ALASKA STATE LEGISLATURE
HOUSE RESOURCES STANDING COMMITTEE
June 3, 2006
8:33 a.m.

MEMBERS PRESENT

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

MEMBERS ABSENT

All members present

OTHER LEGISLATORS PRESENT

Representative Mark Neuman
Representative Beth Kerttula
Representative David Guttenberg
Representative John Coghill
Representative Peggy Wilson
Representative Pete Kott

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."

- MOVED CSHB 2004(RES) OUT OF COMMITTEE

PREVIOUS COMMITTEE ACTION

BILL: HB 2004
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
06/01/06	(H)	Heard & Held
06/01/06	(H)	MINUTE(RES)
06/02/06	(H)	RES AT 9:00 AM CAPITOL 124
06/02/06	(H)	Heard & Held
06/02/06	(H)	MINUTE(RES)
06/03/06	(H)	RES AT 8:30 AM CAPITOL 124

WITNESS REGISTER

DAN DICKINSON, CPA
(No address provided)
POSITION STATEMENT: During discussion of HB 2004, as a consultant for the Department of Revenue (DOR), responded to questions on behalf of the administration.

DAVID VAN TUYL, Commercial Manager
Alaska Gas Group
BP Exploration (Alaska) Inc.
Anchorage, Alaska
POSITION STATEMENT: Testified in support of HB 2004, and responded to a question.

KEN GRIFFIN, Acting Deputy Commissioner
Anchorage Office
Office of the Commissioner
Department of Natural Resources (DNR)
Anchorage, Alaska
POSITION STATEMENT: Responded to questions during discussion of HB 2004.

JOSEPH K. DONOHUE, Attorney at Law
Preston Gates & Ellis
Anchorage, Alaska
POSITION STATEMENT: On behalf of the administration, responded to questions during discussion of HB 2004.

KEVIN JARDELL, Legislative Liaison
Governor's Legislative Office
Office of the Governor
Juneau, Alaska
POSITION STATEMENT: On behalf of the administration, responded to questions during discussion of HB 2004.

ACTION NARRATIVE

CO-CHAIR RALPH SAMUELS called the House Resources Standing Committee meeting to order at 8:33:43 AM. Representatives Samuels, Elkins, Gatto, LeDoux, and Seaton were present at the call to order. Representatives Ramras, Olson, Crawford, and Kapsner arrived as the meeting was in progress. Representatives Coghill, Neuman, Wilson, Guttenberg, and Kott were also in attendance.

HB 2004 - STRANDED GAS DEVELOPMENT ACT AMENDMENTS

[Contains brief mention of HB 2003.]

CO-CHAIR SAMUELS announced that the first 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."

8:34:41 AM

DAN DICKINSON, CPA, in response to a question, after relaying that he is the former director of the Tax Division of the Department of Revenue (DOR) but is currently acting as consultant to the DOR, said that if a limited liability company (LLC) - such as the proposed Pipeline Project Mainline Limited Liability Company Entity ("Mainline LLC") - asks to be treated as a "pass through entity," then the various elements of income will be passed onto the owners; in terms of the Mainline LLC, the three corporations involved in the Alaska Stranded Gas Fiscal Contract ("ASGF Contract") as owners in the project would be BP Exploration (Alaska) Inc., ConocoPhillips Alaska, Inc., and ExxonMobil Alaska Production, Inc., and these three corporations would partner with the State of Alaska - the fourth member/owner of the Mainline LLC. Eventually all income will end up at a taxable entity, though the entity may only be subject to federal taxes. With regard to the Mainline LLC, the three corporations would be taxable - forming part of the "unitary group" that would be taxed - and the State of Alaska would not be subject to state taxes.

MR. DICKINSON added that if any of the individual members of the Mainline LLC changed their structure or "moved into a different structure," as long as the new structure was taxable, the elements of income would flow through and be reportable and be taxed. In response to other questions, he said that the individual corporations will have a nexus with the state, and the state will "pull in anyone engaged in the oil and gas business," and will look at the "unitary business," the worldwide income of that unitary business, and any [related] entity; furthermore, in determining how much income flows to Alaska, the assets that the [Mainline LLC] owns [in Alaska] will form part of the numerator.

8:39:25 AM

MR. DICKINSON, in response to further questions, explained that if an individual wanted to own the pipeline - though such is a fairly farfetched notion - he/she would not be taxed; again, though, "pass through" entities would be taxed. However, if the state wanted to be able to tax an individual who owns the pipeline without first passing an income tax, the legislature could institute a tax on "corporate" persons. He again offered his belief that it is unlikely that an individual would undertake to own the pipeline.

REPRESENTATIVE LeDOUX asked whether the ASGF Contract prohibits passage of a tax on corporate persons.

MR. DICKINSON offered his understanding that the legislature can pass whatever taxes it wishes; that the ASGF Contract exempts participants from certain of those taxes; and that if "an additional person" acquires certain assets controlled by one of the corporations, under Article 31.1(d) of the ASGF Contract, he/she would still be subject to corporate income tax. He noted that Article 31.1(d) reads:

> (d) Conditions Regarding Additional Person. For an Additional Person, the exemption and covenants provided in the Contract are limited to Taxes, other than SCIT, on that portion of the Project that has been assumed by the Additional Person.

MR. DICKINSON explained that "SCIT" is defined as any tax imposed on or measured by net income. In response to a question, he said that in determining taxes, the state will be looking at "what's the unitary group, and who's engaged in oil and gas and pipeline business in the state of Alaska"; that's

who will be dealt with, either under the terms of the contract or under tax law, and the form by which "those affiliates" relate to one another - in terms of paying dividends - is fairly immaterial.

MR. DICKINSON, in response to another question, indicated that a "unitary business" is the larger entity and not just an LLC, and the Alaska taxes would be determined by how much property is owned in the state, and the sales in Alaska - typically the tariffs charged.

CO-CHAIR RAMRAS offered his understanding that corporate entities, regardless of whether they are an LLC, must pay a corporate income tax.

MR. DICKINSON concurred, and, in response to comments, offered his belief that the ASGF Contract is structured such that tax evasion by the corporations is unlikely to occur. In response to a question, he indicated that he is not familiar with how "Lloyd's" operates.

8:56:00 AM

DAVID VAN TUYL, Commercial Manager, Alaska Gas Group, BP Exploration (Alaska) Inc., said:

> We support the intent behind the bill which provides amendments to the [Alaska] Stranded Gas Development Act, and believe this bill will help progress the gas pipeline fiscal contract. The administration did a good job in structuring these amendments and explaining them to this committee. However, there is one point that we see a bit differently than the administration and I'd like to take just a moment to clarify for the record. I believe the administration stated that the amendment to [AS 43.82.220(a)(2)] ... that allows for the inclusion of terms in the contract related to the state reimbursing the producers for certain upstream costs was required because this was not a right the producers currently hold under either existing lease or unit agreements.
>
> We don't agree. In old form leases - known as "DL-1" leases - the state is obligated to pay for upstream costs associated with any of its gas it takes in-kind. So we feel that this is a lease right associated with ... these DL-1 leases, and the vast majority of the

known North Slope gas resource, around 90 percent, is found on these DL-1 leases. The fiscal contract and the amendments to HB 2004 simply [extend] that existing lease right to all gas from all leases.

So to conclude my brief comments, I want to emphasize that [BP Exploration (Alaska) Inc.] stands ready, willing, and able to advance the gas pipeline project, along with our partners, [ConocoPhillips Alaska, Inc., ExxonMobil Alaska Production, Inc.,] and the State of Alaska. The [ASGF Contract], coupled with HB 2004, makes that objective possible; BP also stands ready to work with the legislature as you complete your work on this bill.

We support passage of HB 2004, and then encourage the legislature to approve the [ASGF Contract] to enable all Alaskans to benefit from one of the largest energy projects on the planet. Thank you for the opportunity to testify, and I'd be happy to try [to] ... answer any questions that you might have.

MR. VAN TUYL, in response to a question, said the ASGF Contract provides for delivery of gas at the delivery points, at either the lease boundary or the first midstream element, though he does not know, specifically, what the lease terms call for relative to merchantable condition, but would be willing to research that issue further. What he was referring to earlier, he remarked, were the specific provisions of the DL-1 leases that call for reimbursement of upstream costs associated with processing gas - separating oil, water, and gas - to deliver it from a lease.

9:01:19 AM

KEN GRIFFIN, Acting Deputy Commissioner, Anchorage Office, Office of the Commissioner, Department of Natural Resources (DNR), in response to a question, referred to proposed AS 43.82.020(2) of HB 2004, and said that the terms affecting the lease agreements, unit agreements, and other agreements referred to therein are varied. The adjustments referred to can affect upstream state royalty; gas responsibilities; the responsibilities for the costs of conditioning and the disposal of impurities; royalty in-kind (RIK) and royalty in-value (RIV) switching; the point at which royalty gas is taken; the calculation of sliding-scale royalties; and approval of unit plans of development, particularly at the Point Thompson unit.

Much of the time, a group of leases are incorporated into a unit, and the process for calculating the unit royalty is in the unit agreement; thus, if [the unit royalty] is affected by this provision, so too will the unit agreement be affected.

9:04:46 AM

MR. GRIFFIN indicated that the language, "other agreements" is intended to ensure that agreements are aligned and consistent with the ASGF Contract. The authority being granted by this provision is the authority to negotiate [what has already been negotiated] in the ASGF Contract, and the result of "these changes" will come before the Legislature for final ratification. He assured the committee that this is not an open carte blanche for continual renegotiation or revision once the ASGF Contract has been approved by the legislature and then executed. In response to a question, he indicated that after the ASGF Contract is executed, any further proposed changes must be brought before the legislature and approved; under proposed AS 43.82.020, the legislature would simply be providing the authority necessary to bring the existing draft ASGF Contract forward for legislative consideration.

REPRESENTATIVE SEATON pondered whether the legislature ought to seek confirmation of that with Department of Law.

MR. GRIFFIN acknowledged that point. In response to a question, he said he is focusing on his understanding of the intent behind the aforementioned language. There are number of provisions throughout the ASGF Contract that affect lease terms, and - particularly given that the administration does not agree with the producers' interpretation of some of the DL-1 lease provisions - HB 2004 is simply "clearing the deck" to allow what has [already] been negotiated in the ASGF Contract to be brought before the legislature. Again, once the ASGF Contract is executed, negotiations are finished, and should further changes be necessary, they would have to be brought before the legislature for additional approval. He noted that although producers do have the right to arbitrate under the terms of the ASGF Contract, no changes beyond the scope of Article 41.2 of the ASGF Contract is authorized.

