

**ALASKA STATE LEGISLATURE**  
**SENATE SPECIAL COMMITTEE ON NATURAL GAS DEVELOPMENT**

June 5, 2006

7:05 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 Gene Therriault  
Senator Charlie Huggins

**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: SB2003

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)	REFERRALS - 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
06/02/06	(S)	Heard & Held
06/02/06	(S)	MINUTE(NGD)
06/03/06	(S)	NGD AT 9:00 AM SENATE FINANCE 532
06/03/06	(S)	Heard & Held
06/03/06	(S)	MINUTE(NGD)
06/04/06	(S)	NGD AT 2:00 PM SENATE FINANCE 532
06/04/06	(S)	Heard & Held
06/04/06	(S)	MINUTE(NGD)
06/05/06	(S)	NGD AT 7:00 AM SENATE FINANCE 532

BILL: SB2004

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)	REFERRALS - 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
06/02/06	(S)	Heard & Held
06/02/06	(S)	MINUTE(NGD)
06/03/06	(S)	NGD AT 9:00 AM SENATE FINANCE 532
06/03/06	(S)	Heard & Held

06/03/06 (S) MINUTE(NGD)  
06/04/06 (S) NGD AT 2:00 PM SENATE FINANCE 532  
06/04/06 (S) Heard & Held  
06/04/06 (S) MINUTE(NGD)  
06/05/06 (S) NGD AT 7:00 AM SENATE FINANCE 532

**WITNESS REGISTER**

PHILLIP GILDAN

Greenberg Traurig, LLP

Consultant to the Legislature

**POSITION STATEMENT:** Explained Amendment 10A to SB 2004 and answered questions pertaining to SB 2003 and SB 2004.

DONALD SHEPLER

Greenberg Traurig, LLP

Consultant to the Legislature

**POSITION STATEMENT:** Explained Amendment 10A to SB 2004 and answered questions pertaining to SB 2003 and SB 2004.

JAMES BARNES

Barnes & Cascio LLP

Consultant to the Legislature

**POSITION STATEMENT:** Explained Amendment 10A to SB 2004 and answered questions pertaining to SB 2003 and SB 2004.

LOUISIANA CUTLER

Preston Gates & Ellis

Counsel to the Governor

Office of the Governor

PO Box 110001

Juneau, AK 99811-0001

**POSITION STATEMENT:** Testified on proposed amendments to SB 2004 and answered questions pertaining to SB 2003 and SB 2004.

NICK SPILIOTES

Morrison & Foerster

Counsel to the Governor

Office of the Governor

PO Box 110001

Juneau, AK 99811-0001

**POSITION STATEMENT:** Testified on proposed amendments to SB 2004 and answered questions pertaining to SB 2003 and SB 2004.

BOB LOEFFLER

Morrison & Foerster

Counsel to the Governor

Office of the Governor  
PO Box 110001  
Juneau, AK 99811-0001

**POSITION STATEMENT:** Testified on proposed amendments to SB 2004 and answered questions pertaining to SB 2003 and 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 proposed amendments to SB 2004 and answered questions pertaining to SB 2003 and SB 2004.

WENDY KING, Director of External Strategies  
ANS Gas Development Team  
ConocoPhillips Alaska, Inc.  
PO Box 100360  
Anchorage, AK 99510

**POSITION STATEMENT:** Testified on proposed amendments to SB 2004 and answered questions pertaining to SB 2003 and SB 2004.

DENNIS BAILEY, Attorney  
Legislative Legal Services  
Legislative Affairs Agency  
Alaska State Capitol  
Juneau, AK 99801-1182

**POSITION STATEMENT:** Answered legal questions on proposed amendments to SB 2004.

#### **ACTION NARRATIVE**

**CHAIR RALPH SEEKINS** called the meeting of the Special Committee on Natural Gas Development, continued from 6/04/06, to order at [7:05:44 AM](#). Present at the call to order were Senators Thomas Wagoner, Lyda Green, Gary Wilken, Ben Stevens, Bert Stedman, Fred Dyson, Con Bunde, Lyman Hoffman, Donny Olson, Kim Elton and Chair Ralph Seekins; Senator Albert Kookesh arrived soon thereafter. Other legislators present were Senators Gary Stevens, Gene Therriault and Charlie Huggins.

#### **SB 2003-NATURAL GAS PIPELINE CORPORATION** **SB 2004-STRANDED GAS DEVELOPMENT ACT AMENDMENTS**

CHAIR SEEKINS announced SB 2003 and SB 2004 to be up for consideration.

The committee took an at-ease from [7:07:04 AM](#) to [7:11:52 AM](#).

SENATOR KOOKESH arrived.

SENATOR WAGONER moved to adopt Amendment 10 to SB 2004, labeled 24-GS2046\A.13, Bailey, 6/4/06, which read:

**A M E N D M E N T 10**

OFFERED IN THE SENATE  
TO: SB 2004

BY WAGONER

Page 6, line 23, following "project":

Insert "and each project entity to be created to own and operate any part of the project"

Page 6, line 24, following "chapter.":

Insert "Each collateral agreement shall be a condition subsequent to the proposed contract developed under this chapter shall be subject to review and authorization to execute by the legislature and, on approval, may be entered into by the public corporation as provided in (b) of this section."

Page 6, line 26, following "AS 43.82.435":

Insert ", except that, with respect to collateral agreements submitted by the commissioner of revenue to the legislature within the 180-day time limit, the time limit shall be extended to five days after authorization has been approved. Each project entity collateral agreement to be negotiated must incorporate the following minimum elements:

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

(2) for project entities organized under AS 10.50, the operating agreement adopted under AS 10.50.095, or equivalent governing document for project entities organized under other jurisdictions ("Operating Agreement"), must include the limitation that the state's obligation to fund continuing capital and operating obligations shall be subject to annual appropriation by the legislature, and that the state's failure to appropriate a capital or

operating obligation may not be considered a default of the state's obligation, but shall be considered only to reduce the state's ownership interest on a pro rata basis based on the amount of the failed appropriation relative to the amount of the capital or operating obligations funded by the remaining project owners;

(3) the Operating Agreement must provide that

(A) the state may not agree to a waiver of sovereign immunity without a reasonable monetary limit on that waiver under the facts and circumstances;

(B) the state may not indemnify or otherwise hold harmless any person or entity that has been adjudged in a judicial, administrative, or alternative dispute resolution proceeding to be liable for negligence or misconduct in the performance of the person's or entity's duty or has been adjudged guilty of a crime or had a criminal adjudication withheld subject to probationary terms;

(C) the state may not eliminate claims for actual damages incurred by the state and may not eliminate the equitable rights to seek specific performance and injunctive relief; and

