

ALASKA STATE LEGISLATURE
SENATE SPECIAL COMMITTEE ON NATURAL GAS DEVELOPMENT

June 2, 2006

11:06 a.m.

MEMBERS PRESENT

Senator Ralph Seekins, Chair
Senator Lyda Green
Senator Gary Wilken
Senator Con Bunde
Senator Fred Dyson
Senator Bert Stedman
Senator Lyman Hoffman
Senator Donny Olson
Senator Thomas Wagoner
Senator Ben Stevens
Senator Kim Elton
Senator Albert Kookesh

MEMBERS ABSENT

All members present

OTHER LEGISLATORS PRESENT

Senator Gary Stevens
Senator Hollis French
Senator Charlie Huggins
Senator Bettye Davis

COMMITTEE CALENDAR

SENATE BILL NO. 2003

"An Act establishing the Alaska Natural Gas Pipeline Corporation to finance, own, and manage the state's interest in the Alaska North Slope natural gas pipeline project and relating to that corporation and to subsidiary entities of that corporation; relating to owner entities of the Alaska North Slope natural gas pipeline project, including provisions concerning Alaska North Slope natural gas pipeline project indemnities; establishing the gas pipeline project cash reserves fund in the corporation and establishing the Alaska natural gas pipeline construction loan fund in the Department of Revenue; making conforming amendments; and providing for an effective date."

HEARD AND HELD

SENATE BILL NO. 2004

"An Act relating to the Alaska Stranded Gas Development Act, including clarifications or provision of additional authority for the development of stranded gas fiscal contract terms; making a conforming amendment to the Revised Uniform Arbitration Act; relating to municipal impact money received under the terms of a stranded gas fiscal contract; and providing for an effective date."

HEARD AND HELD

PREVIOUS COMMITTEE ACTION

BILL: SB 2003

SHORT TITLE: NATURAL GAS PIPELINE CORPORATION

SPONSOR(S): RULES BY REQUEST OF THE GOVERNOR

05/31/06	(S)	READ THE FIRST TIME - HELD ON SECY'S DESK
06/01/06	(S)	NGD
06/01/06	(S)	NGD AT 1:30 PM SENATE FINANCE 532
06/01/06	(S)	Heard & Held
06/01/06	(S)	MINUTE(NGD)
06/02/06	(S)	NGD AT 11:15 AM SENATE FINANCE 532

BILL: SB 2004

SHORT TITLE: STRANDED GAS DEVELOPMENT ACT AMENDMENTS

SPONSOR(S): RULES BY REQUEST OF THE GOVERNOR

05/31/06	(S)	READ THE FIRST TIME - HELD ON SECY'S DESK
06/01/06	(S)	NGD
06/01/06	(S)	NGD AT 1:30 PM SENATE FINANCE 532
06/01/06	(S)	Heard & Held
06/01/06	(S)	MINUTE(NGD)
06/02/06	(S)	NGD AT 11:15 AM SENATE FINANCE 532

WITNESS REGISTER

DENNIS BAILEY

Legal and Research Services Division

Legislative Affairs Agency

State Capitol

Juneau, Alaska 99801-1182

POSITION STATEMENT: Testified on the constitutional aspects of SB 2004.

JIM BALDWIN

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

POSITION STATEMENT: Testified on sovereignty issues related to SB 2004.

MAYOR STEVE THOMSON, CHAIR
Municipal Advisory Group
Fairbanks, AK

POSITION STATEMENT: Testified on economically and revenue impacted municipalities in SB 2004.

JOSEPH K. DONOHUE
Preston Gates & Ellis
Counsel to the Governor
Office of the Governor
PO Box 110001
Juneau, AK 99811-0001

POSITION STATEMENT: Testified on the administration's position on SB 2003 and SB 2004.

ACTION NARRATIVE

CHAIR RALPH SEEKINS called the Senate Special Committee on Natural Gas Development meeting to order at [11:06:00 AM](#). Present at the call to order were Senators Lyman Hoffman, Donny Olson, Fred Dyson, Bert Stedman, Gary Wilken, Kim Elton, Con Bunde, Thomas Wagoner, Lyda Green, and Chair Ralph Seekins; Senator Ben Stevens arrived shortly thereafter, and Senator Albert Kookesh arrived as the meeting was in progress.

SB 2004-STRANDED GAS DEVELOPMENT ACT AMENDMENTS

[11:07:02 AM](#)

DENNIS BAILEY, Legal and Research Services Division, Legislative Affairs Agency, said he would answer questions.

SENATOR WAGONER said that he would like to know what authority the legislature might be giving up if these amendments [SB 2004] to the Stranded Gas Development Act (SGDA) pass.

MR. BAILEY responded that there are essentially two areas in the bill that might be considered as compromising or eroding the power of the legislature.

The first is related to taxation. On page 3 of the bill, beginning on line 3, there is a section that allows the commissioner to negotiate terms related to modification of taxes and another that allows him to negotiate credits.

The second is related to the waiver of sovereign immunity for the entrance and enforcement of arbitration awards, which is also on page 3, lines 29-31.

11:10:16 AM

SENATOR BEN STEVENS arrived.

11:10:49 AM

MR. BAILEY summarized by saying that the bill essentially grants power to the commissioner to negotiate terms. It really isn't a question of eroding legislative power.

11:11:46 AM

SENATOR BUNDE asked Mr. Bailey if these two areas of erosion are policy calls that are allowable, or if there is a question of constitutionality.

MR. BAILEY answered that, whether the administration could negotiate the change in taxes essentially outside of the legislative process is a question of constitutional magnitude. The state has the power to grant the authority to waive sovereign immunity. It has done so in the general waiver of sovereign immunity statute for contracts and tortes, and in the specific statute related to federal wetland questions. That is a legislative rather than a constitutional issue.

11:13:30 AM

CHAIR SEEKINS asked if the general waiver for contracts and tortes would cover this particular contract.

MR. BAILEY answered that the intent of the bill is to waive sovereign immunity for the purpose of entering an arbitration award as a judgment for enforcement in federal court, and that would not be covered by the general waiver.

CHAIR SEEKINS said that, on page 3, lines 30-31, it reads "consent to entrance and enforcement of an arbitration award in any state court in the United States that has jurisdiction over the state." He asked what state courts in the United States have jurisdiction over Alaska.

MR. BAILEY replied that he thinks Chair Seekins has identified a language problem in the bill, because he does not believe there are any. It should read, "consent to entrance and enforcement of an arbitration award in any state court" then the waiver applies "in the United States, it has jurisdiction over the state." It is a phrasing issue and really should be clarified.

CHAIR SEEKINS asked if it should read "any state of Alaska court".

MR. BAILEY replied that he would be reluctant to suggest a modification without being really clear about what the intent of the bill is.

CHAIR SEEKINS said that maybe he should ask that question of the administration.

SENATOR DYSON wondered if the word "state" in line 31 really means a state in which there is activity related to this project.

CHAIR SEEKINS asked Jim Baldwin if he could answer the question.

[11:17:11 AM](#)

JIM BALDWIN, Counsel to the Office of the Attorney General, responded that the administration's purpose was to allow enforcement of arbitration awards outside the state of Alaska. This amendment is intended to obtain the proper legal authority for that from the legislature, because the 11th amendment of the constitution and other common-law theories hold that the state is immune from suit outside of its borders.

