

**ALASKA STATE LEGISLATURE
HOUSE RESOURCES STANDING COMMITTEE**

June 1, 2006

9:03 a.m.

MEMBERS PRESENT

Representative Jay Ramras, Co-Chair
Representative Ralph Samuels, Co-Chair
Representative Jim Elkins
Representative Carl Gatto
Representative Gabrielle LeDoux
Representative Kurt Olson
Representative Paul Seaton
Representative Harry Crawford

MEMBERS ABSENT

Representative Mary Kapsner

OTHER LEGISLATORS PRESENT

Representative John Coghill
Representative Mark Neuman
Representative Ethan Berkowitz

COMMITTEE CALENDAR

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."

- HEARD AND HELD

PREVIOUS COMMITTEE ACTION

BILL: HB2004

SHORT TITLE: STRANDED GAS DEVELOPMENT ACT AMENDMENTS

SPONSOR(S): RULES BY REQUEST OF THE GOVERNOR

05/31/06	(H)	READ THE FIRST TIME - REFERRALS
05/31/06	(H)	RES, JUD

06/01/06

(H)

RES AT 9:00 AM CAPITOL 124

WITNESS REGISTER

BONNIE HARRIS, Assistant Attorney General
Oil, Gas and Mining Section
Department of Law
Anchorage, Alaska
POSITION STATEMENT: Introduced witnesses.

KEVIN JARDELL, Legislative Liaison
Office of the Governor
Juneau, Alaska
POSITION STATEMENT: Testified in support of HB 2004.

JOE DONAHUE, Staff
Preston, Gates and Ellis, LLP.
Anchorage, Alaska
POSITION STATEMENT: Presented HB 2004.

JIM BALDWIN, Counsel
Office of Attorney the General
Juneau, Alaska
POSITION STATEMENT: Presented HB 2004.

DAVE VAN TUYL, Commercial Manager
Alaska Gas Group
BP Exploration (Alaska) Inc.
Anchorage, Alaska
POSITION STATEMENT: Answered questions regarding HB 2004.

WENDY KING, Director
External Strategies
ANS Gas Development
ConocoPhillips Alaska, Inc.
POSITION STATEMENT: Answered questions regarding HB 2004.

PATRICK COUGHLIN, Senior Counsel
BP Exploration (Alaska) Inc.
Anchorage, Alaska
POSITION STATEMENT: Answered questions regarding HB 2004.

ACTION NARRATIVE

CO-CHAIR RALPH SAMUELS called the House Resources Standing Committee meeting to order at 9:03:07 AM. Representatives Gatto, Olson, Seaton, Ramras, and Samuels were present at the

call to order. Representatives Elkins, LeDoux, and Crawford arrived as the meeting was in progress.

HB 2004-STRANDED GAS DEVELOPMENT ACT AMENDMENTS

CO-CHAIR SAMUELS announced that the only order of business would be 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."

9:03:40 AM

BONNIE HARRIS, Assistant Attorney General, Oil, Gas and Mining Section, Department of Law, introduced witnesses.

9:04:17 AM

KEVIN JARDELL, Legislative Liaison, Office of the Governor, said HB 2004 contains the necessary amendments to bring the contract to the legislature, providing the legislature the opportunity to "make the policy call" on moving forward with the direction the governor outlined in the contract. He noted that in 1997 a task force was created by the legislature which recommended a stranded gas act that would allow negotiations with "sponsor groups to give special tax breaks and other considerations to bring our North Slope gas to market." He said in 2000 and 2003 the legislature amended the act, recognizing market conditions and changes within gas pricing, economics, and to make the pipeline more feasible. Amendments currently before the body are "just the latest step in recognizing that changes need to be made to the Stranded Gas [Development] Act to recognize and give authority to meet those economic conditions to bring our gas to market." He said the state has recognized that some things were necessary "to bring the gas to market." He added, "We acknowledged all along that amendments would have to be made to the Stranded Gas [Development] Act to allow this authority." He said amendments that the committee has read were very specific because the administration "did not want to hide the ball; this wasn't a game. This is a necessary step to commercialize the gas." He said those amendments were in the packet for the committee, but the legislation that is being introduced is broader in scope than the original Stranded Gas Development Act (SGDA) amendments as released in the fiscal interest finding.

9:07:53 AM

MR. JARDELL said, "That was done after a great deal of consultation with attorneys and looking at the purpose" of the SGDA. He said it is necessary for the administration to have broader authority in order to respond to the public and the legislature. He stated, "The legislature, by statute, has told the administration that they are to take the input from the public, take the input from the legislature, and go back in with the sponsor group and negotiate changes that they believe are necessary." He said that "going to a broader perspective will give us the authority to respond to the public, respond to the legislature, and be able to have that authority to negotiate changes." He noted that that is why the latest amendments are broader in scope and provided to the legislature "so that you would have a clear understanding of what parts of the contract we believe we need authority under the stranded gas act to pass." He said it is necessary to make these changes to have the authority to progress the contract to the point of renegotiating potential terms after public and legislative input, "and then ultimately to provide that contract to the legislature for their decision on the policy as to whether or not we go forward."

9:10:10 AM

REPRESENTATIVE LEDOUX asked Mr. Jardell if by saying "to progress the contract" he meant signing the contract.

MR. JARDELL explained that as the administration went through the negotiation process "we recognized that in order to complete a draft contract and get it to the public...that we were going to have to negotiate terms that may be outside of the stranded gas act and some that we knew were outside the stranded gas act contract. Those portions we have acknowledged from day one that we knew that we would have to come back to the legislature to get authority...to have those provisions comply with the stranded gas act. And so, again, we have acknowledged that all along; we knew we would have to come back to you, and so that is what we are doing today." He said the progression is listening to the public and the legislature, so the administration can make changes and present them to "the policy makers of the state to say, after, since 1998, the stranded gas act amendment, the goal, here it is. Here's the negotiated agreement. Do you want to go forward or not? And to get to that point where you have

that opportunity to make that decision we need to pass this legislation."

9:12:32 AM

REPRESENTATIVE LEDOUX asked if this legislation was necessary to progress the contract and to negotiate the terms, then why it couldn't have been done earlier.

9:13:07 AM

MR. JARDELL said it has been a long process, and it is difficult to know what to change until the final product is known, "because everything is in flux until you're done." He said the administration recognized that it would need amendments and that it would have provisions in the contract that were not currently authorized under the SGDA.

REPRESENTATIVE GATTO asked the meaning of "economic conditions."

