

**ALASKA STATE LEGISLATURE
HOUSE JUDICIARY STANDING COMMITTEE**

July 25, 2006
8:40 a.m.

MEMBERS PRESENT

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

MEMBERS ABSENT

Representative Tom Anderson

OTHER LEGISLATORS PRESENT

Representative Paul Seaton

COMMITTEE CALENDAR

HOUSE BILL NO. 3002

"An Act relating to the Alaska Stranded Gas Development Act; relating to municipal impact money received under the terms of a stranded gas fiscal contract; relating to determination of full and true value of property and required contributions for education in municipalities affected by stranded gas fiscal contracts; and providing for an effective date."

- HEARD AND HELD

PREVIOUS COMMITTEE ACTION

BILL: HB 3002

SHORT TITLE: STRANDED GAS AMENDMENTS

SPONSOR(S): RULES BY REQUEST OF THE GOVERNOR

07/12/06	(H)	READ THE FIRST TIME - REFERRALS
07/12/06	(H)	JUD, FIN
07/25/06	(H)	JUD AT 8:30 AM CAPITOL 120

WITNESS REGISTER

JOSEPH K. DONOHUE, Attorney at Law

Preston Gates & Ellis, LLP
Anchorage, Alaska

POSITION STATEMENT: Presented HB 3002 on behalf of the administration.

EDDY JEANS, Director
School Finance
Department of Education and Early Development (EED)
Juneau, Alaska

POSITION STATEMENT: During discussion of HB 3002, provided comments and responded to questions regarding Section 5.

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

POSITION STATEMENT: Relayed that he would provide comments on HB 3002 after the administration has presented its suggestions for change.

ACTION NARRATIVE

CHAIR LESIL McGUIRE called the House Judiciary Standing Committee meeting to order at [8:40:40 AM](#). Representatives McGuire, Wilson, Kott, Gara, and Coghill were present at the call to order. Representative Gruenberg arrived as the meeting was in progress. Representative Seaton was also in attendance.

HB 3002 - STRANDED GAS AMENDMENTS

[8:40:49 AM](#)

CHAIR McGUIRE announced that the only order of business would be HOUSE BILL NO. 3002, "An Act relating to the Alaska Stranded Gas Development Act; relating to municipal impact money received under the terms of a stranded gas fiscal contract; relating to determination of full and true value of property and required contributions for education in municipalities affected by stranded gas fiscal contracts; and providing for an effective date."

[8:41:34 AM](#)

JOSEPH K. DONOHUE, Attorney at Law, Preston Gates & Ellis, LLP, after relaying that his firm is under contract with the Department of Law (DOL), presented HB 3002. He said that the bill divides itself into three basic areas: Section 1 expands the "Purpose" provision of the Alaska Stranded Gas Development

Act; Sections 2-4 pertain to a new approach to the distribution of "impact payments" paid to the state pursuant to Article 18 of the proposed Alaska Stranded Gas Fiscal Contract ("ASGF Contract"); and Section 5 corrects a problem created by the Payments in Lieu of Taxes (PILT) provisions of the ASGF Contract regarding the impact on the school funding formula.

MR. DONOHUE, with regard to Section 5, explained specifically that Articles 15-17 of the ASGF Contract call for PILT regarding payments on the Trans-Alaska Pipeline System (TAPS), payments on the "upstream facilities" on the North Slope, and payments on the "midstream facility" once its constructed. These PILT have had the effect of removing those properties from the AS 43.56 property tax base which in turn has had an adverse effect on the school funding formula. Section 5 of HB 3002 is designed to provide the Department of Commerce, Community, & Economic Development (DCCED) with the authority to come up with an assessment approach to essentially "plug the full and true value of the properties that would otherwise be taxed under [AS 43.56] during the life of the [ASGF Contract] back into the formula base for purposes of school funding calculation."

[8:44:46 AM](#)

EDDY JEANS, Director, School Finance, Department of Education and Early Development (EED), confirmed that Section 5 of HB 3002 requires the DCCED to calculate the full value, based on the PILT that are paid to municipalities [for schools], and would increase the full value for the purposes of calculating the required local contribution. In simplistic terms, he offered, if a community was paid a \$100,000 PILT and that was equivalent to a "20 mil levy," then the full value would basically be increased to \$5 million, and this would allow the EED to calculate the "formula required local effort" based on that increased full value; at that point, the municipality would have that PILT to make that local contribution to education.

