

ALASKA STATE LEGISLATURE
SENATE SPECIAL COMMITTEE ON NATURAL GAS DEVELOPMENT

June 5, 2006

9:26 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

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."

MOVED CSSB 2004(NGD) OUT OF COMMITTEE

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)	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
06/05/06	(S)	Heard & Held
06/05/06	(S)	MINUTE(NGD)
06/05/06	(S)	NGD AT 9:00 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)	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
06/05/06	(S)	Heard & Held
06/05/06	(S)	MINUTE(NGD)
06/05/06	(S)	NGD AT 9:00 AM SENATE FINANCE 532

WITNESS REGISTER

LOUISIANA CUTLER
Preston Gates & Ellis
Counsel to the Governor
Office of the Governor
PO Box 110001
Juneau AK 99811-0001

POSITION STATEMENT: Spoke about separation-of-powers issues during hearing on SB 2003 and SB 2004.

DONALD SHEPLER
Greenberg Traurig, LLP
Consultant to the Legislature

POSITION STATEMENT: Commented on proposed amendments during hearing on SB 2003 and SB 2004.

JAMES BARNES
Barnes & Cascio LLP
Consultant to the Legislature

POSITION STATEMENT: Commented on proposed amendments during hearing on SB 2003 and SB 2004.

SENATOR GENE THERRIAULT
Alaska State Legislature
Alaska State Capitol
Juneau, AK 99801-1182

POSITION STATEMENT: Presented Amendments 13 and 16 and commented on SB 2004.

LARRY OSTROVSKY, Chief Assistant Attorney General-
Statewide Section Supervisor
Oil, Gas & Mining Section
Civil Division (Anchorage)
Department of Law

PO Box 110300
Juneau, AK 99811-0300

POSITION STATEMENT: Answered questions during hearing on SB 2003 and SB 2004.

KEVIN JARDELL, Legislative Liaison
Office of the Governor
PO Box 110001
Juneau, AK 99811-0001

POSITION STATEMENT: Testified during hearing on 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: Answered questions during hearing on SB 2003 and SB 2004.

EDDY JEANS, Director
School Finance
Department of Education and Early Development (DEED)
801 West 10th Street
Juneau, AK 99801-1894

POSITION STATEMENT: Explained Amendment 14 to SB 2004 and answered questions.

STEVE VAN SANT, State Assessor
Division of Community Advocacy
Department of Commerce, Community & Economic Development
550 West 7th Avenue, Suite 1770
Anchorage, AK 99501-3510

POSITION STATEMENT: Answered questions relating to Amendment 14 to 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 Amendment 14 to SB 2004.

BOB LOEFFLER
Morrison & Foerster
Counsel to the Governor

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

POSITION STATEMENT: Answered questions relating to Amendment 16 to SB 2004.

ACTION NARRATIVE

CHAIR RALPH SEEKINS called the Senate Special Committee on Natural Gas Development meeting to order at [9:26:10 AM](#). An at-ease was taken until [9:26:46 AM](#), at which time the following members were present: Senators Bert Stedman, Ben Stevens, Gary Wilken, Con Bunde, Thomas Wagoner, Lyda Green and Chair Seekins. Senators Fred Dyson, Lyman Hoffman, Donny Olson, Kim Elton and Albert Kookesh arrived soon thereafter. Also in attendance were Senators Gary Stevens and Gene Therriault.

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. Amendment 10A to SB 2004 had been adopted at the 7:05 a.m. meeting on this same date.

[9:28:27 AM](#)

SENATOR WAGONER withdrew the remainder of Amendment 10 to SB 2004 (text provided in the 7:05 a.m. minutes), items 10B through 10Q.

CHAIR SEEKINS indicated some of these issues would be looked at under SB 2003, relating to the Alaska Natural Gas Pipeline Corporation ("PipeCo" or "AK Pipe"). Returning to the separation-of-powers issue, he called upon Ms. Cutler.

LOUISIANA CUTLER, Preston Gates & Ellis, Counsel to the Governor, highlighted a difference in her views and those of Dennis Bailey, Legislative Legal Services attorney. She opined that the separation-of-powers problem is much more acute with respect to approval of collateral agreements. Although it exists as well with regard to the fiscal contract itself, it is less acute because the legislature has two articulated powers related to taxing.

