

**ALASKA STATE LEGISLATURE
SENATE JUDICIARY STANDING COMMITTEE**

June 2, 2006

8:47 a.m.

MEMBERS PRESENT

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

MEMBERS ABSENT

All members present

OTHER LEGISLATORS PRESENT

Representative John Coghill

Senator Gary Stevens
Senator Ben Stevens
Senator Lyda Green

COMMITTEE CALENDAR

SENATE BILL NO. 2002

"An Act conferring original jurisdiction on the Alaska Supreme Court for the purpose of providing judicial review of a contract executed under the Alaska Stranded Gas Development Act, and setting the time in which a contract developed under that Act, or a statute of limitations regarding that contract, must be legally challenged; and providing for an effective date."

MOVED CSSB 2002(JUD) OUT OF COMMITTEE

PREVIOUS COMMITTEE ACTION

BILL: SB2002

SHORT TITLE: GAS PIPELINE CONTRACT: COURT JURISDICTION

SPONSOR(S): RULES BY REQUEST OF THE GOVERNOR

05/31/06	(S)	READ THE FIRST TIME - REFERRALS
05/31/06	(S)	JUD

WITNESS REGISTER

Bonnie Harris

Office of the Attorney General
Department of Law
PO Box 110300
Juneau, AK 99811-0300

POSITION STATEMENT: Available for questions on SB 2002

James Baldwin
Counsel to the Office of the Attorney General
227 Harris Street
Juneau, AK 99801

POSITION STATEMENT: Introduced SB 2002 on behalf of the administration

Douglas Wooliver, Administrative Attorney
Alaska Court System
820 W 4th Ave
Anchorage, AK 99501-2005

POSITION STATEMENT: Provided Court System perspective on SB 2002

ACTION NARRATIVE

CHAIR RALPH SEEKINS called the Senate Judiciary Standing Committee meeting to order at [8:47:28 AM](#). Present were Senators Therriault, French, Guess via teleconference and Chair Seekins. Senator Huggins arrived shortly.

SB2002-GAS PIPELINE CONTRACT: COURT JURISDICTION

CHAIR SEEKINS announced SB 2002 to be up for consideration.

[8:49:01 AM](#)

BONNIE HARRIS, Assistant Attorney General, Civil Division, Oil, Gas & Mining Section in the Department of Law, introduced herself and advised that Jim Baldwin would lead the discussion.

JIM BALDWIN, Counsel to the Office of the Attorney General, introduced SB 2002 as a bill to create original jurisdiction in the Alaska Supreme Court to hear any challenge to the stranded gas contract. In addition it would shorten the period for appeals from 120 days to 60 days.

The bill applies to facial challenges to a statute or a provision in law. Creating original jurisdiction means that the Alaska Supreme Court acts as the court of first instance. That is different from normal cases that originate in the Alaska

Superior Court and the result is that those cases would be given more expedited treatment.

Article IV, Section 1 of the Alaska State Constitution provides that jurisdiction of the courts may be established by law. That provision is viewed as both a jurisdictional statement and a form of statute of limitations.

Article 27.2 in the fiscal contract has special provisions that apply to the state's partners in the project. Under that provision there's usually a suspension of contract obligations during a judicial challenge, but under Article 27.2 there's an exception at the beginning of the contract. It extends for 15 months or during project planning or until \$120 million has been spent on project planning. The thinking is that it's appropriate to expedite any judicial challenge of the contract or the Stranded Gas Development Act. The long-term planning process, the lead time for ordering materials and the substantial financing requirements for a project of this magnitude all make it important to clear any legal defects quickly. The intention isn't to cut off claims but to bring them out early, he said.

[8:54:23 AM](#)

SENATOR THERRIAULT asked the reason the period of time for challenging a contract was cut from 120 days to 60 days.

MR. BALDWIN replied based on the data available on moving regular civil litigation through the court system, it was clear that to move things along faster the time frame needed to be shortened. Cutting back to 60 days seems consistent with what the court did in the redistricting cases and it's longer than the 30 days allowed for certain election challenges.