9:12:42 AM

JOSEPH K. DONOHUE, Attorney at Law, Preston Gates & Ellis, on behalf of the administration, in response to a question, relayed that proposed AS 43.82.210(a)(8) gives the statutory authority

for the provisions of the ASGF Contract to provide an exemption to a reserves tax should such be enacted by initiative, and offered his belief that such an exemption would supersede any other law pertaining to a reserves tax - whether adopted by initiative or statute - though the ASGF Contract itself would not necessarily circumvent the people's or the state's power to adopt a reserves tax; rather, if such a tax is adopted, the ASGF Contract simply provides an exemption from it.

9:18:06 AM

KEVIN JARDELL, Legislative Liaison, Governor's Legislative Office, Office of the Governor, in response to comments and a question, said:

> "Diligence" is a term that's used quite often, and I think there's a lot of reason to believe that that's [a] well-defined term and one that through negotiations ... did provide quite strong relief - if the companies are not pursuing the pipeline - to terminate the agreement. One of the things that was great about the ... legislature's action of adopting the [Alaska Stranded Gas Development Act] was the process that it put in place. And that process provides that there will be legislative input and public input on [a] draft contract. Certainly we are getting quite a bit of that, and some of that relates to the diligence standard and the work commitments.
>
> We've received, from your consultants, documents of recent release that [talk] about it; we're ... currently responding to those, working through them, and we're not dismissing them ... [but rather reviewing them]. The direction from the legislature is that we take that input, we consider it, and the commissioner of [the DOR] - if he believes that ... [change is needed] - can enter into negotiations to make those needed changes. So that input is needed - we believe that the contract currently has sufficient standards - but we are taking the input from the public and ... the legislature very seriously in considering those things as we move through this process.

9:20:22 AM

MR. JARDELL, in response to comments, opined that the current process gives the public sufficient opportunity to provide input regarding which provisions of the contract are acceptable and which aren't. He spoke of Governor Knowles's transmittal letter - which he said focused on the need to waive state, municipal, and local taxes - and of the "original task force," and then posited that the task force recognized that in order to make the project economic and get the gas to market, the economic structure needed to be changed; during the negotiation process, it became clear to the administration that the aforementioned reserves tax was a significant economic change that would have to be addressed, just as the issue of state, municipal, and local taxes had to be addressed via the Alaska Stranded Gas Development Act.

MR. JARDELL indicated that the issue of taxes is addressed in the ASGF Contract such that taxes will not be allowed to harm the project; if the project is not pursued diligently, however, the producers will have to begin paying [taxes], and the administration feels that such a provision is necessary. He cautioned against trying to change the terms of the ASGF Contract prior to hearing public testimony regarding its terms. In conclusion, he proffered that the amendments proposed via HB 2004 to the Alaska Stranded Gas Development Act are within the context and intent of that original Act.

MR. JARDELL, in response to a comment, noted that the administration is conducting hearings throughout the state on the ASGF Contract, and reiterated that the changes proposed via HB 2004 ensure that the ASGF Contract has the necessary authority to move forward and ultimately come before the legislature for approval. The administration views HB 2004 as a cleanup measure necessary to continue the viability of the Alaska Stranded Gas Development Act and the purpose of the Act, that being to negotiate a deal that would get the gas to market, present that deal to the public and the legislature, and obtain legislative approval. In response to a question, he said that information about the ASGF Contract is being given to, and input received from, the public via electronic, written, telephonic, and in-person means.

MR. DONOHUE, in response to questions, reiterated his comments regarding proposed AS 43.82.210(a)(8), and Mr. Griffin's comments regarding the authority granted by the bill and possible future changes that might be necessary.

MR. JARDELL, in response to a question, said that neither existing law nor HB 2004 thwart the municipality's or state's ability to tax, though the ASGF Contract, if approved, will. In response to another question, he said:

> The direction given to us by the legislature was to go out and negotiate a deal. We have done that. And we have brought back a deal that over 35 years at $5.5 gas will return $105 billion to the state of Alaska, that in addition will, we believe, increase the production of our [Trans-Alaska Pipeline System (TAPS)] ... - whose production's been declining for some years now; it'll extend the life of [the] TAPS for 20 to 30 years, and ... change the entire structure of the North Slope. This is the State's long term fiscal interest plan.
>
> And we ... were told by the legislature to go out and negotiate it. We have come back to you with a negotiated deal that gets the gas to market. We understand [there are] a lot of provisions here that people are not going to like. ... When you go out and negotiate a deal, you don't get everything you like; we set forth goals of what we thought the state needed to get in order to get a contract - what we thought was a fair deal. Revenue was a big part of it. We did things such as take in gas in-kind; it was because that was the only option available to us to preserve our revenue, to preserve the opportunity for revenue, and bump up the internal rate of return to make it a viable project.
>
> There are a lot of things in here that we negotiated to get to what we wanted and some things that we had to compromise in the middle on, and we understand, absolutely, that this is a tough decision ...; there are parts of it that ... people out there aren't going to like, but there's a lot of it that people are [going to like].

MR. JARDELL indicated that if, after the public process is concluded, the legislature ultimately disapproves of the terms of the ASGF Contract, a different course can then be pursued.

CO-CHAIR RAMRAS remarked that a memorandum from Daniel Johnston suggests that the state, through various concessions, is actually going to pay for the gas pipeline. Co-Chair Ramras

said he does not question that the state would benefit from $105 billion over the next 35 years. However, isn't it also fair to say that the state will be subsidizing the cost of the project to the tune of $30 billion?

MR. JARDELL indicated that others could more appropriately speak to "the offsets" that will occur due to the sharing of expenses and to some of the credits currently being offered. "Absolutely we are going to share in the costs; it's part of the balancing act of making the project viable, as directed by the legislature, to bring this [gas] to market," he added. In the end, that balancing provides for a project that otherwise would not exist, that gets Alaska's gas to market, that complies with the Alaska Stranded Gas Development Act, and that puts a contract to market Alaska's gas in front of the state's citizens so that they can decide whether this shall be the way of proceeding.

9:37:36 AM

REPRESENTATIVE CRAWFORD offered his understanding that the reserves tax was anticipated when the Alaska Stranded Gas Development Act was written; that Representatives Whitaker and Croft introduced a reserves tax in 1998; and that Representative Whitaker was one of the authors of the Alaska Stranded Gas Development Act and he always expected to have such a tax in order to use it as a tool to help force construction of the [gas] pipeline and keep it from being delayed. Representative Crawford characterized the reserves tax as providing "earnest money" to ensure that producers diligently pursue such a project. Under the terms of the ASGF Contract, he opined, any "diligence provisions" are virtually non-existent. "We want to have the reserves tax there so that there's an actual financial penalty if, at some point, the oil companies decide that they want to pull out of this project or ... [if] they don't get [the] job done; what we want are clear guidelines with benchmarks ... that we can see," he added, and if the producers meet those guidelines, they will get all of the reserves taxes back; hence, a reserves tax would act as an incentive encouraging the producers to act quickly.

MR. JARDELL clarified that Representative Whitaker was not in office when the Alaska Stranded Gas Development Act was introduced and adopted, but acknowledged that he can't recall whether at that time there were discussions regarding a reserves tax. He added that the administration's viewpoint is that a

reserves tax "will kill the gas pipeline and prevent us from getting that gas to market."

REPRESENTATIVE SEATON pointed out that should a reserves tax be passed by the voters, the legislature has ability to repeal it after two years. He also pointed out that in negotiating a contract, the administration went well outside the parameters that had been set for such negotiations. He opined that it is presumptuous of the administration to ask for the power to "change the initiative before it passes"; furthermore, according to a May 29 memorandum from Barnes & Casio, LLP, Article 5 of the ASGF Contract contains a termination process that will be virtually impossible for the legislature to make use of. He questioned how such constraints can be justified.

9:43:12 AM

CO-CHAIR SAMUELS pointed out that if an indemnification of a reserves tax is added to the ASGF Contract and it's a big enough sticking point with enough legislators, the legislature can vote "No" on the contract. He suggested that what should be considered at this point in time is what tools shall the incoming administration be left with; for example, should the next administration be able to take gas in-kind or be able to use arbitration. He offered his recollection that no members voted against either the Alaska Stranded Gas Development Act or the subsequent amendments to it, adding that [the legislature] needs to be careful about which tools are taken away from the new administration.

MR. JARDELL, in response to Representative Seaton, acknowledged that the administration has come before the legislature asking that the scope of what it would be allowed to do regarding the negotiations be expanded, but argued that everything the administration is asking for is in line with the purpose and intent of the Alaska Stranded Gas Development Act. With regard to the proposed initiative on a reserves tax, he assured the committee that the administration doesn't want to thwart the will of the people and would in fact like the people to weigh in on the issue as it pertains to the inclusion of an indemnification clause in the ASGF Contract. He noted that the terms of the ASGF Contract won't actually be changing the initiative, and that it will be up to the courts to ultimately decide, should the initiative on a reserves tax pass, whether an indemnification clause would supersede it. He also noted that the legislature could choose to refund the producers, in the form of tax credits, the amount of a reserves tax.

REPRESENTATIVE SEATON asked for clarification regarding the state's inability to get out of the ASGF Contract, specifically in light of the contract's provisions regarding indemnification against a reserves tax and preclusion of an increase in taxes for the life of the contract.

MR. JARDELL acknowledged that if the opinion expressed in the aforementioned memorandum is true, than it does raise a valid concern. He asked the committee to give the administration the authority - via HB 2004 - to renegotiate the ASGF Contract to the legislature's satisfaction.

REPRESENTATIVE GATTO expressed discomfort with the provision in the contract that would indemnify producers against a reserves tax passed by initiative, because such a provision would thwart the will of the people.

9:55:22 AM

REPRESENTATIVE LeDOUX drew attention to proposed AS 43.82.210(a)(4)-(6), and asked what municipalities are currently levying the taxes referred to in that language.

MR. JARDELL said he didn't have that information available at this time, but would endeavor to provide it later.

CO-CHAIR SAMUELS, after ascertaining that no one else wished to testify, closed public testimony on HB 2004, and recessed the House Resources Standing Committee at 9:56 a.m.

CO-CHAIR SAMUELS called the House Resources Standing Committee meeting back to order at 2:34:11 PM. Representatives Samuels, Ramras, Seaton, Olson, Gatto, and Elkins were present at the call back to order. Representatives LeDoux, Crawford, and Kapsner arrived as the reconvened meeting was in progress. Representatives Neuman, Kerttula, and Guttenberg were also in attendance.

CO-CHAIR SAMUELS referred to Amendment 1, which read [original punctuation provided but formatting changed]:

> Page 4, Line 29: after "suit" insert "including arbitration".
>
> Page 4, Line 31 - Page 5, Line 1: Delete" granted in this subsection" and insert the following in its place

"to enter and enforce an arbitration award in a state other than Alaska".