MR. JEANS, in response to a question, indicated that Section 5 will not impact the foundation formula calculation.

REPRESENTATIVE COGHILL asked about valuation.

MR. JEANS said that although he is not sure what the mil equivalent of the PILT would be, it will be up to the DCCED to make that determination via regulation, "and then they would take that and do the math backwards to figure out what that full value would have been to generate that mil equivalent of the

PILT," and then that full value is what the EED would use to "go back the other direction to apply a formula tax levy to determine what the required local effort would be."

MR. JEANS, in response to another question, offered that under his hypothetical example, for purposes of calculating required local effort under the foundation program, the EED would only consider \$2.5 million and the state would make up the difference. He relayed that that calculation comes from a provision in the foundation statutes. If the committee wanted to change that application of the law, AS 14.17 would have to be amended. The provision in HB 3002 simply requires the DCCED to calculate the value of the full value based on the PILT payment.

REPRESENTATIVE WILSON surmised, then, that the communities that will gain a lot from the gas pipeline running through their area won't have to pay their fair share.

MR. JEANS said that is correct because of the way the foundation statute is currently written. He added, "For the purposes of calculating required local effort for school districts, you would only include half of the increase ... of the new full value determination."

REPRESENTATIVE WILSON asked Mr. Jeans to assist her in crafting an amendment that would change that.

MR. JEANS agreed to do so. In conclusion, he said that the EED has worked very closely with Steve Van Sant [of the DCCED] on Section 5 to ensure that "the full value is calculated and included in the full value determination for education purposes."

[8:53:08 AM](#)

MR. DONOHUE, returning to his presentation of HB 3002, said that Section 1 would expand the scope of the Purpose provision of the Alaska Stranded Gas Development Act and the fiscal contracts developed pursuant to it by adding the phrase, "oil and gas agreements and taxes related to oil and gas business activity in the state" in place of the phrase, "that new investment without significantly altering tax and royalty methodologies and rates on existing oil and gas infrastructure and production". This change would mean that the fiscal terms would relate to oil taxes and oil and gas business activity in the state generally, as opposed to relating to new investment only. Deletion of the aforementioned phrase will allow the contract to consider

significant alterations to the oil and gas tax structure such as the PPT currently being discussed by the legislature.

MR. DONOHUE said that from the administration's standpoint, [the change proposed via Section 1] is the beginning of the discussion of the necessary conforming amendments that will bring the overall ASGF Contract into line with the underlying statute. He assured the committee that although a memorandum by the firm Greenberg Traurig, LLP, indicates that [this provision] suggests that the administration is changing its approach from a laundry list of amendments to one simple alteration that would accommodate all the provisions of the ASGF Contract, that is not the case; instead the administration will be working with the committee and the legislature as a whole to create a committee substitute that will include all of the changes proposed via the proposed committee substitute (CS) for HB 2004, 24-GH2046\F, Bailey, 6/5/06, as amended, which had been adopted by the House Judiciary Standing Committee as a work draft on 6/6/06].

CHAIR McGUIRE remarked that Section 1 of HB 3002 is currently pretty broad and could be interpreted to mean pretty much anything.

MR. DONOHUE concurred.

[8:55:51 AM](#)

REPRESENTATIVE GARA asked what provision of the bill gives the administration the authority to change the tax rules.

[Chair McGuire turned the gavel over to Representative Wilson.]

MR. DONOHUE clarified that the bill doesn't specifically do that; instead, it merely sets up the framework under the Purpose provision of the Alaska Stranded Gas Development Act so that the administration can work with the committee to specifically add in that authority. In response to other questions, he indicated that neither revenues from the PILT for corporate income taxes nor PPT revenues would be directed specifically to political subdivisions. Furthermore, the property tax PILT that are directed to political subdivisions would be in lieu of AS 43.56 "sharing," and would constitute an independent tax in addition to the other PILT. To the extent that members want more details on how the local government PILT work, he recommended that they consult with experts in the Department of Revenue (DOR) regarding how those independent formulas work.