9:14:40 AM

MR. JARDELL said the economic conditions included "every possible hypothesis of what could happen going forward and trying to narrow that down to your best judgment and predication," including what is best for Alaska. He said the discussions and decisions must be made by the legislature, and "this is a necessary step to really get that to you so you have the opportunity to hear and weigh in and decide after the final contract has been renegotiated--is this the step that we want to proceed on?"

9:15:46 AM

REPRESENTATIVE GATTO noted that Mr. Jardell's definition of economic conditions is very broad and not based solely on current conditions, and he said he would expect it would have been done a year ago if the conditions are based on the future. He said he wanted a "specific reference as to what you meant by meeting economic conditions and if you meant the price of gas, if you meant the arrangement of the specific numbers in the contract, or what?"

MR. JARDELL said one thing to move the contract forward was "the state's ownership interest. That was one of the things that we did based on our economic research that we determined to make this project a go, that we were going to have to take 20 percent

ownership of the line, and take our gas in kind." That is one things the administration weighed the economics on, he stated.

CO-CHAIR RAMRAS said that after the public comment period ends on June 23, there is a 30-day period for the administration to synthesize the information, and he asked about the next step in the process.

[9:17:59 AM](#)

MR. JARDELL said that under the SGDA the legislature directed the administration to negotiate the draft contract to present to the legislature and the public. He stated that after that, the commissioner of revenue will review all comments. He said if there are terms that need to be renegotiated, the commissioner will need to renegotiate with the sponsor group and "try to make those changes." He said he thinks the time frame is up to 30 days to renegotiate those terms. If an agreement is reached, the administration will present a final contract to the legislature to decide to move forward.

[9:19:17 AM](#)

CO-CHAIR RAMRAS asked if there is a required period of time after the public comment period to "put everything together, or does it happen concurrently?"

CO-CHAIR SAMUELS said he believes there is no timeline after the public comment period and the renegotiation. The administration can take as much time as it needs; it isn't required to come back with a contract at any specific time, he added.

[9:20:18 AM](#)

MR. JARDELL said Section 43.82.430 states that the commissioner of revenue shall make a decision within 30 days after the public comment period. One decision could be that "we're not going to go forward with the contract because we cannot achieve an agreement or meet the terms that we think are—that have been expressed by the public." He read:

[The commissioner] shall prepare a summary of the public comments received in response to the proposed contract, the preliminary findings, and determination.
(2) After consultation with the commissioner of natural resources, if appropriate, and with the pertinent municipal advisory group established,

prepare a list of proposed amendments, if any, to the proposed contract that the commissioner of revenue determines are necessary to respond to public comments. (3) Make final findings and a determination as to whether the proposed contract and any proposed amendments prepared under this subsection meet the requirements and purpose of the chapter...After considering the material described in this section, securing the agreement of other parties, the commissioner determines that the contract is in the long-term fiscal interest of the state, the commissioner shall submit the contract to the governor, and then state a commissioner's final findings and determination under (a) of this section.

[9:21:44 AM](#)

CO-CHAIR RAMRAS noted that the public comment period will be over on June 23, and he surmised that by July 22 or sooner there shall be a contract to the legislature in a final form.

MR. JARDELL said that is a fair interpretation.

[9:22:31 AM](#)

JOE DONAHUE, Staff, Preston, Gates and Ellis LLP, stated that "most of the amendments in the first part of this bill are driven by two major policy decisions that the state made during the course of the negotiations." Those are to have the state become a full commercial partner in "this project" and "taking royalty in kind; production tax payments in kind, and also taking full responsibility for the marketing and shipping of the gas over the line by committing to a firm transportation commitment on the pipeline itself. The other major policy decision that is still in process is the decision to extend oil fiscal certainty to the producers and that includes the pending discussions surrounding the PPT [profits-based petroleum production tax]. It includes the payment in lieu of taxes for oil production and oil pipeline transportation property. And it will include the oil income within the corporate income tax PILT [Payment in Lieu of Taxes] in the proposed fiscal contract."

[9:25:25 AM](#)

MR. DONAHUE said Section 1 repeals a statement from existing law. "We recommend...the language relating to without significantly altering tax and royalty methodologies. This,

again, ties in with the discussion about the enactment of a PILT for the production tax that would be incorporated into the final...if the PPT is enacted in that fashion."

REPRESENTATIVE SEATON said he is concerned with the statement on page 1, line 10, "authorizing establishment of fiscal terms related to oil and gas agreements and taxes". He said other statements similarly appear in the bill to give the commissioner the ability to modify oil taxes that the legislature would create in the PPT. He said a basic and fundamental question of HB 2004 is allowing the commissioner to change the oil and gas tax structure.

[9:27:47 AM](#)

MR. DONAHUE said HB 2006 allows the administration—subject to the approval of the legislature—to include oil PILTs in the contract. He said it would apply to all types of taxes: oil and gas, production income, and property taxes. He added, "To the extent that there is authority to modify the oil taxes, that is inherent in the initial underlying SGDA, in that a PILT would be designed to minimize disputes between the parties and provide certainty of payment over time, and might not reflect the actual methodologies that are enacted in statute." He said that is seen throughout the proposed fiscal contract discussing the gas pipeline issues, the upstream cost allowances, the upstream facilities payment, and the PILTs that are payable by the mainline entities and the midstream entities. He stated that these are property taxes and in lieu of property taxes. The instructions on those types of taxes, within the SGDA, try to level the imposition of the tax and avoid the front-end impacts of some of the property tax methods "and provide certainty to the local political subdivisions and certainly to the state. So there is authority to incorporate the existing tax structure into the contract and to modify some of it."

[9:29:43 AM](#)

CHAIR SEATON asked, for example, if the legislature passes a production tax of 22.5 percent, can the commissioner incorporate a 20 percent tax into the contract.

CHAIR SAMUELS said he would assume that any tax rate can be put into the contract but then the legislature has to approve it.

MR. JARDELL said the commissioner cannot change the law, but the legislature can if it approves the contract. "However, if you

pass a PPT at 22.5 [percent] or 17, then yes, we could still negotiate terms into the contract that are different than what you ultimately pass in the PPT...with or without this bill. That would be dependent on the legislature's adoption of that contract." He said that would actually be the legislature passing a new law for a new tax.

[9:31:37 AM](#)

REPRESENTATIVE SEATON said, "But without this you are not able to negotiate oil taxes or incorporate oil taxes under your statutory provisions?"