[11:20:08 AM](#)

SENATOR DYSON said he was thinking of the matter in reverse. He asked if this would apply if the state were trying to enforce compliance with the terms of an arbitration agreement with a company headquartered outside of Alaska.

MR. BALDWIN agreed that it might.

SENATOR DYSON said it appears to him that there are at least three different instances in which the state might seek remedy in another state's court, and that the committee really needs to get clarification here.

CHAIR SEEKINS asked if the state would have to obtain the concurrence of the attorney general in each instance, or if this would provide for blanket approval.

MR. BALDWIN said that the Attorney General's signature on the contract would provide blanket consent.

CHAIR SEEKINS asked if the attorney general, the governor, or the commissioner would sign the contract.

MR. BALDWIN replied that there would be a special jurat on the contract for the attorney general, on which he would express his consent.

CHAIR SEEKINS asked Mr. Baldwin to verify that there would be blanket consent to waive sovereign immunity or other immunity. He asked what other immunity there is.

MR. BALDWIN replied that there could be a form of policy-making immunity, but he isn't sure what is contemplated. He thinks there is the potential for an immunity that would bar this particular type of enforcement action.

SENATOR ELTON said he was uncomfortable with the blanket consent and that it might be better to have the attorney general make a decision in each instance. He thought it would be wise to have a policy discussion on that point.

[11:24:03 AM](#)

CHAIR SEEKINS read parts of Section 3, page 2, regarding the commissioner's authority to develop a contract that "may include terms for modifications of taxes on oil and gas, including terms providing for periodic payment in lieu of one or more taxes" and terms related to credits for investment. He asked if this encroaches on the legislature's power of taxation.

MR. BAILEY replied that the question is whether the legislature is giving up its constitutional taxing authority by permitting the commissioner to negotiate modification of taxes. This is an unresolved issue, but it appears that a contractual modification of the state's taxing system would be unconstitutional.

CHAIR SEEKINS asked if other legislatures would be prevented from modifying the taxes if they are included in the contract.

MR. BAILEY answered that, in general terms, if the constitution permits inclusion of tax modifications within the contract, and those modifications exist, then a subsequent legislature would have difficulty changing the tax structure because it would interfere with an existing contract. The big question is whether it is permissible to include that in the contract in the first place.

[11:27:42 AM](#)

SENATOR BUNDE said the Supreme Court would decide whether the administration could set taxes in the contract. He noted that, if the commissioner negotiates a contract and the legislature approves or disapproves, it is basically voting on the taxation in the contract. The bigger issue is whether the commissioner could modify those taxes at a later date when there would be no way to bring the contract back to the legislature.

MR. BAILEY replied that he believes Senator Bunde is correct.

SENATOR BUNDE said that Section 3 appears to have two applications, and the legislature would have no authority over changes made after its initial vote to approve or disapprove the contract.

[11:29:56 AM](#)

SENATOR BEN STEVENS interpreted the SGDA to say that the legislature gave the commissioner the authority not to modify the taxes, but to negotiate a payment structure in lieu of taxes. That was allowed if the negotiated payment in lieu achieved the objectives of the SGDA, which were to bring the resources to market and encourage development on the North Slope. He does not agree with the concept of giving the commissioner the authority to negotiate taxes and does not think that is what the legislature has done.

He said it seems obvious that, in terms of Article 9, Sections 1 and 4, as well as the contractual clause of the U.S. Constitution, the question of whether the legislature can give that authority to the commissioner is one that will be challenged and will have to be resolved in the courts. The question now is whether the legislature wants to commit to get that question to the Supreme Court.

[11:32:16 AM](#)

SENATOR HOFFMAN pointed out that, on page 3, lines 3-4, it reads "terms concerning modifications of taxes on oil and gas, including terms providing for periodic payment in lieu of one or more taxes". So, if modification of taxes was not intended, maybe the first part of that sentence should be deleted.

11:33:20 AM

SENATOR DYSON concurred with Senator Hoffman.

11:34:13 AM

MR. BALDWIN said the intent is to make it clear that the contract can provide for payments in lieu of oil and gas taxes. The legislative history that was created in 1998 was that the payment in lieu authority only applied to taxes on gas, even though the wording in Section 210 of the SGDA [on page 4 of SB 2004] describes the types of taxes to which it applies. He took responsibility for the artless use of the phrase "modifications of taxes", because that was not the administration's intent.

11:35:56 AM

SENATOR STEDMAN said he did not see the language that would allow the commissioner to go back in and modify taxes.

CHAIR SEEKINS responded that he did not see it in the bill either, although there may be terms included in the contract that would allow a renegotiation. He asked what Mr. Baldwin thought.

MR. BALDWIN replied that he is not aware of any provision in the contract that would allow that.

CHAIR SEEKINS asked Senators Bunde, Stevens, and Dyson to provide clarification.

SENATOR BUNDE said he thought Mr. Bailey, of legislative legal services, said it could occur. He asked Mr. Baldwin if it is the administration's intent that the commissioner would be able to renegotiate taxes after the contract has been authorized by the legislature.

MR. BALDWIN said he is not aware of such intent.

SENATOR BUNDE said he understands that the language was aimed at payment in lieu of taxes; but the phrasing about modification may cause a broader interpretation than he could

support. He said he was glad to hear the administration's view that the commissioner's power does not extend beyond ratification of the contract, and wondered if the language should be rephrased to clarify that.

[11:39:40 AM](#)

SENATOR KOOKESH joined the committee.

[11:39:53 AM](#)

SENATOR BEN STEVENS commented that, in the SGDA, Section 43.82.010 Purpose, paragraph (2) is to:

(2) allow the fiscal terms applicable to a qualified sponsor or the members of a qualified sponsor group, with respect to a qualified project, to be tailored to the particular economic conditions of the project and to establish those fiscal terms in advance with as much certainty as the Constitution of the State of Alaska allows,

He quoted from Section 210 Contract terms relating to payment in lieu of one or more taxes:

"... for periodic payment in lieu of one or more of the following taxes that otherwise would be imposed by the state or municipality on the qualified sponsor or member of a qualified sponsor group as a consequence of participating in an approved qualified project."

And noted that the first types of taxes listed were "oil and gas production taxes and oil surcharges under AS 43.55". The second types were "oil and gas exploration, production, and pipeline transportation property taxes under AS 43.56", which are the transportation and tariff charges. He said that a literal interpretation of the law shows that these taxes are subject to negotiation in the payment in lieu of taxes (PILT).

[11:43:31 AM](#)

CHAIR SEEKINS agreed that 210 appears to be a restatement of 43.82.200 and asked Mr. Baldwin if that is correct.

MR. BALDWIN agreed that there is some redundancy between various sections, but explained that the problem presented to lawyers who read this is that lines 8-10 on page 4 of SB 2004, refer to a gas project. Then there is a string of taxes listed that are identified as oil and gas taxes. There was also quite a colloquy in the 1998 House Special Committee on Oil and Gas

about this. It is based on that history that legal was asked to amend 43.82.200 and 210.

[11:45:22 AM](#)

BEN STEVENS agreed that the adjustments in the oil taxes under 43.55 that are applied to the PILT apply only to the qualified sponsor group. So, his interpretation is that this is tied to the gas taxes, because only those who have signed the sponsor agreement are subject to PILT.

