Conceptual Amendment 7, as amended failed by a vote of 3-4.

5:13:20 PM

REPRESENTATIVE COGHILL made a motion to adopt Amendment 9, which read [original punctuation provided]:

Pg. 6 line 29

Delete "promptly"

Pg. 6 line 30 following "board"

Insert "within 30 days after the seat becomes vacant"

REPRESENTATIVE COGHILL remarked that a similar amendment was being considered by the Senate, and opined that having a specific [timeframe] would be appropriate.

REPRESENTATIVE KOTT objected for the purpose of discussion; he asked whether 30 days would be sufficient to search out someone with the necessary expertise.

MS. CUTLER opined that it would be better to use the term "promptly".

REPRESENTATIVE COGHILL characterized that term as subjective.

5:15:00 PM

DENNIS DeWITT, Special Staff Assistant, Capitol Office, Office of the Governor, said he appreciates the intent of Amendment 9, and that while [the administration] doesn't have great objections to it, as a practical matter, the kind of person being sought for appointment to the ANGPC board is not the easiest person in Alaska to find given the expertise requirements. He questioned what the consequence would be if the governor was not able to fill a vacancy within the 30-day timeframe. "The spirit is willing, I don't know whether the body can make it work," he remarked.

REPRESENTATIVE KOTT indicated that that was also his concern.

REPRESENTATIVE COGHILL withdrew Amendment 9.

[5:17:34 PM](#)

REPRESENTATIVE GRUENBERG referred to proposed AS 41.42.080(b) - specifically the language which stipulates that the ANGPC's staff, executive director, and board members must immediately disclose, in writing, any [financial] interest in an entity with an interest in or doing business with the project or an owner entity of the project - and pointed that a person might have no way of knowing whether his/her investment portfolio includes such an interest.

REPRESENTATIVE GRUENBERG made a motion to adopt Conceptual Amendment 10, to add [to the end of the first sentence in proposed AS 41.42.080(b)] the phrase, "as soon as it becomes known to the person".

MS. CUTLER offered her belief that the sponsor would not object to such a change.

REPRESENTATIVE GARA opined that Conceptual Amendment 10 would not solve the problem, and made a motion to amend Conceptual Amendment 10 to say that a mutual fund does not constitute an interest that must be disclosed.

REPRESENTATIVE GRUENBERG agreed to the amendment to Conceptual Amendment 10. [The amendment to Conceptual Amendment 10 was treated as adopted.]

REPRESENTATIVE COGHILL questioned the placement of the language.

CHAIR MCGUIRE acknowledged that Conceptual Amendment 10, as amended, might be better placed elsewhere and so should be considered conceptual in that regard.

CHAIR MCGUIRE asked whether there were any objections to Conceptual Amendment 10, as amended. There being none, Conceptual Amendment 10, as amended, was adopted.

[Following was a brief discussion regarding how the committee would be proceeding.]

The committee took an at-ease from 5:21 p.m. to 5:24 p.m.

CHAIR MCGUIRE announced that the committee would recess for dinner.

[6:44:15 PM](#)

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

REPRESENTATIVE GARA referred to Conceptual Amendment 11, which read [original punctuation provided]:

Delete Findings

CHAIR MCGUIRE indicated that she was objecting to Conceptual Amendment 11 for the purpose of discussion.

MS. CUTLER, in response to a question, said:

We would prefer to have the findings. We do think that it would be helpful to have the legislature articulate the ... findings for why the legislation is necessary. We ... recognize that that is a call for you guys to make, but we do think that they do have some value. There was a question that was asked with respect to ... how does a court really look at findings. I think it sort of depends on the circumstances of the case and what's at issue. Often what you find at issue in that kind of case is, somebody tries to argue that the findings either do or don't provide some sort of a power, or whatever, that

isn't explicitly authorized in the legislation. Hopefully the legislation does provide for the powers and the other things that ... [the ANGPC] is going to need to go forward. I guess to sum it all up, we would prefer to have them, but we recognize that it's your choice as to whether or not they should be in there

REPRESENTATIVE GARA made a motion to adopt Conceptual Amendment 11. He pointed out that nothing in the findings specifically tells the court how the legislature would like the court to interpret the proposed legislation; instead, they are all statements of "hopes" for the future of the state. Representative Gara opined that Representative Stoltze is sometimes correct when he's stated that findings are often used as a form of press release about a bill. He opined that the finding which begins on page 2, line 28, is inaccurate because he believes that taking royalty in-kind (RIK) will actually minimize the benefits to Alaskans by causing the state to lose money. The finding that says acquiring ownership in the pipeline is in the best interest of the state is debatable, he opined, adding his belief that to pretend that all the findings are true when many legislators think that they are not is wrong.

REPRESENTATIVE COGHILL said he tends to agree with Representative Gara's points, and remarked that he doesn't know that adopting Conceptual Amendment 11 will change the structure of the ANGPC.

[6:49:59 PM](#)

MS. CUTLER expressed her hope that in voting to remove the findings the legislature is not saying it disagrees with the findings.

REPRESENTATIVE GARA relayed that he would next be explaining several amendments while the committee awaits the return of Representative Gruenberg, at which time the amendments can then be voted on.

REPRESENTATIVE GARA withdrew Conceptual Amendment 11, indicating that he would re-offer it later.

[6:51:39 PM](#)

REPRESENTATIVE GARA referred to Amendment 12, which, along with some handwritten changes, read [original punctuation provided]:

The corporation must require an annual audit for the state of the operation of the LLC. A version of the audit containing information not otherwise confidential under this statute shall be made publicly available.

(page 20)

REPRESENTATIVE GARA, offering his belief that Mr. Porter has stated that the ANGPC will be requesting an annual audit of the Mainline LLC, remarked that the question then becomes whether any of the resulting information will be seen by the public. Conceptual Amendment 12 specifically states that an audit must be asked for annually by the ANGPC and that the ANGPC must then provide the public with the points of that audit that are not confidential under the various provisions of this legislation.