SENATOR THERRIAULT argued that quick action is required with redistricting because of the election date deadline. He asked if the administration had considered limiting the time under which the court had to render a decision instead of truncating the timeframe that the public has to bring a challenge.

MR. BALDWIN responded doing that would entail administrative rule making, which would require certain constitutional procedural steps. The administration takes the view that the Alaska Supreme Court is being pushed hard enough by asking that the Legislature consider restoring original jurisdiction on it.

CHAIR SEEKINS said he'd prefer to lean on the court to expedite a decision than to lean on the people to hurry a challenge to

provisions in a contract. Certainly there are sophisticated people who already have attorneys at work looking for potential challenge points in a contract, but what do you do about the potato farmer from the Mat-Su, he questioned.

MR. BALDWIN agreed that there will be sophisticated plaintiffs who will sweep up the potato farmer, but the administration believes that they would litigate the issues to the extent that the potato farmer will be collaterally estopped or the issues will be res judicata to that party anyway. The main idea is to get the cases out in the open and into the court system.

Arguing that the time frame is fair, he pointed out that the attorney general has been open with the legal issues and that the public has been able to consider and analyze the legal opinion since about May 10 when it was issued. Whenever the authorization bill takes effect the 60-day count down to the effective day begins. It's possible that the contract will be signed earlier, but more than likely the legal position will be out there and subject to analysis for substantially longer than 60 days.

9:03:00 AM

SENATOR FRENCH said the other way of looking at that is that 100 some extra pages of the contract have just recently been released and some people would assert that this is day 24 of the public comment period. It's not clear that both sides are on even footing with respect to having all the information necessary to mount a challenge.

He expressed concern about the notion that the most sophisticated litigant would focus his or her legal energy on the issues that are of utmost interest to Alaskans. People that are interested in such things as the legality of the State taking its royalty in-kind or the constitutionality of a long term tax lock might not be at all interested in Alaska hire or work commitments. Those issues might be addressed in a cursory fashion if at all.

He questioned what would happen when one litigant is sophisticated, well-heeled and fastest to file while the other struggles through the contract's Byzantine intricacies and is slow on the legal uptake.

MR. BALDWIN said that's a due process issue that is connected to the length of time during which this bill would allow a claim to be brought. He acknowledged that the Alaska Supreme Court does

consider due process issues connected to appeal limitation periods. He mentioned that the court upheld a 30-day time period for initiative petitions and noted in that instance the court considered an initiative committee to be a citizen group rather than a sophisticated individual.

He summarized the fiscal note and said all the elements are present to warrant a shortened appeal period. The administration advocates a 60-day period in recognition of the 15-month obligation in Article 27.2 of the contract. If the State's partners are expected to spend significant amounts of money without the ability to spend their obligations in the face of a lawsuit, then any lawsuit ought proceed as expeditiously as possible. Although everything may not get done within 15 months, it is a good faith effort to move things forward.

9:07:31 AM

SENATOR FRENCH said he was concerned about the unequal fiscal standing of the parties. Basically it's Exxon Mobil, ConocoPhillips, British Petroleum and the State of Alaska against a citizen so the responsibility of bringing a sophisticated legal challenge to this contract within 60 days could fall on just a few legislators and some other public interest folks. They would be matched against some of the most well financed corporations in the world and 60 days is just too short a time.

CHAIR SEEKINS said the current language concentrates from the date the contract is executed and he would suggest going back several steps to where the final fiscal interest finding is prepared by the commissioner. He continued to say:

The renegotiated contract after the public comment period is agreed to by all the parties. The fiscal interest finding and the final determination are published by the commissioner and they forward the bill along with the contract to the Legislature for approval of the contract.

It seems to me, at that point the contract itself and the terms of the contract - if a legal action were to be brought are all contained within the four corners of that document and they're not going to change at this point in time unless the Legislature says 'No, but if you change this we'll say yes.' So let's say at this point this is the final product. It's all there.

