

**ALASKA STATE LEGISLATURE  
HOUSE JUDICIARY STANDING COMMITTEE**

June 5, 2006  
10:20 a.m.

**MEMBERS PRESENT**

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

**MEMBERS ABSENT**

All members present

**OTHER LEGISLATORS PRESENT**

Representative Mark Neuman

**COMMITTEE CALENDAR**

CS FOR SENATE BILL NO. 2002(JUD)

"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 final agency decision of the commissioner of revenue made under that Act, the constitutionality of a law authorizing a contract enacted under that Act, or the enforceability of a contract executed under a law authorizing a contract enacted under that Act must be legally challenged and by whom; and providing for an effective date."

- MOVED HCS CSSB 2002(JUD) OUT OF COMMITTEE

HOUSE BILL NO. 2004

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

- SCHEDULED BUT NOT HEARD

**PREVIOUS COMMITTEE ACTION**

BILL: SB 2002

SHORT TITLE: GAS PIPELINE CONTRACT: COURT JURISDICTION

SPONSOR(S): RULES BY REQUEST OF THE GOVERNOR

05/31/06	(S)	READ THE FIRST TIME - REFERRALS
05/31/06	(S)	JUD
06/02/06	(S)	JUD AT 8:30 AM BUTROVICH 205
06/02/06	(S)	Moved CSSB 2002(JUD) Out of Committee
06/02/06	(S)	MINUTE(JUD)
06/02/06	(S)	JUD RPT CS 1DP 3NR NEW TITLE
06/02/06	(S)	DP: SEEKINS
06/02/06	(S)	NR: FRENCH, THERRIAULT, HUGGINS
06/04/06	(S)	TRANSMITTED TO (H)
06/04/06	(S)	VERSION: CSSB 2002(JUD)
06/04/06	(H)	READ THE FIRST TIME - REFERRALS
06/04/06	(H)	JUD
06/05/06	(H)	JUD AT 10:00 AM CAPITOL 120

**WITNESS REGISTER**

JAMES L. BALDWIN, Attorney at Law  
Juneau, Alaska

POSITION STATEMENT: During discussion of SB 2002, responded to questions as counsel to the Office of the Attorney General.

**ACTION NARRATIVE**

**CHAIR LESIL MCGUIRE** called the House Judiciary Standing Committee meeting to order at [10:20:54 AM](#). Representatives McGuire, Kott, Wilson, Gara, and Coghill were present at the call to order. Representatives Gruenberg and Anderson arrived as the meeting was in progress. Representative Neuman was also in attendance.

SB 2002 - GAS PIPELINE CONTRACT: COURT JURISDICTION

[10:21:07 AM](#)

CHAIR MCGUIRE announced that the only order of business would be CS FOR SENATE BILL NO. 2002(JUD), "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 final agency decision of the commissioner of revenue made under that Act, the constitutionality of a law authorizing a contract enacted under that Act, or the enforceability of a contract executed under a law authorizing a contract enacted under that Act must be legally challenged and by whom; and providing for an effective date."

REPRESENTATIVE WILSON moved to adopt CSSB 2002(JUD) as the work draft. There being no objection, CSSB 2002(JUD) was before the committee.

CHAIR McGUIRE, noting that a representative from the Alaska Court System (ACS) was available to answer questions but that no one wished to testify, closed public testimony on SB 2002.

CHAIR McGUIRE referred to Amendment 1, which read [original punctuation provided]:

page 1 line 10 delete "A person may not bring an  
insert "No"

page 1 line 13 following "section" insert "may be  
brought"

The committee took an at-ease from 10:24 a.m. to 10:25 a.m.

REPRESENTATIVE GARA noted that one view that has been propounded is that the courts won't have to review certain issues if the legislature has already done so. However, his research indicates that when the Alaska Stranded Gas Development Act was passed, the question was raised regarding whether the legislative role provided for in that Act was even constitutional. One view was that the governor gets to execute "things" while the legislature only gets to pass laws, and thus the whole idea of the legislature confirming or stopping the governor from signing the contract might violate the separation of powers clause. If that's the case, and there is neither legislative review nor any court review, then what review is there, he queried. According to a memorandum from Legislative Legal and Research Services, he relayed, there is a still a question regarding whether legislative confirmation, agreement, approval, or disapproval of the contract is constitutional, and the prevailing thought in that office is that such would violate the [Alaska State] Constitution.

REPRESENTATIVE GARA went on to say:

That's the point that ... if we have this sort of shell game where maybe the governor doesn't like our answer and then says, "Well, I don't have to listen to your answer because your answer is irrelevant under the [Alaska State] Constitution," and then we don't get to review and the courts don't get to review, then all of a sudden this is a one branch government, and that's a big problem. ...