(D) the rights and limitations provided in this paragraph shall apply to collateral agreements to be entered into under this section;

(4) the Operating Agreement must provide that, in the event of a dispute between or among the members of the entity, a subsidiary entity, an affiliate of a member, a member representative, and any other person or legal entity that has a membership or ownership interest in an owner entity of the project, that dispute shall be subject to the dispute resolution terms and procedures set out in the contract as approved by the legislature under AS 43.82.435; for purposes of this paragraph, "dispute" means a dispute, matter, controversy, or claim arising out of or relating to any owner entity of the project, any ownership interest in the project, any agreement between or among the

members or owners of any owner entity of the project arising out of or relating to that owner entity of the project, or the operation, management, or implementation of the project, including its interpretation, construction, performance, enforcement, privileges, rights, or obligations; those dispute resolution terms must incorporate equivalent presumptions and burdens of proof as set out for civil trials in Rule 301, Alaska Rules of Evidence, Presumptions in General in Civil Actions and Proceedings, and Rule 302, Alaska Rules of Evidence, as amended, Applicability of Federal Law in Civil Actions and Proceedings;

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

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

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

(8) the Operating Agreement must provide that the state has the unilateral right to initiate expansions of the project if the state funds or obtains third-party funding from a creditworthy customer for the expansion or extension and must include terms for voluntary expansion, including

(A) holding periodic binding or nonbinding open seasons to assess market demand for expansion every three to five years;

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

(C) committing to expansion for creditworthy shippers in less than

reasonable engineering increments when the shippers commit to contributions in aid of construction sufficient to keep the project entity whole, including authorized return; and

(D) committing the project entity to propose and defend the use of rolled-in pricing for all expansions;

(9) the Operating Agreement must provide that, in the event the entity elects to contract with a vendor to operate the entity or implement the project, the vendor shall be independent of and not an affiliate of the members of the entity;

(10) the Operating Agreement must provide that the state member shall have the right to participate in all meetings of the governing board of the entity and vote on all decisions of the entity, including decisions affecting tax allocations between or among the taxpaying members of the entity;

(11) the Operating Agreement must provide that the state member shall have the right to review all books and records of the entity, including all contracts, and to audit the finances of the entity at any time and from time to time;

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

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

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

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

(16) the Operating Agreement must provide that the project entity shall use project financing supported by federal guarantee instruments as defined in the Alaska Natural Gas Pipeline Act to the maximum extent available from the United States Treasury and must limit the equity portion of project capitalization to not more than 20 percent of total capital;

(17) for the purposes of the provisions required by this subsection, the Operating Agreement must define "fair value" as the value as agreed to by the affected members or as determined under the dispute resolution process if agreement cannot be reached; "fair value" shall be determined based on original cost less depreciation, comparable sales, or income approach valuation methodologies"

SENATOR WAGONER objected for discussion purposes.

CHAIR SEEKINS moved to divide the issue.

SENATOR WAGONER indicated members were provided a marked-up copy, with segments identified 10A through 10Q.

[7:12:40 AM](#)

CHAIR SEEKINS announced Amendment 10A would be lines 1-14 of the amendment.

SENATOR WAGONER informed members Phil Gildan was on teleconference to handle part of the amendments, while Don Shepler was present to address the balance. He asked them and Jim Barnes to provide personal background.

PHILLIP GILDAN, Greenberg Traurig, LLP, Consultant to the Legislature, explained that he primarily represents governments in proprietary business relationships, dealing mainly with public utilities, but also with other proprietary businesses. A significant amount of his law practice involves representing governments in public-private partnerships, and he sometimes represents the private sector in dealing with a public entity on utility types of projects. He provided examples, saying although they weren't of the same size and scope as the proposed Alaskan project, he has dealt with the same issues on numerous occasions.

DONALD SHEPLER, Greenberg Traurig, LLP, Consultant to the Legislature, mentioned having represented the Legislative Budget and Audit Committee in Federal Energy Regulatory Commission (FERC) proceedings in 2005 that resulted in the FERC order, and said he has been asked to provide advice with respect to the terms of the contract.

JAMES BARNES, Barnes & Cascio LLP, Consultant to the Legislature, characterized his company as an oil-and-gas law firm that mostly represents companies in the international arena, including a variety of transactions that range from upstream to midstream, and occasionally into the downstream area.

SENATOR WAGONER offered Amendment 10A to SB 2004. Containing lines 1-14 of Amendment 10, it would read:

**A M E N D M E N T 10A**

OFFERED IN THE SENATE  
TO: SB 2004

BY WAGONER

Page 6, line 23, following "project":

Insert "and each project entity to be created to own and operate any part of the project"

Page 6, line 24, following "chapter.":

Insert "Each collateral agreement shall be a condition subsequent to the proposed contract developed under this chapter shall be subject to review and authorization to execute by the legislature and, on approval, may be entered into by the public corporation as provided in (b) of this section."

Page 6, line 26, following "AS 43.82.435":

Insert ", except that, with respect to collateral agreements submitted by the commissioner of revenue to the legislature within the 180-day time limit, the time limit shall be extended to five days after authorization has been approved. Each project entity collateral agreement to be negotiated must incorporate the following minimum elements:

SENATOR GREEN inquired whether lines 15 onward pertain to the colon at the end of line 14.

SENATOR WAGONER observed that the way the drafter constructed it was different from the memorandum; it appears every suggestion in the memo was included. He suggested paragraphs (1) through (17) should become separate amendments, and opined that the colon wouldn't necessarily apply there.

SENATOR GREEN pointed out that there wouldn't be any reference, then, to the line numbers where the language should be inserted.

SENATOR STEDMAN proposed that Amendment 10A only go to line 9. Thus it would read:

**A M E N D M E N T 10A (Revised)**

OFFERED IN THE SENATE  
TO: SB 2004

BY WAGONER

Page 6, line 23, following "project":

Insert "and each project entity to be created to own and operate any part of the project"

Page 6, line 24, following "chapter.":

Insert "Each collateral agreement shall be a condition subsequent to the proposed contract developed under this chapter shall be subject to review and authorization to execute by the legislature and, on approval, may be entered into by the public corporation as provided in (b) of this section."

SENATOR WAGONER said he wouldn't object to that.

CHAIR SEEKINS noted it technically would go through line 8, and announced the motion was being revised to reflect the change.

[7:19:45 AM](#)

MR. GILDAN explained it is simply a mechanism to add clarity, especially with respect to adding the phrase "and each project entity to be created to own and operate any part of the project". The first insert clarifies that the collateral agreements include those kinds of entities; from reviewing this amendment and from listening to the administration's discussions of the project, Mr. Gildan said, he understands the intent of this section is to authorize those kinds of agreements. Thus it clarifies that the authority exists to do that with respect to the project entities.