MR. BALDWIN said the administration intends these amendments to counter the legislative history that was created in 1998.

[11:46:19 AM](#)

SENATOR DYSON said that, if the modifications to Section 3 are only intended to give the commissioner authority to develop a contract that will substitute PILT for oil tax payments, there is no reason not to clarify the language on lines 3-4 and perhaps line 5. He suggested that it be made clear that it does not authorize him to change the underlying tax structure.

[11:47:47 AM](#)

SENATOR ELTON shared Senator Dyson's concerns and suggested that the original language on lines 3 and 4 does what is intended and that the new language is not needed.

[11:49:09 AM](#)

SENATOR HOFFMAN asked why, if the language in the SGDA Section 43.82.210 already includes provisions for both oil and gas taxes and surcharges, does the administration need to amend the language in 200.

MR. BALDWIN said that the administration's purpose was to make the provisions parallel to the extent it is possible.

CHAIR SEEKINS said that the way he reads it, Section 200 says "Contract development" and lists the terms that may be included in the contract development. Section 210, contract terms related to payment in lieu of one or more taxes, basically relates back to 200, paragraph (1).

MR. BALDWIN agreed.

CHAIR SEEKINS asked Mr. Baldwin if he is correct that this section allows the commissioner to modify "taxes on oil and gas, including terms provided for periodic payment of one or more taxes" according to the terms contained in 210, and

"terms related to credits for investment, that is the subsidy of the contract developed under this chapter," which doesn't have a statutory reference under the SGDA.

MR. BALDWIN answered yes.

[11:53:12 AM](#)

SENATOR ELTON asked legislative counsel if there is still a constitutional issue if they do not insert new language on page 3, lines 3-4, and they delete the language on page 4, lines 8-10 that ties the section to gas taxes.

MR. BAILEY asked if Senator Elton could clarify what he is suggesting for the language on page 4, lines 4-10.

SENATOR ELTON responded that he is not suggesting new language. He is referring to the amendment that strikes the language on lines 8-10. He asked whether striking that eliminates the constitutional question that Mr. Bailey testified to earlier.

MR. BALDWIN replied that it does.

SENATOR ELTON recommended that they keep the original language on page 3 and strike the language on page 4, lines 8-10.

[11:57:19 AM](#)

CHAIR SEEKINS said that they would start working on amendments at 2:00 pm on Sunday, and asked Mr. Bailey to put together a written summary of the issues surrounding sovereign immunity.

SENATOR OLSON asked if Mr. Bailey is as confident of the Supreme Court ruling as administrative counsel seems to be.

MR. BAILEY said he preferred not to speculate.

[11:58:24 AM](#)

SENATOR BEN STEVENS said he wants to give the Supreme Court the opportunity to make that decision.

SENATOR DYSON stressed that he really wants to get clarification on the sovereignty issue and what the administration intended.

[12:01:44 PM](#)

SENATOR HOFFMAN asked if there have been other instances in which the state has given up its sovereign rights.

[12:02:03 PM](#)

SENATOR BEN STEVENS jumped back to the discussion of the language inserted in 43.82.200 on page 3, lines 3-5 of the bill. He interprets those lines as relating to Exhibit P.3 on page 360 of the contract, which is a method to determine the Petroleum Production Tax (PPT) PILT payment. That exhibit reads: "P.3 Net Production Value of PPT Oil and PPT Gas (replaces AS 43.55.160)." So, there is a modification of the tax code incorporated into Exhibit P.

Recessed [12:05:12 PM](#) to [2:42:49 PM](#)

CHAIR SEEKINS brought the committee back to order.

[2:43:12 PM](#)

CHAIR SEEKINS reminded the committee that the bill up for consideration is SB 2004, and began the afternoon session with discussion of the provisions for economically and revenue-affected municipalities along the pipeline route.

[2:44:03 PM](#)

STEVE THOMPSON, Mayor, City of Fairbanks, and Chair, Municipal Advisory Group (MAG), said that 13 different communities could be affected during the construction and ramp-up of the gas pipeline.

[2:44:43 PM](#)

SENATOR WILKEN referred Mayor Thompson to pages 7-8 of version A concerning economically-affected and revenue-affected municipalities. He said that he has some concern about the definitions of these terms and the differences in how the municipalities might be treated, and asked if MAG has had discussions about it.

MR. THOMPSON replied yes, economic impacts are during ramp-up and construction of the pipeline. Revenue-affected refers to how the revenues would be handled in place of property tax once the gas is flowing. MAG's main concern has been with the economic impacts during construction, for which \$125 million has been set aside. It has passed resolution 2006-01 to change its term to continue until all impact dollars have been distributed, or until construction is complete. He noted that there is no direction in legislation regarding how the funds should be distributed. MAG would like to act as an advisor to the Commissioner of Commerce, Community and Economic

Development in order to ensure that funds are distributed most effectively.

[2:47:35 PM](#)

SENATOR WILKEN said that his concern is the construction period, and asked if the \$125 million is dedicated only to economic impacts.

MAYOR THOMPSON replied that it is. MAG has been meeting for two years and has passed numerous resolutions to address their concerns.

SENATOR WILKEN asked Mayor Thompson if he was aware that, under principal number one in the SGDA 43.82.510, revenue-affected municipalities are given a priority over economically-affected municipalities.

MR. THOMPSON said that the advisory group's understanding is that the impact funds are for the construction period and ramp-up to construction only.

[2:49:25 PM](#)

SENATOR WILKEN said that he would research it further. His understanding is that the economically-affected municipalities fall away after first gas; then the revenue-affected municipalities are addressed. He said he would ask someone in the administration to look at the affected municipalities and show the committee first-gas impact and 10 years after. He is concerned that this might set up an imbalance on the North Slope with regard to realizing the benefit of those assets. He asked Mr. Thompson how much work they've done on this issue.

[2:51:11 PM](#)

MR. THOMPSON replied that resolution 2006-01 was submitted on Friday, requesting that the municipal advisory group be extended and that MAG be allowed to advise the commissioner of commerce when he reviews grants to communities affected by construction. MAG also passed four resolutions regarding additional concerns including education funding, which will be negatively impacted if property values are not excluded from the annual true and full value determination of the local education funding.

[2:52:23 PM](#)

SENATOR WILKEN said the committee received Mr. Thompson's email and that his office will work on the educational issue. He noted that Valdez and North Slope boroughs, those that

benefit by the 45 percent rule, are the ones most impacted by the throughput calculation rather than a true and full value.

[2:53:17 PM](#)

MR. THOMPSON said that he hoped the committee would take the 2006-01 resolution into consideration.

CHAIR SEEKINS asked Mr. Thompson if he had a copy of the bill on hand.

MR. THOMPSON replied no.

CHAIR SEEKINS read from SB 2004 version A, page 9, subsection (e):

The commissioner of commerce, community, and economic development, in consultation with the relevant municipal advisory group established under AS 43.82.510, shall use money appropriated to the Alaska Natural Gas Pipeline Construction Impact Fund to make grants to municipalities, and to nonprofit organizations serving the unorganized borough, for impacts on transportation, infrastructure, law enforcement, emergency services, health and human services, education, labor force, population, wages, and subsistence, and for socio-cultural impacts, brought about by the construction of the gas pipeline.