2:34:57 PM

[A motion to move the bill from committee was ignored.]

REPRESENTATIVE SEATON made a motion to adopt Amendment 1.

CO-CHAIR SAMUELS objected for the purpose of discussion.

MR. JARDELL explained that Amendment 1 would clarify Section 4; as currently written, Section 4 would preclude the use of arbitration prior to receiving an arbitrator's award, and this doesn't make sense given that an arbitrator's award would not be given until arbitration was entered into. Amendment 1 would clarify that the State can enter into arbitration and utilize the arbitration process.

CO-CHAIR SAMUELS noted that as currently written, Amendment 1 appears to be altering Section 6 rather than Section 4.

REPRESENTATIVE SEATON observed that the page numbers referred to in Amendment 1 merely need to be changed from pages 4 [and 5] to pages 3 [and 4].

The committee took an at-ease from 2:36 p.m. to 2:37 p.m.

2:37:35 PM

CO-CHAIR SAMUELS made a motion to amend Amendment 1 such that it would refer to pages 3 and 4. There being no objection, Amendment 1 was amended.

MR. JARDELL explained that the first portion of Amendment 1, as amended, would clarify that "the state contract can utilize alternative dispute resolutions through arbitration," and that the last portion of Amendment 1, as amended, would ensure that the authority to enter and enforce an arbitration award in a state other than Alaska is effective only after the arbitration award is entered and enforcement is sought in the Alaska Superior Court. Currently under the contract, he added, any arbitration award would have to be filed with an Alaskan court first, and if the enforcement didn't happen within the specified time, then the [recipient] could seek enforcement of the arbitrator's award in another state.

REPRESENTATIVE SEATON questioned whether it is the intention to provide a waiver of the state's immunity from arbitration as well as from suit.

MR. JARDELL said it is; with the adoption of Amendment 1, as amended, the ASGF Contract could then contain a provision that would waive the state's immunity from arbitration. Such a waiver would be required in order for the state to use the arbitration process. In response to questions, he indicated that including terms relating to arbitration and alternate dispute resolution in the ASGF Contract would be optional rather than mandatory; that if such terms are included, those terms could specify whether arbitration must be undertaken in all cases or just in some cases; that currently the ASGF Contract specifies that arbitration is the preferred method of settling disputes; and that an arbitration decision will be the final decision - in other words, it will be binding arbitration.

REPRESENTATIVE LeDOUX turned attention to page 4, line 2, and asked whether the term, "the state" should instead read, "this state".

MR. JARDELL offered his understanding that the drafters use the term, "the state" to mean the state of Alaska, and so he doesn't think it matters if that term is changed.

REPRESENTATIVE LeDOUX and REPRESENTATIVE GATTO indicated, however, that with the adoption of Amendment 1, as amended, the term, "the state" as used on page 4, line 2, would no longer be clear that what is meant is the state of Alaska.

2:46:24 PM

REPRESENTATIVE LeDOUX made a motion to amend Amendment 1, as amended, to add the words, "of Alaska" after the word, "state" on page 4, line 2, of HB 2004. There being no objection, Amendment 1, as amended, was further amended in this fashion.

CO-CHAIR SAMUELS removed his objection, and asked whether there were any further objections to Amendment 1, as amended [twice]. There being none, Amendment 1, as amended, was adopted.

2:46:54 PM

CO-CHAIR SAMUELS referred to Amendment 2, labeled 24-GH2046\A.2, Bailey, 6/2/06, which read:

Page 6, following line 18:
Insert a new bill section to read:
"*** Sec. 11.** AS 43.82.435 is amended by adding a new subsection to read:
(b) A contract authorized by this section and executed by the governor may contain provisions that provide for amendment of contract terms without further action by the legislature, except that any term relating to taxes described in AS 43.82.210(a), or payments in lieu of such taxes, may not be amended without further legislative authorization under this section."

Renumber the following bill sections accordingly.

Page 10, line 23:
Delete "Sections 1 - 12, 15, 16, and 18"
Insert "Sections 1 - 13, 16, 17, and 19"

Page 10, line 25:
Delete "Section 17"
Insert "Section 18"

CO-CHAIR SAMUELS explained that Amendment 2 would clarify that contract terms that pertain to taxes [or payments in lieu of such taxes] may not be amended without further legislative action.

CO-CHAIR RAMRAS made a motion to adopt Amendment 2.

CO-CHAIR SAMUELS objected [for the purpose of discussion].

CO-CHAIR RAMRAS indicated approval of Amendment 2.

REPRESENTATIVE SEATON pointed out that Amendment 2 specifically stipulates that the contract can contain provisions that allow [the administration] to alter terms unrelated to taxes [or payments in lieu of such taxes] without legislative approval.

CO-CHAIR SAMUELS concurred.

REPRESENTATIVE SEATON asked whether, under Amendment 2, the contract could then contain a provision allowing the administration to change terms related to tax credits.

CO-CHAIR SAMUELS acknowledged that that point should be clarified.

CO-CHAIR SAMUELS [made a motion to amend] Amendment 2 such that the words, "taxes described in" are altered to read, "taxes or credits described in". There being no objection, Amendment 2 was amended.

REPRESENTATIVE SEATON suggested that Amendment 2, as amended, be considered conceptual so as to allow the drafter to include the correct statutory references pertaining to credits.

CO-CHAIR SAMUELS concurred. [Amendment 2, as amended, was treated as a conceptual amendment.]

CO-CHAIR SAMUELS removed his objection to Conceptual Amendment 2, as amended, and asked whether there were any further objections. There being none, Conceptual Amendment 2, as amended, was adopted.

CO-CHAIR SAMUELS referred to Amendment 3, which read [original punctuation provided but some formatting changed]:

> AS 43.82 is amended by adding a new section to read:
>
> **Sec. 43.82.255. Term of contract provisions related to oil.** (a) The provisions of this section may apply to a contract developed under AS 43.82.020 that provides for periodic payment in lieu of taxes on oil under AS 43.55.
>
> (b) For the part of the contract term beginning immediately after the date of full project funding or the date of issuance of a certificate of public convenience and necessity for construction and initial operation of the Alaska Natural Gas Pipeline, whichever date is later, and ending 14 years after that date, the commissioner may develop a term for the contract that provides for payments in lieu of the taxes on oil set out in AS 43.55. For the part of the contract term covered by this subsection, the payments in lieu of taxes may be established with as much certainty as the Constitution of the State of Alaska allows.
>
> (c) For the part of the contract term beginning immediately after the period described in (b) of this section, and ending on a date not later than 25 years after the effective date of the contract, the amount of the payment in lieu of tax on oil under AS 43.55 must be equal to the amount of the tax levied by law.

However, the commissioner may develop a contract term that, in the event of a material change in the taxes enacted after the effective date of the contract, establishes a procedure for restoring the parties to substantially the same economic position they had as of the end of the period described in (b) of this section immediately before the change.

(d) Implementation of a contract provision authorized in this section may be made subject to the dispute resolution procedures of the contract.

2:51:57 PM

CO-CHAIR RAMRAS made a motion to adopt Amendment 3.

CO-CHAIR SAMUELS objected for the purpose of discussion. Noting that the ASGF Contract locks in oil [tax rates] for 30 years, he explained that Amendment 3 takes into account a three-part scenario. The first part - which is not addressed by Amendment 3 - is that there will be no fiscal certainty on oil until after the date of full project funding or the date of issuance of a certificate of public convenience and necessity - which is when the Federal Energy Regulatory Commission (FERC) has sanction - and full project funding usually occurs after the FERC sanction; in other words, there shall be no fiscal certainty until after the project is sanctioned. The second part - which is addressed via proposed AS 43.82.255(b) of Amendment 3 - is that after project sanction or full project funding, there shall be full capital cost recovery, for a period of 14 years, before the tax rules can be changed. The third part - which is addressed via proposed AS 43.82.255(c) of Amendment 3 - is that there shall be a "fiscal balancing agreement" after the period referred to in proposed AS 43.82.255(b), [though for no later than 25 years after the effective date of the contract]; this provision requires that any changes to the tax rules will result in the total economic impact to the industry remaining the same, just as if no changes had been made.

CO-CHAIR SAMUELS indicated that delays in the project won't impact this three part scenario or its timelines, and remarked, "It's a three-phase certainty on oil [in] which they get nothing in the front end, they get it locked in in the middle, and at the end we all come back to the table."

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REPRESENTATIVE OLSEN asked whether fiscal balancing mechanisms are currently in use in other jurisdictions.

CO-CHAIR SAMUELS relayed that they are.

REPRESENTATIVE CRAWFORD noted that one of the [legislature's] consultants has said that they have identified approximately $16 billion worth of direct subsidies in the ASGF Contract and expect to find more.

CO-CHAIR SAMUELS indicated that Amendment 3 pertains to just oil taxes and has nothing to do with gas.

REPRESENTATIVE CRAWFORD pointed out that the aforementioned subsidies to the oil companies pertain to the gas pipeline project and that the fiscal certainty with regard to oil taxes that Amendment 3 provides for is also tied to the gas pipeline project.

CO-CHAIR SAMUELS said he did not look too much at the gas terms in the ASGF Contract; rather, he and others are simply not willing to lock in oil taxes for 30 years, and Amendment 3 will alleviate some of that concern.

REPRESENTATIVE LeDOUX asked which other jurisdictions use fiscal balancing mechanisms and what the reasoning was behind using a 14-year timeframe in proposed AS 43.82.255(b).

CO-CHAIR SAMUELS relayed that he didn't have the information regarding the other jurisdictions with him at this time but would provide it later, and that the economists he'd spoken with gave him a range of 12 to 15 years and so he'd simply chosen to use 14 years.

REPRESENTATIVE SEATON questioned how Amendment 3 will work with Amendment 2, as amended, given that Amendment 3 allows for contract terms related to Payment in Lieu of Taxes (PILT) to be developed after the contract is in place, while Amendment 2, as amended, prohibits such contract term changes to be made without further legislative approval. He also questioned how Amendment 3 fulfills Co-Chair Samuels's intention to not provide fiscal certainty until project sanction.

CO-CHAIR SAMUELS offered his understanding that proposed AS 43.82.255(b) says that [the producers] cannot have fiscal certainty until full project funding occurs.

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REPRESENTATIVE SEATON asked whether the wording [in Amendment 3] is clear enough to allow the legislature to change the tax structure between now and project sanction.

CO-CHAIR SAMUELS said that is certainly the intent.