He informed members that the second insert was suggested because as he reviewed the gas contract and legislation, there didn't appear to be a mechanism for the legislature to review and understand - or have approval rights for - the collateral agreements, the primary one being the mainline-entity limited liability company (LLC) that, from the presentations, he surmised would be proposed. Therefore, he'd started this section to give that provision and the right for the legislature to see that document in conjunction with its review of the main fiscal contract.

MR. SHEPLER added that with respect to the LLC agreements or entities to be formed to carry out the contract's missions, the terms of those underlying documents are critical to the project's success; they'll define what rights the state has to vote on which issues, for example, and run the gamut. He said it is impossible to overstate the significance of these LLC agreements, at least at the mainline-entity level.

He noted, as Mr. Gildan had pointed out, that the legislature's having a contract without the interrelated LLC agreements is a potentially problematic disconnect to be aware of. Notwithstanding what goes into the contract, the terms of the LLC agreements may not come back to the legislature; thus there may be a practical necessity to ensure that either they come back to the legislature for approval or that certain parameters are established to control the critical conditions relating to the operation of those companies.

[7:23:49 AM](#)

SENATOR BEN STEVENS asked whether Mr. Gildan's understanding is that SB 2003 is "the entity that would be the partner or be the state participant" in creating any LLCs.

MR. GILDAN indicated that entity will be created to act as the owner entity of the state's position in the mainline entity.

SENATOR BEN STEVENS asked: Why amend the Alaska Stranded Gas Development Act ("Stranded Gas Act") with this provision, which is part of SB 2003? He opined that anything relating to the operation of the LLC should be in SB 2003, not SB 2004. He noted SB 2003 establishes the public entity, Alaska Natural Gas Pipeline Corporation, "PipeCo," that will be partnering in the main line; SB 2004, which amends the Stranded Gas Act, establishes the framework under which a contract can be negotiated, but doesn't create the contract itself.

He offered his understanding that the Stranded Gas Act gave authority for the contract to include provisions and collateral agreements for the creation of PipeCo. He suggested the effort is to preempt the creation of PipeCo by saying the LLCs all have to be approved by the legislature, each individually, in the overall Stranded Gas Act. Mentioning concerns brought up with respect to Amendment 10A to SB 2004, in particular, he surmised that if the legislature agrees to PipeCo, it agrees to allow that entity to enter into collateral agreements. The ability to negotiate a collateral agreement within the contract is authorized by the Stranded Gas Act, he added.

[7:25:40 AM](#)

MR. SHEPLER responded by saying SB 2004, Section 11, Collateral agreements, subsection (e), on page 7, provides for the authority of the state to form LLCs and limited liability partnerships or another recognized form of business association to carry out the purposes of the contract. In SB 2003, PipeCo is the entity to be created as the state's party to those agreements. Although the party is identified in SB 2003, amendment of SB 2004 sets the "terms of the entity" with which that party is going to become a partner.

MR. GILDAN added that (b) of Section 11 in SB 2004 specifically recognizes a collateral agreement negotiated by the commissioner on behalf of a public corporation established to acquire an ownership interest in the project to be developed. He explained that he'd read (b) to say the commissioner is going to negotiate these documents on behalf of the corporation created in SB 2003.

SENATOR BEN STEVENS disagreed, interpreting as follows: The Stranded Gas Act gives the commissioner power to negotiate the contract, which will contain the limited liability entities and the state's participation. He said SB 2003 has 24 suggested powers and duties of the corporation; if the legislature is going to discuss limiting those or how the collateral entities

will operate, this amendment should be discussed under Section 41.42.210, as proposed in SB 2003, which contains powers and duties of the corporation. He opined that if it fails here, it would be within the bounds to offer it as an amendment to SB 2003 as well.

MR. SHEPLER said he believes confusion arises because SB 2003 creates the state entity that will be a member of another legally recognized LLC; Senator Wagoner's amendments set the rules under which that superior LLC must function. To set the terms under which the state's entity must function wouldn't have the same result, however, because the state's entity presumably will be a 20 percent owner of the superior LLC. So the reason for putting the provisions into the amendments to the Stranded Gas Act - which give the commissioner the authority to enter into these LLC and other collateral agreements - is to assure that those LLCs have rules befitting the state's best interest.

He surmised much of this could be resolved if the LLC agreements were brought to the legislature, at least for the main LLC agreements. That would ensure full protection to the state as a minority-interest owner.

SENATOR BEN STEVENS read from page 7, lines 7-9, of SB 2004, subsection (c), which stated:

(c) A collateral agreement executed by the members of the board of a public corporation under (b) of this section is binding only on the public corporation and does not make the state a party to the collateral agreement.

He said it is the public corporation that is a party to the collateral agreement, and SB 2003 provides authority to create the public corporation. He remarked that it seems the effort is to try to overstretch the legislature's authority. This is Stranded Gas Act language, proposed as to how the public corporation shall operate. Noting one issue is the risk from the state's involvement, he said it was demonstrated, under the presentation of SB 2003, that the state isn't at risk or exposed under establishment of the public corporation; rather, the corporation itself is exposed.

MR. BARNES responded that the contract itself - Article 7, which deals with state ownership - contemplates several project entities that will own the hardware: one for the gas treatment plant (GTP); one for the upstream and so on; one for the

main line; and different ones for Canada and the Lower 48. The state will be a minority-interest holder. Typically, investors want to know the full aspects of their involvement: how they will vote, how they will govern, how the capital contributions and expenditures will be handled and so forth. Thus it's not unusual that if the state is being invited to be a participant and owner - to operate at the level of an investor or another party - it would want the full spectrum of such information.

He noted the aforementioned only deals with ownership of a pipe. The pipeline will require gas; thus another entity - Alaska GasCo or whatever it is called - also will have ship-or-pay commitments. This actually may be a larger long-term liability than ownership of the pipe itself, Mr. Barnes pointed out, and the state likely will want to know about those obligations. Therefore, part of the state's initial decision on whether to invest will typically include knowing how it will be governed, how funds will be raised and what liabilities will exist.

SENATOR BEN STEVENS again expressed concern, saying not only should it be an amendment to SB 2003, but also the legislature has created public corporations - such as the Alaska Permanent Fund Corporation or the Alaska Housing Finance Corporation (AHFC) - for which it doesn't ratify every action. He questioned whether those would be so successful if that were required. He said the questions are: whether a corporation will be created under SB 2003 and the expertise will be sought that is required to be a manager of that corporation; and, for the Stranded Gas Act, whether the public corporation that the state creates shall be a member of all the entities which will manage and operate the various components of this project.