She explained that Article IX, Section 1, of the constitution indicates the legislature can contract away the taxing power but never surrender it; Section 4 talks about how the power can be contracted away. Additionally, there is the legal doctrine of

unconstitutional delegation of the taxing powers to begin with: even if it weren't contracted away for a while, there could still be an unconstitutional delegation if the legislature were not involved in that decision.

She surmised there probably wouldn't be any limited liability company (LLC) agreement if the state didn't take a share in the pipeline. It isn't directly connected to the taxing power. Although on a bigger scale, it is akin to other contracts that public corporations and the administration frequently enter into without legislative approval of the exact language; this is in contrast to providing statutory authorization to actually enter into a contract. Hence Ms. Cutler reiterated the belief that the separation-of-powers problem is worse with respect to the collateral agreements. She underscored that even Mr. Bailey recognizes there is a problem.

9:32:18 AM

SENATOR STEDMAN expressed concern about adopting an amendment despite advice, from both Legislative Legal Services and the administration's counsel, that it is unconstitutional.

CHAIR SEEKINS said it is an unanswered question. He mentioned time spent by the Senate Judiciary Standing Committee, which he chairs, on the issue of the fiscal contract and the legislature's requirement for final approval. He said the normal process would be for the commissioner, after publishing final findings of financial interest and a determination, to execute the contract. Amendments in 1998, however, gave rise to a constitutional issue: this interjects the legislature into what normally is an administrative process, and it says PipeCo's board of directors cannot approve a collateral agreement until the legislature has authorized it, to Chair Seekins' belief - or the commissioner in the first 180 days.

MS. CUTLER affirmed that.

SENATOR STEDMAN voiced concern about where the remaining components of withdrawn Amendment 10 had come from, and whether the consultants hired by the legislature had thought of them or had been handed them. Characterizing some as poison pills, he expressed disappointment that they wouldn't be addressed individually.

CHAIR SEEKINS suggested the opportunity to review some and question the consultants further would arise under SB 2003.

[9:35:22 AM](#)

SENATOR BUNDE remarked that the idea of legislative approval of a basic gas pipeline contract likely will be the subject of a court suit on the separation of powers. He surmised the amendment posed no more jeopardy than the notion that the legislature would reconvene later this summer for a yes-or-no vote on a pipeline contract. He suggested there currently are dueling attorneys and consultants.

CHAIR SEEKINS explained one reason for passage of SB 2001 by the Senate: If constitutional questions are to be decided by the court, original jurisdiction will be the Alaska Supreme Court, and they must be brought within 120 days of execution of the contract; thus constitutional questions can be answered early on. He noted some challenges are anticipated on that issue, and perhaps this one as well.

CHAIR SEEKINS returned attention to Amendment 12 to SB 2004, labeled 24-GS2046\A.14, Bailey, 6/4/06, which read:

A M E N D M E N T 12

OFFERED IN THE SENATE

TO: SB 2004

Page 1, line 12, following "state":

Insert ", including gas pipeline pricing that encourages further gas exploration"

CHAIR SEEKINS informed members that in order to make that sentence consistent with what the drafters believe the intent to be, they suggest the following: insert "expansion" after "pipeline".

[9:37:52 AM](#)

SENATOR GREEN moved to rescind the committee's action on 6/4/06 in adopting Amendment 12. There being no objection, it was so ordered.

SENATOR HOFFMAN moved to adopt Amendment 12 to SB 2004, as amended to include the aforementioned word "expansion". There being no objection, it was so ordered.

[9:39:43 AM](#)

SENATOR WILKEN returned to withdrawn Amendment 10 to SB 2004. He asked Senator Stedman to specify which components he believed to be the most disturbing. He explained that if egregious items

will show up tomorrow or next month, he'd like to know about them while the consultants who can address them are here.

SENATOR STEDMAN answered he hadn't marked those.

CHAIR SEEKINS requested that Senator Stedman work on it for the future.

SENATOR BEN STEVENS highlighted what he termed a poison pill for success, on page 3, lines 8-10, of Amendment 10, which read:

(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;

He indicated the aforementioned document was funded with the \$125 million by the sponsors in 2000, and he suggested it is a poison pill because it limits success. The team leaders of the Qualified Project Plan are the experts - engineers and financial members - that will build the line, he noted.

SENATOR STEDMAN informed members that one egregious component of Amendment 10 was item (16):

(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;

He highlighted "must" and "shall", saying he read it as specifying and controlling how the other members would have their capital structure within this LLC.