CHAIR SEEKINS suggested that the clock ought to start ticking at that point rather than at the point of execution. According to the law, the administration and the parties to the contract have 60 days to execute after the Legislature has passed the law authorizing execution of the contract.

SENATOR THERRIAULT said you don't want citizen groups preparing a challenge for something that might not happen.

CHAIR SEEKINS commented he couldn't see the parties agreeing to a contract and then not executing it.

MR. BALDWIN cautioned the committee to think about that carefully in light of the suspension provision because he wasn't sure how the other entities would view it if suit were brought before the contract was signed. Currently the clause says that if the contract is ongoing and a lawsuit is brought then there's a 15-month period when they're locked into the planning process. Whether or not the other entities might view the contract as giving a suspension right is something to think about.

CHAIR SEEKINS clarified this bill talks about constitutional issues.

MR. BALDWIN agreed adding it's authorizing the enforceability of the contract under the Stranded Gas Development Act. He reiterated those are facial challenges meaning they're enforceable on its face.

CHAIR SEEKINS questioned what the enforceability of a contract is.

MR. BALDWIN replied it falls back on constitutional issues at this stage and whether something appears to be invalid on its face under the constitution or other common law doctrines.

SENATOR FRENCH asked him to clarify whether the word "enforceability" would also include the ability to challenge to the fiscal interest finding.

MR. BALDWIN answered he'd have to think about that because there are separate provisions for that kind of challenge.

SENATOR FRENCH asked where the provisions are because the language says "original and exclusive jurisdiction." He asked if he was suggesting that there might be a superior court challenge

to the fiscal interest finding and an original jurisdiction challenge to the constitutionality.

MR. BALDWIN replied he was suggesting there are separate provisions that deal with challenges to the fiscal interest finding and the final agency action when that happens. He noted that the legislation addressing that issue didn't pass during the regular session.

CHAIR SEEKINS added the challenge has to take place before legislative authorization.

MR. BALDWIN clarified that the final agency action is when the final fiscal interest finding is released.

CHAIR SEEKINS said that's after the public comment period and before the final contract is forwarded to the Legislature.

MR. BALDWIN declared that that is a separate legal challenge. This deals with a facial challenge to the contract itself.

CHAIR SEEKINS asked whether that's brought under the Administrative Procedures Act.

MR. BALDWIN replied it's not clear but it would appear to be an administrative appeal type action. The legislation that died at the end of the regular session was meant to clarify that point.

SENATOR FRENCH questioned whether this would be an improvement over the existing legal system. Basically it's a superior court challenge to the fiscal interest finding. There would be the right of appeal for that to the supreme court and probably at some point a superior court judge would issue a stay based on his or her desire to deeply look into the fiscal interest finding to determine whether it truly is in the best fiscal interest to the State. He suggested that that might take just as long as this challenge to the constitutionality of the contract. Are we really imagining two parallel sets of challenges, he asked.

MR. BALDWIN replied it's possible, but he would imagine the State would try to nullify the action using a dispositive motion to deal with a challenge to the fiscal interest finding. He added that the existence of other statutes can't be ignored in the consideration of possible legal challenges.

[9:18:24 AM](#)

CHAIR SEEKINS asked Senator Guess if she had any questions.

SENATOR GUESS, who was participating via teleconference, asked what happens to challenges under the U.S. Constitution.

CHAIR SEEKINS asked Mr. Baldwin to comment.

MR. BALDWIN advised that challenges under the U.S. Constitution can be brought in state court and the proposed language deals broadly with challenging the constitutionality of the law or the enforceability of the contract. He expressed the view that this statute would have to be followed to invoke the jurisdiction of the state courts.

SENATOR GUESS asked him to verify that a federal court filing could not be limited.

MR. BALDWIN responded, "I'm sure if we could, we would have tried earlier."

SENATOR THERRIAULT referenced the version of SB 316 that the Judiciary Committee passed and recalled that the placement of the fiscal interest finding challenge had been problematic, but there was no mention that the 120-day time frame was a concern. SB 2002 indicates that the 120 days is a problem, but it doesn't indicate concern about the placement of the public challenge to the fiscal interest finding.

