

ALASKA STATE LEGISLATURE
SENATE JUDICIARY STANDING COMMITTEE

April 21, 2006

9:39 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. 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 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
04/19/06	(S)	Heard & Held
04/19/06	(S)	MINUTE(JUD)
04/20/06	(S)	JUD AT 8:30 AM BUTROVICH 205
04/20/06	(S)	Heard & Held
04/20/06	(S)	MINUTE(JUD)
04/21/06	(S)	JUD AT 9:30 AM BUTROVICH 205

WITNESS REGISTER

Larry Ostrovsky, Assistant Attorney General
Oil, Gas & Mining Section

Department of Law
PO Box 110300
Juneau, AK 99811-0300

POSITION STATEMENT: Answered questions on SB 316

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

POSITION STATEMENT: Answered questions on SB 316

Paul Fuhs, Lobbyist
Backbone
1635 Sitka St
Anchorage, AK

POSITION STATEMENT: Commented on SB 316

Tim Beck
Fairbanks, Alaska

POSITION STATEMENT: Testified in opposition to SB 316

Phil Kugzruk
Fairbanks, Alaska

POSITION STATEMENT: Testified in opposition to SB 316

Jomo Stewart
Fairbanks, Alaska

POSITION STATEMENT: Testified in opposition to SB 316

Steve Hovenden
Fairbanks, Alaska

POSITION STATEMENT: Testified in opposition to SB 316

ACTION NARRATIVE

CHAIR RALPH SEEKINS called the Senate Judiciary Standing Committee meeting to order at [9:39:07 AM](#). Present were Senators Hollis French, Gretchen Guess, Charlie Huggins, and Chair Ralph Seekins.

SB 316-COURT REVIEW OF STRANDED GAS DECISION

[9:39: 33 AM](#)

CHAIR RALPH SEEKINS announced SB 316 to be up for consideration.

STEVE PORTER, Deputy Commissioner, Department of Revenue (DOR) and LARRY OSTROVSKY, Assistant Attorney General, Gas & Mining

Section, Department of Law (DOL), introduced themselves for the record.

SENATOR CHARLIE HUGGINS asked Mr. Ostrovsky how difficult it would be to complete the gas contract.

MR. OSTROVSKY responded the agreement of the contract should happen in the political process rather than the judicial process. The DOL anticipates that somebody will file an administrative appeal on the findings and that has the potential of stalling the contract.

SENATOR GRETCHEN GUESS asked Mr. Ostrovsky and Mr. Porter whether they have had the chance to discuss Senator French's proposed amendment. She said it addresses some of their concerns.

MR. OSTROVSKY replied they have looked at it but they do not support it because it does not reflect what is really going on. The amendment might move the judicial review to the end, but there is no place for judicial review of a proposal. When the Legislature amended the Stranded Gas Act (SGA) in 1998 to leave a role for itself, it essentially converted what would have been a final agency decision into something that is essentially a proposal to the Legislature and "for that reason, we don't support the amendment," he explained.

SENATOR GUESS disagreed and countered that the Legislature put itself in the middle of the contract but not the findings. She said this is what she has been trying to get at for three days and the answer is still not clear. She said it seems as if the bulk of the focus has been on the delay but the other part is that the Administration seems to be saying that they want it so that an entity could only take the contract to court under constitutional grounds.

MR. OSTROVSKY said that is correct. The DOL believes it doesn't make sense to subject a recommendation to review when it is only half the story. When the Legislature amended the SGA, they wanted the findings attached when the contract was presented to them.

SENATOR GUESS stated that the committee seems unsure of the intent in 1998. She doubted that was what the Legislature intended and said the question is what the process should be now.

MR. PORTER said he looks at the requirements of what the Department is designed to do and he looks and at the final findings and what is appealable to the courts. Now that the finding is no longer a final finding, the Department only has the right to make a recommendation and so there is no action available to the Department. From a process standpoint, it makes sense that something appealable in court would be charged upon an action.

SENATOR HOLLIS FRENCH said the prior day discussion enlightened them with the understanding of how the SGA works. One notable thing is the lateness of when the final fiscal interest finding is released. He speculated that it was very unlikely that a court would assume it had the power to stop the Legislature from working on a contract. He challenged Mr. Ostrovsky and Mr. Porter to find a case where a court ordered the Legislature to stop a process so that they could review it.