MR. JARDELL said, "The stranded gas act is unclear as to whether or not you can do fiscal certainty on oil. The minutes reflect a clear intention by the legislature that oil not be incorporated. That's why we have always decided that we need to come to the legislature and make sure the legislature gives us that authority, and that we're not going to play games with parsing out words in the stranded gas act, but the fiscal certainty on oil is different than what we could propose to you in a statute to say just change the oil tax. I think we still could move forward and say we think the legislature should adopt a 20/20 tax. I don't think we would need this legislation to propose that."

[9:33:00 AM](#)

REPRESENTATIVE LEDOUX said if the legislature passes an oil tax and then ratifies the contract with the same tax, "would the executive branch, then, as a result of the terms in this bill, be able to modify the terms of the contract without going back to the legislature for subsequent ratification of modifications?"

MR. DONAHUE said the statutory authority in this bill is a platform for achieving two goals. One is "to t-up this fiscal contract for the legislature's full debate and deliberation. There can be no modifications via this contract absent the ratification or the authorization act subsequently by the legislature." Changing the production tax can be dealt with "when it comes time to approve or disapprove the authorization act which gives the governor the authority to sign the contract, and without which the contract won't be signed."

[9:35:17 AM](#)

CO-CHAIR SAMUELS put forward another example of passing a PPT with a tax rate of 22.5 percent, which gets put into the contract. He asked if in 10 years, the new governor is able to lower the tax rate without coming back to the legislature to re-ratify the terms.

MR. JARDELL answered that "the commissioner cannot, by himself, bypass the legislature" by changing the tax rate. He said if he is wrong, he will get back to them.

[9:36:36 AM](#)

REPRESENTATIVE LEDOUX asked if other things in the contract can be changed unilaterally. She noted that the gas pipeline contract is the most significant thing that the legislature will ever do, but "aren't most contracts simply an executive function?" She asked what would prohibit modifications.

MR. JARDELL said the executive branch operates within the authority provided by law. The authority being given is only to the degree that the legislature ratifies the contract, but it is different than most contracts, he said.

[9:37:59 AM](#)

REPRESENTATIVE CRAWFORD said his worst fears of the profit-based oil tax is that it will be a lawyer's heaven and an accountant's nightmare, producing state revenue well under what is expected. He asked if that happened, "could we go back and change the contract?"

MR. DONAHUE said he thinks if the PPT was rolled into the contract, those provisions would be locked in for 30 years, but if the issue is egregious, the state could try to renegotiate the contract with the oil producers if they were amenable.

[9:40:07 AM](#)

MR. DONAHUE said Section 1 of the bill "is related to making it clear that fiscal certainty can be granted on the oil side. The original SGDA dealt with providing fiscal certainty on gas issues and on activities related to the specific project. This language makes it clear that it's related--that the fiscal certainty terms are related to the parties--the qualified sponsors--and all of their qualified oil and gas business activities in the state." In paragraphs (1) and (2), the concept of a related party is introduced, which is defined in

Section 16 of the bill as an affiliate of a qualified sponsor that owns part of the project and is an intended beneficiary of the fiscal certainty terms. He said this concept refers to "the LLC, the mainline entity LLC, the GTP [gas treatment plant] entity LLC, and other LLCs that are formed within the state to own and operate the [gas] transmission line." It is meant to include entities "that are not specifically mentioned in the original Stranded Gas Development Act."

MR. DONAHUE said Section 2 "expands the topics that can be addressed in the fiscal contract." It again mentions "related party and we have a repeal of language relating to the approved qualified project under this chapter." He said this is to clarify that fiscal certainty can be applied to oil and existing infrastructure, and not just for the new project.

[9:43:56 AM](#)

MR. DONAHUE said the original section provided the revenue commissioner the authority to amend the notice and timing rules regarding taking gas in kind to adjust royalty valuation methodologies. The new section deals with the fiscal contract and oil and gas leases or unit agreements. The existing version has a provision which authorized the administration to negotiate new royalty valuation methodologies, "mostly aimed at avoiding conflict with producers and providing certainty and ease of administration. That section has not been amended by this bill. The royalty...valuation issues on the gas side are nonexistent, essentially, because the state is taking the gas in kind."

[9:44:31 AM](#)

REPRESENTATIVE SEATON asked for an example of "how the state would be working in the unit agreement and why that modification is here."

MR. DONAHUE said the primary example in terms of the fiscal contract surrounds the Pt. Thompson leases and unit agreement and "the disputes between the producers in that unit area and the state." He said there is a specific article in the fiscal agreement that "supersedes the language of existing unit agreements and oil and gas lease agreements for the time proscribed in that article."

[9:45:41 AM](#)

MR. DONAHUE said [paragraph (3)] essentially provides the authority for the revenue commissioner to include, in a proposed contract, a provision to elect to take production tax payment by delivery of gas in lieu of cash. He said [paragraph (4)] expressly authorizes the state to negotiate to acquire an ownership interest in the project and "also refers to terms relating to collateral agreements authorized in [AS 43.82.437]."

[9:46:25 AM](#)

MR. DONAHUE said Section 3 of the bill, regarding contract development, has parallel changes to reflect changes made in the purposes section and in [AS 43.82.220]. He said line 3 on page 3 refers to terms for modifications to taxes on oil and gas, which is aimed at overcoming the legislative history of the SGDA "that suggests that oil taxes were not to be negotiated and resolved through this contract process." He said that the other amendment in paragraph (1), referring to credits for investment in the project, is "aimed at providing authority to the commissioner of revenue to negotiate credits...within the context of the fiscal contract that may not be specifically authorized by the parallel PPT legislation that is enacted. This is discussed in the fiscal interest findings, and it's a credit that's designed to give incentives and tax credits to the producers in return for their investment in the GTP facility." He said [paragraph (2)] refers to the broadening of the purpose behind 43.82.220, "taking it beyond the authority to amend just royalty in-kind related provisions and royalty valuation provisions, and including the ability to amend/modify oil and gas lease agreements and unit agreements, and to specify and to make clear that these agreements are superseded by any conflicting terms in the fiscal contract." He continued to say that [paragraph (6)] deletes "the concept of administrative termination." It deletes and repeals 43.82.445, which outlined an administrative appeal process for termination of the contract. The termination regime has been substituted for contract provisions, he said. "There is an administrative termination Article 28, and there's also termination authority under Article 5, the work commitments provision."

[9:49:43 AM](#)

CO-CHAIR SAMUELS asked about deleting administrative termination on line 19. He questioned if this contract "doesn't get over the hump" and the next administration comes in, "we're not eliminating that, we're simply broadening that and saying these tools are now available for contract negotiation...we're not

eliminating saying you have to take the gas in kind, we're saying you can, and you can have termination other than administration termination. You can have whatever an administration negotiates."