9:01:19 AM

REPRESENTATIVE PAUL SEATON, Alaska State Legislature, asked whether the PILT would be deductible from the PPT as a deductible expense.

MR. DONOHUE said he would research that issue.

[Representative Wilson returned the gavel to Chair McGuire.]

MR. DONOHUE turned attention to Sections 2 and 3, and said that they pertain to the impact payments that are required to be paid to local governments. Current law raises two concerns: one being whether these impact payments would constitute a dedication of funds violation of the Alaska State Constitution; and the other being whether it is practical for the contract to provide for estimated impacts and the distribution of funds before the impacts are felt. Section 2 changes AS 43.82.505 such that all periodic impact payments would be payable to the state, specifically to a special account in the general fund (GF) that is being established via subsection (b) of Section 3. Subsection (c) of Section 3 establishes an Alaska natural gas pipeline construction impact fund in the DCCED to which funds from the special account outlined in subsection (b) could be appropriated. This resolves the dedicated fund concern because it will be discretionary as to whether the legislature transfers the impact payments into the construction impact fund. This does, however, create a policy preference, though one that is nonbinding regardless that it is something intended under the ASGF Contract.

REPRESENTATIVE WILSON, turning attention back to Section 5, sought clarification.

MR. DONOHUE said that an impact must be clearly demonstrable and have a material affect on local infrastructure, transportation services, law enforcement emergency services, health and human services, education, the labor force, population, wages, subsistence, and socio-cultural aspects of a community. The DCCED would then take into account that there has been an offsetting benefit regarding education funding.

REPRESENTATIVE WILSON pointed out that under these provisions some communities will be receiving more benefits.

MR. DONOHUE noted that subsection (f) of Section 3 provides a public process for reviewing grants that are preliminarily

determined to be appropriate by the DCCED; therefore, there will be public notice and hearing regarding which community is getting what grant and for what purposes. He offered his belief that the municipalities which are impacted will be able to point out the fact that other communities which are seeking grants have received additional benefits, and the DCCED will be able to consider that information when determining fair allocations.

MR. DONOHUE relayed that subsection (d) of Section 3 authorizes the DCCED to promulgate regulations establishing a process through which to apply for "these grants," including eligibility criteria. The DCCED will be charged with giving priority to municipalities and organizations in the unorganized borough that are experiencing the most direct and severe impacts from gas pipeline construction; "direct or severe impact" is specifically defined in proposed AS 43.82.505(j).

MR. DONOHUE, in response to a question, indicated that the Tanana Chiefs Conference is one such organization, organizations which were proposed by the Municipal Advisory Group.

[9:11:25 AM](#)

REPRESENTATIVE COGHILL indicated that he would prefer [that such organizations] work through Title 29 rather than through the process being proposed via HB 3002.

MR. DONOHUE, in response to a question, indicated that the only nonprofit organizations that would be eligible for the aforementioned impact grants would be those serving in the unorganized borough.

REPRESENTATIVE COGHILL offered his understanding that the Tanana Chiefs Conference takes a cut of the fees it receives for providing services, and so the end user is getting less service. He suggested that this issue should be researched further.

CHAIR MCGUIRE noted that another issue is that certain programs, once established, tend to take on a life of their own.

REPRESENTATIVE COGHILL offered his understanding that the periodic grants are meant for only a certain duration; however, it could be hard "to keep it to that."

MR. DONOHUE, in response to a question, said that the definition of "direct or severe impact" relates back to the prioritization requirement located in subsection (d) of Section 3. All of

Section 3 pertains only to the distribution of impact payments that are required to be paid to the state under the ASGF Contract; currently that amounts to \$125 million to be paid over six years, and the bill will allow the legislature to appropriate additional monies for additional impacts beyond either that amount or that period. This program will focus on the communities that have been hit the hardest, he assured the committee. In response to other questions, he indicated that the ASGF Contract allows for PILT to substitute for certain taxes, and that the aforementioned \$125 million is to be paid by the proposed Pipeline Project Mainline Limited Liability Company (LLC) Entity ("Mainline LLC") and is in addition to any PILT.