CO-CHAIR RAMRAS expressed disfavor with the 14-year timeframe outlined in proposed AS 43.82.255(b), with the 25-year timeframe outlined in proposed AS 43.82.255(c), and with the concept of fiscal balancing as outlined in proposed AS 43.82.255(c).

CO-CHAIR SAMUELS, in response to a question, relayed that the definition of, "full project funding" is located in statute under the Alaska Stranded Gas Development Act: "full project funding" means full approval by a party to a contract under AS 43.82.020 for the expenditure of the capital necessary for construction and operation of the approved qualified project that is subject to the contract".

CO-CHAIR RAMRAS expressed favor with proposed AS 43.82.255(a), questioned the math being used to justify the use of the 14-year timeframe in proposed AS 43.82.255(b), and remarked on conversations he'd had with the Senate president regarding the various timeframes for different aspects of the project - specifically that he was under the impression that full capital cost recovery could occur within double the number of years it takes to construct the project.

CO-CHAIR SAMUELS offered his understanding that it would be roughly five years before project sanction occurs, followed by five years of construction, and then another seven years after that for full capital cost recovery to occur.

CO-CHAIR RAMRAS said he interprets the language in proposed AS 43.82.255(b) that says, "whichever date is later, and ending 14 years after that date," to mean that there will be a project sanction period - which goes for five years - and then the "14-year clock starts running after" the four or five years it takes to obtain project sanction.

CO-CHAIR SAMUELS, concurred, and in response to comments and questions wherein an example of a starting date was given, said that the 25-year period begins on the effective date of the ASGF Contract. Thus, every year of delay of the project from the contract's effective date is a year less that the producers have

to take advantage of the fiscal balancing mechanism referred to in proposed AS 43.82.255(c). In response to comments and a question, he indicated that all of proposed AS 43.82.255(c) pertains to fiscal balancing.

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CO-CHAIR SAMUELS, in response to queries, reiterated his explanation of Amendment 3 and the aforementioned three-part scenario, and offered his understanding that the fiscal balancing agreement provided for by proposed AS 43.82.255(c) will allow changes to be made to the terms related to oil while also requiring that the economic positions of the parties remain "flat." He pointed out, though, that proposed AS 43.82.255(c) may never come into play, depending on how soon project sanction is obtained [and how soon after that that the project actually gets built].

REPRESENTATIVE LeDOUX asked why they would bother to change the contract if under proposed AS 43.82.255(c) the economic positions of all parties remains the same.

CO-CHAIR SAMUELS suggested that proposed AS 43.82.255(c) serves as a compromise, and offered that there may be many reasons to renegotiate the terms of the contract that "don't affect the money."

REPRESENTATIVE LeDOUX questioned, though, why they shouldn't always be able to renegotiate such terms.

CO-CHAIR SAMUELS characterized that as a legitimate argument [against locking in the terms of the agreement].

REPRESENTATIVE CRAWFORD asked what the practical effect will be of leaving the terms pertaining to oil open for renegotiation during the period prior to project sanction. He also raised the question of what might happen if MidAmerican Energy Holdings Company or TransCanada PipeLines Limited decides to build a pipeline.

CO-CHAIR SAMUELS, to the latter question, remarked that the whole thing would be a moot point and everything would have to be renegotiated. In response to another question, he ventured that the provisions of Amendment 3 would only apply if the ASGF Contract passes, because the provisions of the ASGF contract that propose to lock in the terms pertaining to oil are unique to that contract. He offered that under Amendment 3, the

concerns that the industry doesn't really want to build the pipeline to begin with should be alleviated by the fact that if they don't build the gas pipeline - if the producers don't get to project sanction - then the legislature can change the [oil] taxes whenever it wants and as often as it wants regardless of whether a contract has been signed.

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REPRESENTATIVE SEATON questioned whether the proposed fiscal balancing agreement provided for in proposed AS 43.82.255(c) of Amendment 3 would also be applied in cases involving changes to municipal taxes.

CO-CHAIR SAMUELS indicated that it would. In response to comments, he reiterated his belief that the provisions of Amendment 3 would only apply to the ASGF Contract and only if that specific contract is approved and executed.

CO-CHAIR RAMRAS argued that Amendment 3 does not specifically refer to the ASGF Contract.

CO-CHAIR SAMUELS pointed out, however, that Amendment 3 does specify that the contract to which it applies must have been developed under AS 43.82.020, the Alaska Stranded Gas Development Act, which is [purportedly] what the ASGF Contract was developed under.

REPRESENTATIVE SEATON questioned whether Amendment 3 really only applies to PILT on oil.

CO-CHAIR SAMUELS offered his understanding that Amendment 3 will apply to a contract developed under AS 43.82.020 that also happens to provide for PILT on oil, adding that he is assuming that there will be PILT in situations where oil taxes are locked in.

MR. DONOHUE indicated that it is the intent of the parties to have the production profits tax (PPT) incorporated into a contract so as to ensure that it plays a roll in providing fiscal certainty to the producers.

CO-CHAIR SAMUELS, in response to comments, suggested that Amendment 3 should be clarified with regard to whether it only applies to PILT on oil.

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CO-CHAIR SAMUELS, in response to other questions, indicated that the intention [with Amendment 3 - and] in relation to Amendment 2, as amended - would be that whatever terms were in place at time of project sanction with regard to oil would be locked in; therefore, at the time of project sanction, the legislature will have to decide what the rates on oil should be set at.

REPRESENTATIVE LeDOUX surmised, then, that that rate would not necessarily be "today's rate" because the rates on oil can change up until the time of project sanction.

CO-CHAIR SAMUELS concurred, and said that that is the intent.

REPRESENTATIVE GATTO referred to the definition of, "full project funding" in the Alaska Stranded Gas Development Act, and surmised that the producers wouldn't necessarily have to accept a tax rate that they felt was unreasonable.

CO-CHAIR SAMUELS concurred, suggesting that in such a situation, the producers could simply decide not to pursue project sanction. In response to a comment, he reiterated that there is no fiscal certainty being provided until project sanction is obtained.

CO-CHAIR RAMRAS mentioned merger and acquisition activity, and suggested that the return that the producers and the State of Alaska, through the Alaska Natural Gas Pipeline Corporation ("ANGPC"), will enjoy will be massive. He opined that although some degree of fiscal certainty should be provided for, a period of 14 years is too long, and that there is no need for fiscal balancing after the expiration of that period.

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CO-CHAIR RAMRAS made a motion to amend Amendment 3: to replace "14" with "10" in proposed AS 43.82.255(b), and to delete proposed AS 43.82.255(c).

CO-CHAIR SAMUELS recommended dividing the question, and asked whether a change to 12 years would be amenable. [Although the motion was not restated, Co-Chair Samuels treated the question as divided and announced that Amendment 3 was amended by replacing "14" with "12" in proposed AS 43.82.255(b).]

CO-CHAIR RAMRAS [made a motion to] delete proposed AS 43.82.255(c) from Amendment 3, as amended.

CO-CHAIR SAMUELS objected.

CO-CHAIR RAMRAS said he objects to the notion of having to lessen taxes in one area because the taxes in another area have been raised.

REPRESENTATIVE CRAWFORD asked what will happen after the 12-year timeframe has passed if proposed AS 43.82.255(c) is deleted.

CO-CHAIR SAMUELS opined that deleting proposed AS 43.82.255(c) will result in there not being any fiscal certainty on oil.

CO-CHAIR RAMRAS expressed favor with that concept.

CO-CHAIR SAMUELS said that he would be maintaining his objection to deleting proposed AS 43.82.255(c) from Amendment 3, as amended. He offered his belief that companies which "take firm transportation commitments" will be "on the hook to pay" even after capital cost recovery has been achieved and regardless of the price of gas, and suggested that some sort of stability should be provided for the life of the contract.

CO-CHAIR RAMRAS argued that those companies will also be reaping extraordinary benefits, and opined that fiscal balancing is simply a way of capping the state's share of revenue - something that he objects to as being bad policy.

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REPRESENTATIVE SEATON pointed out that Amendment 3, as amended, proposes to affect oil rates, whereas the aforementioned firm transportation commitments pertain to gas.

A roll call vote was taken. Representatives Elkins, Gatto, LeDoux, Olson, Seaton, Crawford, and Kapsner voted in favor of the second amendment to Amendment 3, as amended. Representatives Ramras and Samuels voted against it. Therefore, the second amendment to Amendment 3, as amended, was adopted by a vote of 7-2.

REPRESENTATIVE SEATON made a motion to conceptually amend Amendment 3, as amended [twice], such that proposed AS 43.82.255(a) be altered by adding the word, "may" between the words, "section" and "apply", and by adding words on the end to specify the committee's intent, for example, something along the lines of, "certainty for fiscal terms for oil do not apply until

project sanction and will be the terms in place at the time". There being no objection, Amendment 3, as amended [twice], was again amended.

CO-CHAIR SAMUELS removed his objection, and asked whether there were any further objections to Amendment 3, as amended. There being none, Amendment 3, as amended, was adopted.

3:39:19 PM

[Following was a brief discussion regarding which amendment would be taken up as Amendment 4.]

REPRESENTATIVE GATTO made a motion to adopt Amendment 4, labeled 24-GH2046\A.3, Bailey, 6/3/06, which, along with additional text, read:

Page 3, line 25:
Delete "**long-term fiscal** [BEST]"
Insert "best"

Page 4, following line 23:
Insert a new bill section to read:
"*** Sec. 6.** AS 43.82.210(b) is amended to read:

(b) If the commissioner chooses to develop proposed terms under (a) of this section, the commissioner shall, if practicable and consistent with the **best** [LONG-TERM FISCAL] interests of the state, develop the terms in a manner that attempts to balance the following principles:

(1) the terms should, in conjunction with other factors such as cost reduction of the project, cost overrun risk reduction of the project, increased fiscal certainty, and successful marketing, improve the competitiveness of the approved qualified project in relation to other development efforts aimed at supplying the same market;

(2) the terms should accommodate the interests of the state, affected municipalities, and the project sponsors under a wide range of economic conditions, potential project structures, and marketing arrangements;

(3) the state's and affected municipalities' combined share of the economic rent of the approved qualified project under the contract should be relatively progressive; that is, the state's and affected municipalities' combined annual share of

the economic rent of the approved qualified project generally should not increase when there are decreases in project profitability, or decrease when there are increases in project profitability;

(4) the state's and affected municipalities' combined share of the economic rent of the approved qualified project under the contract should be relatively lower in the earlier years than in the later years of the approved qualified project;

(5) the terms should allow the project sponsors to retain a share of the economic rent of the approved qualified project that is sufficient to compensate the sponsors for risks under a range of economic circumstances;

(6) the terms should provide the state and affected municipalities with a significant share of the economic rent of the approved qualified project, when discounted to present value, under favorable price and cost conditions;

(7) the method for calculating the periodic payment in lieu of certain taxes under the contract should be clear and unambiguous; and

(8) while cost calculations for the approved qualified project under the contract should be based on amounts that closely approximate actual costs, agreed-upon formulas reflecting reasonable economic assumptions should be used if possible to promote administrative certainty and efficiency."