SENATOR WAGONER pointed out he'd withdrawn these because of time constraints, but suggested they could be brought back and discussed individually if the committee so wished.

CHAIR SEEKINS proposed addressing components of withdrawn Amendment 10 later, and going on to Amendment 11, labeled 24-GS2046\A.11, Bailey, 6/3/06.

SENATOR DYSON withdrew Amendment 11, explaining that revised language was being distributed as Amendment 13. He offered Amendment 13 to SB 2004, labeled 24-GS2046\A.16, Bailey, 6/5/06, which read:

A M E N D M E N T 13

OFFERED IN THE SENATE
TO: SB 2004

Page 6, following line 18:
Insert new bill sections to read:

"* **Sec. 11.** AS 43.82.400(a) is amended to read:

(a) If the commissioner develops a proposed contract under AS 43.82.200 - 43.82.270, the commissioner shall

(1) make preliminary findings and a determination that the proposed contract terms are in the long-term fiscal interests of the state and further the purposes of this chapter;
[AND]

(2) prepare a proposed contract that includes those terms and shall submit the contract to the governor; and

(3) submit to the governor all documents related to the ownership, governance, management, control, and operation of the project and participating entities at the same time the contract is submitted under (2) of this subsection.

* **Sec. 12.** AS 43.82.410 is amended to read:

Sec. 43.82.410. Notice and comment regarding the contract. The commissioner shall

(1) give reasonable public notice of the preliminary findings and determination made under AS 43.82.400;

(2) make copies of the proposed contract, the commissioner's preliminary findings and determination, the documents required under AS 43.82.400(a)(3), and, to the extent the information is not required to be kept confidential under AS 43.82.310, the supporting financial, technical, and market data, including the work papers, analyses, and recommendations of

any independent contractors used under AS 43.82.240 available to the public and to

(A) the presiding officer of each house of the legislature;

(B) the chairs of the finance and resources committees of the legislature; and

(C) the chairs of the special committees on oil and gas, if any, of the legislature;

(3) offer to appear before the Legislative Budget and Audit Committee to provide the committee a review of the commissioner's preliminary findings and determination, the proposed contract, and the supporting financial, technical, and market data; if the Legislative Budget and Audit Committee accepts the commissioner's offer, the committee shall give notice of the committee's meeting to the public and all members of the legislature; if the financial, technical, and market data that is to be provided must be kept confidential under AS 43.82.310, the commissioner may not release the confidential information during a public portion of a committee meeting; and

(4) establish a period of at least 90 [30] days for the public and members of the legislature to comment on the proposed contract and the preliminary findings and determination made under AS 43.82.400.

* **Sec. 13.** AS 43.82.430(b) is amended to read:

(b) After considering the material described in (a) of this section and securing the agreement of the other parties to the proposed contract regarding any proposed amendments prepared under (a) of this section, if the commissioner determines that the contract is in the long-term fiscal interests of the state, the commissioner shall submit the contract with the supporting documentation, including the documents required under AS 43.82.400(a)(3) to the governor.

* **Sec. 14.** AS 43.82.435 is amended to read:

Sec. 43.82.435. Legislative authorization.

The governor may transmit a contract developed under this chapter with the supporting

documentation, including the documents required under AS 43.82.400(a)(3) to the legislature together with a request for authorization to execute the contract. A contract developed under this chapter is not binding upon or enforceable against the state or other parties to the contract unless the governor is authorized to execute the contract by law. The state and the other parties to the contract may execute the contract within 60 days after the effective date of the law authorizing the contract."

Renumber the following bill sections accordingly.

Page 10, line 23:

Delete "Sections 1 - 12, 15, 16, and 18"

Insert "Sections 1 - 16, 19, 20, and 22"

Page 10, line 25:

Delete "Section 17"

Insert "Section 21"

SENATOR DYSON asked Mr. Shepler and others to explain why Amendment 13 is valuable.

[9:45:01 AM](#)

DONALD SHEPLER, Greenberg Traurig, LLP, Consultant to the Legislature, introduced himself, informing listeners that he is an attorney in his firm's Washington, D.C., office.

