

ALASKA STATE LEGISLATURE
SENATE JUDICIARY STANDING COMMITTEE

April 19, 2006

8:40 a.m.

MEMBERS PRESENT

Senator Ralph Seekins, Chair
Senator Charlie Huggins, Vice Chair
Senator Gene Therriault
Senator Hollis French
Senator Gretchen Guess

MEMBERS ABSENT

All members present

COMMITTEE CALENDAR

SENATE BILL NO. 307

"An Act relating to a fee provided for in the rental agreement for late payment of rent under the Uniform Residential Landlord and Tenant Act."

HEARD AND HELD

SENATE BILL NO. 316

"An Act amending the Alaska Stranded Gas Development Act to eliminate the opportunity for judicial review of the findings and determination of the commissioner of revenue on which are based legislative review for a proposed contract for payments in lieu of taxes and for the other purposes described in that Act; and providing for an effective date."

HEARD AND HELD

PREVIOUS COMMITTEE ACTION

BILL: SB 307

SHORT TITLE: LANDLORD REMEDIES; LATE FEE

SPONSOR(s): LABOR & COMMERCE

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|----------|-----|---------------------------------|
| 02/23/06 | (S) | READ THE FIRST TIME - REFERRALS |
| 02/23/06 | (S) | L&C, JUD |
| 03/09/06 | (S) | L&C AT 1:30 PM BELTZ 211 |
| 03/09/06 | (S) | Heard & Held |
| 03/09/06 | (S) | MINUTE(L&C) |
| 03/16/06 | (S) | L&C AT 1:30 PM BELTZ 211 |
| 03/16/06 | (S) | Scheduled But Not Heard |

03/28/06 (S) L&C AT 1:30 PM BELTZ 211
03/28/06 (S) Heard & Held
03/28/06 (S) MINUTE(L&C)
03/30/06 (S) L&C AT 1:30 PM BELTZ 211
03/30/06 (S) Moved SB 307 Out of Committee
03/30/06 (S) MINUTE(L&C)
03/31/06 (S) L&C RPT 2DP 1NR 2AM
03/31/06 (S) DP: BUNDE, STEVENS B
03/31/06 (S) NR: DAVIS
03/31/06 (S) AM: ELLIS, SEEKINS

BILL: SB 316

SHORT TITLE: COURT REVIEW OF STRANDED GAS DECISION

SPONSOR(s): JUDICIARY

04/13/06 (S) READ THE FIRST TIME - REFERRALS
04/13/06 (S) JUD
04/19/06 (S) JUD AT 8:30 AM BUTROVICH 205

WITNESS REGISTER

Senator Con Bunde
Alaska State Capitol
Juneau, AK 99801-1182

POSITION STATEMENT: Introduced SB 307

Bob Maier
Alaska Manufactured Housing Association
No address provided

POSITION STATEMENT: Testified in support of SB 307

Leo Regner, Landlord
North Pole, Alaska

POSITION STATEMENT: Testified in support of SB 307

William Whipple, Landlord
Fairbanks, Alaska

POSITION STATEMENT: Testified in support of SB 307

Steve Cleary, Executive Director
Alaska Public Interest Research Group
No address provided

POSITION STATEMENT: Testified in opposition to SB 307

Pat Luby, Executive Director
AARP Alaska
No address provided

POSITION STATEMENT: Testified in opposition to SB 307

Wayne Stevens, President and CEO
Alaska State Chamber of Commerce
217 Second Street
Juneau, Alaska 99801

POSITION STATEMENT: Testified in support of SB 307

Ed Sniffen, Assistant Attorney General
Department of Law
PO Box 110300
Juneau, AK 99811-0300

POSITION STATEMENT: Informed the committee of the implications of SB 307

Steven Porter, Deputy Commissioner
Department of Revenue
PO Box 110400
Juneau, AK 99811-0400

POSITION STATEMENT: Answered questions regarding SB 316

Larry Ostrovsky, Chief Assistant Attorney General
Oil and Gas Section
Department of Law
PO Box 110300
Juneau, AK 99811-0300

POSITION STATEMENT: Answered questions regarding SB 316

ACTION NARRATIVE

CHAIR RALPH SEEKINS called the Senate Judiciary Standing Committee meeting to order at [8:40:09 AM](#). Present were Senators Gretchen Guess, Charlie Huggins, and Chair Ralph Seekins.