[7:38:52 AM](#)

SENATOR WAGONER remarked, "We aren't talking about every action that these corporations we would create take; we're talking about each corporation."

SENATOR BEN STEVENS responded by indicating that further in the amendment, provisions say the execution of the operating agreement must include legislative approval.

SENATOR ELTON said it seems the amendment isn't asking for the legislature to review every action taken by the mainline entity; rather, it says the legislature will approve the mainline-entity structure within which PipeCo operates, which seems rational. He characterized it as ensuring the contract negotiated by the commissioner that creates the mainline entity will give the

scope of authority within which PipeCo can operate for the best interest of the state.

SENATOR STEDMAN said looking at how it is structured and the introduction to it, clearly some of the amendments are restrictive and some could cripple the end result of getting a gas pipeline. He noted a document sent to the state June 2 contained these as illustrative amendments, put forth by the consultants present today. He suggested it was timely to discuss where they should be included and how much preemptive authority the state, as a minority interest, should try to have over the entire entity.

SENATOR WILKEN requested examples of collateral agreements, discussed on line 5 of Amendment 10A and defined on page 7, line 14, of SB 2004.

CHAIR SEEKINS indicated these are collateral agreements between entities that would own or operate. He said the authority to be given to the commissioner is to negotiate collateral agreements that are required to implement the state's acquisition of an ownership interest in the project; the commissioner would have 180 days after the effective date of the law authorizing execution of the contract, to his understanding.

MR. BARNES explained that the gas line consists of a pipe and gas. The project entities that will own the pipe and gas are separate entities: the entity that owns the upstream gas transmission lines, the entity that owns the GTP, the entity that owns the main line, the entity that owns the Alaska-to-Alberta segment and so forth. In addition, the gas will be owned by the marketing affiliates of the various shippers. How the state will market its gas isn't known yet, but it would likely be a project entity - Alaska GasCo, for instance - that wouldn't be involved in any other project entity. On the other hand, the state would own perhaps a 20 percent share of the hardware-owning project entities.

CHAIR SEEKINS requested examples of other LLCs or business associations where these types of operating agreements exist.

MR. BARNES affirmed he'd seen them for other types of projects.

CHAIR SEEKINS asked whether those agreements put minority-interest owners at a great disadvantage in the operation of the entity.

MR. BARNES answered that various mechanisms are used to regulate affairs among the parties. In general, though, a minority owner can be reduced to just being a check-writing party unless there is some sort of supermajority provision or other consideration for the interests of that minority-interest holder. These sorts of LLC and operating agreements generally tend to take a long time to negotiate because of balancing the interests of the non-operators and the operator. Thus they tend to be complex, multi-tiered agreements.

CHAIR SEEKINS asked whether there will be a majority owner for the contemplated project.

MR. BARNES answered it can't be determined yet without knowing the percentages of ownership. A typical provision might say a decision will carry if a certain number of parties agree to it; that's called a pass-mark decision, somewhat more than a simple majority, although it might be a simple majority. In further response, he surmised alignment among parties would vary dramatically from issue to issue. Fairly certain is that profit drives a for-profit company, whereas the state has additional drivers: jobs, gas, education and so forth. Thus the motivations of the producers and the state likely will differ.

CHAIR SEEKINS suggested if the state becomes an owner of the gas, the primary motive will be to produce income for Alaskans; the state will want to hold the producers' feet to the fire in this regard. He related his experience that the three producers aren't a cohesive group, but are competitors; he opined that part of the problem in negotiating the terms of the LLC stems from difficulties among them in agreeing to some conditions. Thus Chair Seekins said he perhaps doesn't have a great concern that the three will team up and "squeeze" the state.

[7:50:55 AM](#)

SENATOR BUNDE pointed out that the state will have no way to hold the producers' feet to the fire; they are totally insulated from the legislature, and the state isn't protected there. Returning to Senator Ben Stevens' concern, he asked whether there would be a legal problem if this amendment were adopted for SB 2004 instead of another bill. He also asked whether it sums it up to say, if the amendment passes, that the legislature would have the right to approve the basic structure of an LLC, and would be in a position to "trust but verify."

MR. SHEPLER voiced concern that the three consultants don't know what the terms of these LLC agreements will be. Established

will be a contract that contemplates the creations of these entities, and the state may be fully protected, with 50 percent voting strength, for instance, or may not be able to vote on some issues at all. Emphasizing that there is an important piece missing and that the terms of this joint ownership should be known, he said it is a policy call as to whether the legislature wants to take it on trust, trust but verify or do something in between.

[7:54:20 AM](#)

SENATOR BUNDE requested a legal opinion from Tam Cook, director of Legislative Legal and Research Services, as to whether there would be a problem from putting this amendment into SB 2004, rather than another bill.

SENATOR ELTON highlighted the importance of this, noting Chair Seekins had provided an example where the state's interest aligns with the other partners. If there is a desire to commercialize gas found by explorers that aren't part of the mainline entity, however, expansion could be a big issue for the state, for example, since the private partners might not want to allow that expansion.

[7:55:14 AM](#)

SENATOR STEDMAN told Mr. Shepler that while he believed his writings had been clear, these amendments stand out as a little odd if taken literally. He asked whether the portion of Amendment 10 not included in Amendment 10A was illustrative only, to get a feel for the state's exposure and how to interact with the administrative branch, or is intended as a literal amendment, to be inserted in its entirety. He remarked that Amendment 10A seems more broad, allowing legislative final approval, whereas the others control the structure.

MR. SHEPLER replied that these were suggestions posited by himself and Mr. Gildan as to what steps the legislature might take, given the significance that the terms of these LLC agreements aren't to be presented to the legislature.

MR. GILDAN added that the memo was intended to provide illustrative amendments; he hadn't understood that the committee could discuss amendments that weren't presented formally. There are two kinds of options: 1) express guidance on structural issues of concern relating to the enumerated items or 2) generally give more freedom for the negotiations, but have it brought back for legislative approval.

SENATOR STEDMAN interpreted that to mean the amendment is broken into two major sections: 1) Amendment 10A, the broader policy call to give the legislature authority to sign off on the structure put together by the administration, and 2) the "coming attractions," which will dictate structure including capital structure.

8:00:33 AM

SENATOR WILKEN noted there will be five major LLCs: the upstream LLC; the GTP LLC; the gas treatment/gas processing LLC; the marketing LLC, which has been called Alaska GasCo; and the transportation piece, PipeCo. The collateral agreements that are the subject of this amendment and Section 11 are the agreements among those five. He asked whether that is what collateral agreements are.