REPRESENTATIVE GARA referred to Conceptual Amendment 13, which read [original punctuation provided]:

The LLC shall be governed by the LLC rules of the state of Alaska

REPRESENTATIVE GARA and CHAIR McGUIRE remarked, "As opposed to Delaware."

REPRESENTATIVE GARA referred to [what later became known as Conceptual Amendment 15] which, along with a handwritten change, read [original punctuation provided]:

The LLC cannot sell any portion of its interest in the mainline entity without the approval of the Governor

p. 16

REPRESENTATIVE GARA referred to the language on page 16, line 26, which says in part, "This section does not prohibit the corporation from selling assets", and offered his belief that this language would allow the ANGPC to sell Alaska's 20 percent interest in the pipeline. He said he wants the governor to approve any sale by the ANGPC of any interest in the state's portion of the Mainline LLC.

MS. CUTLER, in response to questions, relayed that it is the plan for the "mainline entity" to be the Mainline LLC.

REPRESENTATIVE GARA [again made a motion to adopt] Conceptual Amendment 11 [text provided previously].

A roll call vote was taken. Representatives Gruenberg, Gara, and Coghill voted in favor of Conceptual Amendment 11. Representatives Kott, Wilson, McGuire, and Anderson voted against it. Therefore, Conceptual Amendment 11 failed by a vote of 3-4.

[6:58:00 PM](#)

REPRESENTATIVE GARA made a motion to adopt Conceptual Amendment 12 [text provided previously].

MS. CUTLER asked whether the intent - through use of the word "operation" - is for the audit to be a performance audit rather than a financial audit.

REPRESENTATIVE GARA said he just thought that the term "operation" was all encompassing. He asked whether a performance audit reviews the operations.

MS. CUTLER, after suggesting that perhaps someone else might be better able to address that question, noted that the Legislative Budget and Audit Committee does two kinds of audits, one being a performance audit - for example, an audit of a particular program - and that she is not sure what kind of audit is being referenced in Conceptual Amendment 12, and so would prefer to discuss this issue with Mr. Porter as well as see the specific language before taking a position on it. She offered her understanding that under the Mainline LLC agreement, the ANGPC will have the ability to ask for what are more along the lines of financial audits of the operations of the Mainline LLC, but she does not know how the details of those provisions will be put together such that she can say whether the administration would have any objections to Conceptual Amendment 12. She acknowledged, however, that she and Mr. Porter have said that it would be the intent of the ANGPC to audit the Mainline LLC operations to ensure that there weren't problems and then share whatever information could be made public.

REPRESENTATIVE COGHILL noted that language on page 20, lines 9-14, says in part:

The corporation shall provide annual audited financial statements to the governor and the Legislative Budget and Audit Committee on or before the 150th day after

the end of each fiscal year. The Legislative Budget and Audit Committee may provide for an internal audit of the corporation's books, records, and accounts, and for annual operational and performance evaluations of the corporation's operations and budget."

REPRESENTATIVE COGHILL surmised, therefore, that [the legislature] is already getting an inside look, and so he isn't sure that anything beyond that is [practical]. Furthermore, according to proposed AS 41.42.510, a report of the corporation will be made available by September 30 of each year.

REPRESENTATIVE GARA pointed out, however, that the audits and report in the aforementioned language are of the ANGPC, whereas he wants the ANGPC to conduct an audit of the Mainline LLC because the public is going to want to know that the Mainline LLC is operating properly; thus he used the term "operation". And although Mr. Porter said that as a 20 percent owner, the ANGPC will of course ask for audits of the Mainline LLC, currently nothing in the bill requires the ANGPC to make information from those audits available to the public. Conceptual Amendment 12 says that the state - via the ANGPC - shall ask for annual audits of the Mainline LLC and that non-confidential information gleaned from those audits shall be made available to the public. Without Conceptual Amendment 12, the state won't receive information regarding whether the Mainline LLC is efficient, or whether it's charging too much for the price of gas, or whether it's deterring entry of producers' gas into the pipeline, or whether there is waste.

REPRESENTATIVE GARA, in response to comments and questions, again explained that he is proposing that the ANGPC, not the Legislative Budget and Audit Committee, annually request an independent audit of the Mainline LLC, and that the information from those audits that is not confidential be provided to the public.

[7:08:21 PM](#)

MS. CUTLER, in response to a question and comment, offered that although the Legislative Budget and Audit Committee has the right to audit the ANGPC, Representative Gara is speaking of a different audit power, that being that the ANGPC, as a member of the Mainline LLC, will have the right to audit the operations of the Mainline LLC. She again noted that Mr. Porter has stated that it is the intent for the ANGPC - as a means of doing its duty to ensure that the Mainline LLC is performing properly - to

ask for that kind of audit on the operations of the Mainline LLC, perhaps annually, perhaps more often. The idea that any non-confidential information that comes out of that audit could be made public is not a problem, she remarked, surmising that that information could be made public through the Legislative Budget and Audit Committee audit of the ANGPC or through the annual report provided for in proposed AS 41.42.510 or through some other method. Her concern, she reiterated, is that she doesn't know the exact wording that will be put in place via the adoption of Conceptual Amendment 12, though, again, the administration's intent is to make sure that the Mainline LLC is operating properly.

A roll call vote was taken. Representatives Gruenberg and Gara voted in favor of Conceptual Amendment 12. Representatives McGuire, Wilson, Anderson, Coghill, and Kott voted against it. Therefore, Conceptual Amendment 12 failed by a vote of 2-5.

[7:11:50 PM](#)

REPRESENTATIVE GARA made a motion to adopt Conceptual Amendment 13 [text provided previously].

REPRESENTATIVE COGHILL objected for the purpose of discussion.

REPRESENTATIVE GARA - offering his understanding that those who are negotiating the Mainline LLC agreement intend for the Mainline LLC to be governed by the LLC laws of Delaware, and that the legislature's consultants have indicated that the state, as a minority interest holder, will get less protection and have fewer rights under Delaware law than it would under Alaska law - opined that it will compromise Alaska's sovereignty to say that Alaska's laws don't apply to the biggest project in the history of the state. He offered his belief that the legislature should require that the LLC laws of Alaska apply to the Mainline LLC.