SB 307-LANDLORD REMEDIES; LATE FEE

[8:40:28 AM](#)

CHAIR RALPH SEEKINS announced SB 307 to be up for consideration.

SENATOR CON BUNDE, Sponsor, introduced the bill. SB 307 addresses a problem in the landlord/tenant relationship that surfaced due to a 2002 Superior Court decision, which changed the status quo on collection of late rent and late fees. The bill would return the notification process back to its original process.

Prior to 2002, inclusion of a late fee on the same 7-day notice to quit for nonpayment of rent was an accepted practice. The court ruled that this was illegal and required that the landlords use an additional 10-day notice for the late fee.

Simple, clear language between landlord and tenant is essential. Replacing one notice with two notices, both with different due dates and amounts owed causes problems, and a dispute invariably ends up in court. The bill would allow landlords to return to the same 7-day notice requirement for non-payment of the rent plus the additional late fee.

[8:42:49 AM](#)

Senator Hollis French joined the meeting.

[8:43:38 AM](#)

BOB MAIER, Alaska Manufactured Housing Association, testified in support of the bill. He said historically the late was included in the 7-day notice to quit of non-payment of rent. This practice has been going on since before the Landlord-Tenant Act was enacted. He asked the committee to support the bill and gave a comparative example of an electric bill that includes a late fee on the same notice with the same due date.

[8:46:02 AM](#)

Senator Gene Therriault joined the meeting.

SENATOR GRETCHEN GUESS asked Mr. Maier whether a person could be evicted for not paying a late fee even after paying the rent.

MR. MAIER said yes but it has never happened. A landlord would not pursue an action based on a late fee due to all of the additional costs involved, including court costs and the costs involved in re-renting the property.

SENATOR GUESS countered that as the bill is written it would allow for an eviction based on the late fee.

MR. MAIER agreed and said that it has never been the practice of a landlord to evict a person based on non-payment of a late fee. He said he has sat through over 400 eviction hearings and has never seen a judge evict on the basis of a late fee alone and has never seen an action brought forward on the basis of a late fee alone.

[8:48:38 AM](#)

LEO REGNER, Landlord, testified in support of the bill. He said the contract agreement should be enforceable with one notification to quit. The law as currently written allows the tenant to extend the problem due to all of the additional paperwork and waiting that both parties have to go through.

[8:53:48 AM](#)

WILLIAM WHIPPLE, Landlord, testified in support of the bill. He voiced support of the previous testimony and informed the committee of the difficulty in evicting tenants who have failed to pay their rent.

[8:57:39 AM](#)

STEVE CLEARY, Executive Director, Alaska Public Interest Research Group (AkPIRG), testified in opposition to SB 307. He asserted that late fees should not be treated as rent and the bill would cause that to happen.

[8:58:55 AM](#)

PAT LUBY, Executive Director, AARP Alaska, testified in opposition to the bill. He cautioned the committee that the bill would allow for landlords to impose unreasonable late fees and that the bill would force the courts to include that late fee in the rent. AkPIRG agrees with the attorney general's office and with the court on the issue.

ED SNIFFEN, Assistant Attorney General, Department of Law (DOL), testified that the DOL has already provided comments to the bill sponsor in the previous committee hearing. Senator Guess has highlighted some issues with the bill. Currently if a late fee is assessed the landlord has the right to give a 10-day notice and the recipient has the opportunity to schedule a hearing and challenge the reasonableness of that late fee. If a person does not pay the late fee, the judge must decide whether failure to pay constitutes a material non-compliance with the lease agreement.

Hence, the court is forced to apply a different standard of review to the failure to pay rent and the failure to pay the late fee. Combining these two issues into one hearing would allow the court to evict a tenant for failing to pay a late fee and it wouldn't necessarily need to consider the reasonableness of the late fee. The DOL does not take a position on the bill but the committee should understand the impact of the legislation, he stated.

[9:03:47 AM](#)

SENATOR FRENCH said for the record he has done two evictions for non-payment of rent and they were over 10 years ago. He asked Mr. Sniffen if there was anything in the law that outlines a maximum late fee proportional to the rent.