REPRESENTATIVE WILSON pointed out that the second paragraph in the aforementioned memorandum draws attention to the fact that the legislature does have inherent powers over the fiscal matters of the state.

[10:27:17 AM](#)

REPRESENTATIVE GRUENBERG, asking that all of his proposed amendments be altered to conform to CSSB 2002(JUD), made a motion to adopt Amendment 1 [text provided previously]; that alteration will result in having the first part of Amendment 1 apply to page 1, line 12, and the second part apply to page 1, line 13, at the beginning of the line.

REPRESENTATIVE WILSON objected.

REPRESENTATIVE GRUENBERG offered his understanding that this change comes at the request by Mr. Baldwin. He then [made a motion to amend] Amendment 1 such that the language on page 2, lines 6-8, also be deleted, thus eliminating proposed AS 43.82.440(b). [Amendment 1 was treated as amended.]

CHAIR MCGUIRE asked whether there were any further objections to Amendment 1 [as amended]. There being none, Amendment 1 [as amended] was adopted.

The committee took an at-ease from 10:30 a.m. to 10:32 a.m.

CHAIR MCGUIRE referred to Amendment 2, which read [original punctuation provided]:

page 2 line 1 delete "the state and the other"  
insert "all"

REPRESENTATIVE GRUENBERG, clarifying that Amendment 2 should instead alter the language on page 2, line 5, made a motion to adopt Amendment 2.

CHAIR McGUIRE objected for the purpose of discussion.

REPRESENTATIVE GRUENBERG clarified further that the language to be inserted via Amendment 2 should be, "all the".

JAMES L. BALDWIN, Attorney at Law, as counsel to the Office of the Attorney General, offered his belief that the administration doesn't have a problem with Amendment 2.

CHAIR McGUIRE removed her objection, and asked whether there were any further objections to Amendment 2 as altered in the aforementioned fashions. There being none, Amendment 2 was adopted.

[10:34:47 AM](#)

REPRESENTATIVE GRUENBERG [made a motion to adopt] Conceptual Amendment 3 as altered to say [original punctuation provided]:

page 2 line 8. Add the following sentence"

"As used in this subsection, "contract" is the contract developed under AS 43.82.020."

MR. BALDWIN said the administration doesn't think that Amendment 3 is necessary, though it is not injurious to the administration.

REPRESENTATIVE GRUENBERG said he simply want's to clarify which contract is being referred to in SB 2002.

REPRESENTATIVE WILSON offered her understanding that Amendment 1, as amended, deleted subsection (b), which ended on page 2, line 8.

REPRESENTATIVE GRUENBERG clarified that the language being added via Conceptual Amendment 3 would constitute a new subsection (b).

CHAIR McGUIRE asked whether there were any objections to Conceptual Amendment 3. There being none, Conceptual Amendment 3 was adopted.

[10:37:51 AM](#)

REPRESENTATIVE GARA made a motion to adopt Conceptual Amendment 4, labeled 24-GH2054\A.1, Bailey, 6/1/06, which read:

Page 1, line 1, following "Act":

Delete "increasing the time period for legislative and public comment on a proposed contract and preliminary findings and determinations under the Alaska Stranded Gas Development Act,"

Page 1, following line 6:

Insert a new bill section to read:

"\* **Section 1.** AS 43.82.410 is amended to read:

**Sec. 43.82.410. Notice and comment regarding the contract.** The commissioner shall

(1) give reasonable public notice of the preliminary findings and determination made under AS 43.82.400;

(2) make copies of the proposed contract, the commissioner's preliminary findings and determination, and, to the extent the information is not required to be kept confidential under AS 43.82.310, the supporting financial, technical, and market data, including the work papers, analyses, and recommendations of any independent contractors used under AS 43.82.240 available to the public and to

(A) the presiding officer of each house of the legislature;

(B) the chairs of the finance and resources committees of the legislature; and

(C) the chairs of the special committees on oil and gas, if any, of the legislature;

(3) offer to appear before the Legislative Budget and Audit Committee to provide the committee a review of the commissioner's preliminary findings and determination, the proposed contract, and the supporting financial, technical, and market data; if the Legislative Budget and Audit Committee accepts the commissioner's offer, the committee shall give notice of the committee's meeting to the public and all members of the legislature; if the financial, technical, and market data that is to be provided must be kept confidential under AS 43.82.310, the commissioner may not release the confidential information during a public portion of a committee meeting; and

(4) establish a period of at least 90 [30] days for the public and members of the legislature to comment on the proposed contract and the preliminary findings and determination made under AS 43.82.400."

Page 1, line 7:  
Delete "**Section 1**"  
Insert "**Sec. 2**"

Renumber the following bill sections accordingly.