[2:54:26 PM](#)

MR. THOMPSON said that is the exact language submitted by the advisory board and he appreciates the fact that it was included so promptly. He reminded Chair Seekins that MAG also submitted language to extend the existence of the advisory group and allow them to advise the commissioner on grant applications.

[2:55:14 PM](#)

CHAIR SEEKINS said that the next sentence may address that, and continued reading from page 9 subparagraph (e):

In determining whether an expenditure or proposed expenditure by a municipality or non-profit organization is eligible for a grant under this subsection, and in allocating available money among grant proposals, the commissioner shall consider the recommendations of the relevant municipal advisory group established under AS 43.82.510 and whether the proposed expenditure meets the purposes of this section.

He asked if this sentence gave Mr. Thompson some confidence in the total picture.

MR. THOMPSON replied yes. He noted that the nonprofit referenced would be the Tanana Chiefs' Conference that is representing the unincorporated areas from the North Slope to the Canadian border.

CHAIR SEEKINS thanked Mr. Thompson for that identification.

[2:56:17 PM](#)

SENATOR ELTON questioned the definition of non-profit in this context. He said that the wording seemed to be broad enough to allow unintended entities to qualify for impact funds.

MR. THOMPSON said that Steve Porter is the person to talk to about that.

[2:56:57 PM](#)

CHAIR SEEKINS added that he had some questions on the "unincorporated borough" language with regard to the list of impacts on page 9, lines 6-8. He questioned whether it would always be Tanana Chiefs that would handle transportation infrastructure, for example.

MR. THOMPSON agreed that the language is pretty broad, which is one of the reasons he would like MAG to be involved with the Department of Commerce in the selection process before requests go to the legislature.

[2:58:10 PM](#)

MR. THOMPSON reiterated that MAG has sent a number of resolutions to the legislators and asked that the committee consider them. He thanked the legislators for their efforts to protect the communities and citizens of Alaska.

[2:58:59 PM](#)

SENATOR WILKEN asked for Mr. Thompson's understanding of the process by which impact requests would be made, considered, certified, and awarded. For example, if a new pipe-coating yard in Fairbanks made it necessary to add a new fire station, how would it get the impact money to build that.

MR. THOMPSON said that no process has been established yet.

[3:00:02 PM](#)

SENATOR OLSON asked Mr. Thompson whether the Tanana Chiefs would represent the North Slope Borough communities.

[3:00:25 PM](#)

MR. THOMPSON said no. Tanana Chiefs only represents unincorporated entities.

[3:00:57 PM](#)

SENATOR ELTON asked whether this would be limited to Alaskan communities, or would extend into Canada.

MR. THOMPSON said impact funds would only be granted to Alaskan communities.

[3:01:38 PM](#)

CHAIR SEEKINS thanked Mr. Thompson for his input and asked the committee if they had questions for Kevin Ritchie from Alaska Municipal League (AML).

SENATOR WILKEN directed Mr. Baldwin's attention to page 9, subsection (e), which addresses the awarding of grants. He said he would like this process to be conducted in a public forum. He also asked if the bill might include who makes the decisions and by what criteria they determine which communities are considered impacted.

[3:04:00 PM](#)

MR. BALDWIN answered that the administration's approach is to do this in regulation. If the legislature desires to make it more specific, they could try to do it in statute; but it is a matter of time and effort.

SENATOR WILKEN speculated that, if Fairbanks puts in a request for impact funds to build a new fire station, it will go to someone who will qualify it, to someone else who will certify it, and to someone else for funding. All of those things must be done in a public forum.

MR. BALDWIN responded that Senator Wilken is really talking more in terms of process than in defining what an impact is.

SENATOR WILKEN said that is his next question; but he wants to be sure that, whatever is done, it is done in public.

SENATOR WILKEN directed Mr. Baldwin's attention to page 8, line 24, regarding direct and severe impacts. He said he has a

definition of impact that he would like included in the bill and asked who he should work with on that amendment.

MR. BALDWIN said to give it to him and his office would help Senator Wilken to draft it.

SENATOR WILKEN moved to page 7 beginning on line 31, through page 9. He said he understands that the economically-impacted communities have \$125 million available that goes away at first gas; then the revenue-impacted communities are addressed. He said it appears that 11 entities would be affected by the definition and asked if anyone has run the pro-formas, given the throughputs on which the PILT will now be based.

MR. BALDWIN said he would have to check.

[3:07:47 PM](#)

SENATOR WILKEN asked whether he should be concerned about the language in 43.82.510 in the stranded gas amendment, principal (1), with regard to the revenue-affected municipalities trumping the economically-affected municipalities.

[3:08:05 PM](#)

MR. BALDWIN responded that a memo was just delivered to Senator Wilken that addresses that issue. The criteria that are listed in 020(b) are directory, not mandatory and, when referring to economically-affected municipalities, this doesn't seem to be in the proper context, so the priority would not apply.

[3:09:00 PM](#)

SENATOR WILKEN said he is not concerned about economic impacts here, but about the revenue-impacted communities. He wants to know who defines them and how the money flows all the way from the North Slope to the Canadian border. He wants to be sure the state takes the time to develop an infrastructure that will provide benefits statewide and not just in certain areas.

[3:10:15 PM](#)

SENATOR GREEN asked if aid to revenue-affected municipalities would also be shut down when the \$125 million in impact funds is gone.

MR. BALDWIN answered that there will be a continuing PILT that will be paid under the agreement.

SENATOR GREEN asked if they are separate.

MR. BALDWIN confirmed that they are.

SENATOR WAGONER said that is part of the contract, and payments continue in lieu of taxes at the municipal level.

MR. BALDWIN confirmed that Senator Wagoner is correct.

[3:10:58 PM](#)

SENATOR WILKEN asked if, when the \$125 million is gone, the economically-impacted definition is moot.

MR. BALDWIN answered that he understands that to be true.

[3:11:20 PM](#)

SENATOR STEDMAN said he assumes that when they talk about spreading the impact benefits across Alaska, that means along the gas pipeline and not broadly across the state. He asked if that is correct.

CHAIR SEEKINS said that is his understanding, but it would help to have a clear definition of "impact".

[3:12:59 PM](#)

SENATOR WILKEN said that a profit stream would flow out of the gas pipeline into a "bucket"; but before it gets there, areas across the state will be making claims on it. The state has to be sure the claims are valid, because they reduce the amount available to benefit the state as a whole.

[3:14:37 PM](#)

MR. THOMPSON interjected that the revenue-affected communities are only those with a property-taxing authority. Once the line is complete and gas is flowing, they will not be able to collect a property tax, so it has to be paid with a PILT from the state.

CHAIR SEEKINS asked for confirmation that it is not intended to go to unincorporated communities that do not levy taxes under state law.

MR. THOMPSON said that is correct.

[3:15:53 PM](#)

SENATOR HOFFMAN said this might also be interpreted to mean that the unorganized areas along the corridor would remain

unorganized for 45 years and could not collect PILT during that time.

CHAIR SEEKINS said that is not his understanding. If a community falls into the definition of a revenue-affected municipality in the future, it could apply for PILT through the commissioner. For example, if the Delta Borough comes into existence after this is executed, it would qualify.