He questioned why there was one problem then and a different problem now and suggested that the work that was done in Sections 7 and 8 of SB 316(JUD) giving the Supreme Court original jurisdiction ought to be the way both questions are addressed.

CHAIR SEEKINS expressed the opinion that there are two questions in the bill that ought to be addressed separately; first look at the question of original jurisdiction and then look at the time frame during which a challenge can take place.

SENATOR FRENCH agreed then added that SB 2002 is basically a rewrite of AS 43.82.440 and it happens to be the same statute where the challenge to the final fiscal interest finding was placed. If SB 2002 were adopted, that right to challenge the fiscal interest finding would be gone so he questioned what the administration thinks would preserve that right.

CHAIR SEEKINS said what SB 316(JUD) accomplished was to bring the challenge to the fiscal interest finding to the end of the process. Without amendment, the challenge to the fiscal interest finding would stay in AS 43.82.430.

[9:23:29 AM](#)

CHAIR SEEKINS asked Mr. Wooliver to give the court's reaction to original jurisdiction as it relates to SB 2002.

DOUGLAS WOOLIVER, Administrative Attorney for the Alaska Court System, stated that the court is neutral on the bill, but advised that there is precedence for original jurisdiction. There is one existing statute on election law and one that is no longer on the books. In both instances original jurisdiction was preferred on the Supreme Court. Five opinions have been recorded under the two statutes reflecting how the court handles this sort of case. Three of the cases were resolved without a special master because there was no need for additional evidence. A special master was appointed in two cases and in both instances a superior court judge who was appointed as special master to take evidence. The Supreme Court then reviewed the special master's opinion. He said he would anticipate that that is how it would be done in this case.

He agreed with Mr. Baldwin that there are constitutional issues involved in placing a time limit on the court for making a decision, but that there are some time limits in statute. Although the court makes every effort to meet timelines whether they are constitutionally required or not, he cautioned the committee to consider carefully the wisdom of rushing the court to issue an opinion. The Legislature and the Judiciary Committee in particular has spent time deliberating the oil tax provisions that are likely to be a part of the contract and have worked hard not to rush the process. He suggested that the court ought not be put in the position of rushing its process either.

He said that the forgoing discussion raised a question that he hadn't thought about previously. If there were a challenge to the fiscal interest finding and the remedy that was sought was to void the contract, it would be arguable that that is a review of the contract. If that were the case he asked whether it would go directly to the Supreme Court or to a trial court first.

[9:27:57 AM](#)

CHAIR SEEKINS recapped that if the Legislature were to require expedited consideration of a lawsuit challenging the

constitutionality of a contract the Supreme Court would make every effort to meet the timeline, but it might not feel constrained by it because of separation of powers.

MR. WOLIVER said yes, but the court does recognize the importance and priority of any of the related cases that are likely to come before it regardless of timelines.

SENATOR FRENCH asked if it's basically superior court procedures that are followed when a special master is appointed.

MR. WOOLIVER said yes.

SENATOR FRENCH said it seems that challenges to the constitutionality of the law or the enforceability of the contract are strictly legal issues that the Supreme Court might decide to have briefs on and argument. They are not fact-driven inquiries. Fiscal interest findings are different and would be very fact-driven inquiries. He asked Mr. Wooliver if he sees it the same way.

MR. WOOLIVER replied he would imagine it that way, but he could also imagine a mix. If the lawsuit was a pure question of law then it's unlikely that the court would appoint a special master, but if there were questions in which evidence had to be taken then it's more likely that a special master would be appointed.

SENATOR FRENCH asked whether the parties have the right to preemptively bump a master.

MR. WOOLIVER said he didn't know, but he could try and find out.

CHAIR SEEKINS expressed the view that questions about constitutional provisions wouldn't necessarily require a master and neither would questions about whether the terms of the contract were enforceable under the law.