Renumber the following bill sections accordingly.

Page 6, following line 8:
Insert a new bill section to read:
"*** Sec. 11.** AS 43.82.260(d) is amended to read:

(d) The commissioner may not unreasonably withhold approval under (a) of this section, but may condition the approval in any way reasonably necessary to protect the **best** [FISCAL] interests of the state and to further the purposes of this chapter."

Renumber the following bill sections accordingly.

Page 6, following line 18:
Insert new bill sections to read:
"*** Sec. 13.** AS 43.82.310(b) is amended to read:

(b) If requested by the applicant, information provided to the commissioner of revenue or the

commissioner of natural resources under AS 43.82.300 shall be kept confidential if the commissioner receiving the information determines, upon an adequate showing by the applicant, that the information

(1) is a trade secret or other proprietary research, development, or commercial information that the applicant treats as confidential;

(2) affects the applicant's competitive position; and

(3) has commercial value that may be significantly diminished by public disclosure or that public disclosure is not in the **best** [LONG-TERM FISCAL] interests of the state.

*** Sec. 14.** AS 43.82.310(c) is amended to read:

(c) Information determined to be confidential under (b) of this section is confidential under that subsection only so long as is necessary to protect the competitive position of the applicant, to prevent the significant diminution of the commercial value of the information, or to protect the **best** [LONG-TERM FISCAL] interests of the state. The commissioner of revenue or the commissioner of natural resources, as appropriate, may not release information that the commissioner has previously determined to be confidential under (b) of this section without providing the applicant notice and an opportunity to be heard.

*** Sec. 15.** AS 43.82.400(a) is amended to read:

(a) If the commissioner develops a proposed contract under AS 43.82.200 - 43.82.270, the commissioner shall

(1) make preliminary findings and a determination that the proposed contract terms are in the **best** [LONG-TERM FISCAL] interests of the state and further the purposes of this chapter; and

(2) prepare a proposed contract that includes those terms and shall submit the contract to the governor.

*** Sec. 16.** AS 43.82.430(b) is amended to read:

(b) After considering the material described in (a) of this section and securing the agreement of the other parties to the proposed contract regarding any proposed amendments prepared under (a) of this section, if the commissioner determines that the contract is in the **best** [LONG-TERM FISCAL] interests of the state, the commissioner shall submit the contract to the governor."

Renumber the following bill sections accordingly.

Page 10, line 23:
Delete "Sections 1 - 12, 15, 16, and 18"
Insert "Sections 1 - 18, 21, 22, and 24"

Page 10, line 25:
Delete "Section 17"
Insert "Section 23"

CO-CHAIR SAMUELS objected for the purpose of discussion.

REPRESENTATIVE GATTO, indicating that Amendment 4 pertains to the issue of "best interest findings," and using an example regarding coal bed methane (CBM) drilling and the Matanuska-Susitna (Mat-Su) valley, offered his belief that the term, "long-term fiscal interests" could be interpreted to preclude the consideration of any other factors such as whether an action is really in the best interests of the people of the state. He suggested that the long-term fiscal interests can be included as part of a best interest finding.

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REPRESENTATIVE SEATON pointed out that Amendment 4 conforms the standard used in HB 2004 to that used in the Alaska Stranded Gas Development Act.

MR. JARDELL said the administration opposes Amendment 4. Changing the standards retroactively - with regard to the process that the parties have been engaged in - would create enormous problems moving forward. "Although it is a consistency problem, I would much prefer to leave the current statute alone and continue with the best interest finding at the end, and utilize two different standards, than to retroactively change the standards that we have used to date," he remarked, adding that the ASGF Contract [shouldn't] be compared with the aforementioned example involving CBM. He went on to say:

> Here, the best interest finding becomes a proposal to the legislature. It's not binding, it's not determinative. If we make the best interest finding as it's currently written, we submit the contract to the legislature, and the legislature will have the decision, ultimately, to make the decision of best interest. The best interest finding here really is just a step before you propose the contract to the

> legislature for the legislature to make the decision of whether it's in the best interest of the state. So the protections afforded to the people of your district are that you have a chance to look at it, make that determination, before implementation. And so I really don't think that [the issues that] were raised in the [CBM situation] really have an application to how this will go ... forward and how it will be implemented.

MR. JARDELL, in response to a question, relayed that the "long-term fiscal interest" standard was used from the start in the negotiation process.

MR. DONOHUE explained that the preliminary fiscal interest findings have already been issued and the basis for those findings is an ultimate decision, a determination, that on a preliminary basis this contract satisfies the "long-term fiscal interests of the state" criterion. The final findings that will be made after the public review process, after the legislative comment period, and after the renegotiation period, is subject to the same long-term fiscal interest finding requirement and an additional requirement, which is that the commissioner find that the contract is in conformity with the law, "which is one of the reasons we're here today," he added, "to move the conforming amendments bill to allow the commissioner to make those findings." There is only one place in the Alaska Stranded Gas Development Act where the term, "best interests" is used, whereas the term, "long-term fiscal interests" is used much more pervasively, and the goal with the bill's proposed language change is to make the terminology consistent throughout the Alaska Stranded Gas Development Act.

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REPRESENTATIVE LeDOUX asked why, if the ASGF Contract really is in the best interests of the state, couldn't the commissioner simply review the testimony, come to the conclusion that the contract is in the best interests of the state, and amend the findings to say that such is the case if indeed it really is.

MR. JARDELL said that if the term, "best interests" is left in statute, it would require that a best interest finding be made prior to the ASGF Contract being forwarded to the legislature. He added:

> If you want a best interest finding, if that is the desire of the legislature or this committee, then I would suggest that ... instead of changing - retroactively - all of the standards, that you just leave the best interest finding, and that would require a best interest finding before the contract gets submitted to the legislature.

REPRESENTATIVE LeDOUX surmised, then, that the administration can live with the first portion of Amendment 4 - that which proposes to change the language on page 3, line 25, of HB 2004 - but not with the remainder of Amendment 4.

MR. JARDELL indicated agreement.

REPRESENTATIVE CRAWFORD opined that there is either a consistency problem or there is not, and surmised that [the administration simply] didn't want "the rest of the contract" to be consistent with "best interests." There are a lot of interests that do not necessarily fall under the term, "fiscal interests", he remarked, adding that he believes the State should be negotiating for the best interests of the state, not just for the long-term fiscal interests; the concept of looking out for the best interests of the state is central to what they as legislators should be doing.

MR. JARDELL said that the administration thinks it would be better if the information it disseminates to the public is based on the same standard as "the final standard," and offered his belief that the administration always works for best interests of the state.

REPRESENTATIVE CRAWFORD offered his understanding that the courts have already defined the term, "best interests" but have not yet done so for the term, "long-term fiscal interests", adding his belief that using the term, "best interests" will provide protection to the state, protection that is backed up by the courts.

CO-CHAIR SAMUELS asked whether Amendment 4 was intended to act retroactively; in other words, was it meant to change the standard for work that has already been done.

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REPRESENTATIVE GATTO offered his belief that "long-term fiscal interests" is already included in "best interests". He remarked:

> My thoughts about Mr. Jardell's statement that at the end of the process you will be able to rule individually on whether or not this contract satisfies the best interests of the state, that would mean, at that point, when it was done, we would have to now go back and review the entire contract all over again and try to determine for ourselves whether or not any specific part was in the best interests of the state. I can look at, and accept, as [Representative Crawford] ... has said, that we can rely on some other people to use court-determined defined actions and rulings of what the best interest is. We do not have a single ruling on what a long-term fiscal interest is, so we are leaving ourselves wide open to nullifying what the best interests of the state are.

REPRESENTATIVE GATTO suggested that by adopting Amendment 4, it wouldn't necessarily follow that the parties would have go back and change anything, because the ASGF Contract already addresses the issue of long-term fiscal interests, and so using the term, "best interests" merely adds another measure by which to consider the terms of the contract.

CO-CHAIR SAMUELS expressed concern with changing the standard retroactively.

MR. JARDELL pointed out that currently, the Alaska Stranded Gas Development Act - in AS 43.82.210(b) - speaks to developing terms that in addition to being in the long-term fiscal interests of the state, should balance certain principles, those principles being:

> (1) the terms should, in conjunction with other factors such as cost reduction of the project, cost overrun risk reduction of the project, increased fiscal certainty, and successful marketing, improve the competitiveness of the approved qualified project in relation to other development efforts aimed at supplying the same market;
>
> (2) the terms should accommodate the interests of the state, affected municipalities, and the project sponsors under a wide range of economic conditions,

potential project structures, and marketing arrangements;

(3) the state's and affected municipalities' combined share of the economic rent of the approved qualified project under the contract should be relatively progressive; that is, the state's and affected municipalities' combined annual share of the economic rent of the approved qualified project generally should not increase when there are decreases in project profitability, or decrease when there are increases in project profitability;

(4) the state's and affected municipalities' combined share of the economic rent of the approved qualified project under the contract should be relatively lower in the earlier years than in the later years of the approved qualified project;

(5) the terms should allow the project sponsors to retain a share of the economic rent of the approved qualified project that is sufficient to compensate the sponsors for risks under a range of economic circumstances;

(6) the terms should provide the state and affected municipalities with a significant share of the economic rent of the approved qualified project, when discounted to present value, under favorable price and cost conditions;

(7) the method for calculating the periodic payment in lieu of certain taxes under the contract should be clear and unambiguous; and

(8) while cost calculations for the approved qualified project under the contract should be based on amounts that closely approximate actual costs, agreed-upon formulas reflecting reasonable economic assumptions should be used if possible to promote administrative certainty and efficiency.

MR. JARDELL also pointed out that the ASGF Contract is a "fiscal" contract. He assured the committee that if the administration cannot make a best interest finding, it will not go forward with the ASGF Contract.

REPRESENTATIVE LeDOUX made a motion to amend Amendment 4, to delete everything but the change proposed to page 3, line 25, of HB 2004.

REPRESENTATIVE GATTO objected. He referred to a June 1, 2006, memorandum written by Dennis Bailey, Legislative Legal and

Research Services, and relayed that Mr. Bailey has said that the Alaska Supreme Court has addressed interpretation of the "best interest" findings and summarized it but has not done so for the term, "long-term fiscal interests" Representative Gatto opined that using an undefined term will complicate matters more than will using established terminology already defined by the Alaska Supreme Court. He reiterated his belief that using the term, "best interests" won't occasion drastic changes, because a best interest finding will find that the long-term fiscal interests are already met.