MR. DONOHUE, in response to further questions, said he would research whether the \$125 million would be deductible from the PPT, and that the impact payment requirement is provided for in Article 18 of the ASGF Contract, though that only says that the Mainline LLC will pay \$125 million for social and economic impacts; therefore it is up to the legislature to determine the right approach for allocation of those monies over time. Subsection (d) of proposed AS 43.82.505 requires the DCCED to come back to the legislature at the beginning of each session and explain which communities and organizations got the grants and which meritorious applications were left unfunded because of a shortage of funds. Therefore the legislature will have the opportunity to define the program and refine it as necessary should the legislature feel that the grants are not going in an appropriate or fair direction.

REPRESENTATIVE GARA offered his understanding, then, that the impact payments will be revenue in addition to whatever local property tax is raised, and that those property taxes won't be raised to deal with any impacts a community experiences as a result of pipeline project construction.

[9:21:30 AM](#)

MR. DONOHUE said that that is generally correct; the impact payments are intended to deal with some of the construction-level impacts that might have otherwise been dealt with via a raise in local taxes. However, during the construction period, at least two of the PILT articles would continue to fund local political subdivisions, and those would be the taxes on the TAPS as well as upstream facilities primarily on the North Slope.

REPRESENTATIVE SEATON surmised that that the state - as a 20 percent producer - would be paying 20 percent of the aforementioned \$125 million.

MR. DONOHUE concurred, adding that it is unlikely that it will relate back to the PPT.

REPRESENTATIVE SEATON asked whether "this investment" will qualify for a tax credit for the investors in the Mainline LLC.

MR. DONOHUE suggested that someone else might be better able to address that issue, but offered his understanding that the 35 percent tax credit only pertains to the gas treatment plant (GTP), not the Mainline LLC.

REPRESENTATIVE SEATON surmised that the PILT won't qualify for a tax credit.

MR. DONOHUE concurred.

[9:24:26 AM](#)

MR. DONOHUE referred to subsection (e) of Section 3, and explained that this language regarding the specific things that might be impacted by construction of the project was recommended by the Municipal Advisory Group; furthermore, subsection (e) requires that the department consult with the Municipal Advisory Group in order to determine what constitutes a fair allocation of the impact payments.

REPRESENTATIVE GARA asked how the number of \$125 million was arrived at.

MR. DONOHUE said it was based on information garnered from a study using an analysis based on the TAPS experience, and that the actual number arrived at was \$109.9 million; \$125 million is not an inflated number but does contain some coverage for inflation. Furthermore, Article 18 of the ASGF Contract does allow portions of that amount to be inflated should any payments be made more than nine years after the effective date of the ASGF Contract. In response to a question, he offered his understanding that the Municipal Advisory Group agreed to the \$125 million figure.

MR. DONOHUE reiterated that subsection (f) of Section 3 provides for public notice and hearing of the department's decisions and of the final grant awards. Subsection (g) of Section 3 contains

a prohibition against using the impact payments to retire municipal debt. Subsection (h) provides that once monies are appropriated into the Alaska natural gas pipeline construction impact fund, they should be retained there for future disposition; this will ensure that the funds can be distributed when the impacts are felt rather than in just the year they were received. Subsection (i) of Section 3 assures the Alaska Supreme Court that nothing in the chapter dedicates the initial impact payments to any specific purpose. Again, Subsection (j) of Section 3 defines "direct or severe impact" and is designed to show preference to communities that are experiencing clear and demonstrable impacts on the services listed therein.

MR. DONOHUE indicated that Section 4 extends the life of municipal advisory groups to the later of either 90 days after final distribution of impact payment money or commencement of operations of the qualified project. Furthermore, Section 4 stipulates that the expenses of a municipal advisory group could be covered by impact funds.

[9:30:54 AM](#)

CHAIR McGUIRE asked why the administration decided to depart from the specific clauses included in [HB 2004].

MR. DONOHUE said:

The approach was to put in a purpose section which was consistent with the other bill that was introduced at the beginning of the Third Special Session, which is the PPT provisions and what have you, and then to allow, essentially, the administration and this committee ... to deal with this, either through specific amendments by committee members or [a] committee substitute such as the one that was adopted for discussion purposes at the end of the Second Special Session. So the decision was really to provide flexibility in working with the legislature.