REPRESENTATIVE GARA remarked that Amendment 4 must be conceptual for the purpose of allowing the drafter to conform it to CSSB 2002(JUD). He explained that he doesn't believe that 30 days is adequate time for the public to review the proposed Alaska Stranded Gas Fiscal Contract ("ASGF Contract"); rather, having a minimum of 90 days for public review would be a better public policy.

REPRESENTATIVE GRUENBERG asked to be listed as a co-sponsor of Conceptual Amendment 4.

REPRESENTATIVE COGHILL opined that HB 2004 would be a better vehicle for the language of Conceptual Amendment 4.

REPRESENTATIVE GRUENBERG opined that the change proposed by Conceptual Amendment 4 stands for such an important principal that it ought to be included in SB 2002 even if similar language is also inserted into other bills.

REPRESENTATIVE GARA expressed a preference for including the proposed language in SB 2002.

REPRESENTATIVE GARA, noting a typographical error, made a motion to amend Conceptual Amendment 4 such that the word, "Delete" would be replaced with the word, "Insert". There being no objection, the amendment to Conceptual Amendment 4 was adopted.

[10:44:13 AM](#)

A roll call vote was taken. Representatives Gruenberg and Gara voted in favor of Conceptual Amendment 4, as amended. Representatives McGuire, Coghill, Wilson, Kott, and Anderson voted against it. Therefore, Conceptual Amendment 4, as amended, failed by a vote of 2-5.

[10:45:02 AM](#)

REPRESENTATIVE KOTT made a motion to adopt Conceptual Amendment 5, to delete "120" from page 2, line 4, and insert "60".

REPRESENTATIVE GARA objected. He opined that 60 days will not be a sufficient amount of time for someone to bring an action, and recounted some of the steps that should be taken beforehand by the person bringing the action and his/her attorney.

REPRESENTATIVE GRUENBERG referred to Alaska Rules of Civil Procedure Rules 11 and 95(b) - the latter pertaining to penalties for violating the former - and offered his understanding that those rules have been imposed, though perhaps not often.

CHAIR McGUIRE offered her belief that Rule 11 is either not enforceable or is simply not enforced. Although most lawyers are diligent and try to include a reasonable basis for their claims, the reality is that very often complaints contain boilerplate language intended to preserve any claim that might be made. Furthermore, she opined, by the time a contract such as the ASGF Contract would be executed, significant discussion will have already occurred; therefore, having a 60-day statute of limitations is not unreasonable, particularly given that a significant amount of time will have already passed, and those that intend to file litigation will be well aware of the issues. She indicated that the 120-day statute of limitation period is too long, will create uncertainty, and become a burden. She offered her belief that the rules of the court favor fairness, and so she doesn't anticipate that any court of law in Alaska will reject information or claims that may arise later in the process.

REPRESENTATIVE GARA again opined that reducing the statute of limitations to 60 days will preclude legitimate suits from being filed by regular citizens because good lawyers will require time to research whether a particular claim is valid. He noted that 60 days is only one-twelfth of the time that is currently provided for simpler types of cases.

[10:56:48 AM](#)

MR. BALDWIN offered his belief that the "notice pleading" system Alaska has will alleviate a large part of the burden that Representative Gara has concerns about, and said that the point of having a short statute of limitations period is to encourage people to [file claims early] rather than waiting until a "choke point" in the project is at hand. He noted that other types of claims also have short statute of limitations periods, simply as

a matter of public policy, and encouraged the committee to change the statute of limitations period to 60 days.

REPRESENTATIVE ANDERSON surmised that the question could be viewed as, "Are we restricting rights as we make this policy on the 60 day versus other [amounts] of time?" He opined that a 60-day statute of limitations period will not infringe on someone's substantive rights; rather, it's really a timing issue specifically. He also opined that shorter statute of limitations periods for things like redistricting and election law challenges are appropriate. So in terms of public policy, it's important to consider the potential cost and harm that can occur as a result of dilatory litigation. He concluded, "At the end of the day, we really have to come [up] with a number that's parallel to other administrative timelines, and I think this fits. ..."

[11:03:12 AM](#)

REPRESENTATIVE GARA again remarked on how long it can take a credible private attorney to decide whether to even take on a case.

MR. BALDWIN offered his understanding that if a potential client has a deadline, a lawyer does what he/she can to decide that question quickly.

REPRESENTATIVE GARA said it is very common to research a case before taking it and common to take more than a month performing such research. He said he wants the regular citizen to be able to represent his/her own interests.