[9:50:35 AM](#)

MR. DONAHUE said that's correct.

REPRESENTATIVE SEATON surmised that administrative termination would still be available; "it's just that you're allowing arbitration as well."

[9:51:02 AM](#)

MR. DONAHUE said that is correct. "This would allow the next administration, focusing on a different type of contract, to fashion any contractual remedies that it wishes to pursue."

CO-CHAIR SAMUELS asked, "Are there are any provisions, instead of broadening that--the example that we're given on the termination--that you're limiting it to what is actually the contract that is currently negotiated. I would think in every instance you have broadened it to incorporate what this administration has negotiated, as well as other options."

[9:51:31 AM](#)

MR. DONAHUE said that's exactly correct, and the goal is to develop a set of statutory provisions that could work "going forward." He said [paragraph] 7 contains language to provide "a generic authority and a flexibility to the commissioner of revenue to fashion various commercially reasonable provisions that are necessary to implement the complex policy decisions that are inherent in this bill, and that is the decisions to attain an equity interest, decisions to make shipping commitments on the project, and other related provisions." He said this provision substitutes for more detailed provisions "in the former version of this amendment." He said it adequately covers each of the more specific provisions that are outlined there and provides authority for new and different provisions that may arise from public and legislative input.

[9:53:27 AM](#)

REPRESENTATIVE SEATON asked if it significantly changes the legal standard for the commissioner's best interest finding.

"No longer does it have to be best interest finding, it's just an interest finding, in the interest of the state."

MR. DONAHUE said he thinks "best interest" was changed to "long-term fiscal interest" because that is the finding that the commissioner is making now with the preliminary fiscal interest findings and will ultimately have to make with the final. "This is really, we see, as a consistency amendment. It does change the word "best interest" to "long-term fiscal interest", so the type of test that might arise there would be slightly different, but we would see it as essentially the same."

[9:54:56 AM](#)

REPRESENTATIVE SEATON asked if the terms would be the same from a legal standpoint.

MR. DONAHUE said, "I think the answer is certainly 'necessary to further the purposes' is arguable a more rigid test, and what we're trying to establish here is flexibility for the commissioner to cover eventualities that may arise in the future, as well as to deal with the number of complex provisions that have been set forth in detail in the fiscal interest findings and in the contract. Whether or not "long term fiscal" is the same as "best interest", you can argue that they're different. We believe that in this context it's essentially the same, because it ties in with the findings that are ultimately necessary for the commissioner to make to have the contract go forward, to be referred to the governor, and to be referred, ultimately, to the legislature for ratification."

[9:56:03 AM](#)

REPRESENTATIVE CRAWFORD said that when the legislature was reauthorizing the SGDA in 2002-2003, "a lot of us had a lot of qualms about it." The line about the best interests of the state "was one of the ways they sold reauthorization." He said it seems that "long-term interest" could be construed to mean that the state could lose money in the short term. He noted that the change of terms could keep the state from being sued if something was being done that was not in the best interest of the state. He added that weakening the act creates trepidation in him.

[9:57:46 AM](#)

MR. JARDELL said, "I think ultimately this is what...the legislature told the commissioner to make in the preliminary interest finding." He said it is a consistency change, "but ultimately it's the legislature that's going to make that determination." He said the change strengthens the act by making it consistent with the preliminary interest findings.

[9:58:27 AM](#)

REPRESENTATIVE CRAWFORD said if the legislature approves this contract, "we're not going to have another chance for 30 or 45 years to go back in and change something that we fouled up." He said there will be no chance to fix it if it doesn't work.

[9:59:07 AM](#)

MR. JARDELL said, "Continuing the inconsistency, I don't think, will address that concern." He said that Representative Crawford's concerns should be considered by the legislature as the issue moves forward.

CO-CHAIR SAMUELS said the best interests of the state would be the long-term interests of the state, and he asked why the change was made.

[10:00:19 AM](#)

MR. DONAHUE said it was changed mostly for consistency, "because that's what the commissioner is actually finding in the documents that he is preparing." The best-interest finding is different than it is in the Department of Natural Resources context. "In this particular instance, the best-interest judgment is ultimately made by the legislature," he stated.

[10:01:16 AM](#)

REPRESENTATIVE LEDOUX said she is still confused by the distinction of the language. "If it had originally been in the long-term fiscal interests of the state, then that would have sounded fine. But to change it now from the best interest of the state..." She suggested the following: long-term best fiscal interest of state.

[10:01:58 AM](#)

MR. DONAHUE answered, "I think we didn't intend to trigger too much concern over this change. We were trying to kind of make a

rational, technical edit here that made it fit with the rest of the act. There was no intent to undermine the judgments that have to be made here. But we are trying to make the distinction between the DNR best interest types of findings and the types of findings that are being made here by the commissioner of revenue."

[10:02:36 AM](#)

REPRESENTATIVE LEDOUX asked Mr. Donahue if he can understand, as a lawyer, how taking "best" out of the findings can be interpreted in court, regardless of intent.

[10:03:09 AM](#)

MR. JARDELL said AS 43.82.400 provides that the preliminary findings and determination be in the long-term fiscal interest of the state. "It was really a consistency with what the legislature wrote for the preliminary findings."

MR. DONAHUE referred to Section 4 on the bottom of page 3. He said it "basically authorizes the attorney general and the commissioner of revenue to agree to arbitration provisions and, as part of that agreement, to waive sovereign immunity and other immunity protections and consent to forms of arbitration that are different from that applicable under state law, which is the revised Uniform Arbitration Act, and also, to allow the enforcement of judgments against the state in other jurisdictions." He said Section 4 also ties in with Section 17 of the bill, which makes an exception from the Uniform Arbitration Act for arbitration agreements entered into under AS 43.82 or under the SGDA. He said Article 26 of the fiscal contract and the accompanying exhibit (C), which lays out the mandatory dispute resolution process, adopts the federal arbitration act as the standard, and allows confirming an arbitration award in another jurisdiction and to enforce that judgment against the state in that jurisdiction.

[10:05:46 AM](#)

REPRESENTATIVE CRAWFORD asked for a clarifying example.

[10:06:17 AM](#)

MR. DONAHUE said currently the contract requires arbitration-mandatory dispute resolution-in every case. The methodology for invoking that process is a choice between the state uniform act

and the federal arbitration act. He said parties to the contract agreed that it would be the federal act that would apply, "and that awards that are entered against the state as a result of an arbitration can be confirmed and enforced against the state in another jurisdiction." For example, if there is a dispute within the contract over how much money the state owes the producers for upstream cost allowances, and there is an award against the state that the state doesn't pay, the oil companies could go to another state with jurisdiction over Alaska assets, he explained. He said he doesn't know if the Alaska Permanent Fund could be part of that.