MR. SNIFFEN said no but courts are unlikely to allow a late fee that is greater than the rent.

SENATOR FRENCH referred to Mr. Sniffen's letter in the bill packet regarding the possibility of moving everything to a ten-day notice. He asked him to review the letter dated March 22, 2006 from Mr. Maier, which claims that going to the 10-day notice would be a disaster for the tenant.

MR. SNIFFEN responded that he spoke to Mr. Maier about the issue of landlords being able to evict tenants and stated that there are a number of ways for landlords to evict tenants. He said he would read the letter and get back to the committee.

SENATOR FRENCH said his experience is that 25 percent of the people he rents to are young people renting for the first time. He said when they sign the lease they generally don't know to what obligation they are signing. He expressed agreement with the one time notice and said he is looking for a procedure that is more efficient yet protects both sides.

[9:09:08 AM](#)

WAYNE STEVENS, President and CEO, Alaska State Chamber of Commerce, testified in support of the bill. He said the court decision created unnecessary confusion and disruption to the rental and leasing services in Alaska.

CHAIR SEEKINS saw no further testimony and held the bill in committee.

SB 316-COURT REVIEW OF STRANDED GAS DECISION

[9:12:27 AM](#)

CHAIR SEEKINS announced SB 316 to be up for consideration. He said the committee has reviewed the legislative findings and are familiar with the contents of the bill.

STEVE PORTER, Deputy Commissioner, Department of Revenue (DOR), and LARRY OSTROVSKY, Assistant Attorney General, Department of Law (DOL), introduced themselves.

[9:13:29 AM](#)

MR. PORTER said the administration supports the legislation and the DOR has written a zero fiscal note because the bill is primarily clarification of the department's responsibilities. He advised that Mr. Ostrovsky would explain the details of the legislation to the committee.

MR. OSTROVSKY directed the committee to AS 43.82.430(b) and said under the original version of the Stranded Gas Development Act (SGDA) it provided that the commissioner of the DOR present the proposed contract to the public and the Legislature and after comment and review, the commissioner had the power to execute the contract. That decision would be a final agency decision and would normally be subject to administrative review and challengeable.

[9:17:08 AM](#)

CHAIR SEEKINS asked the procedure if someone were to challenge the commissioner's final findings and determination after he has executed the contract.

MR. OSTROVSKY referred to the DOR regulations and explained that the challenge has to happen within 30 days of the decision. He said additionally under appellate rule 602, an appeal may be taken to superior court from an administrative agency within 30 days from the date that the decision is distributed.

[9:18:48 AM](#)

SENATOR FRENCH asked the kinds of documents and information that the challenger would be entitled to in the course of discovery.

MR. OSTROVSKY said typically when there is an administrative appeal the superior courts will order the agency to compile the record and that would be all of the papers that were present and considered. Once the record is compiled, the court sets the briefing schedule.

SENATOR FRENCH speculated that the record would be composed of the modeling, assumptions, fiscal terms, data, and every piece of evidence that the commissioner took into account when finding that the contract was in the long-term fiscal interest of the state.

MR. OSTROVSKY said he did not have the particular rule but in his experience, agencies typically have files and the court orders the file put together. In the case of the SGDA there are probably numerous relevant files. He said there would likely be

some discussion about where the record actually begins and ends with respect to the contract.

CHAIR SEEKINS asked whether historically the person challenging the contract would be appealing the finding or the contract or both.

[9:21:56 AM](#)

MR. OSTROVSKY said both but most likely that person would be appealing the finding as the basis for the contract. There are various standards of review for appealing administrative determinations. The court would look to see whether there was a reasonable basis for the commissioner's findings.

CHAIR SEEKINS asked whether it would be right for appeal prior to the signing of the contract.

MR. OSTROVSKY said it probably would. He used an analogy of a lease sale by the Department of Natural Resources. They have had many challenges to administrative determinations and they usually occur directly before the lease sale. After the commissioner has released his findings then he is empowered to go forth and lease. "Under the original law, after the commissioner issued the fiscal interest finding, the commissioner would then be empowered to execute a contract, so it would be after the finding," he said.