MR. BARNES answered he believes they are the internal-governance agreements for each of those entities, as well as the agreements among them. As for other collateral agreements, he said potentially there is a series of agreements among the parent companies coordinating how they'll proceed with the regulatory process. In addition, Alaska GasCo will have its own set of documents dealing with financing and its operations.

SENATOR WILKEN asked: Once the collateral agreements are in place among these five, would a change be a major event, rather than a quarterly or annual happening?

MR. BARNES affirmed that.

MR. SHEPLER explained that these relate to corporate charters for the corporation that will own the mainline entity, the GTP, the upstream facilities and so forth. These documents won't be amended frequently, and will control how the organizations work.

MR. GILDAN added that generally those kinds of agreements can't be amended without unanimous consent of all parties.

SENATOR BEN STEVENS requested testimony from the administration on these proposed amendments. He also interpreted Amendment 10A such that directors of the public corporation wouldn't need to be sought because the legislature, in a sense, would be the directors. He said he doesn't believe this is what the legislature should be doing, and doesn't believe that is the intent demonstrated by the legislature in the past with the establishment of public corporations.

He mentioned creation of the five LLCs; the state's participation through the public corporation, PipeCo; the overall approval of the contract, understanding the state will be approximately a 20 percent participant in each entity, with the same partners in each, at least in the initial creation; and the LLC agreement with respect to PipeCo, which will be seen before acting on it. Senator Ben Stevens said that, to him, that's the authorization and the understanding that the legislature has: PipeCo - not the state - will be the member of these entities. By the approval of the creation of PipeCo, and the approval of the project contract, the legislature gives the authority.

He emphasized this is a policy call as to whether the state shall participate as an equity owner; if so, these are the levels the state will be involved in, at 20 percent across the board. Stating opposition to the amendment, Senator Ben Stevens again requested testimony from the administration.

CHAIR SEEKINS called upon Ms. Cutler.

8:07:01 AM

LOUISIANA CUTLER, Preston Gates & Ellis, Counsel to the Governor, noted she is a partner in the law firm, and asked that Joseph Donohue come to the witness table as well.

CHAIR SEEKINS informed listeners that Mr. Loeffler and Mr. Spiliotes were on teleconference.

MS. CUTLER first provided background. Because Steven Porter of the Department of Revenue (DOR) wasn't available, she said the lawyers would speak for the administration with respect to PipeCo and LLC issues, in addition to providing straight legal advice.

She explained that she and Mr. Donohue drafted a lot of this legislation; both have represented the state for a long time and are familiar with state law issues, particularly as they apply to governments. Morrison & Foerster has also been the state's counsel for many years. Mr. Loeffler has been around for all of the gas line negotiations and for the Trans-Alaska Pipeline System (TAPS) and so forth, and has expertise at FERC. Mr. Spiliotes has been primary counsel to the state in developing the LLC agreement with the partners; he has years of experience dealing with mega-projects and is a corporate lawyer.

She turned to the amendment. First, Ms. Cutler stated opposition to an amendment that provides for legislative approval, for many of the reasons articulated by committee members who'd indicated opposition, from what she'd heard. There is a potential separation-of-powers problem; furthermore, this isn't the same as legislative approval of the fiscal contract. When the Stranded Gas Act was enacted, Ms. Cutler recalled, there was discussion of whether it was acceptable to have legislative approval of the fiscal contract; the final advice from the attorney general was that it would be appropriate as a matter of comity or - given that the constitution has sections dealing with contracting away the taxation power - it might be necessary anyway.

She told members it is crucial to the state that the pipeline corporation have the ability to act independently. Comparing it to the earlier Alaska Permanent Fund Corporation example, Ms. Cutler acknowledged this is the biggest project the state has ever gone into, and there may be policy reasons for the legislature to decide differently than it would with respect to the permanent fund.

She reported having had good discussions with Mr. Gildan with respect to his suggestions for SB 2003; she surmised talking with people involved in the negotiations and drafting the legislation perhaps gave him a different point of view. Ms. Cutler proposed that committee members approach the suggestions relating to SB 2004 in the same way. They're all excellent suggestions from a public policy standpoint, she said, but noted another side of that also could work from a public policy standpoint.

She also reported that the testifiers on teleconference, in particular, have been intimately involved in both the LLC negotiations and the fiscal contract negotiations. Ms. Cutler indicated that, in part, the LLC agreement isn't before legislators yet because there have been fierce negotiations among all four parties. Acknowledging the frustration of not having the LLC agreement to view, she highlighted the effort to inform legislators of what it contains and how the negotiations are going. She turned the discussion over to Mr. Spiliotes.

CHAIR SEEKINS brought attention to Senator Wilken's question of what these look like, how many LLCs there are and so forth.

[8:15:14 AM](#)

NICK SPILIOTES, Morrison & Foerster, Counsel to the Governor, informed members that he is a partner in his firm's Washington, D.C., office, with over 20 years' experience in domestic and international project development and finance projects; he also chairs the firm's business department, about 500 transactional lawyers. He first began working on this project, on the LLC side, in September 2004 and has been involved in negotiations for about two years.

He agreed there are probably five major pieces of this project: 1) the mainline LLC, the document being negotiated with the producers, which will ultimately serve as a template for the other pieces; 2) the GTP LLC; 3) feeder line LLCs; 4) the Canadian piece, expected to be an unincorporated joint venture, since Canadian law doesn't have the same sort of LLCs; and 5) perhaps, at some point, a non-gas liquids plant entity - it isn't clear yet whether this will happen or whether the state will participate.

He noted legislation discussed earlier will establish the public corporation currently contemplated; its subsidiaries will own the state's interest in these other project entities. That's the basic structure. Each sponsor group company will have its own pipeline affiliate that will own an interest in the various project entities as well, Mr. Spiliotes said.

He explained that the LLC being worked on now will create the rights and obligations, including voting terms and the capital-contribution structure. Built in will be a number of protections for the state; these will be replicated in other agreements, although tailored for the specific agreements. Mr. Spiliotes gave examples.

[8:18:28 AM](#)

BOB LOEFFLER, Morrison & Foerster, Counsel to the Governor, informed the committee that he has been a partner in his law firm since 1979 and has represented the state on various matters since about 1974. He related his understanding that the administration has committed to allow the legislature to review the LLC agreement once it is completed. The mainline agreement will come first and be the model for the others. Although he agreed with Ms. Cutler that there is a separate point about approval, he opined there will be a higher degree of comfort after legislators see the actual document.