MR. WOOLIVER said he would agree that pure questions of law are unlikely to result in the appointment of a special master, but he couldn't predict what the cases would look like.

CHAIR SEEKINS said as someone who isn't a lawyer he interprets the contract to be a question of law as well as a constitutional question. He solicited comment.

MR. BALDWIN offered the opinion that if the record becomes substantial and the discovery is long and disputed it's likely that the court would appoint a special master.

CHAIR SEEKINS read the first sentence of the bill. "The Alaska Supreme Court has original and exclusive jurisdiction of any judicial review of a contract developed under this chapter." He asked Senator Therriault to comment.

SENATOR THERRIAULT asked Senator French if the opportunity for a challenge might evaporate because it would be swept in under the proposed language.

SENATOR FRENCH replied that's a question for the administration. Mr. Baldwin has said it's preserved, but it's a broad sentence.

CHAIR SEEKINS said it appears to him that it's a challenge of an administrative action rather than a challenge of the contract itself.

MR. BALDWIN said timing is a consideration. First, he didn't know whether this would be effective in time to deal with when a claim would be ripe under AS 43.82.430(c), which is when it would be a final agency action. If it were effective immediately, it could be argued that the first sentence is expansive and would sweep much of it in. If it is not effective then you would have to deal with the effects of the statutes as they now read.

He reflected that testimony during the regular session indicated that the statute is broken and the result could be an immediate administrative challenge once the fiscal interest finding is finalized. The challenge would be whether or not that finding is an appropriate basis for taking further action. The contract itself would not be in effect, but he would assume that a party would try and suspend its effectiveness. He stated that the effort was to preserve the Legislature's power to step forward in the next phase to authorize the contract or not.

That's the problem that was addressed at that time and he separates the issues because they address different times. SB 2002 deals with judicial review of the contract - presuming there is one. But because of the words that are used it may give a right of action to challenge the finding itself before the contract is in effect.

CHAIR SEEKINS disagreed with the notion that the ability to challenge the finding evaporates because it exists one place or the other. There's still the ability to seek redress through the Administrative Procedures Act in its current form or directly to the supreme court. The ability to challenge isn't taken away either way.

SENATOR FRENCH said anticipating a future argument from the administration he would suggest that the committee be very explicit in its intention.

CHAIR SEEKINS said it seems explicit that it applies to any jurisdiction of a contract developed under this chapter.

SENATOR THERRIAULT asked the Chair if he was sure that the language didn't sweep in the fiscal findings upon which the contract is based.

CHAIR SEEKINS argued that when the Legislature approves the contract it does matter what the commissioner's fiscal interest findings have to say because it is just a recommendation to the Legislature. There's nothing in the law that says legislative approval is pending on the fiscal interest findings being correct or not. The Legislature's final decision will be based on what it thinks is the best fiscal interest of the citizens of the State of Alaska and not what the administration thinks it is.

SENATOR HUGGINS agreed with the Chair.

CHAIR SEEKINS added the committee tried to correct the problem in SB 316 and it didn't go anywhere.

SENATOR THERRIAULT reflected on Mr. Baldwin's words that the existing statute is broken and said he anticipated that this legislation would have a fix, but it doesn't.

CHAIR SEEKINS said that issue might be addressed when the special committee meets to consider amendment to the Stranded Gas Development Act, but the question here is whether or not it's a problem to say that the supreme court has original and exclusive jurisdiction for any judicial review of the contract. He stated the opinion that it isn't a problem and he would find comfort in knowing that he could go directly to the supreme court for a decision. He asked if that's what the committee wants to allow.

SENATOR FRENCH said he doesn't find that to be controversial, but the open and interesting question is whether or not the first sentence sweeps into its jurisdiction a challenge to the fiscal interest findings. He stated he would prefer that a court decide whether or not legislative approval supersedes and renders unchallengeable the fiscal interest finding.

CHAIR SEEKINS asked what would be undone.

SENATOR FRENCH answered passing SB 2002 could provide ammunition to the administration should they argue in court that there is no challenge to the fiscal interest finding because it's not listed as a point of challenge.