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CO-CHAIR SAMUELS expressed favor with the amendment to Amendment 4.

REPRESENTATIVE SEATON expressed disfavor with changing the standard retroactively, but opined that the commissioner's final determination should be a best interest finding. He asked whether the amendment to Amendment 4 will result in the later.

CO-CHAIR SAMUELS and REPRESENTATIVE LeDOUX offered their belief that it would.

REPRESENTATIVE LeDOUX opined that the Alaska Stranded Gas Development Act should have used the term, "best interests" throughout to begin with. However, as long as a best interest finding is made before the contract goes forward, she remarked, then she will be satisfied.

REPRESENTATIVE SEATON asked whether a legal challenge to the commissioner's finding would be to the final finding, that being a best interest finding.

JARDELL said it would.

A roll call vote was taken. Representatives Elkins, LeDoux, Olson, Seaton, and Samuels voted in favor of the amendment to Amendment 4. Representatives Gatto, Crawford, and Ramras voted against it. Therefore, the amendment to Amendment 4 was adopted by a vote of 5-3.

CO-CHAIR SAMUELS asked whether there were any objections to Amendment 4, as amended. There being none, Amendment 4, as amended, was adopted.

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REPRESENTATIVE SEATON made a motion to adopt Amendment 5, labeled 24-GH2046\A.4, Bailey, 6/3/06, which read:

> Page 3, line 27, through page 4, line 2:
> Delete all material and insert:
> "(b) A contract developed under this chapter may not include a waiver of the state's sovereign or other immunity."
>
> Page 10, line 14:
> Delete "**and (b)**"

CO-CHAIR SAMUELS objected for the purpose of discussion.

REPRESENTATIVE SEATON made a motion to amend Amendment 5, to delete the words, "or other" from the language that would be inserted. There being no objection, Amendment 5 was amended.

REPRESENTATIVE SEATON offered his belief that the legislature did not intend, in the Alaska Stranded Gas Development Act, to waive the state's sovereign immunity, and opined that doing so would put the state in a very bad position.

REPRESENTATIVE LeDOUX noted, though, that if Amendment 5, as amended, is adopted, there will be no way for the state to settle disputes, adding her belief that the State waives its sovereign immunity in just about any commercial transaction it engages in.

REPRESENTATIVE SEATON pointed out that nothing in Amendment 5, as amended, says that the State cannot waive sovereign immunity; instead, it says that the contract terms may not include a waiver of the state's sovereign immunity. He offered his belief that the State can always waive its immunity.

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REPRESENTATIVE LeDOUX argued that generally speaking, when people enter into a contract with the State, they want to know in advance whether they will be able to bring suit against the state; they don't want the State to just be able to decide on a case-by-case basis whether it will waive its sovereign immunity in one particular situation but not in another. If the latter were the case, the State could simply decide not to waive sovereign immunity in cases it thinks it might lose. Although not a proponent of the ASGF Contract's "fiscal certainty"

provisions, she remarked, she does believe that parties to an agreement should be given certainty with regard to being able to seek remedy through the court system.

REPRESENTATIVE SEATON expressed disbelief that the State waives its sovereign immunity in every contract, for example, that the Department of Transportation & Public Facilities (DOT&PF) enters into.

REPRESENTATIVE LeDOUX posited that such a waiver is probably included as boilerplate language in DOT&PF contracts.

CO-CHAIR SAMUELS questioned whether, if a provision requiring the State to waive its sovereign immunity is not included in the ASGF Contract, could the State then simply make a determination on a case-by-case basis - every time a dispute arises - regarding whether it will waive sovereign immunity.

REPRESENTATIVE SEATON offered his belief that typically the State allows itself to be sued.

MR. JARDELL said he can't provide information on DOT&PF contracts at this time, but offered his understanding that the State does waive sovereign immunity in every contract; furthermore, the State is routinely sued "under contract, in quasi-contract, and torts - otherwise, no one would enter into a contract with us." He indicated that Amendment 5, as amended, causes some concern on a policy level because sovereign immunity needs to be waived in order for the State to be sued or to enter into arbitration. He offered his belief that lack of an express waiver of sovereign immunity will prevent the project from going forward; furthermore, the State wants to be able to utilize the tool of arbitration - and such would not be possible without an express waiver - because the potential benefits of doing so far outweigh any potential problems, particularly given that arbitration, which is utilized in commercial transactions all over the world, is a quick and efficient method of resolving disputes.

MR. JARDELL also pointed out that the language currently in the bill - along with Amendment 1, as amended - merely provides the authority for the negotiators to consider inserting waiver language in the ASGF Contract, and that the administration did not feel that providing such authority was [an unreasonable] concession given the focus on negotiating for terms that would result in higher revenue streams for the state. In response to

a question, he offered his understanding that sovereign immunity is usually waived via statutory language.

MR. DONOHUE explained that there is a constitutional provision which says that the legislature shall establish procedure for suits against the state; thus the notion of sovereign immunity is totally a legislative policy decision. Certain causes of action are allowed to be brought against the state on a regular basis, and certain causes of action are precluded.

MR. JARDELL posited that the language [of Amendment 5, as amended] could be read to say that the state may not waive its sovereign immunity in the ASGF Contract, and thus the state would be forced to assert sovereign immunity.

4:16:49 PM

A roll call vote was taken. Representatives Gatto, Seaton, Crawford, and Kapsner voted in favor of Amendment 5, as amended. Representatives Elkins, LeDoux, Olson, Ramras, and Samuels voted against it. Therefore, Amendment 5, as amended, failed by a vote of 4-5.

[Following was a brief discussion regarding which amendment would be taken up as Amendment 6.]

The committee took an at-ease from 4:18 p.m. to 4:23 p.m.

REPRESENTATIVE SEATON made a motion to adopt Amendment 6, labeled 24-GH2046\A.5, Wayne, 6/3/06, which read:

> Page 3, line 26:
> Delete "a new subsection"
> Insert "new subsections"
>
> Page 4, following line 2:
> Insert a new subsection to read:
> "(c) If the commissioner approves an application and proposed project plan under AS 43.82.140 and develops a contract that does not by its terms require a party to complete the project named in the contract, the contract must, at a minimum, contain
> (1) a list of each and every specific act a party to the contract must accomplish before fully committing to completion of the project named in the contract, a description of each act, and a timeline

from start to finish that the party shall follow while accomplishing each act;

(2) a completion date, which may only be changed with the commissioner's consent, for each act listed as required by (1) of this subsection;

(3) a commit-in-full date by which a party must fully commit to completion of the project named in the contract; and

(4) language allowing the commissioner to terminate a contract with a party if the party does not complete an act by its corresponding completion date or fully commit by the commit-in-full date."

CO-CHAIR SAMUELS objected for the purpose of discussion.

REPRESENTATIVE SEATON explained that Amendment 6 addresses specific work commitments as outlined on page 5 of the aforementioned May 29 memorandum by Barnes & Cascio, LLP. He opined that the state needs a set of work commitments that will lead to project sanction. However, given that the memorandum pertains to preliminary documents, Representative Seaton remarked, he is going to withdraw Amendment 6 at this time, and allow committee members and the administration time to consider this issue further so as to be able to address it later. [Amendment 6 was withdrawn.]

CO-CHAIR SAMUELS relayed that Mr. Barnes is continuing to review this issue.

4:25:35 PM

REPRESENTATIVE SEATON made a motion to adopt Amendment 7, which read [original punctuation provided]:

Page 7 subsection (d), Delete all material

Insert: "A collateral agreement negotiated by the commissioner necessary to implement a contract that has been authorized by the legislature must be approved by the legislature."

CO-CHAIR SAMUELS objected.

The committee took two short at-eases between 4:26 p.m. and 4:27 p.m.

CO-CHAIR SAMUELS announced that Amendment 7 has been withdrawn.

REPRESENTATIVE SEATON [made a motion to adopt] Amendment 8, which read [original punctuation provided]:

> Page 4 line 23 after commissioner
> Insert "except for a tax imposed by a voter approved initiative."

CO-CHAIR RAMRAS objected.

REPRESENTATIVE SEATON indicated that Amendment 8 will prevent the administration from repealing a voter-approved initiative regarding a reserves tax via language in the ASGF Contract.

4:29:01 PM

CO-CHAIR RAMRAS said he supports [the goal of] Amendment 8 but would prefer to simply delete proposed AS 43.82.210(a)(8).

REPRESENTATIVE SEATON pointed out that the language currently in proposed AS 43.82.210(a)(8) is part of the existing Alaska Stranded Gas Development Act, and surmised that there may be circumstances in which the issue of other taxes might need to be addressed in future contracts.

CO-CHAIR RAMRAS removed his objection.

CO-CHAIR SAMUELS objected.

REPRESENTATIVE CRAWFORD said he agrees with [the concept of] Amendment 8. He added:

> I think that the reserves tax is one of the reasons why we're here and why we're actually debating this; without the reserves tax impetus I think that we would have rocked on for a number more years with our gas languishing in the ground in Prudhoe Bay.

CO-CHAIR SAMUELS opined that a reserves tax will have an impact on the economics of the project, and that if [the underlying issue] isn't addressed in the final contract, then the contract won't be approved by the legislature. He offered his understanding that indemnification won't nullify the reserves tax, rather it will merely provide for a rebate, and suggested that one solution would be for the administration to make it easier for the state to get out of the contract.

REPRESENTATIVE SEATON, in response to a question, indicated that Amendment 8 is intended to address the issue of whether the administration should be allowed to negotiate a contract that will result in nullifying a voter-approved initiative. He offered his understanding that even though the legislature has to wait two years, such an initiative could be changed or repealed by the legislature long before project sanction is obtained.

4:36:24 PM

REPRESENTATIVE CRAWFORD suggested that [the reserves tax] will not add any costs to the project or change the project's economics; rather, it simply acts as a penalty if producers don't sell the gas or contract to transport it. As long as the producers do those things in a timely manner, the tax is refunded to them.

REPRESENTATIVE GATTO questioned whether the reserves tax initiative could affect a contract that's already been approved.

MR. JARDELL posited that the administration thinks it is likely to have a contract prior to the vote on the reserves tax initiative taking place.

MR. DONOHUE said that assuming the fiscal certainty provisions of the ASGF Contract are found to be constitutional, they would in effect indemnify the producers from a reserves tax, whether such a tax comes about via the initiative process or via statutory changes.

CO-CHAIR SAMUELS offered his belief, though, that the tax system proposed by the initiative would be on gas that has not been produced.