[3:16:58 PM](#)

SENATOR HOFFMAN said he thinks it was addressed during the hearings at Centennial Hall, and that a new borough would not be able to assess property taxes or be eligible for PILT because of the lockdown; so there would be no reason to form. He said he would like to get clarification on this issue.

[3:17:21 PM](#)

SENATOR WILKEN asked for confirmation that the revenue-impacted definition exists from first gas to last gas.

MR. BALDWIN answered that the PILT is payable immediately from the effective date.

SENATOR WILKEN asked if revenue-impacted communities stop at first gas or last gas.

MR. BALDWIN replied that they stop at last gas.

SENATOR WILKEN said that, in that case, the state is peeling off .001 and putting it into a bucket for the unorganized areas. If a new borough forms, it can take part of that money and attach itself to the revenue stream, so there is an incentive to become a borough, to tap into the funding that comes out of the throughput.

[3:18:28 PM](#)

MR. BALDWIN said that there are additional factors built into the allocation formulas to allow for the creation of new municipalities.

[3:19:20 PM](#)

CHAIR SEEKINS asked for confirmation that they would not be locked out forever.

MR. BALDWIN replied that is correct.

SENATOR HOFFMAN asked if that is in the contract.

MR. BALDWIN answered yes.

SENATOR HOFFMAN asked if Mr. Baldwin would point that out to him.

MR. BALDWIN said he would do so after the meeting.

CHAIR SEEKINS thanked Senator Hoffman for bringing the question up.

[3:19:45 PM](#)

SENATOR ELTON referred back to section 3 on page 3, and asked for the rationale behind the change on line 25 from the "best interest of the state", to the "long-term fiscal interest of the state".

[3:21:04 PM](#)

MR. BALDWIN answered that the administration provided a memo, addressed to the chair of the committee, explaining the rationale behind that change.

SENATOR ELTON said he would wait for the memo.

At ease from [3:21:52 PM](#) to [3:29:12 PM](#)

CHAIR SEEKINS noted that copies of the memo had been distributed. He then referred to page 3, paragraph 5 of the bill.

JOSEPH DONOHUE, Preston Gates & Ellis, explained that the reasoning behind the change to 7(b) on page 3, line 25, was to ensure that the court considers the commissioner's proposed contract terms and preliminary and final findings under the same standard.

[3:32:03 PM](#)

MR. DONOHUE went on to say that the term "best interests" has been litigated in the context of the Department of Natural Resource findings. There is a body of law that says it refers back to Article 8 of the constitution and means that the decision of the commissioner of natural resources has to be made to the maximum benefit of the people and the best public interest. So, there is little difference between the two standards. This change is designed to minimize potential litigation issues and is, in short, a consistency edit within the SGDA.

[3:33:28 PM](#)

SENATOR ELTON said it seems that, if the goal is to minimize potential litigation, moving from a standard that has been litigated and has some basis in case law, to one that has not, might increase the potential for lengthy litigation.

[3:34:12 PM](#)

MR. DONOHUE said that there is a body of law regarding the best interests standard that tells the Supreme Court the constitutional provisions to look at, but it is a very amorphous test. The commissioner has already gone through elaborate effort to put forward the preliminary fiscal interest findings using the standard that pervades the SGDA, which is whether the contract is in the long-term fiscal interest of the state.

[3:35:15 PM](#)

CHAIR SEEKINS said the findings of long-term fiscal interest already occur in the SGDA and are the same as those that could be challenged under 602 of the Appellate Procedures. So, it is a matter of consistency as to what the commissioner must provide in his findings.

MR. DONOHUE agreed.

[3:36:24 PM](#)

SENATOR ELTON referred to an earlier discussion of Section 4, subsection (b), page 3, line 27, and noted that this seems to provide a producer the opportunity to "shop around" for another court of jurisdiction that will enforce an arbitration award. He asked if the state of Alaska also has that opportunity.

[3:37:39 PM](#)

MR. DONOHUE replied that, under Article 26, the rights to enforce arbitration awards are reciprocal.

SENATOR ELTON asked if he means that any party could do it.

MR. DONOHUE answered yes; any party can proceed to another state that has jurisdiction over the state or over the producing entity involved in the dispute.

[3:38:12 PM](#)

SENATOR DYSON referred to page 3, line 31, and asked if it would be possible to clarify what is meant by "the state".

[3:40:15 PM](#)

MR. DONOHUE answered that, given the substantial assets the producing entities have in Alaska, it is unlikely that the state would shop in other jurisdictions to enforce an arbitration award, although the state could do that under the contract. If it could not confirm its award within its jurisdiction, it could seek to have the arbitration award entered in other states where the entity that owes the award has assets.

[3:41:26 PM](#)

SENATOR DYSON said that he was not thinking of the remedy in terms of money, but enforcement of an arbitrator's decision to press for action.

MR. DONOHUE responded that what the waiver of sovereign immunity is intended to achieve, is to put the state on equal footing with the producers in the context of solving litigation problems and enforcing judgments.

CHAIR SEEKINS asked Mr. Donohue if the state would have to waive sovereign immunity to collect against the producers.

MR. DONOHUE said no. He explained that the reason the contract includes a waiver of sovereign immunity is that the state's commercial partners fear, if they are left with only state remedies to enforce an arbitration award, the remedies for collection on a judgment against the state are limited. The state and public corporation assets are exempt from execution and attachment, and the only way a private party can collect against the state in Alaska is to take the case to the legislature and ask for the money. Basically, the companies feel on an unequal footing for litigation within the state.

[3:44:20 PM](#)

SENATOR DYSON asked why they would feel the need to go after us in another state's court.

MR. DONOHUE said the primary reason would be if the judgment were too large to be recouped under the waterfall provisions of Article 22, and the legislature refused to appropriate funds to cover it. At that point, the companies could seek enforcement against state assets in other parts of the country.

[3:45:06 PM](#)

SENATOR DYSON asked Mr. Donohue to explain the waterfall provisions of Article 22.

MR. DONOHUE said that all of the reciprocal obligations under the contract are described in Article 22. These are calculated on a monthly basis and then netted out. Hopefully, most of the time the companies will owe the state significant amounts of money at the end of the waterfall. The companies are allowed to recoup arbitration awards through this process, so it would be an unusual circumstance that could not be covered by the recoupment provisions. It would also be very unusual for the legislature not to appropriate the funds to cover a judgment. If that happened however, they would be entitled to pursue remedy in another state.

[3:46:53 PM](#)

SENATOR DYSON said they could come to our state court.

MR. DONOHUE explained that the dispute would be settled through private arbitration and the companies would be granted an award. If the state continued to object and did not pay through the accounting process, they would seek to have the judgment entered in our state court first. The remedy to enforce a judgment against the state of Alaska inside the state is to come to the state legislature and ask for an appropriation. So, if the companies are not treated fairly at the time they present an appropriation request to the state legislature, they can go after the state's assets in other jurisdictions.

[3:48:21 PM](#)

SENATOR DYSON asked if, on line 31, "the state" means the state of Alaska.

MR. DONOHUE said yes, that is common wording and refers to the state of Alaska.

SENATOR DYSON asked if there are any states that do not have jurisdiction over Alaska.