CHAIR SEEKINS said that section of law is untouched. It says it's a judicial review of a contract and so at that point it's a finding and not a contract. Furthermore he doesn't believe the fiscal interest finding is included in the contract. He asked Mr. Baldwin if they were either referenced or an exhibit.

MR. BALDWIN replied not to his knowledge.

CHAIR SEEKINS asserted that this limits the challenge to the contract itself and nothing that took place in the development. He asked whether the administration didn't intend it to include just what is contained within the final four corners of the contract.

MR. BALDWIN responded the administration is ready to take its chances in court with regard to the issues encompassed in SB 316, which is why the broken statute isn't addressed.

CHAIR SEEKINS restated his position that this bill limits action on the final the contract developed under this law.

SENATOR HUGGINS announced that he wants to make sure the citizens of Alaska are heard but he doesn't want to create a playground for lawyers as has happened as a result of the Exxon Valdez grounding 17 years ago.

[9:50:36 AM](#)

MR. BALDWIN asked the committee to consider a drafting point. The definition of "person" on page 1, line 10 might not be interpreted to include a government entity.

CHAIR SEEKINS said he had an amendment to address that point.

The question, he said, is whether or not to allow an original action of the Supreme Court. He restated his opinion that the bill deals with what is contained within the four corners of the final contract and not with any of the steps leading to a final contract.

SENATOR THERRIAULT said he didn't have a problem going directly to the Supreme Court but he does have concern about impacting or extinguishing the public's right on the fiscal interest finding. To address that issue he suggested adding the language in Sections 7 and 8 of SB 316 before the first sentence in SB 2002.

SENATOR HUGGINS asked for a copy of SB 316.

CHAIR SEEKINS called an at-ease from [9:53:59 AM](#) to [10:06:56 AM](#).

CHAIR SEEKINS asked if the suggesting was to insert the following after "review" on page 1, line 8:

Notwithstanding any other provision: of law, a person may not bring an action challenging a final agency decision of the commissioner of revenue made under AS 43.82.430(c), the constitutionality of a law authorizing a contract enacted under AS 43.82.435, or the enforceability of a contract executed under this chapter until that contract has been executed and unless the action is commenced within 120 days after the date that the contract was executed by the state and the other parties to the contract."

SENATOR THERRIAULT said that is his suggestion and he would think that Section 8 ought to be included as well.

CHAIR SEEKINS asked Mr. Baldwin to comment on the advisability of inserting:

Rights under a contract entered into under this chapter may not vest until the day after the deadline to bring an action under (a) of this section.

He questioned how that would fit into the 15-month period provision.

MR. BALDWIN explained that when the contract becomes effective, the parties cannot suspend their performance for a 15-month period in face of a judicial challenge.

He referenced the suggested language from Section 7 of SB 316 and interpreted it to mean that the contractual rights would not vest until the 120 days had elapsed.

SENATOR THERRIAULT noted there had been concern about preserving the public's right to challenge and so that was moved to the end of the process. Regarding the issue of legislative authorization and whether it supersedes the public's challenge rights, he recalled there was considerable discussion about the constitutionality of the Legislature's right to authorize.

CHAIR SEEKINS repeated the point that, under the old law, findings were necessary before the commissioner could execute the contract. The Legislature removed the commissioner's authority to execute the contract and assigned that authority to itself. The Legislature was charged with reviewing the contract, making a best interest determination, and then authorizing execution of the contract. Chair Seekins expressed the opinion that since that law hasn't been amended, the fiscal interest finding is simply a recommendation and the Legislature is not constrained from being able to authorize a contract based on the commissioner's fiscal interest finding.

He questioned whether the committee wanted to insert the language from SB 316 to say that any challenge of a final agency decision of the commissioner would also have to be brought within the time period and after the execution of the contract. If that isn't done it allows someone to challenge the findings of fact as soon as they're published and become final agency decisions. The questions are: whether or no we want to move that challenge to the end; whether or not we want to include it in this language; and whether or not we want to put it under the same original jurisdiction of the Alaska State Supreme Court.