He said a number of issues addressed in this set of amendments are being addressed in the negotiations, which are hopefully near completion with respect to the LLC. For example, there is

considerable discussion of how, and on what terms, the federal loan guarantee should be utilized for the capital structure.

[8:20:52 AM](#)

MR. LOEFFLER offered his reading that the amendments divide into two large subjects: 1) the general requirement for review and approval of the agreement that PipeCo would enter into; and 2) a set of amendments - from good motives, because people haven't seen the LLC documents - that limit what can be negotiated in the LLC agreements between PipeCo and the other three companies. He highlighted keeping those two separate purposes in mind.

He raised a third point, seen in the LLC negotiations and fiscal contract negotiations: The companies have different commercial perspectives and ways of pursuing those. While there isn't a monolith - three companies against the state - there should be clear voting provisions, including what calls for unanimous consent or for a supermajority. Mr. Loeffler highlighted the intent to bring that product to the legislature for review but not approval as such, as noted by Ms. Cutler.

[8:23:49 AM](#)

SENATOR BUNDE suggested that if the LLC discussions will address these amendments, perhaps this bill is being addressed prematurely. Noting the legislature is granted the ability to approve the basic contract and PipeCo, he questioned why it is such a big leap to review and approve the LLCs as far as a balance-of-power issue.

MS. CUTLER gave the view that approval of the fiscal contract is different from approval of any contracts that "AK Pipe" might enter into. AK Pipe would be provided the authority, in the other bill, to enter into LLC and other agreements. She indicated that is the interplay between Section 43.82.437 of the Stranded Gas Act conforming amendments - currently before the committee in terms of this amendment - and AK Pipe. That section provides for approval of the so-called collateral agreements - these LLC agreements and other agreements - in the event the legislature approves the fiscal contract and the basic structure before those agreements are completed, and also in the event AK Pipe has not itself been set up.

She said the legislature has an important role in establishing AK Pipe and deciding what kinds of powers it will have, and also, in the event AK Pipe is not set up yet, providing the authority to enter into these collateral agreements, either by the two commissioners under subsection (a) or by the partial

quorum in subsection (b). Thus the legislature has a role in telling AK Pipe whether it can even do this, and hopefully will get enough information to make that decision. Also, as Mr. Loeffler had indicated, hopefully there will be an LLC agreement for legislative review.

She specified, "It is not our desire to hold up the process by waiting for that LLC agreement to be completed." Ms. Cutler acknowledged Senator Bunde's point of view, but related the administration's view that if the legislature approves AK Pipe and the authority to enter into the collateral agreements, then actual approval of those agreements isn't within the legislature's purview.

[8:28:09 AM](#)

JOSEPH K. DONOHUE, Preston Gates & Ellis, Counsel to the Governor, clarified the original intent of this collateral agreement section: subsection (a) was initially intended to authorize coordinating agreements between the state government and entities that aren't direct parties to the fiscal contract and yet are related parties. At one time, the administration thought that once the fiscal contract was entered into, there'd be a parallel agreement with the parent companies and affiliates that would become members of the LLC; it might be appropriate to coordinate the planning of the implementation of the fiscal contract. The second type of contemplated agreement was the LLC agreements, currently being negotiated and eventually to be entered into on behalf of the public corporation.

He said there is a sequencing problem, however, since the public corporation isn't yet set up to do these negotiations. The administration intends to have the master LLC agreement available for legislative review at the time when the legislature is requested to authorize the contract, so legislators will see the template for future LLC agreements. Ultimately, this is a temporary, transitional authority that will be granted to the commissioner, and future LLC agreements would be negotiated directly by the board, not by the commissioner of DOR.

SENATOR BUNDE announced he was tempted to table this until there is future information.

SENATOR BEN STEVENS agreed, but said Mr. Donohue had addressed the point he was going to bring up about SB 2004, Section 11, that the authority of the commissioner lapses after 180 days and thus subsection (a) is a transitional provision: if the

legislature does approve the policy call to become an equity participant, the commissioner has authority to continue negotiations of creation of the subsidiary LLCs until such time as the board of the public corporation is established.

MR. DONOHUE concurred, saying at the time the AK Pipe legislation is enacted, the two commissioner members of the board would be able to immediately begin to act on its behalf; that is how the LLC agreements would be entered into. There would be a modified-quorum requirement applicable to AK Pipe so that it would be immediately able to execute the LLC agreement.

8:31:51 AM

SENATOR BEN STEVENS discussed timelines, indicating that if it is 180 days after the effective date of AS 43.82.435, he believes the governor must sign within 60 days and the project must begin 90 days after that.

CHAIR SEEKINS offered that 60 days after execution, it becomes effective. However, this provision begins with the approval by the legislature - the effective date of the bill.

SENATOR BEN STEVENS said the ability for the commissioner to negotiate the agreements ends after that period of time.

CHAIR SEEKINS agreed, saying the commissioner has 180 days after the effective date of the law authorizing the contract. There is a 60-day period after the authorization to accomplish execution by the parties, and then, to his understanding, the contract become effective 60 days after execution.

SENATOR BEN STEVENS concurred, but said a contract provision says that within 90 days they must begin the application process; he noted Wendy King of ConocoPhillips was affirming that. He said if the time continuums were laid atop one another, the actual time during which the commissioners have the authority to do the authorization is very short; more than likely, it wouldn't occur in that time period. He also pointed out that actual operation of these entities wouldn't even begin until the time of sanction.

He agreed with Senator Bunde's suggestion to table this, surmising it would be until such time as the structure is seen for the operating agreement. Senator Ben Stevens opined that it is unrealistic for legislators to expect a final product on the operations of an entity that may not even come into existence five years from now, let alone commence operations commercially

eight to ten years from now. Thus it is unrealistic to want to see the operating agreements for all five new LLCs - one of which might not even exist for the natural gas liquids (NGL) plant - and to stipulate what each must provide, as stated in the second portion of Amendment 10. However, he suggested it is justifiable for the legislature to ask to see the template under which state ownership will be represented.

8:35:11 AM

SENATOR BUNDE clarified he was thinking of tabling the whole bill. He noted there had been considerable discussion about this superior group of experts that needs to be gathered to run PipeCo because it is critical to the state. He said he takes some solace and hope from Senator Ben Stevens' remark that the clock might run out on the two commissioners who will develop the template without the assistance of these experts for the LLCs. Pointing out that he wasn't expressing lack of confidence in the commissioners, Senator Bunde voiced concern if these experts cannot be used to develop the underpinnings of the project - the template - as well as concern about timing.

CHAIR SEEKINS said it appears Mr. Spiliotes, Mr. Loeffler and others from the law firms are experts who are assisting these commissioners in trying to develop the LLC at this time.