MR. DONOHUE answered that it is based on whether Alaska has any assets in the state.

SENATOR DYSON restated that having assets in another state is what would give that state's court jurisdiction over Alaska.

MR. DONOHUE said, in a general sense, yes.

[3:49:30 PM](#)

CHAIR SEEKINS asked what recourse the state would have against a company that refuses to pay an award.

[3:50:11 PM](#)

MR. DONOHUE answered that the contract is ambiguous on that. One reading is that the state would enter the award in state court and seek enforcement against the company. Another reading is that the state could pursue direct action to collect it. He suggested that the committee speak to Bob Loeffler and the negotiating team to get a clearer answer.

CHAIR SEEKINS said that, if the producers can net out their awards and the state has to go through normal collection procedures, they are not on equal footing.

MR. DONOHUE said that, under waterfall, the state could net out its obligations too. The ultimate issue is, what if waterfall isn't sufficient to satisfy the obligation.

[3:51:48 PM](#)

SENATOR OLSON asked whether other states have given up their sovereign immunity in similar circumstances.

MR. DONOHUE said he is unaware of any other states that have consciously waived sovereign immunity when doing business in another state, but there is a U.S. Supreme Court precedent on the question that goes back to the 19th century, when the state of Georgia ran a railroad through Georgia and Tennessee and had a railroad asset in Tallahassee. The city wanted to condemn it, but Georgia said that the asset was protected by its sovereign immunity. The Supreme Court ruled that the state has no sovereign immunity when doing business in another state; it is just another entity.

[3:53:08 PM](#)

SENATOR OLSON asked if there were any sovereignty issues surrounding TAPS.

MR. DONOHUE could not recall any.

SENATOR OLSON said that his concern about trying to collect from the companies is illustrated by what has happened with the Exxon Valdez issue. There has been a judgment languishing for years without being paid.

[3:53:44 PM](#)

SENATOR BUNDE said that, as he understands it, the LLC is contemplating incorporation in Delaware. He asked if this discussion has anything to do with the fact that it would be incorporated in a state other than Alaska.

MR. DONOHUE answered that the rules for the fiscal contract and disputes under the fiscal contract would be resolved in accordance with Alaska law. The LLC agreement that is being negotiated will be incorporated under Delaware Law and will include provisions for alternative dispute resolution. He believed that Delaware law would apply. The reason for using Delaware rather than Alaska law is that Delaware has decades of case law interpreting its corporate and LLC codes, so many states use Delaware law to govern commercial agreements. In the context of a dispute, one is more likely to be able to predict outcomes and resolve them readily.

[3:55:26 PM](#)

CHAIR SEEKINS said that, according to the 2006 State Liability Systems Ranking Study conducted for the U.S. Chamber institute for legal reform, Delaware is the number one state for having and enforcing venue requirements, overall treatment of tort and contract litigation, treatment of class action suits, treatment of punitive damages, timeliness of summary judgments, and so on. It appears that if a corporation wants speedy treatment, it goes to Delaware.

[3:56:17 PM](#)

SENATOR ELTON said that he recalls being told during the hearings at Centennial hall, that the arbitrator is precluded from awarding punitive damages for losses. If that is correct, he wonders under what circumstances there would be a huge award that would prompt a party to seek remedy in another state.

MR. DONOHUE replied that Senator Elton is correct. The fiscal contract has provisions limiting the types of damages that the parties can pursue against each other. He admitted that he is less familiar with the LLC agreement under negotiation, but he believes it has similar, fairly standard limitations. He could not think of any example of a huge award against the state.

[3:57:40 PM](#)

CHAIR SEEKINS asked Mr. Donohue if there is a situs agreement as to where disputes will be tried.

MR. DONOHUE answered that Exhibit (C) discusses where the tribunal would sit. He believes it is by mutual agreement of parties first, and then there is a default situs.

CHAIR SEEKINS preferred that it be sited in Alaska.

[3:58:41 PM](#)

SENATOR ELTON asked that the administration provide an example to demonstrate the need for this provision.

MR. DONOHUE said that he would try to provide an example.

[3:59:49 PM](#)

SENATOR WILKEN asked Mr. Donohue to look at page 5, lines 18-20. This section of the legislation expands the powers of the Department of Natural Resources (DNR) and, with agreement of the Department of Revenue (DOR), expands the commissioner's power to enter into shipping commitments and long-term gas marketing agreements. But on lines 18-20, the sentence really seems to be divided into two. The first section that stops with "and" on line 19, has to do with changing lease and unit expenses "for separation, cleaning, dehydration, gathering, and saltwater disposal", which means a gas treatment plant. He asked if the second part, "and preparation for transportation on or off the lease", speaks to the gas processing facility.

MR. DONOHUE answered yes; it deals with upstream field costs that the state is agreeing to assume and whatever processes are used to deal with impurities and make the gas pipeline quality. He referred the committee to question number three in the letter from Kevin Jardell to The Honorable Jay Ramras, dated June 2, 2006.

[4:02:45 PM](#)

SENATOR WILKEN said that the next time the legislature confirms a commissioner of DNR or DOR, it had better be awfully sure it knows what kind of person it is confirming, because those are going to be very important people in state government.

[4:03:21 PM](#)

CHAIR SEEKINS asked if these expenses would be deducted from what the state receives if it takes its gas in cash rather than in kind.

MR. DONOHUE answered no. The state has taken these expenses on as part of the process of becoming a full commercial partner

in the project, and they would not otherwise be authorized under the leases and existing agreements.

CHAIR SEEKINS asked if they reduce the value of the gas versus taking it in cash.

[4:04:13 PM](#)

MR. DONOHUE said that sounds like a question for Pedro [Van Meurs]. He thinks that the state, by taking its gas in kind, is likely to make as much or more than it would by taking it in cash.

[4:04:55 PM](#)

CHAIR SEEKINS said that public hearings are scheduled for Saturday and the committee will start with amendments to the bill on Sunday.

SENATOR BUNDE noted that he gave Chair Seekins' staff a couple of amendments and asked whether they should be incorporated into a CS, or be introduced as amendments.

CHAIR SEEKINS said he would like to look at each amendment to see what could be incorporated into a CS, then work with the amendments and perhaps come up with a second CS.

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SENATOR BUNDE referred to page 6, line 29 of Section 41.42.045 (b), "the governor shall promptly make an appointment", and asked whether the term "promptly" should be further defined.

[4:07:30 PM](#)

CHAIR SEEKINS said that is a point well taken. He reminded the committee that the question of whether appointments to the board would require legislative confirmation has not been resolved.

SENATOR BUNDE advised that Tam Cooke provided a legal opinion that legislative confirmation is unlikely to be enforceable or allowed.

CHAIR SEEKINS asked for a copy of that opinion.

SENATOR BUNDE said that it is being distributed.

CHAIR SEEKINS commented that Senator Green said, when the primary function of a board is fiduciary, it is not subject to

confirmation by the legislature. The legislature can stipulate that board members cannot be dismissed except for cause.

4:09:25 PM

CHAIR SEEKINS said that the other unresolved question having to do with public members of the board is the residency requirement.