MS. CUTLER said:

I stated several reasons for why, as a minority owner in the [Mainline LLC], the state strongly believes that Delaware law will favor it and strongly opposes this kind of an amendment. ... I heard Mr. Gildan to say, when he responded to what I said, that he was sort of positing the theoretical construct of the opposite side, which was that the majority owners could also act in their self interest as well, and of

course that's true, but ... he also said that he was not familiar with what was going on in the [Mainline LLC] negotiations and that he recognized that it was just a theoretical point as opposed to actually dealing with the facts of the [Mainline LLC] negotiations themselves.

And furthermore I ... would just point out that I think that with respect to the minority interest that we're going to have, that's probably ... potentially what's important to the state, more so than the majority interest of the parties. ... As I understand it, ... I think this is the kind of thing that would ... - if it were to remain as part of the overall legislative practice - ... have a very detrimental impact on the possibility of this particular project coming together.

REPRESENTATIVE COGHILL characterized the sovereignty question as a legitimate one. He said he is envisioning the state as a [minority interest holder] and having an issue with the basis of LLC law, having to go to court in Delaware, as a state, amongst aggrieved partners; it strikes him as odd in that the state could be subject to the laws [of another state], and this is of concern to him. He acknowledged, though, that if the Mainline LLC is organized under Alaska law, then the state, which will have the negotiating power, could change those laws.

[7:16:30 PM](#)

MS. CUTLER characterized that concern as valid, and noted that one of her first questions when getting involved in this legislation was, why is the Mainline LLC being incorporated under Delaware law when Alaska already has an LLC statute. The thinking of the state on this issue, she relayed, is that as a minority interest holder, it will be in the state's best interest for the Mainline LLC to be incorporated under Delaware law. She offered her belief that it is not unusual [for a state to] to allow the laws of another state to apply; [case in point,] the 150,000 LLCs incorporated under the LLC laws of Delaware are not all operating within the state of Delaware. Whether to incorporate under Delaware law is a policy call, she remarked, and she does not view it, necessarily, as a question of giving up the state's sovereignty so much as allowing for a known set of rules to govern the Mainline LLC agreement. Again, it is the administration's view that incorporating under

Delaware law will be the best way to protect the state's minority interest.

REPRESENTATIVE GARA argued, however, that Mr. Gildan has indicated that Delaware law will favor the majority interest owners - those who, together, will own 80 percent of the project - by providing weak duties for them as well. The LLC laws that the Mainline LLC are incorporated under will determine how the members will treat each other with regard to the sharing of information, the degree of fair dealing and honesty that must be accorded each other, and what accounting and fair conduct duties must be observed. He opined that as a minority interest owner, the state should want the other owners to accord it strong duties with regard to fair dealing, forthrightness, and accountability. Alaska laws will be more protective of the state, and he opined that it's important to get that protection, particularly since - according to his understanding - the state won't have any veto power under the Mainline LLC agreement because everything will be decided by a majority vote and so Alaska will lose all the votes.

REPRESENTATIVE COGHILL, on the latter point, said, "We don't know that."

REPRESENTATIVE GARA concurred, but argued that that's what has been represented to him.

[7:21:17 PM](#)

MS. CUTLER asked that the state's chief negotiator of the Mainline LLC agreement be allowed to provide comments on this issue.

The committee took an at-ease from 7:22 p.m. to 7:23 p.m.

NICHOLAS J. SPILIOTES, Attorney at Law, Morrison & Foerster, LLP, relayed that he has been working on the Mainline LLC agreement on behalf of the State of Alaska for about 18 months.

CHAIR McGUIRE recounted for him the discussion thus far regarding Conceptual Amendment 13.

MR. SPILIOTES said he can see why on its face it would seem to make sense to have Alaska law govern the Mainline LLC and have that entity be an Alaskan LLC, and surmised that Representative Gara is concerned about the duty of care with regard to things like loyalty and fiduciary duties in an LLC.

REPRESENTATIVE GARA concurred.

MR. SPILIOTES explained:

We all looked at this issue on the state's side, and, setting aside all the other stuff you've probably heard - which is that most oil and gas joint ventures are ... Delaware LLC, and Delaware has a fully developed corporate law, and all that stuff - one of the real key issues that has evolved for the state with the negotiations over the past ... year and a half has been the need for the state to have, essentially, ... the unfettered right to make its decisions within the context of the management committee in whatever way it deems appropriate in its own interests.

And the reason why this is particularly important and a little different than it is for ... the producers is that the state - [the ANGPC] - is going to have as an affiliate the State of Alaska, and the State of Alaska will have, I think, a broader set of interests and concerns with respect to this project. And when I say project, I don't mean just the pipeline but I mean the total project - ... the gas marketing side, the gas sales side, regulation of the pipeline, environmental issues, tax [issues] - I mean the whole panoply of state interests, and [the ANGPC], although it will be a public corporation and the idea is it's supposed to be as commercial as possible, it is in fact not a commercial entity and it's part of the state government.

So one of our concerns was that we don't want the producers to be able to sue us for breach of fiduciary [duty] or duties such as duty of care [or] duty of loyalty. If the state has a blocking vote on a particular item - and we haven't finalized exactly where there are going to blocking votes and where there won't be, but the state will have blocking votes on a very ... significant number of items - [and] if the state decides to block and it's not in the interest of the other members and it's not in the interest of the [Mainline LLC] itself, that could be a real problem.

The producers have a similar concern but for other reasons: ... they actually, in all of their deals ... that we know about ..., fight with each other all the time, and ... any of the three don't want to have, vis-a-vis themselves, any obligations, any fiduciary duties, so that they can't vote or ... [so] they can be challenged if they vote solely in their own interest and make a decision for any reason under the sun including ... [simply that the producers don't like each other]. ...