[10:08:39 AM](#)

REPRESENTATIVE CRAWFORD asked if the state has the same ability to hold the oil companies to the same standard.

MR. DONAHUE said he believes the state would be able to pursue assets of these producers in other jurisdictions, and it may not have to go through the arbitration confirmation process.

CO-CHAIR RAMRAS spoke of a discussion of forming a Delaware LLC rather than an Alaska LLC, and he said he doesn't understand what was just explained.

[10:10:12 AM](#)

MR. DONAHUE said the rules for dispute resolution for the fiscal contract will be separate from the rules under the LLC agreements. The LLC agreements will adopt Delaware law.

[10:11:40 AM](#)

REPRESENTATIVE SEATON asked for other instances of state sovereignty waivers.

MR. DONAHUE said the state has a standing waiver of sovereign immunity for most contract tort and other claims. The state has asked for approval to allow itself to be sued in federal court, he said, and that is dependent upon an express waiver of the 11th Amendment immunity of the state against prosecution in federal court. He said he is not aware of an example where there's an express waiver of sovereign immunity to be pursued in other states, but it is similar to being allowed to be sued in federal court, which is generally prohibited.

[10:12:53 AM](#)

CO-CHAIR SAMUELS requested further information.

MR. DONAHUE said Section 5 of bill has the addition of the concept of related party to cover the project owner entities. "These would be the mainline LLCs, the GTP LLCs, and other LLCs that are formed within Alaska to own and operate different segments of this project."

[10:13:55 AM](#)

REPRESENTATIVE SEATON asked about the confidence that the definition of related party will not have unintended consequences regarding other groups, such as contractors "requesting some other provisions under this contract."

MR. DONAHUE said the concept of related party is narrowly and tightly drafted "to deal with the entities that appear in the contract and that are expressly given fiscal certainty rights and privileges."

[10:15:14 AM](#)

MR. DONAHUE referred to Section 6 of the bill. "In its existing form, it deals only with modifications of the right to provide notice and timing in the taking of royalty, gas in kind and...the royalty valuation issues." He said there has been an expansion of this provision to clarify that the fiscal contract will supersede all oil and gas leases and unit agreements. On page 5, he noted that (A), (B), and (C) modifications reflect the decision by the state to enter into the firm transportation commitments, "and to elect to take [royalty in kind] for the life of the contract and to elect to take payment of production taxes in kind for the life of the contract." He said the modifications reflect the shipping commitment concept and not long-term purchase and sale contracts. He said the reference to "specified period of state's commitment to take its royalty share in value or in kind does not exceed the term of the purchase and sale agreements" was deleted on page 5, line 10 because the state is not entering into purchase and sale agreements; it's entering into shipping agreements. He said, "Those amendments will be entered into at the open season."

[10:18:15 AM](#)

REPRESENTATIVE SEATON noted that Shell approached the state about buying "all the gas" and asked if this would limit the state's ability to make that sale.

MR. DONAHUE said, "This does not affect any future decisions by the state or DNR to enter into arrangements with Shell or any other entity to help it market its gas." Those particular decisions might need some amendments to the royalty advisory board, he stated, and the role of that board will have to be examined before the purchase and sale agreements commence. "There should be no narrowing of authority; there may be a need to come back and clarify them." He said that paragraph (2) "relates to clarifying the authority for upstream cost allowances, which are generally not provided for or allowed under oil and gas leases, to the extent that there is any difference between the fiscal contract, the terms of the fiscal contracts, for instance, relating to the state's agreement to pay for the disposal of impurities. This provision renders the fiscal contract...preeminent over any other existing oil and gas lease agreement or unit agreement with respect to those costs." He said Section 7 deletes the reference to royalty to reflect the broader purpose of subsection 220.

[10:20:47 AM](#)

MR. DONAHUE said Section 8 tries to "nail down and avoid any conflict with the statutory provisions in Title 38 that may apply in the context of [royalty in kind] dispositions, and to make it clear that the standard laid out in 220(a) for determining the appropriate methodologies for maintaining gas for in-state uses, for example, are satisfied by the fiscal contract enacted pursuant to this provision...to avoid litigation or conflicts with other provisions of Title 38 that might apply in this instance." He noted it would just be for gas and not oil.

[10:21:52 AM](#)

REPRESENTATIVE SEATON noted a "blanket prohibition on us requiring any producer to sell any gas, so we're the only gas supplier, yet we have a 20 percent shipping commitment." He asked how that relates to "keeping the pipe full and yet supplying in-state gas, if we're the only suppliers."

[10:22:36 AM](#)

MR. DONAHUE said he must defer to the FERC experts. He said he thinks the state has made allowances for the take-off points. The state can bargain during the open season, he added, and make judgments about how much gas it wants to deliver in state. He said he is not conversant on the relationship between the in-state FERC tariffs and capacity and the long haul to Alberta.

[10:23:13 AM](#)

REPRESENTATIVE SEATON asked if the modification will impair the ability to meet in-state demands. He expressed concern that there is no obligation for the producers to sell any gas in the state, and he requested more information.

MR. DONAHUE said he thinks the theory is to set up a platform for the legislature to decide whether the in-state needs are adequately met by the terms of the contract and not so much to revisit that whole area that is addressed in Title 38, and now here. "We're trying to provide authority for the general provisions in the contract and to allow the contract to come forward to the legislature and then for the legislature to make a judgment about whether in-state use is adequately protected."

[10:25:14 AM](#)

MR. DONAHUE said Section 9 relates to the term of the contract, and the language deleted at the top of page 6 "refers to the possible argument that...the known amount of stranded gas in [the] North Slope is something like 37 trillion cubic feet (tcf), and the project itself is dependent upon the discovery of another 16 tcf, and so to avoid any ambiguities about whether or not unknown gas is considered 'stranded gas', that language has been deleted." He said it also provided clarification that suspensions of contract obligations are covered by force-majeure terms, but not to exceed the 45-year period "in the ultimate contract." Section 10 relates to project plans and work commitments, he stated, providing for provisions that "allow the qualified project plan to be implemented as modified as a result of the contract--development of the contract under this chapter. And that relates to provisions in the work commitment section of the contract." He said the intent was to provide statutory support for the approach taken in the work commitment section.