SENATOR BUNDE interjected that he has submitted an amendment that requires most of them to be Alaskans. He also noted that committee members should now have a copy of the memo from Tam Cooke before them, and read the last sentence from that memo: "The Board of Directors of the Alaska Natural Gas Pipeline Corporation do not fall within the types of boards in which confirmation is required."

4:10:20 PM

CHAIR SEEKINS thanked Senator Bunde. He then brought up the subject of when board meetings should be held and whether the meetings should be public.

4:10:50 PM

SENATOR ELTON said that he is more comfortable with the Permanent Fund Corporation model than that outlined in the bill. All of its meetings are public and, if the board needs to address matters that are confidential, it goes into executive session.

SENATOR GREEN asked if there is or should be a provision for emergencies in which a decision must be made post-haste.

CHAIR SEEKINS said he thinks that would be handled based on notice, and asked if anyone had an opinion on it.

4:11:47 PM

SENATOR WILKEN asked how the Alaska railroad board handles meetings, and whether that would be a good model to follow.

MR. DONOHUE asked Chair Seekins to repeat the question.

CHAIR SEEKINS explained that the discussion is about the public meeting process and how it should be handled.

MR. DONOHUE replied that the plan was to ensure that at least one of four meetings would be public, although that would not preclude making all of them public. The primary concern of DOR is that the meetings remain exempt from the Open Meetings Act,

because it puts constraints on how quickly the board could meet, creates litigation points for lack of notice and subject matter of executive sessions. If AK Pipe is to operate on an equal footing as a commercial entity with the other members of the LLC, freedom from the Open Meetings Act is necessary.

[4:14:33 PM](#)

SENATOR WILKEN restated his concern about allowing votes on fiscal issues via teleconference.

SENATOR ELTON said that Mr. Porter stopped by his office to discuss the issue of public meetings. He understood the model that Chair Seekins suggested and had no objection to it, and may be working on some language now.

CHAIR SEEKINS asked Senator Wilken whether all members of the board must be present, or if a certain number of members could attend via teleconference.

SENATOR WILKEN said he prefers that all members must be present.

SENATOR BUNDE said that, on page 6, line 8, where it states that board members would be paid for "each day or portion of a day spent at a meeting of the board," he would like the portion required to earn the honorarium to be more clearly defined. He said he would prepare an amendment for the committee's consideration.

[4:16:14 PM](#)

CHAIR SEEKINS said that, when he was on the permanent fund board of trustees, he sometimes spent half a day each way traveling to a meeting and ended up not meeting at all. He asked Senator Bunde if he would want to put members of this board in the position of doing that without compensation.

SENATOR BUNDE said he would like to discuss it.

[4:16:59 PM](#)

CHAIR SEEKINS directed Mr. Donohue's attention to page 9, paragraph (8) starting on line 3, and asked whether the board of directors could divest the state of Alaska of its ownership interest in the project simply by a vote.

MR. DONOHUE replied that there are provisions that would restrict the transfer of assets as long as the corporation has outstanding obligations. Since this is a public organization,

its duty is to acquire and maintain an ownership interest over the life of the project. The provision on page 9 is focused on allowing the board to use the ownership interest as an asset to secure debt and so on.

[4:19:14 PM](#)

MR. DONOHUE said that he does not think the administration would have any objection to amending the language to make it clear that the board cannot transfer the entire asset.

CHAIR SEEKINS asked for questions on indemnification and confidentiality agreements, which are discussed on page 10.

[4:20:01 PM](#)

He went on to page 11, line 9, dealing with police powers of the state, and asked Mr. Donohue to explain what those powers are.

[4:20:12 PM](#)

MR. DONOHUE answered that the police powers of the state refer to its sovereign authority to maintain the health and security of the state, to regulate criminal matters, and commercial activity within the state.

CHAIR SEEKINS went on to page 21, line 14, and asked if the insertion of the word "reasonably" before "required" would address some of the concerns the committee has discussed.

[4:21:43 PM](#)

MR. DONOHUE said that is a question for Mr. Porter. He said that this provision has been a hot issue with producers. They are uncomfortable with the administration's approach and would prefer a complete exemption from the public records act. They are insisting on a confidentiality agreement as part of the LLC agreement.

[4:22:34 PM](#)

CHAIR SEEKINS said that he knows there is a confidentiality agreement in the SGDA that delineates those things that must be confidential, and he wonders why that was not done in this bill.

MR. DONOHUE said that the administration did look to the SGDA provisions as a model.

[4:23:20 PM](#)

CHAIR SEEKINS said that what concerns him is the inclusion of a blanket statement covering "anything that is required to be kept confidential under an agreement with an owner entity". He asked if that means the state has to agree to keep it confidential first, or that there is a vote to determine whether it is confidential.

MR. DONOHUE said that, under the LLC agreement, there is a standard definition of what is confidential and how information would be shared among the parties. He reiterated that the producers are concerned about taking a public corporation into their partnership, which has not been done before.

He said that he has no legal problem with adding the word "reasonably", but that this is a policy issue that should be addressed by Mr. Porter.

[4:25:03 PM](#)

CHAIR SEEKINS asked when the legislature would see the LLC agreement.

MR. DONOHUE said that he does not have an answer to that question, but that every effort is being made to complete negotiations as quickly as possible.

[4:25:22 PM](#)

SENATOR GREEN commented that, just because there is a government entity in partnership with a private entity, does not mean that the same public information standards should be imposed on the private entity as are required of the state.

MR. DONOHUE assured her that the administration is not trying to bring the members of the LLC or the LLC itself within the Freedom of Information Act.

SENATOR GREEN said that she was referring to the call for information that normally, under a government entity, would not be kept confidential.

MR. DONOHUE replied that part of the problem might be that the current public records act is somewhat vague in regard to the types of proprietary information that would be protected if challenged. Part of rationale for the expanded list in the bill, is to clarify the nature of the business information that could be protected by Alaska Pipe Corporation in the context of this commercial venture.

[4:27:32 PM](#)

CHAIR SEEKINS referred Mr. Donohue to page 27, section 12 of the bill, and asked him to explain what 45.45.900 actually accomplishes.

MR. DONOHUE answered that this provision is in current law and provides that, in the context of a construction contract in Alaska, a person cannot agree to indemnify another contractor for their sole negligence or misconduct. So, section 12 amends that rule by providing for the exception that is added with section 13.

He explained that the standard mechanism for a joint venture between oil and gas entities is to hire an affiliated operator to manage the construction and operate the project at no profit; so that operator would not be willing to accept any risk. The risk would be absorbed by the LLC, which would indemnify the operator against its own negligence or misconduct by its employees, and the cost would be spread among the LLC members according to their membership interest. The members can insure against it on an individual basis or self-insure, which is what the oil companies do. The operator, as an affiliate of one of the members of the LLC, has every incentive to avoid negligence and misconduct; but in a project as big as this, such things do occur.

CHAIR SEEKINS asked if this indemnification flows only to the operating entity and is not a cross-indemnification of the owners of the project.

[4:32:53 PM](#)

MR. DONOHUE answered that this provision deals with two types of indemnification: the operator, and the members of the LLC. These are contractual agreements that will be narrowly drafted to deal with certain kinds of misconduct by low-level employees that the policy makers of each of the partners cannot control.

He said there are also provisions that allow the operator to hire experts to assist in construction or permitting and other special areas. The entities providing the consulting service to the operator would be indemnified in the same way. Some companies may also loan employees to the operator during certain phases of the project, and these employees too would be indemnified.