So it works for them as well as for us, but that's a key element, and I think, again, initially it might not appear to be favorable for the state, but I think ... we concluded that ... having the kind of minimal duties to each other - because the state is very different than the producers ... - makes a lot of sense. ...

7:30:29 PM

MS. CUTLER asked Mr. Spiliotes to discuss the issue of blocking votes and veto powers, and the issue of whether being incorporated under Delaware law would improperly interfere with the state's sovereignty.

MR. SPILIOTES, on the issue of blocking votes, relayed that there are going to be about 50 or 60 different votes made in the Mainline LLC by the management committee, and a significant number of them will be majority votes wherein any three of the four members can approve something, but there will be another category of super majority votes requiring three out of four [to agree], as well as another category of votes requiring unanimous or near unanimous agreement. For the latter type of votes, if the state votes "no", than it's a block and whatever was being voted on doesn't happen, and the state is still negotiating a significant number of those key votes. With regard to those blocking votes, one of the concerns is that if a member has fiduciary duties to other the members or the Mainline LLC, then a vote by the state to block something the other members are in favor of could result in them suing the state for breaching its fiduciary duties.

MR. SPILIOTES said, for example, that in a situation wherein the Mainline LLC is involved in litigation with another entity and the other members want to settle, the state, after taking into account all its sovereign and state-regulatory interests with

respect to the project, ought to be able to vote against such a settlement - if it feels that doing so is not in the best interest of the state - without being sued for breach of duty. The Delaware LLC statutes permit the parties to structure their obligations to each other in just about any way the parties want to, and what the state is seeking in the Mainline LLC negotiations is the total freedom, via Delaware LLC laws, for the ANGPC to vote and block and do whatever it wants for whatever reason - even a reason unrelated to the project - without being challenged.

[7:34:40 PM](#)

REPRESENTATIVE GARA acknowledged that the legislature doesn't want the state to be sued for standing up for its own interest, but offered his understanding that an LLC member will always have the right to vote to promote its own financial interest regardless of whether it is incorporated under Delaware law or Alaska law.

MR. SPILIOTES pointed out, though, that at least under Delaware law, the only duty that can't be contracted away is the duty to act in good faith, so as long as a member is acting in good faith, it can decide why it will vote and how it will vote without being challenged. The concern regarding stepping away from just that bare minimum duty of good faith and fair dealing and then layering on fiduciary obligations, duty of care, and duty of loyalty is that it allows a member to potentially be challenged for a vote that was not necessarily in the best interest of the entity as a whole. "From the state's perspective, we want to have unfettered freedom and not have imputed obligations under common law or under a statute [that would] essentially muck up the waters for the state, and the producers want the same thing for their own reasons," he remarked.

MR. SPILIOTES added:

For example, ... if you have a board of directors ... in a corporation, [and] if a director is a shareholder, he can't act just in the interest of his one ... [share]; he has to think more broadly about the whole corporation, and the board of directors has fiduciary duties to all shareholders. What we want in the [Mainline LLC] is for [the] state to have a duty only to itself, and so long as it acts in good faith

and deals fairly with the other members, it can't be challenged.

7:38:02 PM

MR. SPILIOTES, in response to a comment, he said:

There are different crosscutting alliances and interests that ... have already formed, and that will form, among the parties to the pipeline. One of the three producers - and ... it hasn't been decided yet [which one] - ... is going to be the operator, and the operator will ... play the lead role in the project. The other two producers - their pipeline entities - will be non-operators along with the state. There actually is a fair amount of alignment of interest among the three non-operators to make sure that the operator is doing the right thing, ... broadly defined, in terms of entering into contracts, in terms of committing the [Mainline LLC], [and] in terms of engaging the right advisors. ...

So there's a situation where you really don't have a majority oppressing a minority. One of the [dominant] crosscutting cleavages in this entity is going to be operator versus non-operator. ... We don't know exactly what the percentage interest of the three producers is going to be, but there's going to be no one that's going to have a majority. So it's conceivable that you have an operator with 30-something percent, and then you have three non-operators who have a majority. So I think I wouldn't necessarily always look at it as if the state's going to be in the minority; there is no majority owner here.

Although there are three pipeline companies and they do have aligned interests on many things, they will not always be aligned, and, in fact, ... an important fundamental aspect of the [Mainline LLC] is going to be [that it will be] one producer company against three non-operators, and the state's going to have a very close set of interests with the other non-operators. The state, as a 20 percent owner, ... is negotiating this set of rights it feels it needs in order to participate as a full ... member in the project, and I think that having protections imputed

in from the common law into the [Mainline LLC agreement] - when, in fact, what we're doing is really putting everything ... the state wants to have in the [Mainline LLC agreement] - isn't really something that is an unalloyed benefit. ...

The state's not necessarily ... always in a minority, there's no one with a majority, and we can't ... assume that the three producers will be aligned in their interests.

[7:41:58 PM](#)

REPRESENTATIVE GARA asked whether the state will have veto power to stop the majority members from seeking from the FERC the ability to charge what the state might consider to be too high a price for transportation.

MR. SPILIOTES relayed that the "FERC votes" are still under discussion in the negotiations, and that he would be deferring to Robert H. Loeffler, his firm's "FERC expert," on such matters. With regard to the ANGPC having a blocking vote, if duties additional to the ones provided by Delaware law are imposed, then the other members - the oil companies, which don't need any protection - will have the right to challenge the state's blocking vote on the basis that the state breached its additional duties.

MS. CUTLER offered her belief that generally the FERC will set tariffs based on what's fair and reasonable, rather than on what the parties propose.

MR. SPILIOTES concurred; the FERC will do what it wants regardless of what the members propose and regardless of whether the state has the ability to block a particular proposal.

REPRESENTATIVE GARA pointed out, though, that the rates set by the FERC will be influenced greatly by what is being sought by the members of the Mainline LLC. He asked Mr. Spiliotes whether he is aware of any provision in Alaska's LLC statutes that would prevent the state from voting in a way that protected its own financial interest.