REPRESENTATIVE GRUENBERG predicted that those who bring a suit will be in a far weaker financial position than those defending against such litigation. Once a suit is filed, the case can't be dismissed without either an order of the court or a stipulation of the parties, and a party can't withdraw itself from the suit without the court's permission. So once a lawyer signs a pleading, he/she is "in" for the duration and will be arrayed against some of the biggest corporations in the entire world. An attorney in such a case will take it on as a type of a public interest case, and will be paid, if at all, only a modest amount. Hence it will be very difficult to assemble anyone willing to take on such a case in order to protect someone's constitutional rights.

CHAIR MCGUIRE noted that there is only a difference of 60 days between the language currently in the bill and what it could be changed to via Conceptual Amendment 5.

REPRESENTATIVE GRUENBERG said that to ensure that the constitution is followed, it will take more than 60 days to determine whether a suit should be filed and whether one has the resources to litigate a case.

CHAIR MCGUIRE recalled that there have been other discussions in the House Judiciary Standing Committee regarding what the right number of days is for a statute of limitations, and surmised that for each type of case, regardless of how long the period is, there will likely be someone who falls outside of what's provided for. The committee is attempting to strike a balance between the need to resolve issues surrounding this important project quickly and the need to provide the public with an opportunity to challenge aspects of the project. She reiterated her belief that 60 days will be sufficient because that timeframe begins after the contract is executed, which will itself be after an extensive public comment period and legislative hearings as well as extensive press coverage; "this is not something that is going to creep up and surprise individuals ...."

[11:12:53 AM](#)

REPRESENTATIVE GRUENBERG argued, however, that there is a difference between knowing about an issue and assembling members of a litigation team, the sheer logistics of which won't work for one person to do [in 60 days].

CHAIR MCGUIRE noted that the laws they pass on the various gas pipeline issues will be laws that exist beyond the current administration, and so it is important to set up a structure that will encourage people to come to the table and build a gas pipeline, and although there will be challenges to any contract that's entered into, the legislature must provide a specific timeframe after which challenges will not be allowed in order to give the parties to the contract some certainty that they can proceed with the project.

REPRESENTATIVE GRUENBERG clarified that his point is that the 120-day figure was arrived at by the conservative members of the Senate, and so in order to avoid the delay of a conference committee, they should consider retaining that figure.

REPRESENTATIVE WILSON offered her belief that a 60-day statute of limitations period will be sufficient because "regular" attorneys won't even consider taking on such litigation.

REPRESENTATIVE COGHILL, surmising that those who are interested in bringing a challenge have probably already begun amassing information from as far back as a year ago, said he has been convinced that the commencement of an action is an easy task, and that once the action is commenced, it is not as if it will die when that 60-day period is up; instead, an action need only be commenced within that timeframe, which he considers to be adequate.

[11:20:41 AM](#)

REPRESENTATIVE GARA, on the issue of media coverage, suggested that that will not be sufficient to inform the average citizen of what he/she needs to know in order to determine whether a challenge should be brought. He said that if left at 120 days, there is some chance that a regular citizen will be able to enter into the process, whereas 60 days does more to guarantee that fewer people will be able to participate in the process, leaving challenges to be brought only by special interest groups.

REPRESENTATIVE COGHILL opined that the 120-day statute of limitations was sufficient when it pertained to a contract that the governor could enter into without any public input, whereas the proposed ASGF Contract is different in that it will have public input and legislative review.

CHAIR McGUIRE, too, remarked on the fact that Alaska is a "notice pleading state" rather than a "code pleading state."

REPRESENTATIVE GRUENBERG predicted that the challenges will come from those who feel that the legislature is giving its taxing power away for the next 30-45 years, those that will be most concerned that the state is getting its fair share of taxes over the next 30-45 years. He surmised that those who will be most concerned with this issue will be the tax payers [of Alaska] because Conceptual Amendment 5 proposes to decrease the time in which tax payers can find someone to represent them in a challenge.

REPRESENTATIVE COGHILL relayed that even before the regular session started in January he'd heard lawyers saying that they would be prepared to bring a suit should the contract contain

items they don't favor, and even some regular citizens have indicted to him that they are already studying the issues involved.

[11:26:27 AM](#)

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

REPRESENTATIVE GARA asked for a copy of the "talking points" that the administration has provided other members of the committee.

CHAIR MCGUIRE agreed to provide him with a copy.

[11:27:33 AM](#)

REPRESENTATIVE KOTT moved to report CSSB 2002(JUD), as amended, out of committee with individual recommendations and the accompanying zero fiscal notes. There being no objection, HCS CSSB 2002(JUD) was reported from the House Judiciary Standing Committee.

REPRESENTATIVE GRUENBERG indicated that in the committee report he would be recommending that the bill be amended.

#### **ADJOURNMENT**

The House Judiciary Standing Committee was recessed at 11:28 a.m. to a call of the chair. [The meeting was never reconvened.]