REPRESENTATIVE GARA said that the big issue is how the administration will make the tax structure in the ASGF Contract consistent with the law. He asked whether the administration holds the belief that merely changing the Purpose provision of the Alaska Stranded Gas Development Act will give the administration all the authority it needs to change the ASGF Contract.

MR. DONOHUE said it was never the intent of the administration to rely solely on a change to the purpose provision of the Alaska Stranded Gas Development Act; that change is meant to be just the beginning of the discussion.

REPRESENTATIVE GARA indicated that if there is an intention to add provisions to HB 3002, he would prefer to see them in the form of a new committee substitute (CS) rather than simply working with "this shell of a bill and then a bunch of amendments that come from I don't know where." He asked, "Does the administration have an intention to file a bill to ask for what they want?"

MR. DONOHUE said that would be up to the committee and the administration.

[9:33:24 AM](#)

CHAIR McGUIRE remarked that HB 3002 currently has specific provisions with regard to the grant provisions, the PILT, the education funding, and the municipal advisory groups, and so what is left is to add provisions pertaining to oil and gas taxes. She asked Mr. Donohue to recommend to the administration that it provide suggestions for those provisions in writing to the committee. She then offered her understanding that the Senate is moving forward with its version of the bill, and yet she still doesn't have any proposed amendments from the administration.

MR. DONOHUE reiterated that the administration would be willing provide a more complete set of provisions, either as a proposed CS [or as a series of amendments], and that it is ultimately looking to have something similar to what was adopted [by the House Judiciary Standing Committee as a work draft on 6/6/06 - the proposed committee substitute (CS) for HB 2004, 24-GH2046\F, Bailey, 6/5/06, as amended].

REPRESENTATIVE COGHILL surmised that the oil and gas tax issue ought to be dealt with in this committee, since the fiscal-certainly question will have to be answered as part of the deliberation on the constitutionality [of the ASGF Contract].

REPRESENTATIVE GARA expressed a preference for seeing what the administration really wants - via either amendments or a committee substitute - rather than just passing a shell out of this committee and then having the administration add its desired provisions to the bill in the House Finance Committee.

CHAIR MCGUIRE concurred, and relayed that she has just now heard from the administration that it will be providing [suggested language] to the committee.

REPRESENTATIVE COGHILL suggested that they look at what the Municipal Advisory Group was tasked with under the original Alaska Stranded Gas Development Act.

REPRESENTATIVE WILSON said she wants to ensure that communities which won't receive impact funds won't be penalized.

[9:38:08 AM](#)

REPRESENTATIVE SEATON relayed that in CSHB 2004(RES), the House Resources Standing Committee was very explicit that the administration, for the purposes of fiscal certainty, could only incorporate a tax structure and rates adopted by the legislature. The original version of HB 2004 provided that the commissioner could modify tax rates and structures, and the legislature shouldn't allow such, he warned, as doing so would constitute an inappropriate public policy.

CHAIR MCGUIRE asked whether the House Resources Standing Committee had considered the question of whether allowing such would constitute an unconstitutional delegation of the legislature's taxing authority.

REPRESENTATIVE SEATON relayed that a legal opinion which the House Resources Standing Committee received said in part:

It seems unlikely, however, that even an otherwise enforceable contract could provide for a tax exemption as such because exemptions must be provided "by law" or "by general law" not by contract. Art. IX, sec. 4.

MR. DONOHUE, in response to a question, said he doesn't think that the administration has yet issued a formal legal opinion on the issue of modifying the ASGF Contract after its been authorized. However, the administration did propose, in the House Resources Standing Committee, language that would require the legislature to authorize any future proposed change to the ASGF Contract after its been executed; this language was meant to address the concern that delegation of taxing power should be restricted to those items clearly authorized by the legislature.

CHAIR McGUIRE suggested that the administration and members have written suggestions for change ready for when the bill is next heard.

[9:41:59 AM](#)

PHILLIP C. GILDAN, Attorney at Law, Greenberg Traurig, LLP, relayed that he would defer his comments until after the administration has provided the additional language it wants included in the bill.

[HB 3002 was held over.]

ADJOURNMENT

There being no further business before the committee, the House Judiciary Standing Committee meeting was adjourned at 9:42 a.m.