CHAIR SEEKINS asked how close in juxtaposition that would be.

MR. OSTROVSKY said under the original law it could be sequentially.

[9:24:12 AM](#)

SENATOR FRENCH said the term "final findings and determination" is a term of art and is a signal to the world that this is the place to mount the challenge. Under the SGDA, the threshold question is whether or not the gas is stranded and the chief point of anyone challenging the decision would be that the gas is not stranded. Since the department has all of the data and modeling to prove that the gas is stranded, he asked whether it would be reasonable to believe that a challenger would be able to obtain all that data.

MR. OSTROVSKY said under the SGDA there are a number of factors that the commissioner must weigh and balance. A challenger might disagree on a number of issues, such as whether it is the best project, whether it serves communities, or whether there is a

constitutional issue. He said a challenger would want anything that was relevant to their claim.

[9:27:51 AM](#)

MR. OSTROVSKY continued in March of 1998, the Legislature amended the original version of the Stranded Gas Act. He referred the committee to AS 43.82.435 and said the Legislature retained the ultimate authority to authorize execution of the contract. "This is an unusual statute and quite frankly I've not seen one like it," he stated.

[9:30:20 AM](#)

Under the old Act, the place for the challenge is appropriate because it is directly after the final agency decision. In the amended version, the commissioner's fiscal interest finding doesn't enable the commissioner to execute the contract; rather the Legislature must authorize it first. People who normally might oppose it and have no recourse under the fiscal interest finding, now have recourse to the Legislature because that is a step that happens between the fiscal interest finding and authorization. That is a step that doesn't exist in other cases.

[9:32:41 AM](#)

One issue with the current law is that it could lead to a premature court case before all of the facts are disclosed, and it could put the court of law in between the legislative and executive branches. As a general rule courts like to take up final decisions because they don't want to take up something until there is finality. The risk is that all the facts and circumstances won't be in front of the court and also there is a risk that the case might be moved.

A legal challenge set before the Legislature has the opportunity to consider and debate the contract would prevent the court from seeing whether there are aggrieved parties and also prevent the court from taking into consideration the full facts underlying the contract. The practical implications are that it puts the court squarely between the flow of the executive and legislative branches, Mr Ostrovsky stated. Normally the governor proposes bills and the Legislature acts on the bills and the court doesn't get involved until somebody challenges a bill that has been enacted. He offered to answer questions.

[9:38:06 AM](#)

CHAIR SEEKINS referred to the flowchart comparison of the original SGDA version and the current Act. He said in either case, the contract is subject to judicial review.

SENATOR THERRIAULT asked Mr. Ostrovsky if the legal challenge were at the end of the chain of events, would the court be able to review the findings that the contract was predicated on to determine whether the commissioner has "struck the right balance" or would they be precluded to only looking at the constitutional challenges to the words of the contract itself.

MR. OSTROVSKY responded there is a remedy for when people do not agree with the balance that the commissioner struck and that is to go to the Legislature and prove that the commissioner's reasoning was faulty. If the process goes through and the Legislature passes it and somebody challenges it, the court would look at what led to the contract and also what developed in the Legislature.

SENATOR THERRIAULT asked whether it is constitutionally allowable for the Legislature to have a roll in the SGDA. In the original version of the SGDA, the administration saw no role of the Legislature in the function, he said.

MR. OSTROVSKY said that might be a potential separation of powers issue since the Legislature isn't in the business of negotiating contracts. The legislative history on the SGDA is skimpy and there doesn't seem to be much discussion through the process of the bill. Regardless, if the court found that the Legislature had no role in the development of the contract then that contract would only be based on the findings of the commissioner.

[9:48:26 AM](#)

CHAIR SEEKINS read AS 43.82.430(a):

(a) Within 30 days after the close of the public comment period under AS 43.82.410(4), the commissioner of revenue shall

(1) prepare a summary of the public comments received in response to the proposed contract and the preliminary findings and determination;

(2) after consultation with the commissioner of natural resources, if appropriate, and with the pertinent municipal advisory group established under AS 43.82.510, prepare a list of proposed amendments, if any, to the proposed contract that the commissioner of revenue determines are necessary to respond to public comments;

(3) make final findings and a determination as to whether the proposed contract and any proposed amendments prepared under (2) of this subsection meet the requirements and purposes of this chapter.