MR. DONAHUE explained that Section 11 refers to collateral agreements of two types, and [subsection] (a) covers "a type of coordinating arrangement that is under consideration by the negotiating team," which has not decided on whether to pursue a

coordination arrangement. This arrangement refers to having a parallel contract that would be with the state and some of the affiliated entities that would become part of the LLC agreements, for instance. He said, "This is a matter of debate; I don't have a concrete example of what type of coordination agreement might be proposed...Some of these issue may be just incorporated into the LLC agreements themselves," negating such an arrangement. He said subsection (b) deals with possible situation "in that one of the major pieces of legislation that will also need to go forward on this transaction is the legislation enacting Alaska Pipe, the public corporation of the state that would take an ownership interest in the main line LLCs or in the GTP LLC agreements." He said these collateral agreements may be in place and available for signature at the time of the authorization of the fiscal contract. If the public Alaska Pipe Corporation has been set up, he said, this section gives the commissioner members of that board the authority to bind the public corporation. He said for a limited period of time there is a modified quorum requirement within the public corporation so that the commissioner members can bind it, and as new members are appointed, it becomes a majority vote of all those appointed to date. "So it's a sequencing issue," and it's a question of how long it takes to get that corporation up and running. "This allows it to be immediately effective in terms of negotiating agreements and entering into these LLC agreements," he said.

[10:30:47 AM](#)

REPRESENTATIVE SEATON, regarding subsection (e), asked if it is limited to the sponsors and their affiliates. He said there has been talk that the sponsors will not maintain ownership of the pipeline. "They always sell them off," he stated. He asked if this limits the ability of others to be part of this contract. "Do they need to be part of this contract at all? If ConocoPhillips Alaska, Inc. decided to sell its interest, that would no longer be an affiliate...or would it become an affiliate?" he asked.

MR. DONAHUE said the fiscal contract has specific provisions with respect to the withdrawal of ConocoPhillips Alaska, Inc. from this contract.

REPRESENTATIVE SEATON said he just meant if Conoco sold its pipeline interest in the LLC. He stated that big oil companies generally do not operate pipelines.

MR. DONAHUE said it is very narrowly drafted and intended to deal with a short-term problem, "and after that the Alaska Pipe Corporation would be the member with the ownership interest in the LLC. Whether or not ConocoPhillips could pull out of the LLC agreements and under what terms, that would be a matter for the LLC agreement."

[10:32:40 AM](#)

REPRESENTATIVE COGHILL asked how many LLCs are contemplated.

MR. DONAHUE said currently there are LLC agreements being negotiated for the mainline entity, the pipe from the North Slope to the Canadian border. He said there will be a separate LLC for the GTP. He noted two others being contemplated for the transmission lines. So there are at least four LLCs that are related to ownership of the project. He noted, "On the Canadian side that ownership structure hasn't been determined, but it would be some comparable entity, possible a limited liability partnership formed under Canadian law, which would be formed to own the Canadian border to the Albert segment." He said there might be another one formed for the next segment.

[10:34:02 AM](#)

REPRESENTATIVE SEATON said he is concerned with the proliferations of LLCs because LLCs don't pay corporate tax. He asked if there is a way to make sure corporate taxes are paid "and it doesn't become a shell game so that we lose the ability to have corporate income tax paid to the State of Alaska?"

[10:34:39 AM](#)

MR. DONAHUE said that's a better question for Dan [Dickinson]. He said the project owner entities, which are these LLCs, are "for the most part" covered within the terms of the fiscal contract, "and so their tax liabilities, not necessarily income tax, but their tax liabilities for property tax and whatever, are already structured in the deal." He stated that "to the extent that they're not subject to an income tax, then perhaps the members of these entities are, then those entities would have to report under either the skit—that article of the fiscal contract that deals with corporate income tax liabilities of the producers and their unitary businesses, or if it's an unrelated entity that happens to own part of one of the LLCs, then they would have to pay and record corporate income tax."

[10:35:39 AM](#)

REPRESENTATIVE SEATON asked that the administration get back to the committee on the tax treatment of these LLCs.

[10:35:57 AM](#)

MR. JARDELL said, "It is important to clarify that the rights of any companies to create an LLC is not being changed within this amendment. Their ability to create an LLC, whether we're in partnership or if there are any other joint venture or anything else in this state, is what it is under the statute. This isn't changing that authority; this is granting us the authority to negotiate what would be in that LLC."

[10:36:37 AM](#)

REPRESENTATIVE SEATON said, "Under the contract, we're saying that this covers all your taxes, and I want to make sure that we don't get into a position establishing these LLCs," and if the legislature decides to change the tax laws so that LLCs have to pay taxes, due to these entities "basically escaping those taxes, that the contract does not prevent us from modifying LLC taxes to mirror corporate taxes."

[10:37:27 AM](#)

CO-CHAIR RAMRAS expressed his understanding that the LLC membership of the producers would flow back to the C-Corp entities. He said he has some LLCs and "they are extraordinary vehicles designed very appropriately for exactly what our intent is here." He said, "Although the LLC may not pay any taxes, the backstop is that the LLC flows back to BP of Alaska, ConocoPhillips, ExxonMobil Corporation, and those are C-Corps that would have their own ownership interest in the LLC."

[10:39:01 AM](#)

JIM BALDWIN, Counsel to the Office of the Attorney General, said Section 12 addresses Payment in Lieu of Taxes (PILT) made on behalf of taxes that are owed to revenue-affected municipalities. He said the section "basically provides comfort that these PILT payments can be paid directly to the municipalities as their taxes have been paid in the past." Section 13 begins to implement provisions in the contract, "although not expressly or completely set out in the contract. And it has to do with the payment of the impact funds to the

economically-affected communities." He said pages 82-83 of the fiscal findings outline the impact payments, which equals \$125 million over a six-year period during the construction phase of the contract. He noted a request received "rather late in the process" from the municipality advisory group to come up with a method for receiving the funds, and that is what Section 14 does. It establishes an account in the general fund for receiving the money and a grant program that is loosely based on the NPRA grant program, he said. He said Section 15 also implements a request from the municipality advisory group that its existence be extended throughout the period that these grant funds would be payable.

[10:41:49 AM](#)

CO-CHAIR SAMUELS asked about the terms of membership expiring all at one time.

[10:42:08 AM](#)

MR. BALDWIN said Sections 16 defines related party, and Section 17 clarifies that the state arbitration act is subject to the terms of the SGDA. Section 19 is a reviser's instruction, and Section 20 provides for retroactivity of the bill in certain sections. The grant provisions would not be retroactive, but all the sections that deal with conforming of the stranded gas act amendments would be retroactive to January 2004, he explained. He added that Section 17 has a different retroactive date because it becomes effective on January 2005.