He said he didn't object to putting it under the jurisdiction of the Supreme Court because it still preserves the right to challenge whether or not it is a meaningful challenge.

SENATOR THERRIAULT remarked that was the result of previous deliberation. The right would be preserved but the current placement was problematic. He agreed that having the challenge come under the Supreme Court for expediency would seem proper.

With regard to truncating the timeline for mounting a challenge, he said the 120 day statutory timeline ought to be preserved. He is not comfortable cutting it in half.

MR. BALDWIN stated that the underlying concern is to maintain a level playing field. The Legislature wants to preserve the right to bring a challenge and the state wants to preserve the ability

to argue that a claim regarding the decision of the commissioner may be moot. If the Legislature allows appeal of a final agency decision of the commissioner, the administration would like express language or a separate intent statement saying it isn't the purpose of the committee to come down on the side that the claim is justiciable.

SENATOR FRENCH said it's surprising that the administration wouldn't welcome a detailed examination of the fiscal interest finding. The concern has been to let there be discovery and a detailed analysis of the finding to determine whether or not the gas truly is stranded and whether it's necessary for the state to make concessions to industry. Preserving that inquiry to the extent that it's available very important, he asserted.

SENATOR THERRIAULT agreed that this committee made that decision after lengthy debate and he hadn't heard a compelling argument to change his mind.

SENATOR HUGGINS reiterated the statement that he doesn't want to create a "playground for lawyers" such that future generations will be talking about building a gas line.

CHAIR SEEKINS read language Section 7 of SB 316 and asserted that the Legislature isn't required to have findings of fiscal interest in order to authorize the execution of a contract. There is no intention to extinguish a right to point out an egregious error in the process; the intention is to make the process as efficient and effective as possible in order to come up with a final decision.

SENATOR THERRIAULT mentioned the Exxon Valdez case and commented that because the supreme court is in the position of original jurisdiction, the potential for lengthy litigation is truncated here.

CHAIR SEEKINS asked what he would suggestion for the amendment.

SENATOR THERRIAULT replied he would suggest adding the language from Sections 7 and 8 that the committee had developed and it could be inserted before or after the original jurisdiction language.

SENATOR FRENCH agreed that adding the original jurisdiction language to the language from Section 7 makes sense, but he wasn't sure about Section 8. That was written before the contract was released so it wasn't known that the parties would

have to move forward for a 15-month period. He asked whether inserting Section 8 might alter that and suspend the duty not to suspend their actions.

CHAIR SEEKINS said it would.

MR. BALDWIN replied he didn't want to give a seat of the pants answer that might be misleading. He said he would want to review the contract and consult with attorneys that dealt with the issue. He allowed that it is a bit confusing.

10:28:30 AM

CHAIR SEEKINS said the special committee could review that issue. The challenge before this committee is to decide whether or not to allow original action of the supreme court. The other challenge is looking at whether or not the timeframe in current law ought to be shortened.

SENATOR THERRIAULT recalled there had been concern about whether or not there would be damages if contractual rights vested before a challenge was brought.

MR. BALDWIN responded Article 27.2 requires them to perform notwithstanding a challenge, which explains the effort to get the Legislature to approve the expedited consideration. Whether rights vest or not they're required to perform during the pendency of litigation, which is an important consideration.

CHAIR SEEKINS said this conflicts with that.

MR. BALDWIN replied it might because upon the effective date of the contract they have an obligation under the contract. He reiterated he would prefer to reflect on the matter and give a more considered response.

CHAIR SEEKINS restated that he didn't object to looking at that as one of the amendments that the Stranded Gas Development Act.

SENATOR THERRIAULT noted that it would be a potential 3-month delay. He wasn't sure what expenditures might potentially be a vested right or a potential damage.

CHAIR SEEKINS said it would be a 4-month delay and potentially a 6-month delay if they take 60 days to execute.