CHAIR SEEKINS asked, "Isn't that what would be appealed under the current law?"

MR. OSTROVSKY stated yes. The difference is under the old law the commissioner would then sign the contract.

CHAIR SEEKINS asked, "Isn't it the determinations that the proposed contract and the amendments prepared meet the requirements of the Chapter?"

MR. OSTROVSKY stated yes.

CHAIR SEEKINS said, "So his final determination is everything in this proposed contract meet the requirements of the chapter and is in the fiscal interest of the state."

MR. OSTROVSKY stated yes.

CHAIR SEEKINS said:

So isn't it now under the new law part of the responsibility of the Legislature in its review, to make sure or to become satisfied that the contract and the proposed amendments that are forwarded by the governor to us meet the requirements of the Chapter?

MR. OSTROVSKY stated yes.

CHAIR SEEKINS asked, "And isn't that determination challengeable at the point where we say the governor can now sign it?"

MR. OSTROVSKY stated:

Because the Legislature writes the laws, the Legislative determination that the facts that are developed are consistent with the law would not likely survive a challenge. But what would survive a challenge is if somebody believes that the Legislature [or the commissioner] violated the Constitution.

[9:53:48 AM](#)

CHAIR SEEKINS countered if the Legislature reviewed the contract and determined that it meets the requirements of the bill, they would be making the determination that the facts are consistent with the law and with the fiscal interest of the state.

MR. OSTROVSKY said that is right and that is something that doesn't normally exist. People normally do not have recourse to the Legislature.

CHAIR SEEKINS said:

Otherwise what purpose does the legislative review have? When I look at the new law, it says the governor can transmit the contract to us and it is not binding or enforceable unless the governor has authorized to execute the contact.

MR. OSTROVSKY agreed.

CHAIR SEEKINS said it seems that at the end of the process, after the Legislature has reviewed the contract, there is still the ability to challenge the conclusion that it does not meet the requirements of the Chapter.

MR. OSTROVSKY said people would still be able to challenge the constitutionality. It would be difficult to challenge the Legislature's determination that the commissioner's finding was sufficient because it is not necessarily required to do a fiscal interest finding.

CHAIR SEEKINS asked whether, based on the fiscal interest finding, could a person still bring a challenge if that fiscal interest finding did not comply with Article 8, paragraph 2 of the Alaska State Constitution.

MR. OSTROVSKY responded the person could challenge the ultimate contract.

[9:57:30 AM](#)

SENATOR FRENCH pointed out that the exchange between the Chairman and Mr. Ostrovsky highlights the concerns that he has heard regarding the bill. The question is whether SB 316 is about where to make the challenge or whether a person could make a challenge at all. He said that is his concern. It is quite possible that a court would say that the Legislature's findings are not challengeable.

MR. OSTROVSKY said,

In the original bill, and in most processes in the state that concerns a best interest finding, the best interest finding is the end of the story and that is the distinction. When the contract is signed, the court would look at the whole story. And the whole

story is both the commissioner's determination and the legislative findings and that is why I believe that the findings would likely be important but not viewed in isolation.

SENATOR FRENCH concluded the fact is that the bill would restrict a challenge strictly to constitutional grounds. What is completely taken away is a person's right to challenge that the contract is in violation of the SGDA or the law. That is a far more difficult challenge to win.

MR. OSTROVSKY insisted conversely one would have access to the Legislature that they normally don't have.

SENATOR FRENCH expressed concern that aggrieved parties would not have access to the entire record in order to bring their case to the Legislature.

[10:00:51 AM](#)

MR. OSTROVSKY argued that one remedy that the Legislature always has is they can reject the contract if they feel there is insufficient information in front of it.

SENATOR GUESS said:

What gives us the authority on the findings? It seems like why have the findings at all, honestly? You said that we have the authority to approve the findings, well, we have the contract in front of us, we don't have the findings and determination necessarily in front of us and we don't necessarily have all the background information, nor are we always successful in getting all the background information for what is in front of us.