[10:44:08 AM](#)

CO-CHAIR RAMRAS requested from the Department of Law a discussion of precedents or case law on the terms "long-term fiscal" and "best".

REPRESENTATIVE OLSON asked if an oil tax passed the legislature, "what kind of certainty can you give me that the contract that's delivered to us on July 22 has those same terms in it?"

[10:45:54 AM](#)

MR. JARDELL said, "I think it would be somewhat bad faith on my part to sit here and tell you that without a doubt that if we get into renegotiating the contract after the public has weighed in and after the legislature weighs in through that process, that we would give you a definitive answer at this time what our

position would be at the bargaining table. We do want to wait until we can consider all the input of the public and all the input of the legislature. With that, let me restate what, I believe, the Governor has stated for some time now, that oil taxes--the rate and the credit and the structure--need to be decided by the legislature, and that was why the governor insisted on not putting those into the contract and delivering that to the legislature, but to do that through a separate piece of legislation, and then work from there to incorporate that into the contract. And so our position...has been that the legislature needs to set those rates, and I believe it is our intention to take those rates back to the bargaining table and negotiate from those rates." He said he cannot give a definitive answer at this time.

[10:47:32 AM](#)

CHAIR SEATON requested information on unit agreements and how they can be modified, suggesting that was skipped over.

MR. JARDELL said he will get back to the committee.

The committee took an at-ease from [10:48:07 AM](#) to [10:49:26 AM](#).

DAVE VAN TUYL, Commercial Manager, Alaska Gas Group, BP Exploration (Alaska) Inc., addressed Representative Seaton's question on the impact of in-state gas sales on the state's requirement to take out "FT" [Firm Transportation--the transportation commitment to ship gas to Alberta] given that there is no specific requirement for the producers to enter into in-state gas sales contracts. He stated that Article 10 of the contract is complex and discusses "capacity management--or management of FT." The provision allows the state to request each producer to participate in an open season "and acquire that FT--that capacity--on behalf of the state." It will instruct the producers to what capacity seems appropriate, and the state will identify to the producer what in-state capacity the state might need, he explained. He said an open season is like an auction with no guarantee of successfully acquiring capacity, but "we certainly would go to the open season with that intent." It requires that "we would acquire capacity sufficient to accommodate state export gas," which specifically excludes any gas used for instate purpose.

[10:52:42 AM](#)

CO-CHAIR SAMUELS asked if ENSTAR Natural Gas Company and Chugach will bid, "so we know how much to take off?" He continued, "But if there's no spur line and no way to get it to Anchorage, I guess, do you have to wait till the next expansion?"

[10:53:06 AM](#)

MR. VAN TUYL said open season is where willing buyers and sellers come together, "so it would be an opportunity for an outfit like an ENSTAR" to bid for capacity off the line at Delta Junction, for example, to take gas into Southcentral Alaska. "At the same time there would be shippers on the line bidding for capacity into the line, long haul, instate, whatever their needs and their markets might be." He said it allows the sponsor of the project to design the project appropriately to meet the needs of the market, and that is why FERC has come up with an open season process, "to allow the market place to speak and to insure that the transportation system is designed to meet those needs."

[10:54:41 AM](#)

REPRESENTATIVE GATTO said ENSTAR doesn't own gas, it's just a distribution network. "They have had it pretty easy—gas is right next door," he said. Under the system of shipping gas from the North Slope, ENSTAR needs a supply of gas, and he asked if it will need an intermediate party now, and if the state will sell its in-kind gas to ENSTAR.

[10:55:13 AM](#)

MR. VAN TUYL answered that there are owners of the resource and there are parties that would be interested in providing a service beyond just the main pipeline into Alberta. He surmised that "it would make sense for those entities to discuss what sort of arrangements they might have to be able to access gas to be able to fill the need that they would have for an in-state distribution system." He said the answer may be "yes".

[10:55:54 AM](#)

REPRESENTATIVE GATTO asked if ENSTAR can be a party in the open season.

MR. VAN TUYL said he thinks an entity like a local distribution company would be interested in contracting for service. The open season rules require that the service that is provided to

the off-take points in Alaska would have to be mileage sensitive. "The open season process is a way for folks to say, whether or not they own the gas, to say, yea, I'd be interested in having that service available."

[10:57:38 AM](#)

REPRESENTATIVE CRAWFORD noted that the state will own 20 percent of the pipeline, and if ENSTAR or another in-state entity wants to contract for gas for in-state uses, he asked how profits from the rest of the gas that is shipped to Alberta will be dealt with. "Who would lose by...taking care of that in-state gas when the rest is going down to the tar sands?"

[10:58:39 AM](#)

WENDY KING, Director, External Strategies, ANS Gas Development, ConocoPhillips Alaska, Inc., said it is her understanding that in-state needs are about 600 million [cubic feet] per day. She added that the state would have the opportunity to choose to market its gas to any entity. "If you choose to market your gas to an in-state company...you would let us know that you...would like to do that," and "we would acquire capacity that's representative of short-haul capacity," and it would have a mileage-sensitive rate. "And then it would be just the commercial arrangements the state chose to make with those respective buyers as to what price that would be," she added.

[11:00:33 AM](#)

REPRESENTATIVE CRAWFORD asked about "the rest of the gas that went down to the tar sands project." If the state took its gas off in Alaska, "do we still make some of the money...for the tariff where the gas went to the tar sands? Once we take gas off, is that the end of our participation?" he asked.

[11:01:09 AM](#)

MR. VAN TUYL offered an example in answering the question: If the state has access to 20 units of gas, and chooses to make 1 unit of gas available for in-state consumption, at the end of the open season the state would have 19 units to move the gas long haul. He added that the intent would not be to require the state to take 20 units of long-haul capacity if it knew in advance that it intended to provide 1 unit to the state. Who is best advantaged in providing in-state gas versus long-haul gas depends on a number of questions that no one can answer, he

stated, because it depends on the markets from Alberta "as far as who would make out better." The pipeline rates will be adjudicated by FERC and will be fair, he said. If the state asked for gas before the open season, "that's indeed what we would try to do."

[11:04:14 AM](#)

REPRESENTATIVE SEATON asked if the state would still be responsible for 20 percent capacity, FT, down to Alberta, plus what it took off instate.

[11:04:53 AM](#)

MS. KING said if the state asked for in-state capacity, then its obligation with respect to that capacity would be for that amount to that off-take point. The rest would be long-haul, going through the entire main line, and the responsibility for capacity would be the amount not used in-state.

[11:05:38 AM](#)

REPRESENTATIVE SEATON asked about mileage-sensitive pricing.