JAMES BARNES, Barnes & Cascio LLP, Consultant to the Legislature, explained that the state, in looking at this fiscal contract, is being asked to make a current decision with respect to the nature of its investment. He referred to the following language in Amendment 13:

(3) submit to the governor all documents related to the ownership, governance, management, control, and operation of the project and participating entities at the same time the contract is submitted under (2) of this subsection.

He noted a board of directors typically wants to see those items and be included in the decision. Mr. Barnes surmised the intent of Amendment 13 is to give the state an opportunity to look at the full picture of the investment to which it is being asked to commit. While much of this information will have been obtained

at the decision point for the other parties - in perhaps four or five years - the same isn't necessarily true for the state at the point where it will consider the fiscal contract.

SENATOR BUNDE asked whether the issue is that the commissioners don't have access to this information. He noted the governor would have access through the commissioners.

MR. BARNES said he wasn't personally involved in drafting this amendment. He deferred to Phillip Gildan, a consultant to the legislature on teleconference.

The committee took an at-ease from [9:49:20 AM](#) to [9:59:31 AM](#) to fax a copy of Amendment 13 to Mr. Gildan.

SENATOR DYSON moved to divide Amendment 13. Amendment 13A would be all except page 2, lines 16-18, of the amendment. Amendment 13B would be page 2, lines 16-18, as follows:

A M E N D M E N T 13B

(4) establish a period of at least **90** [30] days for the public and members of the legislature to comment on the proposed contract and the preliminary findings and determination made under AS 43.82.400.

[10:00:53 AM](#)

SENATOR DYSON indicated he was offering these amendments as a courtesy to Senator Therriault and would let him and his consultants explain.

SENATOR GENE THERRIAULT, Alaska State Legislature, explained that Amendment 13B is to expand the comment period. This was addressed in the Senate Judiciary Standing Committee as part of SB 316 during the regular session; due to the complexity of the overall package, he'd proposed an amendment to provide additional time to understand the contract and submit input to the administration, which would benefit legislators, the general public and other oil and gas companies in Alaska.

He recalled debate in the administration as to whether public comment should be at least 30 days or up to 90 days; he also recalled the governor saying it should be at least 45. Senator Therriault reported, however, that during discussion of SB 316 he'd heard from smaller companies that have in-house counsel who were scrambling to understand the full impact of the contract in order to give meaningful input during the public comment period;

they wanted a minimum of 60 days, and had said 60 to 90 days would provide time for meaningful comment. Furthermore, some small companies such as Anadarko or Pioneer might not even have in-house counsel, and their hired counsel would need time to get up to speed before even making recommendations to them.

He noted he'd originally suggested 90 days. In the Senate Judiciary Standing Committee, however, the administration indicated up to 60 days was acceptable but 90 days was a bit long; thus that committee changed it to 60. Although 90 days is proposed in the amendment, Senator Therriault deferred to the current committee to decide whether to change it to 60, which would add two weeks to the 45 days stated by the administration. This would provide an opportunity to comment, not only for legislators, but also for petroleum companies in Alaska that are concerned about open access and other provisions.

SENATOR BEN STEVENS brought attention to the following language in withdrawn Amendment 11:

(3) if state participation is proposed, submit to the governor all documents reasonably related to the ownership, governance, management, and control of the state's participation at the same time the contract is submitted under (2) of this subsection.

He pointed out parallel language in proposed Amendment 13A:

(3) submit to the governor all documents related to the ownership, governance, management, control, and operation of the project and participating entities at the same time the contract is submitted under (2) of this subsection.

He reiterated his concern voiced on a previous amendment: It is unreasonable to complete this in the next 45 or 90 days. Senator Ben Stevens also said if that portion of the project is part of the requirement before the contract can be presented to the legislature, they might as well delay determination until there is a FERC Qualified Project Plan and a certificate of public convenience is issued, since, as he interprets it, it won't ever be satisfied.

[10:08:49 AM](#)

CHAIR SEEKINS returned attention to proposed Amendment 13B, relating to the comment period.

SENATOR THERRIAULT, in response to discussion of the deadline dates, reiterated the concern of smaller companies: they don't know whether should be scrambling now, since day 45 might be the deadline, and want 60 to 90 days for meaningful comment. He also reiterated his earlier explanation.

SENATOR BEN STEVENS paraphrased part of AS 43.82.430(a), noting the commissioner of revenue shall provide the findings to the legislature within 30 days after the close of public comment.