He said he was in favor of changing the timing but he disagreed with the reduction of citizen's right to have access to the modeling, data and assumption that goes into the Department's recommendation.

[9:54:16 AM](#)

Senator Gene Therriault joined the meeting.

CHAIR SEEKINS said the committee shared Senator French's concern. He said once the commissioner has compiled all the data in order to publish the preliminary findings, the supporting data becomes public.

MR. PORTER said that was correct. There will be a preliminary finding that will look similar to the final finding. At that time the Department would make economic models available as well as the reports and analysis. The DOR will build all of that into files and make it available to the public via the Internet.

[9:57:59 AM](#)

CHAIR SEEKINS asked Mr. Porter to comment on rumors that the Governor was "hiding the ball" and not disclosing a vast amount of models and competing numbers from competing contracts.

MR. PORTER replied two years ago the price of oil was below \$60 a barrel and some of the original reports have progressed over time. Even so, the Department should provide every piece of that data used to consider the best option for the state, he said.

CHAIR SEEKINS asked Mr. Ostrovsky whether he, as Senate Judiciary Committee chairman, could put Mr. Porter under oath and ask him whether he provided all of the documentation that would otherwise be discoverable under court proceedings.

MR. OSTROVSKY indicated there would always be discovery disputes but the question really is whether or not the Department has to disclose every single piece of data.

CHAIR SEEKINS asked Mr. Porter to define what information would be considered confidential.

MR. PORTER replied some of the discoverable information would be available to the legislators but not necessarily the public.

[10:04:48 AM](#)

CHAIR SEEKINS asked whether there were any internal documents that would be kept confidential.

MR. PORTER advised if the current contract does not move forward, there are certain documents that the producers are not privy to and if released, would limit the Department's ability to negotiate future contracts.

CHAIR SEEKINS speculated that would be an area of dispute regarding discoverable documents.

MR. OSTROVSKY said to some degree. The Stranded Gas Act (SGA) provides a cloak of confidentiality for internal documents up until the time of the proposed contract so that negotiations can take place. He informed the committee that the Public Records Act is a statute that operates very quickly. Once the request is made, agencies have to respond within 10 working days. The reason for withholding any documents has to be described and if the party were not satisfied they would appeal to a judge who would then ask the agency the reason for withholding the documents. Both the SGA and the Public Records Act compel the release of the supporting documents.

[10:11:59 AM](#)

CHAIR SEEKINS read page 19, line 25, subsection (f) [version L] and said basically everything that would be considered discoverable documents would become public.

MR. OSTROVSKY said there are statutory exceptions set out in paragraphs 1-3.

SENATOR FRENCH asked whether subsection (f) makes the contract itself confidential.

MR. OSTROVSKY said, "We believe it would be confidential under (f)." It is a question of when the contract is completed. He said until the commissioner proposes the contract, it is difficult to say whether it is complete because it is still subject to a decision not to present it.

SENATOR FRENCH said it seems like (f) is all about protecting the strategizing and assembling the pieces of the contract.

[10:15:59 AM](#)

CHAIR SEEKINS said there is no argument that once the preliminary findings are published that the contract and all of the supporting documents become public.

MR. PORTER agreed. There are three classes of information; information provided to the public, confidential information provided to the legislators, and proprietary data from the industry that the state does not have the right to disclose to anyone.

[10:18:53 AM](#)

CHAIR SEEKINS asserted the intent of the committee was to ensure that the public would have plenty of opportunity to review the contract and the supporting documents.

SENATOR FRENCH agreed but expressed concern that the Administration might not disclose all of the specifics of the contract.

[10:22:50 AM](#)

TIM BECK, Fairbanks, testified in opposition to the proposed change to the SGA saying it would be a detriment to the people of the State of Alaska. He asserted that Governor Murkowski's Administration was attempting to thwart the judicial system and not allow the public access to the gas contract, therefore eliminating citizens' rights.

SENATOR THERRIault asked Mr. Beck whether he would agree with the direction that the committee was headed on the bill.

MR. BECK replied he would have to see the bill in its final form. He stated a preference for allowing public review early in the contract process.

CHAIR SEEKINS suggested that people were taking positions without being fully knowledgeable about the process.

[10:28:59 AM](#)

SENATOR FRENCH referred to AS 43.82.430(a)(3) and said he assumed that is the same final findings and determination that is referred to in (c) and the challenge would come to that final finding and determination.