MR. SPILIOTES said he is not aware of anything, but acknowledged that he is not familiar with Alaska LLC law.

REPRESENTATIVE GARA asked Mr. Spiliotes whether he is aware of any other state which has LLC laws that would preclude it from voting in a way that protects its own financial interest.

MR. SPILIOTES instead reiterated that under Delaware LLC law, there is a freedom to contract away all fiduciary duties other than the duty of good faith and fair dealing, and surmised that this is one reason why over 150,000 LLCs have incorporated under Delaware law.

7:48:10 PM

REPRESENTATIVE GARA offered his understanding that the legislature's consultants say that minority rights will be better protected under Alaska's LLC laws as opposed to Delaware's LLC laws, and that there is no evidence that Alaska's LLC laws will pose a danger to the state as a member of the Mainline LLC. Alaska will be "a minority owner on very important issues where we won't have a veto power," he remarked, adding that this is a big concern of the legislature's consultants. Alaska's LLC laws won't preclude the ANGPC from voting in the state's best interest, but it will impose duties to be honest and duties not to hide things from the other parties, and he wants those duties to be strong, he relayed, because Alaska, as a 20 percent owner, will be at a disadvantage in the Mainline LLC agreement. So for both the issue of sovereignty and the concerns that the legislature's consultants have expressed, it's important that the state have Alaska's LLC laws apply, he opined.

MR. SPILIOTES opined that Delaware has a "very well-developed jurisprudence of corporate governance," and surmised that that's why Delaware is the preferred venue for complex joint ventures.

REPRESENTATIVE GRUENBERG pointed out that there is a difference between "preferred venue" and choice of law.

MR. SPILIOTES clarified that he meant that Delaware is the preferred location for incorporating an LLC.

REPRESENTATIVE GRUENBERG noted that even in his field of practice the issue of choice of law comes up not infrequently. He surmised that people/entities from the East Coast are more used to dealing with Delaware law whereas Alaska courts are used to dealing with Alaska law and are very familiar with it, and presumably any litigation [occurring because of this project] will largely take place in Alaska courts. Again, Alaska's

lawyers, judges, and courts are used to dealing with Alaska law, not Delaware law.

MS. CUTLER reiterated her belief that Mr. Gildan, in his comments regarding Delaware law, was simply speaking from a theoretical standpoint and is not that familiar with the particular facts and circumstances at issue in negotiating the Mainline LLC agreement. Mr. Spiliotes, however, is very familiar with the negotiations and so brings to the table knowledge of what is specifically at issue in the Mainline LLC agreement, Ms. Cutler remarked.

[7:54:09 PM](#)

REPRESENTATIVE GARA remarked:

People come up from "Outside," they come up here, they assume that we're not talented, they assume that we don't know what we're doing, and it's the exact opposite. The reason our constitution is so much better than the constitutions of other states is we saw what everybody did for a long time and we picked the best things and we came up with our constitution. ... We also have a later LLC law in this state but it's not like we made it up - this legislature looked at what other states did, and they picked model provisions from the model code, they picked whatever wrinkles worked out best in the other places.

It's not like we picked the law out of thin air, and we often benefit from seeing what's not worked in other places, and we end up with better things. And this conjecture that our law maybe is newer so therefore isn't somehow enforceable or interpretable is just complete conjecture; ... there's been no example that anybody's pointed out to where our law is deficient. So it's the sovereignty issue and it's the main point of our consultants - we know that Delaware [law] protects minorities in a lesser way than Alaska law does.

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CHAIR McGUIRE noted, though, that she has been approached by people asking that she introduce legislation that would make Alaska's LLC laws more like Delaware's LLC laws. Therefore, not everyone agrees that Alaska's LLC laws are the most progressive

and shouldn't be changed; furthermore, perhaps changes to the deficiencies in Alaska's LLC laws might encourage more business incorporation in the state. And although Alaska will hold a minority interest in the Mainline LLC, the state is looking at going into business via the ANGPC, and Delaware has long been a preferred place to do business for a variety of reasons. She said she would continue to look at the issue of how minority interests are treated, but pointed out that in some instances the Legislature's consultant's opinions have turned around after he'd had a chance to speak with [Ms. Cutler and Mr. Porter]. She predicted that a more [in depth] look might reveal that a lot of Alaska companies and partnerships actually are incorporated in Delaware. She remarked that a vote against Conceptual Amendment 13 should not be construed as a vote against Alaska or its laws or as a sign that the legislature is caving into the oil companies and shirking the state's responsibility as a minority interest holder.

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REPRESENTATIVE GARA, in response to a question, relayed that the bill itself doesn't stipulate that Delaware law will apply; that stipulation is part of the Mainline LLC agreement.

CHAIR MCGUIRE suggested that Conceptual Amendment 13 will authorize incorporation under Alaska law as a tenet of the Mainline LLC agreement.

REPRESENTATIVE GRUENBERG offered his belief that generally the law that applies will be the law of the states where the parties reside - and in this situation, one of the parties is the State of Alaska - or where the contract is to be performed. This contract is to be performed, at least for the Alaska portion, in Alaska, and the "center of gravity" for this contract is Alaska - the contract is with the State of Alaska and it's to be largely performed in Alaska. He elaborated:

Under choice of law, the parties can contract for another jurisdiction's law to apply, and that is done sometimes in these cases, but if nothing is said, the default rule would be the center of gravity rule here, where the parties reside in the state of Alaska and where the contract's to be performed. So we are doing something that's at least a little unusual: (indisc.) the law of a state based on that state's public policy, and we're favoring that over the policy of our own state. And I want you to be aware [that] if you

reject this amendment, that that's setting a precedent that in other major contracts this state may well adopt the law of another state over its own. And that's something that I think has some policy implications that we ought to really be concerned about.

CHAIR MCGUIRE remarked that a different type of analysis must be done when entering into a venture as a business. She said she doesn't believe that the Alaskans that have been negotiating the ASGF Contract have simply decided to adopt Delaware's law regardless that Alaska's laws really are better for the interests of Alaska.