10:13:37 AM

LARRY OSTROVSKY, Chief Assistant Attorney General-Statewide Section Supervisor, Oil, Gas & Mining Section, Civil Division (Anchorage), Department of Law, stated his belief that the administration would agree to 60 days.

10:14:22 AM

SENATOR DYSON moved to adopt Amendment 1 to Amendment 13B, to replace 30 days with 60 days. There being no objection, it was so ordered.

CHAIR SEEKINS asked if there was any objection to Amendment 13B as amended.

SENATOR BEN STEVENS objected.

A roll call vote of 8 yeas and 4 nays proved Amendment 13B as amended passed, with Senators Bunde, Olson, Kookesh, Dyson, Wilken, Elton, Hoffman and Wagoner voting yea, and Senators Stedman, Ben Stevens, Green and Seekins voting nay.

10:15:50 AM

SENATOR BEN STEVENS moved to table SB 2004 until no sooner than the week of July 10, 2006.

SENATOR BUNDE asked why that date was chosen.

SENATOR BEN STEVENS answered that it equals the time just adopted, no sooner than 60 days from the public comment period.

CHAIR SEEKINS opined that the effect would be a 30-day comment period if SB 2004 isn't adopted, since the commissioner would be compelled, under current law, to bring the final version back to the legislature anytime after 30 days from May 10. There would be no extension of time. It would be at the discretion of the governor, who has stated it would be 45 days or whatever it

takes. In effect, anytime after that 45-day commitment the governor could bring the contract back to the legislature in its final form.

An initial roll call vote was 7 yeas and 5 nays, with Senators Bunde, Olson, Kookesh, Ben Stevens, Stedman, Hoffman and Green voting yea, and Senators Dyson, Wilken, Elton, Wagoner and Seekins voting nay. Senator Bunde changed his vote from yea to nay. Therefore, the motion to table SB 2004 until no sooner than the week of July 10, 2006, failed by a vote of 6-6.

The committee took an at-ease from [10:20:05 AM](#) to [10:58:41 AM](#).

SENATOR HOFFMAN moved to rescind the committee's action in adopting Amendment 10A to SB 2004 during the 7:05 a.m. meeting. Containing the first section of Amendment 10, as revised during that meeting to contain only lines 1-8, Amendment 10A 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 GREEN put a call on committee members.

CHAIR SEEKINS announced discussion would continue meanwhile.

SENATOR DYSON objected for discussion purposes, asking why Senator Hoffman wanted to withdraw Amendment 10A.

SENATOR HOFFMAN explained that previous dialogue suggested there isn't oversight over major corporations such as the Alaska Permanent Fund Corporation. Having it in this particular Act would cause further problems, and he voiced concern about what

the "majors" would think of it. He stated his belief that it is bad policy.

KEVIN JARDELL, Legislative Liaison, Office of the Governor, informed members that the administration strongly opposes the amendment and thus supports its rescission. He said it is clear from testimony in the Senate and House that members are looking for answers about how the collateral agreements will be structured and what they'll contain.

He told members that throughout the Stranded Gas Act, it clearly is the administration's burden to get that information to legislators and ensure their comfort with what has been put together in the contract before the legislature votes on it. Mr. Jardell stated the intention of carrying that burden throughout the education process until hopefully there is a ratification vote in the legislature.

He voiced concern, however, that Amendment 10A - which similarly tries to get the legislature to understand the contract's contents - has what he hopes is an unintended consequence: killing any contract and not allowing a commercial project like this to go forward. Mr. Jardell opined that every application received - not just those from the producers - would require significant collateral agreements in the future, and that this amendment, forcing those to come back to the legislature, would preclude the ability to proceed on any application.

[11:03:10 AM](#)

SENATOR DYSON recalled that consultants had previously posited that the state is in a weak position in relation to its other partners in this venture. He asked whether the administration believes its position is strong enough to protect the interests of the people of Alaska.

MR. JARDELL related the belief that the contract necessary protections while achieving a extremely beneficial outcome for the State of Alaska. He added, "We think we fully comply with the purpose and the intent of the Stranded Gas Act, which was to go out and negotiate a deal to get the gas to market." Expressing appreciation for members' comments and work by legislative consultants, he explained that the administration sends comments to its team to analyze; it's part of the process outlined in the Stranded Gas Act. For those with merit, Mr. Jardell stated the intent to see if there is a need to renegotiate those pieces back into the final contract before bringing it to the legislature.