MS. CUTLER affirmed that.

CHAIR SEEKINS noted there is a \$36 billion corporation that operates with a board of trustees, without this micromanagement. He said he also gets concerned when a four-paragraph bill becomes 400 pages of regulations promulgated by the commissioners. He said he shares the concern, but wonders at what level it should be put.

SENATOR BUNDE responded that he isn't interested in that level of micromanaging. If the Alaska Permanent Fund Corporation decided to set up an LLC, however, he surmised the legislature would want something beyond just the ability to review it. He said the template should be back before the legislature, for review and approval, just like the contract and PipeCo will be.

CHAIR SEEKINS said he didn't necessarily disagree with respect to the template.

MS. CUTLER offered her understanding that the Alaska Permanent Fund Corporation, as part of its investments, holds membership interests in certain LLCs, though obviously not of the same

magnitude. With respect to the team negotiating the series of LLC agreements, she specified that in addition to Morrison & Foerster and Preston Gates & Ellis, the state has retained the services of a Canadian law firm; in particular, Mr. Loren Carson (ph) has been involved in the LLC negotiations. The state also has financial advisors, a consortium of UBS and others, that have been involved. Furthermore, Steve Porter, DOR deputy commissioner, has been intimately involved along with several others from DOR and other state agencies, as needed. Thus there has been a tremendous effort put into negotiating that agreement.

[8:40:34 AM](#)

SENATOR BUNDE remarked he is thankful for such expert advice, but some experts disagree. Regarding the product, he emphasized the desire to review it and then vote on whether to accept it.

SENATOR WAGONER read from what would be the second item in Amendment 10:

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

He suggested it would be an Alaskan LLC, and yet it is now being constructed using Delaware law. He said there are problems, and he probably wouldn't mind tabling it because he doesn't see any scheduling of the coordination and necessary dates, for example.

[8:42:09 AM](#)

CHAIR SEEKINS invited Ms. King to testify.

WENDY KING, Director of External Strategies, ANS Gas Development Team, ConocoPhillips Alaska, Inc., offered points on the amendment. She noted there'd been discussion about the collateral agreements for the mainline LLC, the GTP, the Canadian portion and so on; Article 7 of the proposed fiscal contract puts the state's ownership interest in those entities at 20 percent. However, there are other entities for which information isn't known. These include the gas transmission lines, which she clarified aren't "upstream lines," as she'd heard, but are midstream portions of the business, to get gas into the main line for interstate commerce. She cited the National Petroleum Reserve-Alaska (NPR-A) transmission line as an example that would go from the GTP to support exploration and bring new exploration volumes from the west.

She discussed how the state-ownership share of 20 percent was arrived at. Highlighting a principle seen in commercial alignment relating to the proposed fiscal contract, Ms. King explained that there is a value in having commercial alignment between the gas volumes and the ownership share. ConocoPhillips' equity share in NPR-A is 50+ percent; the ownership in that transmission-line LLC could be very different from the GTP or mainline LLC. The answers to those questions aren't known yet, and there even could be different member companies in that LLC because, she said, "the assets that that transmission line might be supporting might be different working-interest owners." Thus trying to stipulate a set of rules that applies for every LLC is premature at this stage.

She cited another example: There isn't a clear understanding yet of the Alberta-to-Lower-48 project, which could include "new build," expansions or just utilizing existing capacity; there may or may not be an entity formed for that. It is premature to stipulate that all the entity collateral agreements that might be needed to fulfill this fiscal contract should be known at this point in time, Ms. King told members.

She indicated PipeCo, created in SB 2003, becomes the party that represents the State of Alaska in those commercial interests. It needs to function like a business. Ms. King said state ownership - taking gas in kind, making a firm shipping commitment and having an ownership position in the contract - is a critical component to the entire fiscal contract. The challenge for ConocoPhillips is that if the legislature isn't satisfied with the materials provided by the producers to support that ownership interest, the vote will be "no" for the contract; that is the process outlined in the Stranded Gas Act, having the legislature agree or not agree to support the terms.

8:46:30 AM

SENATOR OLSON asked whether Ms. King favored setting aside this amendment.

MS. KING affirmed that.

SENATOR OLSON asked whether she would support setting aside SB 2004.

MS. KING said it was a distinctly different question and she needed to think it through.

SENATOR BEN STEVENS discussed differences between setting aside Amendment 10 and SB 2004. The amendment specifically brings up items on the collateral agreements and questions that have arisen because the legislature hasn't seen the mainline LLC template. By contrast, he said, setting aside SB 2004 is declining to take any action on the fiscal contract. It amends the Stranded Gas Act, and it is a three-step process to get to a vote on a stranded-gas contract; the first step is final approval of an oil-tax-regime change, which would be incorporated into the fiscal contract via the authorization of SB 2004 or the enabling legislation.

He therefore suggested that not acting on SB 2004 precludes being able to conclude whether to accept ratification of a contract and to anticipate legislation developed under Section 43.82.435, which would give the governor authorization to execute. Senator Ben Stevens said he wasn't prepared to do that, but wanted to stay and work on it. He indicated there had been agreement to wait to act on SB 2003 until there is a more final document and better understanding of how the LLC will operate and what the state's participation will be.

CHAIR SEEKINS said if SB 2004 is dropped, the Stranded Gas Act won't have been amended, and the framework under which the contract would come to the legislature for presentation and approval would be the existing framework of that Act. He agreed with the need to look at the other amendments to the Act, to see whether that's how they want the final contract to look.

SENATOR ELTON suggested another way of looking at it: If SB 2004 is set aside, at the time the contract is before the legislature there will be the contract, SB 2004 and - to his understanding from previous testimony - the LLC. He said nothing precludes the legislature from dealing with those three topics in another session.

CHAIR SEEKINS reiterated his concerns and emphasized making the legislature's intent clear now so that after the public comment period is over, the state and the producers - when they go back to renegotiate the terms of the contract - know the boundaries. He questioned the wisdom of creating rules that may be changed after the renegotiation.

SENATOR ELTON suggested that's the process gone through to get the contract. He said he didn't see a problem with it, especially when the contract would come back before the legislature as an up-or-down vote. Noting one thing he likes

about the amendment is that it gives legislative guidance to the administration as there are discussions about the LLC, he asked, "If we're not willing to give that legislative guidance now, in the form of this and other amendments, then why not wait and have all three elements before us at the same time?"

CHAIR SEEKINS proposed that an up-or-down vote on something unknown is "asking them to take a shot in the dark and see if they can guess what we're going to do."