MR. VAN TUYL said he is not an expert, but surmised that FERC sets prices based on the cost of moving gas from point A to point B, not on the market price of gas.

[11:06:57 AM](#)

REPRESENTATIVE SEATON asked if gas prices would have nothing to do with the total price of the gas, just the shipping costs.

CO-CHAIR SAMUELS said the gas price is based on the market, and the contract relates only to the tariff. He asked if the gas is only going one third of the way, the tariff will be one third. "The price of the gas is not relevant to anything to do with this contract; the price of gas is what it is."

[11:07:56 AM](#)

MR. VAN TUYL answered yes, the price of gas is one matter, and the mileage-sensitive service is only related to the tariff.

CO-CHAIR SAMUELS asked if the costs are heavier for the first third of the mileage.

MR. VAN TUYL said he understands that FERC rules specify that there will be a mileage-sensitive rate for the Alaska portion. It tries to insure that service to Alaska will be less than the rate provided to Chicago, for example.

[11:08:58 AM](#)

CO-CHAIR RAMRAS drew a distinction between a mature gas economy like Kenai or Anchorage, and immature economies like Delta, Valdez, or Fairbanks. It will take years to "ramp up," and it is expensive to convert from oil to gas. He noted that those people who could most benefit from lower energy costs, are least able to make the conversion. He asked how that will work.

[11:11:40 AM](#)

PATRICK COUGHLIN, Senior Counsel, BP Exploration (Alaska) Inc., said it is the same policy debate the state had in the marketing of oil in 1977. Policy makers discussed subsidizing in-state businesses by selling oil more cheaply and whether to have refineries, he said. "When the state owns its gas it will have the ability to market the gas at what price it feels necessary..." He said that is one of the benefits to the state.

[11:12:51 AM](#)

CO-CHAIR RAMRAS clarified his concern about a transition to a gas economy. He noted that Flint Hills takes most of the state's royalty oils.

MR. COUGHLIN said the contract contemplates the state forming a marketing entity responsible for making those decisions, and he would expect the legislature to make guidelines.

[11:14:32 AM](#)

MR. VAN TUYL said, "We plan on conducting an initial open season, approximately two years-ish after entering the project planning phase, and that would be the initial opportunity for folks to say, yes, I'm interested in that service." He said that might be an easier decision for communities with a mature gas economy. He added that there are multiple opportunities for other communities, including a subsequent open season and a potential expansion of the system because pipelines are commercially motivated to expand if there are more customers.

[11:15:57 AM](#)

CO-CHAIR RAMRAS said the tariff "could actually overtake the cost of a MCF of gas." He added that "the take-or-pay issue as it relates to shipping commitments in the gas line is a sensitivity, for me, on behalf of all the immature economies that would like to make this transition from fuel oil to presumably more efficient natural gas." If the state commits to a certain capacity, and then the demand grows in the state, "how does this get structured for the benefit of Alaskans?"

[11:18:47 AM](#)

REPRESENTATIVE GATTO asked if the state still owns the capacity all the way to Alberta if some is taken off in Alaska.

MS. KING explained the difference between short-haul and long-haul capacity. "If there is capacity booked in the initial open season to take to the off-take points within Alaska, that would be called short-haul capacity, and that means the obligation to pay the ship-or-pay commitment is just for that portion of capacity. You don't have to pay for capacity all the way down to Alberta." The obligation for that ship-or-pay commitment is directly linked to the short-haul capacity commitment, she said. For long-haul capacity, the state will be responsible for the demand charges associated with the capacity booked all the way to Alberta or other off-take points along the way.

[11:21:05 AM](#)

REPRESENTATIVE CRAWFORD asked if "in the open season the capacity was bid out, and from that point forward if we wanted a ramp-up, there was going to have to be new capacity in the line...they would have to have more compression and all that, and that there would be a new open season at some point to do that ramp-up. Is that not correct?"

MR. VAN TUYL said if ramping up means more capacity in the overall pipeline, then yes, that would trigger another open season to allocate the additional capacity among the willing buyers of that capacity.

[11:22:13 AM](#)

REPRESENTATIVE SEATON asked about page 5, subparagraph (C), stating that the modification does not impair the ability of the state to meet demands of state gas. He asked if the administration feels that an open season will trump the "ramp-up

use of gas in the line, or does this statutory requirement under (C) mean that the state will have to look at the reasonably foreseeable demand of in-state gas and not impair the ability within its contract to supply that demand?" He suggests that it states that regardless of an open season, the state has to meet reasonably foreseeable in-state demand.

[11:24:22 AM](#)

MR. JARDELL offered to get back to that, but the new language is an expansion of what the state can do.

CO-CHAIR SAMUELS requested information on how a community will be able to increase its demands for gas over time.

[11:26:05 AM](#)

REPRESENTATIVE SEATON referred to a June, 1, legal services memo to Representative Ramras and mentioned Section 5, which discusses related party "and removes the language specifically included for the...taxes on oil/gas reserves or resource." He asked if that is included in the bill.

[11:27:03 AM](#)

MR. DONAHUE said he thinks that is the language in the long form of the SGDA conforming amendments, appendix i to the fiscal interest findings. "In that version of the bill we had language at the end of what's on page 4 of HB 2004. If you look at 43.82.210(a), what is now going to be re-numbered 9--other state or municipal taxes or categories of taxes identified by the commissioner. In that former version we had references to reserves tax, taxes enacted by initiative, and taxes not yet imposed by state or municipal governments. Those provisions were put in there, mostly, out as a matter of full disclosure in the context of what was in the contract. It was being released at the same time as a very complex contract. It was our judgment that the language was probably not necessary to identify those taxes but that it was in the interest of facilitating an understanding of the contract that it was put in, and that language has now been deleted from subsection (9), but we don't feel there was any substantive change."

[11:28:32 AM](#)

REPRESENTATIVE SEATON said the sectional analysis he has from Legislative Legal Services states that the change in Section 5

does include "remove language specifically included within the state and municipal taxes for the following. And one would be a tax on oil or gas reserves or resource. Your reading is number 8, line 22, [which] would authorize the commissioners to negotiate removal of the gas reserves tax."

MR. DONAHUE said, "Yes, that is our view of what the law would allow." He added that the commissioner's authority to identify these different taxes is unchanged.

[11:29:39 AM](#)

MR. JARDELL said it was also broadened to more fully allow the administration to respond to the public if it brings up concerns on how to go about changing components of the tax structure.

[HB 2004 was held over.]

ADJOURNMENT

There being no further business before the committee, the House Resources Standing Committee meeting was adjourned at [11:30 AM](#).