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REPRESENTATIVE GRUENBERG posited that the laws of Delaware have been chosen simply because some of people involved in the negotiations [on behalf of Alaska] live on the East Coast and are therefore more familiar with the laws of Delaware, and offered his belief that any ensuing court cases will be litigated in an Alaskan court, not a Delaware court, and so those involved will be more familiar with Alaska law.

MS. CUTLER offered her belief that the attorneys at Morrison & Foerster, LLP, who have been involved in the Mainline LLC negotiations have a duty of loyalty to the State of Alaska and have the best interests of the ANGPC and the state at heart regardless of where they reside; these attorneys are making their recommendation to incorporate under Delaware law because they fully believe it is the right thing to do, and the administration agrees.

REPRESENTATIVE GRUENBERG reiterated his belief that the judges involved in any ensuing court cases will be Alaskan judges.

REPRESENTATIVE GARA said:

The duty of the lawyers who represent us in this, they do not represent this broad spectrum of the interests of the people of the state - they represent the governor's office. ... The governor is their client, the governor has a position, and they have a duty to uphold it.

MR. SPILIOTES clarified that his firm's client is the Department of Law (DOL) and has been so through many different administrations.

REPRESENTATIVE GARA asked, then, "Is your duty of loyalty to represent the interests of the Department of Law?"

MR. SPILIOTES replied, "I don't have the engagement here, but our duty is to represent the interests of the State of Alaska, the State of Alaska is our client, and the Department of Law is our immediate ... -- we are engaged through the Department of Law."

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REPRESENTATIVE GARA surmised, "Their duty is to the person who hires them: that's the governor, it's the Department of Law who works for the governor." On the issue of why so many companies choose to incorporate under Delaware law, he opined that "companies register in Delaware because Delaware imposes the lowest level of duties on corporations to the people who they might harm or be sued for harming." "That's the exact point that we need to protect ourselves from," he added, remarking also, "That's why we have to be cautious - we're the minority owner - and the reason you go to Delaware [is] because Delaware has the laws that most adequately protect the majority."

MR. SPILIOTES again opined that there will be no majority owner because "this group of producers" does not see eye to eye on a lot of issues.

REPRESENTATIVE GARA said he does not anticipate that the producers will start siding with the State that much.

A roll call vote was taken. Representatives Gara and Gruenberg voted in favor of Conceptual Amendment 13. Representatives Coghill, Wilson, Kott, McGuire, and Anderson voted against it. Therefore, Conceptual Amendment 13 failed by a vote of 2-5.

[8:08:51 PM](#)

REPRESENTATIVE GARA made a motion to adopt Conceptual Amendment 14, which read [original punctuation provided]:

The Board members of the subsidiaries shall be the same as the Board members of the Corporation, except when required by the law of another jurisdiction.

REPRESENTATIVE COGHILL objected.

REPRESENTATIVE GARA said that Conceptual Amendment 14 implements [Mr. Gildan's] recommendation that the ANGPC's board members be the board members of the Ancillary LLCs except where prevented by the laws of another jurisdiction.

MS. CUTLER said she has still not had a chance to discuss this issue with Canadian counsel and therefore doesn't feel comfortable saying that Conceptual Amendment 14 would be acceptable; however, from a conceptual basis the amendment seems like it might be acceptable to Canadian counsel.

MR. SPILIOTES acknowledged that Canada does have different rules regarding [LLCs and their board members], but ventured that as long as the exception language is included, Conceptual Amendment 14 seems reasonable.

REPRESENTATIVE COGHILL removed his objection.

CHAIR MCGUIRE asked whether there were any further objections to Conceptual Amendment 14. There being none, Conceptual Amendment 14 was adopted.

REPRESENTATIVE GARA made a motion to adopt Conceptual Amendment 15 [text provided previously].

REPRESENTATIVE COGHILL objected.

REPRESENTATIVE GARA referred to page 16, line 26 - the start of proposed AS 41.42.330(b) - and reiterated his understanding that the language, "This section does not prohibit the corporation from selling assets" could be interpreted to mean that the ANGPC could sell part or all of Alaska's 20 percent interest in the pipeline. This interest would involve so much money and would be of such value to the state, he opined, that the state's elected officials should be allowed to chime in on the sale of any such interest, and although he would prefer that it be the legislature that oversees such a sale, it would probably be more streamlined to have the governor do it.

CHAIR MCGUIRE questioned whether such language would have any negative impact on the bond agreements that proposed AS 41.42.330(b) deals with.

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MS. CUTLER opined that it would make more sense to include the proposed new language on page 9, under power (8) - proposed AS 41.42.210(8) - because that provision goes specifically to the ANGPC's ability to sell, lease, exchange, donate, convey, or encumber property including ownership interest in the project or in a subsidiary entity. The pledge language on page 16, line 26 - proposed AS 41.42330(b) - pertains specifically to bonded indebtedness, and so including the language of Conceptual Amendment 15 in that location could potentially cause unintended problems. She also pointed out that Conceptual Amendment 16 currently says that the Mainline LLC may not sell its interest in the Mainline LLC, rather than that the ANGPC may not sell its interest.

MS. CUTLER said that another problem with Conceptual Amendment 15 is that it uses the phrase, "any portion of its interest in the mainline entity", and it is her understanding that the sponsor wants the flexibility to sell a portion of the state's interest in the pipeline at certain points in time. She said that she was under the impression that the concept they had discussed earlier was what would happen should the ANGPC want to sell its entire interest in the pipeline, and she'd agreed that such a sale ought to be subject to some sort of additional consent. Therefore, as currently written, Conceptual Amendment 15 could be problematic.

MR. SPILIOTES said that the goal of having the ANGPC be as commercial as possible is to have it be independent and staffed with pipeline experts, and one of the issues discussed in the negotiations is the ability of the state to sell its interest back to the Mainline LLC or the other members at various points in time - essentially an option out. So the preferred arrangement would be to have the ANGPC make such a decision on its own, but if it is necessary to have some sort of additional consent provision included, it would make sense to have it apply only in the case of a total sale, particularly given that there may be a need for some readjusting of the state's interest percentage over time and a second layer of approval would complicate the process.