He asked if there was objection to using the language in SB 316 Section 7, line 6 to replace the second sentence on page 1 of SB 2002.

SENATOR THERRIAULT moved to replace the second sentence on page 1, line 10 of SB 2002 with the language on page 5, lines 6-12 of SB 316(JUD).

CHAIR SEEKINS found no objection and Amendment 1 was adopted. He queried the committee about the change from 60 days to 120 days.

10:34:02 AM

SENATOR HUGGINS said he'd like to hear whether there is concern about the implications of doubling the timeframe.

MR. BALDWIN responded 60 days was selected in light of the 15-month obligation.

SENATOR THERRIAULT clarified that the time isn't doubled; 120 days currently exists in statute so the effect of the amendment is to simply preserve the status quo.

CHAIR SEEKINS said he had no real problem with the change. More than likely what will happen is that the sophisticated person will begin analyzing as soon as the final contract is presented to the Legislature. They will have a challenge ready well within 60 days of the time that the Legislature authorizes the contract and it's executed. He stated he didn't have a problem if that was 120 days after the date that the contract is authorized by the Legislature rather than executed by the state.

SENATOR FRENCH expressed the view that the state and the three producers have had two years to become intimately familiar with the contract while the rest of the public hasn't even gotten to the latest version. He said he was willing to bet that if the Legislature authorizes the Governor's bill and he executes it, those parties will be ready to sign up in 10 to 15 days.

10:37:03 AM

CHAIR SEEKINS said he too was a bit conflicted because he wanted to get to finality within a reasonable period of time. He didn't want the oil companies to drag their feet if there was a contract but at the same time he didn't have any problem holding the state's feet to the fire as well so that things are done in

a timely manner. He didn't really think the extra 60 days is necessary, but it isn't worth falling on your sword over either.

SENATOR THERRIAULT mentioned another amendment he provided earlier.

[10:38:40 AM](#)

CHAIR SEEKINS said before addressing that issue he'd like a motion to amend under AS 43.320.340(8) the definition of "person" to be the definition contained under AS 02.25.110(5), which reads as follows:

(5) "person" means an individual, firm, copartnership, corporation, company, association, joint stock association, or body politic, and includes a trustee, receiver, assignee, or similar representative;

SENATOR HUGGINS moved Amendment 2 as outlined above.

CHAIR SEEKINS announced that without objection, Amendment 2 is adopted.

SENATOR THERRIAULT explained that the impact of the proposed amendment is to extend the public comment period from a minimum 30 days to a minimum 90 days. This was discussed during the regular session and the administration's spokesperson indicated support for 60 days. He said he continued to be concerned about the public's ability to fully understand the full document and the smaller producers in the state are also scrambling to understand the full impact of the contract so they can submit comments to the administration within the public comment period. It is through that process that the administration and the producers can consider support or expressions of concern and make possible contract modifications before it's submitted to the Legislature for final action.

He noted that the administration indicated the minimum public comment period would be 45 days rather than 30 days but he continues to support a more expansive timeframe.

CHAIR SEEKINS asked that the amendment be submitted when the Stranded Gas Development Act is reviewed and amended so that SB 2002 is confined to judicial review issues.

SENATOR THERRIAULT expressed concern because he isn't a voting member of the Special Committee on Natural Gas Development (NGD).

SENATOR HUGGINS supported the Chair's position.

CHAIR SEEKINS told Senator Therriault he could offer the amendment to the NGD committee and he would be welcome to take part in the discussion as well. He said he didn't like the 30 day timeframe in the current law either.

SENATOR FRENCH advised that this is day 24.

SENATOR THERRIAULT said with the Chair's assurance that the amendment could be offered in the NGD Committee he would hold the amendment.

CHAIR SEEKINS found there was no further discussion and asked for the will of the committee.

SENATOR HUGGINS moved CSSB 2002 (JUD) from committee with individual recommendations and attached fiscal note(s). There being no objection, the motion carried.

There being nothing further to come before the committee, Chair Seekins adjourned the meeting at [10:46:59 AM](#).