REPRESENTATIVE GATTO asked whether a voter initiative requiring Alaska hire could affect the ASGF Contract.

MR. DONOHUE suggested that that issue raises other state and federal constitutional questions.

REPRESENTATIVE GATTO said he is merely questioning whether any voter initiative could affect the ASGF Contract.

MR. DONOHUE offered his belief that federal contract law and the ASGF Contract's provisions allowing for fiscal certainty would

prohibit an initiative from having any affect on "contractual rights under the agreement."

CO-CHAIR RAMRAS said his concern is that the indemnification would begin with the signing of the contract and not with the language adopted via Amendment 3, as amended, and therefore he will be supporting the adoption of Amendment 8.

CO-CHAIR SAMUELS raised the issue of net present value, and opined that the "front-end money ... takes the economics away."

CO-CHAIR RAMRAS said he rejects the argument that a reserves tax has anything to do with the construction of a gas pipeline; rather, they are separate and apart, and he objects to the formula that "throws it into the net present value computation." He indicated that he doesn't support the reserves tax initiative, but supports protecting the rights of the people to interpret issues differently, adding that he did not become a legislator in order to thwart the will of the people.

CO-CHAIR SAMUELS characterized [the reserves tax initiative] as premature.

REPRESENTATIVE CRAWFORD mentioned that if the reserves tax initiative passes, he intends to introduce legislation that will "plow all that money into the project so that we don't harm the net present value" of the tax amount.

A roll call vote was taken. Representatives Gatto, LeDoux, Seaton, Crawford, Kapsner, and Ramras voted in favor of Amendment 8. Representatives Elkins, Olson, and Samuels voted against it. Therefore, Amendment 8 was adopted by a vote of 6-3.

4:46:33 PM

CO-CHAIR RAMRAS made a motion to adopt Conceptual Amendment 9, which read [original punctuation provided]:

Page 4, Lines 17-18
Delete all of (5)
Page 4, Lines 22-23
Delete all of (8)

CO-CHAIR SAMUELS objected.

CO-CHAIR RAMRAS noted that Conceptual Amendment 9 will affect the language just adopted via Amendment 8. He said that much of the TAPS goes through Fairbanks North Star Borough, which he said derives a lot of fiscal stability from the taxes assessed on the TAPS; therefore, because he does not want the commissioner to be able to affect the assessed value of either the TAPS or a potential gas pipeline, he is proposing the deletion of proposed AS 43.82.210(a)(5) and (8).

CO-CHAIR SAMUELS offered that the entire point of the Alaska Stranded Gas Development Act, however, was to stabilize all the taxes, including the property taxes; therefore, removing one of the taxes referred to in proposed AS 43.82.210(a)(1)-(8) could result in property taxes [increasing dramatically] once the gas pipeline is built.

REPRESENTATIVE LeDOUX questioned why the proposal is to delete just paragraphs (5) and (8) and not also paragraphs (4), (6), and (7), since that same analysis could be applied to those paragraphs as well.

CO-CHAIR RAMRAS acknowledged that he was simply being sensitive to the recent assessment challenge on the TAPS, and is concerned about the subject matter just covered in Amendment 8.

REPRESENTATIVE SEATON noted that proposed AS 43.82.210(a) speaks to the issue of including terms regarding PILT, allowing the taxes included therein to be considered for PILT, and he does not think this provision will diminish the tax amounts; therefore, he doesn't think it will be beneficial to delete paragraphs (5) and (8) from proposed AS 43.82.210(a).

A roll call vote was taken. Representatives Elkins, Crawford, Kapsner, and Ramras voted in favor of Conceptual Amendment 9. Representatives Gatto, LeDoux, Olson, Seaton, and Samuels voted against it. Therefore, Conceptual Amendment 9 failed by a vote of 4-5.

4:52:21 PM

CO-CHAIR RAMRAS made a motion to adopt Conceptual Amendment 10, which read [original punctuation provided]:

Page 6, line 20-Page 7, line 19

Delete all language

Insert

Sec. 11. AS 43.82 is amended by adding a new section to read:

Sec. 43.82.437. Collateral Agreements. (a) The commissioner of revenue with the concurrence of the commissioner of natural resources may negotiate collateral agreements that are required to implement the state's acquisition of an ownership interest in the project **and each project entity to be created to own and operate any part of the project** that is the subject of a proposed contract developed under this chapter. **Each such collateral agreement shall be a condition subsequent to the proposed contract developed under this chapter, shall be subject to review and authorization to execute by the legislature, and upon approval may be entered into by the public corporation as provided in (b) below.** The authority of the commissioner of revenue to negotiate collateral agreements on behalf of the state lapses 180 days after the effective date of the law authorizing the contract under AS 43.82.435**, provided, that with respect to collateral agreements submitted by the commissioner of revenue to the legislature within the 180 day time limit, the time limit shall be extended to 5 days after authorization has been approved. Each project entity collateral agreement to be negotiated shall incorporate the following minimum elements:**

(1) if organized to do business in the state, the project entity shall be a limited liability company organized under the Alaska Revised Limited Liability Company Act, AS Chapter 10.50 ("Alaska Act");

(2) for project entities organized under the Alaska Act, the operating agreement adopted under AS 10.50.095, or equivalent governing document for project entities organized under other jurisdictions ("Operating Agreement"), shall include the limitation that the state's obligation to fund continuing capital and operating obligations shall be subject to annual appropriation by the legislature; and provide further that the state's failure to appropriate a capital or operating obligation shall not be deemed a default of

the state's obligation, but shall be deemed only to reduce the state's ownership interest on a pro rata basis based upon the amount of the failed appropriation relative to the amount of the capital or operating obligations funded by the remaining project owners.

(3) the Operating Agreement shall provide that the state shall not agree to a waiver of sovereign immunity without a reasonable monetary limit on such waiver under the facts and circumstances; and provided further, that the state shall not indemnify, or otherwise hold harmless any person or entity that has been adjudged in a judicial, administrative, or alternative dispute resolution proceeding to be liable for negligence or misconduct in the performance of the person's or entity's duty or has been adjudged guilty of a crime or had such criminal adjudication withheld subject to probationary terms; provided further, that the state may not eliminate claims for actual damages incurred by the state, and may not eliminate the equitable rights to seek specific performance and injunctive relief; and provided further that the rights and limitations provided in this subsection shall apply to collateral agreements to be entered into under AS 43.82.437.

(4) the Operating Agreement shall provide that in the event of a dispute between or among the members of the entity, a subsidiary entity, an affiliate of a member, a member representative, and any other person or legal entity that has a membership or ownership interest in an owner entity of the project, such dispute shall be subject to the dispute resolution terms and procedures set forth in the contract as approved by the legislature pursuant to AS 43.82.435. The term "dispute" shall mean a dispute, matter, controversy or claim arising out of or relating to any owner entity of the project, to any ownership interest in the project, to any agreement between or among the members or owners of any owner entity of the project arising out of or relating to such owner entity of the project, or to the operation, management, or implementation of the project, including its interpretation, construction, performance, enforcement, privileges, rights or obligations. Such dispute resolution terms shall incorporate equivalent

presumptions and burdens of proof as set forth for civil trials in Rule 301, Presumptions in General in Civil Actions and Proceedings, and Rule 302, Applicability of Federal Law in Civil Actions and Proceedings, Alaska Rules of Evidence as amended.

(5) the Operating Agreement shall provide that the managing members and member representatives owe a duty to act in the best interest of the entity and perform their duties in good faith towards the goal of implementation of the project.

(6) the Operating Agreement shall provide that the entity shall not effect a material change or amendment to the Qualified Project Plan without the review and authorization of the legislature.

(7) the Operating Agreement shall provide that the members of the governing body of any subsidiary entity organized by the entity shall be the members of the governing board of the entity, unless otherwise authorized by the legislature,

(8) the Operating Agreement shall provide the state the unilateral right to initiate expansions of the project, provided the state funds or obtains third party funding from a credit worth customer for each such expansion or extension, and shall include terms for voluntary expansion, including:

A) holding periodic (every 3-5 years) binding or non-binding open seasons to assess market demand for expansion;

B) commit to satisfy all creditworthy demands for capacity expansion in reasonable engineering increments;

C) commit expansion for creditworthy shippers in less-than reasonable engineering increments when such shippers commit to contributions in aid of construction sufficient to keep the project entity whole, including authorized return; and

D) commit the project entity to propose and defend the use of rolled-in pricing for all expansions.

(9) the Operating Agreement shall provide that in the event the entity elects to contract with a vendor to operate the entity or implement the project,

such vendor shall be independent of and not an affiliate of the members of the entity.

(10) the Operating Agreement shall provide that state member shall have the right to participate in all meetings of the governing board of the entity and vote on all decisions of the entity, including, but not limited to, decisions affecting tax allocations between or among the taxpaying members of the entity.

(11) the Operating Agreement shall provide that the state member shall have the right to review all books and records of the entity, including, but not limited to, all contracts, and to audit the finances of the entity at any time and from time to time.

(12) the Operating Agreement shall provide that upon termination, liquidation or dissolution of the entity, the state shall have a right of first refusal and option to acquire all of the assets of the entity at the then fair value of the assets.

(13) the Operating Agreement shall provide that in the event a member seeks to transfer or divest its ownership interest in the entity, the state shall have a right of first refusal and option to acquire the member's ownership interest at the then fair value of the interest.

(14) the Operating Agreement shall provide that in the event that the entity seeks to transfer or divest any or all of the project assets, the state shall have a right of first refusal and option to acquire such project assets at the then fair value of such project assets.

(15) the Operating Agreement shall include a right of first refusal and option by which the state may acquire all or any part of the project assets in the event that Federal Energy Regulatory Commission of the United States Department of Energy, the United States Department of Justice, the Federal Trade Commission, or other applicable federal or state agency or adjudicatory body orders one or more qualified sponsor or the qualified sponsor group, or their affiliates, to divest any or all ownership

interest in the project, at the then fair value of such project assets.

(16) the Operating Agreement shall provide that the project entity shall utilize project financing supported by federal guarantee instruments as defined in the Alaska Natural Gas Pipeline Act to the maximum extent available from the Federal Treasury, and shall limit the equity portion of project capitalization to no more than 20% of total capital.

For purposes of this section (a), the term "fair value" means the value as agreed to by the affected members or as determined under the dispute resolution process if no agreement can be reached, provided fair value shall be determined based on original cost less depreciation, comparable sales or income approach valuation methodologies.

CO-CHAIR SAMUELS objected.