MS. CUTLER indicated that [she and the sponsor] would need to consider whether requiring an extra layer of consent would somehow suggest that the ANGPC isn't really a separate and independent entity for purposes of liability protection, revenue bonds, and not creating state debt.

MR. SPILIOTES concurred.

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REPRESENTATIVE GARA made a motion to conceptually amend Conceptual Amendment 15 such that it says in part "The corporation cannot sell" rather than "The LLC cannot sell" and such that it shall be placed in the most appropriate part of the proposed statute. There being no objection, the conceptual amendment to Conceptual Amendment 15 was adopted.

REPRESENTATIVE GARA, in closing, said:

This is going to be the biggest asset this state has ever owned ... except for the permanent fund, and god forbid we let somebody sell the permanent fund without us having a say or the governor having a say. ... That would shock people. It would also shock people that ... the head of the state has no say in how much we sell a portion of our [\$5 billion] or \$6 billion interest in a pipeline for. Whether it's a 50 percent portion [or] a 25 percent portion, if this major asset is going to be sold, or a part of it, I think the public would want the head of the state to have some say, not a board and an executive director who could be fired after they made the decision ...; that's a big decision to leave to somebody who's not an elected official.

CHAIR McGUIRE said she takes some comfort that the permanent fund is managed by a board of individuals who aren't elected, because of the volatility of the whole election process, and are thus able to make the best decisions in managing the state's assets. She mentioned that she also takes some comfort in the fact that the ANGPC is set up in a similar fashion, because it may not necessarily be in the best financial interest of the state to have the governor make certain decisions regarding the state's assets.

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REPRESENTATIVE WILSON suggested changing the language of Conceptual Amendment 15, as amended, such that it would say in part, "any major portion of its interest".

REPRESENTATIVE GARA indicated that using the phrase "any major portion" would be fine with him, but pointed out that even

1 percent of the project could amount to \$50 million. Therefore, should they stipulate that anything over 1 percent needs the governor's approval? He noted that although the Alaska Permanent Fund Corporation (APFC) gets to manage the permanent fund, the APFC is not allowed to spend the permanent fund without approval, and he would like to have the ANGPC set up in a similar fashion such that the ANGPC gets to manage the state's interest in the pipeline project but isn't allowed to sell the state's biggest asset without the governor's approval.

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A roll call vote was taken. Representatives Wilson, Gara, Gruenberg, and Coghill voted in favor of Conceptual Amendment 15, as amended. Representatives Kott, McGuire, and Anderson voted against it. Therefore, Conceptual Amendment 15, as amended was adopted by a vote of 4-3.

REPRESENTATIVE GARA said the only concern he has about Conceptual Amendment 15, as amended, is that it might get rid of the tax exemption that the state might otherwise get without it.

CHAIR MCGUIRE remarked also that more research might need to be done in the House Finance Committee regarding what "any portion" means and whether there is a threshold [that will trigger it].

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REPRESENTATIVE GARA - referring to page 27 - made a motion to adopt Conceptual Amendment 16 to say that "the state or the corporation shall not provide indemnity to pay for a tax or royalty that is due to the state or a political subdivision". The intention is to correct an unintentional potential consequence of the indemnification provisions, and clarify that "we don't want to allow and require that the state indemnify the companies for when they pay taxes or royalties, and that's the whole gas reserves [tax] issue," he added.

MS. CUTLER opined that Conceptual Amendment 16 goes way beyond that; it is instead a statement that there will be no such indemnity, and that is entirely contrary to the administration's position as put forth in the ASGF Contract. It is not the intent of proposed AS 45.45.905 to deal with "that issue," so to then go so far as to actually add that issue to proposed AS 45.45.905 is the exact opposite of what the administration intends in the sense that that would be a positive statement by the legislature that it doesn't support what is in the ASGF

Contract. Although the question of whether to adopt Conceptual Amendment 16 is a policy choice, she remarked, it is not something that the administration would support.

REPRESENTATIVE COGHILL, remarking that this issue can be addressed in a different piece of legislation due to come before the committee, indicated that he would be opposing Conceptual Amendment 16.

A roll call vote was taken. Representatives Gara and Gruenberg voted in favor of Conceptual Amendment 16. Representatives McGuire, Coghill, Wilson, Anderson, and Kott voted against it. Therefore, Conceptual Amendment 16 failed by a vote of 2-5.

8:28:50 PM

REPRESENTATIVE GARA made a motion to adopt Conceptual Amendment 17, to delete from page 21, lines 7-8, the words, "the particulars of the business or affairs of an owner entity of the project, including, without limitation,".

CHAIR MCGUIRE objected for the purpose of discussion.

REPRESENTATIVE GARA, acknowledging that certain things about a business must remain confidential, opined that "the particulars of the business or affairs on an owner entity" is simply a catchall phrase that could be used to make everything confidential because everything could be said to pertain to the particulars of a business. In response to a question, he clarified that under Conceptual Amendment 17, proposed AS 41.42.520(a)(1) would simply read: "(1) information pertaining to tax returns, financial statements, and business plans;".

MS. CUTLER asked whether paragraph (1) would then apply to anyone.

REPRESENTATIVE GARA made a motion to amend Conceptual Amendment 17 such that paragraph (1) would then read: "(1) information pertaining to tax returns, financial statements, and business plans of an owner entity of the project;". [Conceptual Amendment 17 was treated as amended in this fashion.]

MS. CUTLER offered her understanding that the legislature's consultant indicated that as currently written, AS 41.42.520(a)(1) is not of concern and is standard language. She also offered her belief that this language regarding confidentiality is very similar to what's contained in the

Freedom of Information Act (FOIA) and the Alaska Stranded Gas Development Act, and that a similar concept is included in the statutes pertaining to the APFC, the Alaska Industrial Development and Export Authority (AIDEA), the Alaska Energy Authority (AEA), and the Alaska Natural Gas Development Authority (ANGDA). She said that the language which Conceptual Amendment 17, as amended, proposes to delete adds to the meaning of proposed paragraph (1), and that it is not the intention to have it mean everything; furthermore, Conceptual Amendment 17, as amended, is not something the administration would support because it is too limiting.