CHAIR SEEKINS asked if the actions of someone hired temporarily by or loaned to the operator do not flow back to their original employer, but are indemnified as if he were a regular employee of the operator.

[4:34:59 PM](#)

MR. DONOHUE answered yes; the indemnification covers any employee that is loaned to the operator, the entity that loaned the employee, and any entity providing consulting services to the operator. He stressed the fact that these are entities affiliated with members of the LLC, and not just any consultant to the operator.

CHAIR SEEKINS asked whether, if the negligence of an employee of the state of Alaska caused damages, the cost of the damages would be shared on an equal basis between all of the members of the LLC.

MR. DONOHUE answered yes, as long as the employee was working for the operator.

[4:35:53 PM](#)

SENATOR GREEN asked if Mr. Donohue said that the operator would not have to pay at all.

MR. DONOHUE responded that the producers and the state would share the 100 percent ownership interest. The operator would be a separate entity affiliated with one of the owner entities, but would not have ownership in the LLC.

SENATOR GREEN asked if the four owners would share 100 percent of the liability.

MR. DONOHUE answered yes; it would be shared in proportion to their ownership interest.

[4:37:11 PM](#)

SENATOR BUNDE referred to page 5, paragraph (3)(A), which lists specific things that would disqualify a person for membership on the board and noted that, although it excludes employees of the state, it does not exclude executives or employees of the major oil companies. He asked why that is not addressed.

CHAIR SEEKINS also asked why state employees, but not oil company employees, are excluded from serving on the board.

MR. DONOHUE responded that he could not understand why a governor would appoint an oil company employee to the board. He said the desire is to get experienced people on the board, which might mean former oil company employees, who would then be subject to the conflict of interest clause.

[4:38:37 PM](#)

SENATOR BUNDE said that the conflict of interest section says board members and applicants to the board have to declare a conflict, but does not say it precludes them from serving.

SENATOR GREEN asked where the conflict of interest section is located, and then found it on page 7.

[4:39:20 PM](#)

SENATOR ELTON asked if there is anything that precludes a future legislature from tweaking any of these provisions.

MR. DONOHUE replied that there is nothing in the fiscal contract, but there are provisions in the LLC called member default provisions, that would be triggered by amendments to this statute in the future. These are designed particularly to address producers' concerns about confidentiality and the makeup of the board. They include a dispute resolution process, and a specific provision on page 11, section 22, that specifies the powers of the corporation in the event of changes that adversely affect its ability to perform its obligations under the contract.

[4:41:46 PM](#)

SENATOR ELTON suggested that it might be helpful for the Administration to identify elements in the bill that the legislature will be prevented from changing in the future.

MR. DONOHUE advised that these issues are under discussion. The triggering mechanisms and the penalties have not been resolved; so he does not think the administration can give more specific examples at this time.

SENATOR ELTON likened this to putting the cart before the horse, and said that he is uncomfortable not knowing if the legislature will have the power to change this in the future.

[4:43:58 PM](#)

CHAIR SEEKINS commented that it is hard to predict; but the LLC will have to comply with the decisions the legislature makes now.

SENATOR ELTON agreed, and likened it to the way the legislature is dealing with amendments to the SGDA that implicate the kind of contract that can come before the legislature for a vote. In this situation however, the legislature does not have the ability to vote on the LLC.

CHAIR SEEKINS said that the legislature would provide the framework within which the LLC can operate.

[4:45:19 PM](#)

MR. DONOHUE said that the legislature would not be precluded from changing the law in these areas; but there could be limited penalties on the Alaska member within the LLC that would affect voting rights and access to confidential information.

CHAIR SEEKINS said he could not imagine that information normally available to shareholders of a corporation would be withheld from the citizens of the State. He said he thinks the committee is trying to get at what information it is not necessary to share with shareholders of a corporation, because the people of the state are really acting as shareholders in the LLC. He asked Mr. Donohue if the state is bound by the agreement.

MR. DONOHUE said that changes could be made but might be subject to penalties, which are limited as described in this power. [page 11, paragraph (22)]

[4:48:24 PM](#)

SENATOR ELTON said he would describe a couple of examples, and then go back to the situation the committee finds itself in with the contract. By passing this bill, the legislature will be making decisions on indemnification in sections 12 and 13. It will be determining how many board members there should be and where they come from. Those are two examples of decisions that a future legislature may want to "tweak". The legislature is adopting the SGDA amendments after having seen the contract, to accommodate the contract. The other way to do this is to wait and adopt legislation authorizing Pipeco after seeing what the LLC looks like.

[4:49:54 PM](#)

MR. DONOHUE remarked that he understands that the administration intends to bring the LLC to the legislature for review in conjunction with the Alaska Pipe legislation.

4:50:07 PM

SENATOR WILKEN said he is not comfortable with his knowledge of the subject matter; but he knows the 29 pages of legislation the committee is dealing with are very important. He said he hopes that Chair Seekins has asked the legal and professional advisers available to the state to look at this legislation and advise the committee.

SENATOR BEN STEVENS asked Mr. Donohue if it is the LLC management agreement the committee is talking about.

MR. DONOHUE said yes, that is what is being negotiated.

SENATOR BEN STEVENS asked if there has been any discussion about the LLC operating agreement.

MR. DONOHUE said that there have been discussions, but he is not sure where they stand.

SENATOR BEN STEVENS said that an LLC operates on two guidelines, a management agreement and an operating agreement. The first to pass is the management agreement that defines the members' rights within the organization. Then the parties to the management agreement develop the operating agreement that defines how the organization will function and how the money will flow through the operation. He has no expectation that there will be an operating agreement by the time the contract comes up for ratification; it may take three years before that is developed. As all Pipeco will do is to set up the public entity that will become a member of the management agreement.

SENATOR GREEN asked if there is a different standard required when a government entity is involved.

SENATOR BEN STEVENS responded that he asked that question yesterday, specifically regarding Sarbanes-Oxley.

4:54:59 PM

MR. DONOHUE said that Louisiana Cutler is looking into it. He responded to Senator Ben Stevens that the management and operating agreements are very closely related, even if they are not created simultaneously.

SENATOR BEN STEVENS agreed that they are closely related, but stressed that the LLC operating agreement evolves through participation of the members and is constantly changing.

[4:56:59 PM](#)

SENATOR BEN STEVENS voiced concern about the establishment of the corporation that will become a member of the LLC, and commented that he will feel better when he has actually seen the LLC agreement. He does not have much concern about the operating agreement, because the LLC will manage that.

[4:58:14 PM](#)

CHAIR SEEKINS acknowledged Senator Bettye Davis.

[4:58:36 PM](#)

CHAIR SEEKINS said that the committee will meet at 9:00 am Saturday and will have comments from BP, ConocoPhillips, and ExxonMobil, followed by public comment on SB 2003 and SB 2004.

[4:59:14 PM](#)

He said that on Sunday at 2:00 pm the committee would entertain amendments from members. He requested that legislative legal services draft the amendments and that they be provided to his staff person, Brian Hove.

CHAIR SEEKINS said that the committee might begin consideration of amendments on Saturday if there is time.

ADJOURN [5:00:27 PM](#)