CO-CHAIR RAMRAS explained that Conceptual Amendment 10 was "directly lifted from the memorandum" written by Phillip C. Gildan of the [consulting firm] of Greenberg Traurig, LLP. He mentioned that he has shared with others his belief that there are too many ambiguities in the contract and with regard to some of the as yet unformed entities such as the ANGPC or any of the [wholly owned subsidiary entities ("Ancillary LLCs") that would be formed for the purpose of owning, financing, or operating portions of the project]. Furthermore, the ANGPC legislation proposes that the ANGPC shall be incorporated under Delaware LLC law, and he opined that it would be helpful to use Alaska's LLC law, given the adoption of Amendment 1, as amended, and the fact that it will be Alaska's Department of Law that defends the state.

4:56:08 PM

CO-CHAIR RAMRAS relayed that Conceptual Amendment 10 proposes to add a new AS 43.82.437, and that paragraph (1) will require any entity organized to do business in the state of Alaska to be a limited liability company (LLC) established under Alaska's LLC law. This provision, he opined, will reduce ambiguities and give the administration firm guidance.

CO-CHAIR SAMUELS questioned whether incorporating under Alaska's LLC laws could result in higher costs and tariffs.

CO-CHAIR RAMRAS acknowledged that concern. He went on to explain that paragraph (2) requires that any entities organized under Alaska's LLC laws shall include the limitation that the state's obligation to fund continuing capital and operating obligations shall be subject to annual appropriation by the legislature, and provides that the state's failure to appropriate such an obligation shall not be deemed a default of the state's obligation but shall instead only be deemed to reduce the state's ownership interest on a pro rata basis based upon the amount of the failed appropriation relative to the amount of the capital or operating obligations funded by the remaining project owners. He suggested that this provision will address the issue of possible cost overruns.

CO-CHAIR RAMRAS offered that [Conceptual Amendment 10] is meant to strengthen the states position, increase the state's accrued rights, and bring in groups such as Anadarko Petroleum Corporation, "Shell, Chevron," and "some of the other small players." Under paragraph (2), he posited, should the project cost more than is currently anticipated, the state will have the right to simply reduce its pro rata share of ownership without finding itself in default. In response to a question, he said he does not know what effect this provision will have on tariff rates.

CO-CHAIR SAMUELS suggested that HB 2003 would be the better vehicle for Conceptual Amendment 10 because that bill specifically addresses the issues of the ANGPC and Ancillary LLCs, and ownership interest in the project. He characterized Conceptual Amendment 10 as far too complex to be considered in the discussion of HB 2004.

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CO-CHAIR RAMRAS disagreed, and pointed out that many of the provisions of Conceptual Amendment 10 are relevant and specific to HB 2004. He acknowledged, however, that members may care to offer amendments to Conceptual Amendment 10 to strike particular paragraphs if it is felt that those paragraphs aren't relevant. He then referred to paragraph (3), and explained that it in part limits the waiver of sovereign immunity. He acknowledged, however, that he doesn't yet understand paragraphs (3) and (4) well, since he'd only just received this language yesterday; one solution would be to allow more time to research the points raised by Conceptual Amendment 10, though he himself supports moving the bill along as soon as possible.

REPRESENTATIVE LeDOUX observed that the first portion of paragraph (3) is similar to Amendment 5, as amended, which failed to be adopted, and so a similar discussion would be applicable.

CO-CHAIR RAMRAS indicated that he would be amenable to an amendment to delete paragraph (3), and perhaps paragraph (4) as well, from Conceptual Amendment 10. Referring to paragraph (5), he explained that it stipulates that any operating agreement of the aforementioned entities shall provide that the managing members and member representatives owe a duty to act in the best interest of the entity and perform their duties in good faith towards the goal of implementation of the project. One of the concerns expressed in the aforementioned memorandum from which the language of Conceptual Amendment 10 was derived is that the interests of the state's partners in the Mainline LLC may not be the same as the interests of the state.

CO-CHAIR RAMRAS explained that paragraph (6) stipulates that any operating agreement shall provide that the entity shall not effect a material change or amendment to the "Qualified Project Plan" without legislative review and authorization; this provision empowers the legislature to participate in proposed changes once a qualified project plan is "on the table." He mentioned that paragraph (7) stipulates that any operating agreement shall provide that the members of any Ancillary LLCs organized by an entity shall be members of the governing body of that entity unless otherwise authorized by the legislature. In response to a question, he acknowledged that he does not know how current law addresses that issue.

5:08:26 PM

CO-CHAIR RAMRAS relayed that paragraph (8) stipulates that any operating agreement shall provide the state the unilateral right to initiate expansions of the project, provided the state funds or obtains third party funding from a credit worthy customer, and shall include terms for voluntary expansion regarding the issues outlined in subparagraphs (A)-(D). He spoke of the speed with which HB 2004 is moving, and expressed a preference for providing the administration with as many tools as possible, even if such tools are later abandoned as being unnecessary. He noted that one of the problems facing those in the Cook Inlet area is that "the gas in the pipe is full until the year 2012," and yet the contracts are in place to maintain a full pipe, so

there is no opportunity for expansion and thus little incentive to find additional gas at this time.

CO-CHAIR RAMRAS indicated that paragraph (8) is precisely the protection the state should offer all of the smaller companies; paragraph (8) will require that the state look at the issue of expanding pipe capacity even if the engineering doesn't warrant it. He then read subparagraphs (C) and (D) as proposed via Conceptual Amendment 10, and relayed that subparagraph (D) addresses the cost of the tariff. He again said that [Conceptual Amendment 10] focuses on what's best for the state, what's best for exploration, and what's best for incentivizing more discoveries.

CO-CHAIR RAMRAS explained that paragraph (9) stipulates that any operating agreement shall provide that contracted vendors be independent and not an affiliate of members of the entity; this provision will protect the state from its position of only owning 20 percent interest in the Mainline LLC - in other words, being a minority member of the Mainline LLC. In response to a question, he offered his understanding that in owning the TAPS, the producers have abused the state with regard to revenue that could have gone to the state, and said that Conceptual Amendment 10 does not address the state's ability, as a minority member, to exercise veto power. Paragraph (9), as well as [the rest of] Conceptual Amendment 10, he remarked, is designed to help protect the state as a minority member of the Mainline LLC and Ancillary LLCs.

REPRESENTATIVE LeDOUX said that even if the provisions of Conceptual Amendment 10 are really good ideas, she is concerned with the seeming lack of understanding of those provisions.

5:15:56 PM

CO-CHAIR SAMUELS said he agrees with some of the provisions, but doesn't know enough about most of the provisions to vote on them as a whole. For example, paragraph (16) speaks to the issue of federal loan guarantees, but the federal rules have not been promulgated yet, and so it's not yet known whether the parties will want to use them. He again noted that HB 2003 will specifically address the issues raised by Conceptual Amendment 10.

CO-CHAIR RAMRAS suggested that they simply delete the paragraphs of Conceptual Amendment 10 that members have concerns with and hold HB 2004 over for a day so that representatives from the

consulting firm of Greenberg Traurig, LLP, can provide additional testimony. He again offered his belief that the provisions of Conceptual Amendment 10 are relevant to HB 2004.

REPRESENTATIVE CRAWFORD expressed favor with paragraph (8), characterizing it as fundamental to the goal of getting Alaska's gas to market. He indicated a preference for addressing Conceptual Amendment 10 in relation to HB 2004.

REPRESENTATIVE SEATON opined that HB 2003 does not go into as much detail as Conceptual Amendment 10, and also expressed a preference for addressing it in relation to HB 2004, particularly given that HB 2004 already addresses the issue of collateral agreements. He also expressed a preference for having the legislature authorize collateral agreements.

The committee took an at-ease from 5:20 p.m. to 5:29 p.m.

5:29:34 PM

CO-CHAIR RAMRAS made a motion to delete paragraphs (3) and (4) from Conceptual Amendment 10. There being no objection, Conceptual Amendment 10 was amended.

CO-CHAIR RAMRAS explained that paragraph (11) stipulates that any operating agreement shall provide that the state member shall have the right to review all books, records, and contracts of the entity, and to audit the finances of the entity at any time. Paragraph (12), he relayed, stipulates that any operating agreement shall provide that the state has the right of first refusal and option to acquire all assets of the entity upon termination, liquidation, or dissolution of that entity. He remarked: "We have heard at length ... that once the construction-risk period is over, that the producers may not elect to hold on to a FERC-regulated 12 or 13 percent return that doesn't rise to the return requirement.

CO-CHAIR RAMRAS explained that paragraph (13) stipulates that any operating agreement shall provide similar terms with regard to any owner member that wishes to transfer or divest its ownership interest in the entity. He mentioned that the term, "fair value" as referred to in paragraphs (12), (13), and (14) is defined at the end of Conceptual Amendment 10. Paragraph (14), he relayed, stipulates that any operating agreement shall provide similar terms with regard to any owner member that wishes to transfer or divest its project assets. Paragraph (15) stipulates that any operating agreement shall provide similar

terms with regard to any owner member that is ordered - by the FERC, the U.S. Department of Justice, the Federal Trade Commission (FTC), or other applicable federal or state agency or adjudicatory body - to transfer or divest its project assets; paragraph (15) addresses antitrust issues.

CO-CHAIR RAMRAS posited that anti-trust issues at the wellhead could result in the project being delayed, adding, "We don't want to build a pipe that only allows for producer gas to go through it"; the whole notion behind the PPT [legislation] and building the gas pipeline is to "get more folks up there developing, investing, and exploring for gas." He explained that paragraph (16) stipulates that any operating agreement shall provide that the project entity shall utilize project financing supported by federal guarantee instruments to the maximum extent available from the U.S. Department of the Treasury, and shall limit the equity portion of project capitalization to no more than 20 percent of total capital. Regardless that this provision may make the project cost more, he concluded, he is more comfortable with including this language than he would be with leaving it out. He then read Conceptual Amendment 10's definition of the term, "fair value", and characterized it as a pretty standard [definition].

CO-CHAIR SAMUELS offered his understanding that the House Judiciary Standing Committee has addressed "a number of these subjects" via HB 2003.

A roll call vote was taken. Representatives Gatto, Seaton, Crawford, Kapsner, and Ramras voted in favor of Conceptual Amendment 10, as amended. Representatives Elkins, LeDoux, Olson, and Samuels voted against it. Therefore, Conceptual Amendment 10, as amended, was adopted by a vote of 5-4.

5:35:06 PM

CO-CHAIR RAMRAS moved to report HB 2004, as amended, out of committee with individual recommendations and the accompanying fiscal notes. There being no objection, CSHB 2004(RES) was reported from the House Resources Standing Committee.

ADJOURNMENT

There being no further business before the committee, the House Resources Standing Committee meeting was adjourned at 5:36 p.m.