She said the bill seems to take the consideration of whether a contract serves the long-term interest of the state and whether the contract complies with the SGDA off the table. She questioned the purpose of the bill and questioned the approach to the bill. She said she does not understand the intent and she does not "buy the whole delay issue." Historically speaking, and especially on initiatives, the courts wait to see if it passes before they deal with it and in this situation the court would wait to see if the Legislature passed the contract and would then go back to look at the findings.

MR. OSTROVSKY responded that it was dangerous to opine about legislative intent. The SGDA requires that the commissioner set

out findings with the contract and to answer certain questions specifically dealing with that contract. Because of that, the findings have an important purpose, he said. He agreed that courts do not like to take up matters until there is finality but indicated that it could if it felt there was adequate reason for the challenge.

SENATOR GUESS asked whether it would void the contract if the court ruled that the contract did not meet the requirements of the chapter.

10:06:33 AM

MR. OSTROVSKY admitted that is untested terrain and it is possible that the Legislature would take up the contract regardless.

SENATOR GUESS said she did not see the tie between the findings and the contract.

MR. OSTROVSKY responded the tie is there and there is an avenue for challenge.

SENATOR GUESS challenged Mr. Ostrovsky to explain how the court could prevent the governor from transmitting the contract, even if somebody took the findings to court.

MR. OSTROVSKY said what would happen is the commissioner would issue the final finding and a person would go to court with a reasonable basis for challenge. The court would order a record compiled and there would be arguments. The court would determine whether the commissioner had a reasonable basis. If the court found that the commissioner didn't, the court would remand it back to the commissioner and make him redo the finding. So the commissioner would not have the ability to then advance the contract.

SENATOR THERRIAULT asked whether there could be clarifying language that a challenge to the findings could be guaranteed. The criticism that is being heard from the constituency is that the process they normally have access to would be gone if SB 318 were to be enacted.

10:11:44 AM

MR. OSTROVSKY replied under the SGDA that could be a problem in terms of finality since someone could challenge an intermediate step in the process. He questioned how meaningful the

commissioner's findings would be at the final point. "It's only one piece of the puzzle," he stated.

10:14:19 AM

MR. OSTROVSKY posed a hypothetical situation of a challenge where the person said the commissioner did not consider a certain economic aspect therefore the finding lacks a reasonable basis. The Legislature comes to the same conclusion yet they address it and fix it. There are facts that develop after the fiscal interest findings that might take care of the original reason for challenge.

CHAIR SEEKINS asked Mr. Ostrovsky to explain the difference between the commissioner's final findings and determination and a final agency decision.

10:16:34 AM

MR. OSTROVSKY replied the final agency decision is normally the trigger for an administrative appeal under the appellate rules and under the regulation.

CHAIR SEEKINS said if a person wanted to delay a consideration by the Legislature by filing an action against the findings that person could automatically ask for a stay on the contract.

MR. OSTROVSKY agreed. On the other hand if SB 316 is passed it says to the court that the commissioner's finding and contract are tantamount to proposing legislation.

CHAIR SEEKINS speculated that the Legislature would look at the findings to make sure the commissioner served his or her due diligence, which includes making sure that all of the public comments have been compiled and addressed, and after consulting with the commissioner of the DNR, ensures that the contract meets the purposes of the chapter and that it also meets the long-term fiscal interest of the state. It's more of a recommendation than a final agency decision, he said.

MR. OSTROVSKY responded that is the way the Act reads since the Legislature decided to retain the authority for the approval.

10:20:03 AM

CHAIR SEEKINS said he could not imagine that during the committee process of looking at the contract that the Legislature would not examine the challenge and look at the findings. He asked Mr. Ostrovsky whether there was any record during the consideration of the amended bill indicating if it

was the intent of the Legislature to obtain a judicial review at the point of the final findings of the commissioner.

MR. OSTROVSKY said no and indicated that the legislative record on the 1998 amendment of the SGDA was skimpy.

[10:23:56 AM](#)

MR. OSTROVSKY added the DOL believes the 1998 Legislature might not have thought out the entire procedural process.

SENATOR FRENCH said he was not sure the committee has addressed Senator Guess's concern regarding the likelihood of delay. He said that potentially within minutes of releasing the final findings, the commissioner would give the contract to the Legislature. He said it was beyond the realm of possibility that a court would at that time issue an injunction based on a challenge to the findings.