CHAIR SEEKINS asked Mr. Ostrovsky whether (b) referenced the preliminary finding.

MR. OSTROVSKY said that was a "playground for lawyers" and that there was "ambiguity in AS 43.82.430(b)." The DOL would consider the material described in subsections (a) and (b) tied because the final findings and determination are what underlie the conclusion that the long-term fiscal interest findings are in the best interest of the state.

CHAIR SEEKINS asked whether there were one or two findings that would come to the Legislature.

MR. OSTROVSKY said there would be one document, which would be a findings and determination. The determination being that the contract is in the long-term financial interest to the state. Ambiguity aside, the court would probably not separate out the two because the conclusion would be based on the package.

[10:33:46 AM](#)

CHAIR SEEKINS agreed the wording was ambiguous.

SENATOR FRENCH agreed and said it is important to clarify what the Act says.

SENATOR THERRIAULT asked Mr. Ostrovsky whether it would be clearer if subsection (c) said, "The commissioner's final findings and determination under (a) or (b) of this section are final agency decisions under this chapter."

MR. OSTROVSKY said that was a "belt and suspenders approach."

[10:36:34 AM](#)

PAUL FUHS, Lobbyist for Backbone, testified regarding concerns that the organization has on the bill. Backbone is comprised of approximately thirty citizens of past legislators and governors who care about the issue. The organization was first formed when BP attempted to take over the entire North Slope. They have been

quiet until interest of this issue came up. This is the final year of the current administration and Alaska still does not have a gas contract, he said.

[10:38:56 AM](#)

The gas contract is similar to a royalty oil and gas deal, he stated. The administration negotiates the deal and brings it to the Legislature for an up or down vote. The concern is the up or down vote because there will be no chance for amendments and so there will be a lot of pressure involved. He agreed with Senator Guess's comments regarding, "why have the Stranded Gas Act?" He said, "Just pass a law of applicability of gas development, put the incentives in and the first people who show up can build the project," he said.

[10:43:22 AM](#)

CHAIR SEEKINS agreed that the gas was stranded but said the question is how to get the gas to market.

SENATOR THERRIAULT said he wasn't sure that Backbone could question whether the gas was stranded since they would not know the cost of the development of the project.

[10:45:35 AM](#)

SENATOR THERRIAULT asked Mr. Fuhs whether preserving the public process would address Backbone's concern.

MR. FUHS said he thought it would. It would make more sense to have public comment before the Legislature voted on it.

CHAIR SEEKINS stated under the original Act, the challengeable point was after the final agency determinations.

[10:52:14 AM](#)

CHAIR SEEKINS noted there were three more people signed up to testify.

PHIL KUGZRUK, Fairbanks, testified in opposition to the bill. Oil companies have a paternalistic attitude toward Alaskans and Alaskans should not agree to that, he said. He compared the administration's bill and their holding of the gas contract to a person buying a house and not allowing his wife to see any of the details.

[10:56:29 AM](#)

SENATOR THERRIAULT advised Mr. Kugzruk of Mr. French's amendment that would preserve the citizen's right to review the contract.

JOMO STEWART of Fairbanks offered to let Mr. Steve Hovenden testify in his stead.

MR. HOVENDEN, Fairbanks, testified against the bill. He informed the committee that the bill infuriates people and they do not agree with eliminating judicial review.

[11:04:01 AM](#)

CHAIR SEEKINS asked Mr. Hovenden whether he has followed the discussion of the committee on the bill.

MR. HOVENDEN said he has not followed all of the discussion but when it comes down to eliminating public review, people are getting upset.

CHAIR SEEKINS suggested he get a copy of the Stranded Gas Act and read the sections dealing with preliminary findings and public review. The intent of the committee is to establish the point at which a judicial review would take place. The bill is poorly worded and the committee is working on that, he stated.

SENATOR THERRIAULT thanked the witness and advised him that the original bill would not likely pass out of committee. He assured the witness that the Senate Judiciary Committee is the committee that would come up with a good bill. He clarified that the bill came into committee as a request of Governor Frank Murkowski's administration.

[11:12:20 AM](#)

CHAIR SEEKINS held SB 316 in committee and recessed the meeting until 9:30 AM Saturday, April 22, 2006.