SENATOR ELTON reiterated that this is what is happening with the contract, as well as the Stranded Gas Act amendments presented by the administration.

[8:53:32 AM](#)

SENATOR OLSON asked: If we don't wait until after the public comment period, why have one?

CHAIR SEEKINS offered his understanding of the Stranded Gas Act: The public comment period is to comment on the terms of the proposed contract; at the end of that period, the commissioner has 30 days to recraft and renegotiate the contract, based on comments received during that period; then final findings of financial interest and the contract, along with a law authorizing the administration to execute the contract, are presented to the legislature for approval.

He agreed it is a bit clumsy, but said he also intends to provide an opportunity for public input, to him as a legislator, so that when he provides his final comments to the commissioner the concerns will be incorporated. At the same time, Chair Seekins suggested, it is valuable for the body to make certain amendments to the law now, since that would be the law within which the contract would fit. It may or may not include comments on collateral agreements; that is the discussion being held now. However, not amending the Stranded Gas Act at all is asking the commissioner to bring forth a contract that fits within the purposes of the existing Act; he questioned the logic of that process.

He called upon legislative drafter Dennis Bailey to address Senator Bunde's earlier question.

[8:56:35 AM](#)

SENATOR BUNDE noted that Senator Ben Stevens had suggested Amendment 10 fits within SB 2003, not SB 2004. He asked whether there is a legal problem if it is addressed in SB 2004.

DENNIS BAILEY, Attorney, Legislative Legal Services, Legislative Affairs Agency, gave an initial impression that these kinds of terms could be included in either bill. The amendments to the Stranded Gas Act appear to be an attempt by the legislature to give guidance they may not have otherwise with respect to the contract, and Mr. Bailey said he wasn't sure it made a whole lot of difference whether these kinds of terms, relating to the organization, are in SB 2003 or SB 2004.

SENATOR BUNDE asked whether it would fit under the title.

MR. BAILEY said he hadn't reviewed that specifically, especially with regard to SB 2003.

SENATOR GREEN asked whether it should be included in both.

MR. BAILEY answered that SB 2004 was his bill, and thus he was more knowledgeable about it. However, he didn't see why it needed to be in both, since one or the other would establish the law. Mr. Bailey said he would look at the titles for both to see whether there was a problem; he pointed out that the title for SB 2004 was quite broad.

SENATOR GREEN explained she'd asked because a June 2 memo from Greenberg Traurig on SB 2003 had recommended "such collateral agreements shall be subject to review and authorization by the legislature or by LB&A when the legislature's not in session." She said she was just curious.

[8:59:53 AM](#)

SENATOR BUNDE called the question on Amendment 10A.

CHAIR SEEKINS allowed further questioning of Mr. Bailey.

SENATOR GREEN asked Mr. Bailey, as drafter of Amendment 10, whether he had other concerns about the format or content.

MR. BAILEY replied that the content was part of Mr. Shepler's June 2 memo. As to whether he had concerns from a drafting perspective, Mr. Bailey said he believes it reflects the concepts that were recommended for including the policy calls suggested, using this as a mechanism to focus the administration on making these changes in the contract.

SENATOR BEN STEVENS reiterated concern that this is premature. He said he believed there had been a good discussion, talking

about components of entities yet to be formed and components of an entity template, whether called AK Pipe or PipeCo, that will be the underpinning document of participation in the equity role of the state.

9:02:20 AM

SENATOR BEN STEVENS moved to table Amendment 10.

A roll call vote of 5 yeas and 7 nays proved the motion to table Amendment 10 failed, with Senators Ben Stevens, Stedman, Hoffman, Green and Seekins voting yea and Senators Bunde, Olson, Dyson, Wilken, Elton, Kookesh and Wagoner voting nay.

CHAIR SEEKINS asked Mr. Bailey whether he saw any constitutional problems or separation-of-powers issues with any of the amendments contained in Amendment 10.

MR. BAILEY replied that he couldn't make that broad a statement and would have to review it with that in mind. He pointed out that drafts are reviewed for constitutional issues, which are relayed to the drafters.

SENATOR GREEN expressed disappointment that a drafter whose name was on the draft couldn't say whether there were constitutional issues or whether it was in proper form or followed the instructions of the requestor. She said she wanted more assurance that it didn't have constitutional or separation-of-powers issues.

MR. BAILEY requested a moment to refresh his recollection.

SENATOR BUNDE suggested the review be limited to Amendment 10A.

CHAIR SEEKINS concurred.

9:05:24 AM

SENATOR STEDMAN indicated he wanted to know any legal concerns Mr. Bailey might have about using this illustrative amendment that had been presented.

MR. BAILEY, focusing on Amendment 10A, noted it had been brought to the attention of the requestor - which he didn't think was new information to the committee - on the broader perspective of whether the legislature has the power to review administrative contracts without interfering with the administrative powers. The existing Stranded Gas Act suggests that the governor transmits the contract to the legislature, which would authorize

it; whether it would become an issue as to whether the legislature has that power is certainly a separation-of-powers question. Mr. Bailey remarked, "I don't think that there's really an answer to that question, given the context." He added that there are practical aspects of debating that issue in court, given the magnitude of the project.

CHAIR SEEKINS reported this topic was discussed at length in the Senate Judiciary Standing Committee, which he chairs; he said it is the same underlying concern as to whether it is a violation of separation-of-powers to require legislative approval of the fiscal contract, to his understanding.

MR. BAILEY agreed that is the issue.

CHAIR SEEKINS noted it was anticipated that it probably wouldn't be challenged by the administration in this case, but there is an underlying discussion of whether the legislature has authority to require its approval for the execution of a contract. He said it's an open question with respect to requiring approval of an LLC or collateral agreement that would be spawned from the fiscal contract.

MR. BAILEY suggested the second issue is a subset of the first: if the legislature is going to approve the entire contract, then approving the collateral agreements seems to be incorporated.

[9:09:03 AM](#)

CHAIR SEEKINS asked whether there was objection to Amendment 10A (revised) to SB 2004.

SENATOR BEN STEVENS objected.

A roll call vote of 7 yeas and 5 nays proved Amendment 10A passed, with Senators Bunde, Kookesh, Olson, Dyson, Wilken, Elton and Wagoner voting yea and Senators Ben Stevens, Stedman, Hoffman, Green and Seekins voting nay.

CHAIR SEEKINS explained that he'd voted "no" because he believed Amendment 10A belonged in SB 2003. He held over SB 2003 and SB 2004. (Also see the 9:26 a.m. minutes for this date.)

CHAIR SEEKINS adjourned the Senate Special Committee on Natural Gas Development meeting at [9:10:13 AM](#).