[10:26:22 AM](#)

SENATOR GUESS added that under the amendment, the findings could only be evaluated as to the constitutionality since the bill is taking out any relationship between, or any court review of, AS 43.82.440(a)(3). She added that there are supposedly twenty amendments coming from the administration to the SGDA. One of them is an amendment to the SGDA relating to the taxation of oil. She said:

If we pass this [SB 316] it doesn't really matter, does it? Probably it is still constitutional to have oil and gas in the contract. It's probably not against the [Alaska State] Constitution. It would be against the statute of the Stranded Gas Act. But if we pass this, it wouldn't matter so why do we even need to amend the Stranded Gas Act and I even question why do we even follow the Stranded Gas Act and don't just follow the Constitution?

MR. OSTROVSKY responded he wasn't sure he understood the question and indicated that there might or might not be amendments to the SGDA. He said, "I think that is the purpose of the Act. That the Legislature doesn't want just a contract, it wants the due diligence too so it can make that determination."

SENATOR GUESS argued that the commissioner's "due diligence" is just to ensure that the contract complies with the Act.

MR. OSTROVSKY stated, "Correct."

CHAIR SEEKINS said the two findings are that the contract meets the terms of the Act and that it is in the long-term fiscal interest of the state.

[10:30:14 AM](#)

SENATOR GUESS agreed but countered that the final findings are just that the contract meets the requirements and the purposes of the Act. The long-term interest is not reiterated; it is implied.

CHAIR SEEKINS argued that it was in subsection (b).

SENATOR GUESS agreed but countered that subsection (b) is not a final finding; only subsection (a) is. Really the entire bill is about subsection (a), she said.

SENATOR GUESS asked Mr. Ostrovsky what happens if a contract is passed that is in contradiction to the statute.

MR. OSTROVSKY said the governor's intention would be to follow the statute.

[10:32:05 AM](#)

CHAIR SEEKINS referred to Article 8, paragraph 2 and said it appears that a challenge to the contract, based on a constitutional issue, would be that the findings of the commissioner did not meet the requirement that natural resources were to be developed for the maximum benefit of the people because the findings were flawed.

MR. OSTROVSKY responded that if one brought that challenge to the contract the court after it was approved by the Legislature, the court would find that neither the commissioner's findings or the legislative record was sufficient to meet that constitutional provision because the court would have to look at the whole record.

SENATOR THERRIAULT said under the long-term fiscal interest to the state there are eight things listed that the commissioner should look to. Under the pending contract, Alaska is aiming to supply the market in the Midwest. He said the commissioner would be limited to making a comparison with competition on that particular project. He asked Mr. Porter whether he was at liberty to say whether the commissioner, when making his determination, was limiting himself to comparison of other projects delivering into that market or whether he was able to look at similar projects delivering into other markets.

[10:36:38 AM](#)

MR. PORTER responded that the commissioner would review the competitiveness of both the North American and the International markets. The fiscal interest finding though, would deal specifically with the SGDA and all the elements within.

SENATOR THERRIault said the first item details that the commissioner must look at whether the project under consideration meets the competitiveness with other competing projects for the specific market.

MR. PORTER stated that would certainly be addressed.

SENATOR THERRIault stated, "It would have to be addressed or that will have to be modified."

MR. PORTER agreed.

CHAIR SEEKINS remarked that a contract forwarded to the Legislature would have to comply with the elements of the SGDA. Somebody who wanted to challenge whether or not the gas was stranded would have to deal with the definition in the Act itself. If the Legislature were to find that the definition of stranded gas were outdated they have the prerogative to change the definition.

SENATOR FRENCH said the bill severely restricts when the challenge could be brought. He suggested there is a way to keep "full public availability to the documents that led up to the contract."

CHAIR SEEKINS said he believed that the way the SGDA is written comes down to the Legislature authorizing that the final findings and determination by the commissioner meets the elements of the Act. The intent is to develop Alaska's natural resources to the benefit of the people of the State of Alaska. He held the bill in committee.

There being no further business to come before the committee, Chair Seekins adjourned the meeting at [10:45:54 AM](#).