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REPRESENTATIVE GARA opined that the language currently included in paragraph (1) is not at all consistent with what's in the FOIA. He said he can't think of a single example of information that should be kept confidential that couldn't still be kept confidential under Conceptual Amendment 17, as amended.

MS. CUTLER suggested that tax information other than tax returns, as well as other information that governs the particulars of a business or affairs of an owner entity, could fall into the category of information that should be kept confidential but wouldn't be should Conceptual Amendment 17, as amended, be adopted.

REPRESENTATIVE GARA reiterated his previous comment, adding that he also doesn't want the other members of the Mainline LLC to be able to hold back evidence of illegal conduct.

A roll call vote was taken. Representatives Gara and Gruenberg voted in favor of Conceptual Amendment 17, as amended. Representatives Coghill, Wilson, Kott, McGuire, and Anderson voted against it. Therefore, Conceptual Amendment 17, as amended, failed by a vote of 2-5.

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REPRESENTATIVE GARA made a motion to adopt Conceptual Amendment 18, to add to page 21, line 5, after the word, "project", the words: ", to the extent it does not involve illegal conduct,". He explained that Conceptual Amendment 18 will ensure that everything listed in proposed AS 41.42.520(a)(1)-(6) shall remain confidential except for documentation that involves evidence of illegal conduct.

MS. CUTLER expressed disfavor with Conceptual Amendment 18, suggesting that documentation of instances of illegal conduct shouldn't necessarily be made available to the public because doing so might violate someone's rights, and offered her belief that without speaking further with the administration, she doesn't think that she ought to support Conceptual Amendment 18 as it is currently worded. Perhaps acceptable alternative language could be drafted with more time, though, since no one has the desire to keep information that could provide evidence of fraud confidential, but whether that information should become "public" information, as opposed to simply providing for the ability to tell the proper authorities that fraud could be occurring, is a different issue.

MS. CUTLER, in response to a question, opined that there should be an ability to disclose - but not through the public information request process - to the proper authorities that fraud [or a similar crime] is occurring, and reiterated her belief that Conceptual Amendment 18 as currently written doesn't accomplish that goal.

MR. SPILIOTES offered:

Just one example would be when ... there are disclosures to the [Federal Communications Commission (FCC)] or to the federal or state prosecutors: those are not disclosed publicly, they're disclosed to investigative authorities, and ... what would be disclosed is a set of facts that potentially could be indictable ...; [in other words] a person could become a defendant and be indicted and tried. Having it go through the public ... information process might be the wrong channel. ...

MR. SPILIOTES indicated that as currently written, Conceptual Amendment 18 sounds quite broad.

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Mr. DeWITT expressed the concern that Conceptual Amendment 18 presumes that the ANGPC would be judge and jury in determining whether someone has violated the law; allowing for such would certainly violate a person's due process rights. He opined that there are other ways, via other language, for information to be disclosed than what is proposed via Conceptual Amendment 18.

CHAIR McGUIRE suggested amending Conceptual Amendment 18 such that the release of information was compelled by law enforcement - something more specific than just an allegation of wrongdoing.

REPRESENTATIVE COGHILL questioned, though, whether there is any law currently that would stop a court from issuing a subpoena to investigate wrongdoing. If not, then "we're probably already served well" by current law, he remarked.

MS. CUTLER relayed that proposed AS 41.42.520(c) also covers that issue because it says in part that information considered confidential may be disclosed for the purpose of an official law enforcement investigation or when its production is required by an administrative or court order.

CHAIR McGUIRE indicated that all members want the ANGPC to be required to disclose information [to the proper authorities] in order to resolve a criminal issue. She asked Representative Gara for an example of something that isn't already covered [under the aforementioned language].

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REPRESENTATIVE GARA said he is troubled by the broad confidentiality provisions [of proposed AS 41.42.520] and the limited public access to information that will result, and wants to ensure that documentation of illegal conduct is made public.

CHAIR McGUIRE asked what is supposed to trigger that duty to disclose - would a newspaper article alleging illegal conduct be sufficient? Or someone's opinion? Or an indictment? Or a conviction? And who determines that any wrongdoing has occurred?

REPRESENTATIVE GARA said:

We would like to know of information relating to illegal conduct that the corporation knows about; "the corporation" will be its employees and its management. So file a public information request; if, in looking at the request, there is somebody who knows that there's illegal information pertaining to the request, it's got to be released, then the knowledge of the employees is imputed to the agency. ... I'm less concerned about employee crime than I am about evidence that maybe the state has been shortchanged through/for fraudulent reasons and things like that.

... It's improper conduct that I think we have the right to know about.

MS. CUTLER reiterated that even when there is an allegation of wrongdoing, questions of constitutional privacy rights will arise, and that releasing the information to the public is a different concept than making sure that if the ANGPC thinks that fraud has potentially taken place that it has the ability to inform the proper law enforcement authorities, and that Conceptual Amendment 18 might not accomplish that latter goal.

CHAIR McGUIRE suggested that Representative Gara continue to work in this issue further.

A roll call vote was taken. Representatives Gruenberg and Gara voted in favor of Conceptual Amendment 18. Representatives Kott, McGuire, Wilson, and Coghill voted against it. Therefore, Conceptual Amendment 18 failed by a vote of 2-4.

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REPRESENTATIVE KOTT moved to report HB 2003, as amended, out of committee with individual recommendations and the accompanying fiscal notes. There being no objection, CSHB 2003(JUD) was reported from the House Judiciary Standing Committee.

ADJOURNMENT

The House Judiciary Standing Committee was recessed at 8:53 p.m. to a call of the chair. [The meeting was never reconvened.]