He said those comments and input are vital to making the Stranded Gas Act work and ensuring the contract is one the legislature can support. However, he highlighted the difference between setting it out in law - where there is no flexibility to negotiate any portion - and providing input, with the expectation that the administration will try to negotiate certain changes. If the language is too restrictive, Mr. Jardell cautioned, it hinders the ability to comply with the Stranded Gas Act and negotiate the final deal.

[11:06:02 AM](#)

MR. JARDELL, in response to Senator Bunde, stated the expectation of providing members of the legislature with an LLC agreement and other pattern agreements and frameworks to look at. He added, "We intend to make sure you have enough information to feel comfortable that the contract that we have agreed to is in the best interest of the State of Alaska, and allow it to be ratified."

SENATOR BUNDE asked whether there is an awareness that the contract likely won't be approved by the legislature if good information isn't provided.

MR. JARDELL replied yes, indicating the administration is aware of the burden it has and the responsibility to ensure the decision by the legislature is an educated and informed one.

[11:08:41 AM](#)

SENATOR OLSON asked Mr. Jardell to specify the unintended consequences of Amendment 10A.

MR. JARDELL responded that he believes legislators are trying, with Amendment 10A, to gather information and comfort themselves that they'll have that information before voting on the contract. However, he opined that the consequence - which he hopes is unintended - would be to kill the contract or other contracts because of the uncertainty, not knowing if there is an ability to do collateral agreements and get them signed off by the partners in the project in a timely fashion, years from now, without waiting for a session and going before the legislature to sign the collateral agreements.

He further responded that not having the legislature in session to sign an agreement and thus delaying a commercial project is one problematic possibility; as far as not allowing the partners to go forward in a timely manner, however, there are many

possibilities. In response to Senator Wagoner, he indicated he was expressing the administration's views, formed from looking at the issues, rather than relating the producers' views.

SENATOR ELTON opined what was intended with the amendment wasn't that every future contract done by PipeCo or another entity would require approval, but that the legislature would approve the charter or recipe under which the entity operates; he expressed comfort with that.

CHAIR SEEKINS observed it says each collateral agreement would be a condition subsequent to the fiscal contract. He remarked, "Tied back to the fiscal contract is pretty heavy."

MR. JARDELL responded that the administration believes, through the Stranded Gas Act process in the coming weeks and the information process, that the legislature will be fully informed of the intent of the administration and the producers with regard to what they'll be signing, and the patterns and forms of that. He added, "If, in the event we don't provide that information, then we could certainly have opportunities for the legislature to weigh in on that and let the administration know that we need to provide more information or have other tools available to you, to ensure that we do."

[11:13:46 AM](#)

SENATOR HOFFMAN reminded members that the motion before them was to rescind the committee's action, during the 7:05 a.m. meeting, in adopting Amendment 10A.

CHAIR SEEKINS announced all members were present.

SENATOR GREEN pointed out awkward wording in Amendment 10A:

Insert "Each collateral agreement shall be a condition subsequent to the proposed contract developed under this chapter shall be subject to

CHAIR SEEKINS suggested "and" is needed there.

[11:14:34 AM](#)

CHAIR SEEKINS asked whether there was any objection to the motion to rescind the committee's action in adopting Amendment 10A.

SENATOR ELTON and SENATOR WAGONER objected.

A roll call vote of 8 yeas and 4 nays proved the motion passed, with Senators Stedman, Bunde, Kookesh, Ben Stevens, Olson, Hoffman, Green and Seekins voting yea, and Senators Dyson, Wilken, Elton and Wagoner voting nay.

CHAIR SEEKINS indicated the original motion to adopt Amendment 10A was before the committee again.

SENATOR GREEN concurred with Chair Seekins' assessment that "and" was missing between "chapter" and "shall".

CHAIR SEEKINS related his experience that good agreements make good partners. He highlighted the difficulty in feeling comfortable without seeing the template that goes along with the LLC and that might evolve into further collateral agreements. He also emphasized this is a long-term project that will benefit his grandchildren and their generation. He asked why it had taken longer than anticipated to see the template.

MR. JARDELL replied that he couldn't define the difficulties, other than trying to get it right. Noting he hadn't been deeply involved with the negotiations of the LLC, he indicated someone else from the administration might be able to speak to that. In further response, Mr. Jardell said he believes it is fair to characterize the situation as each party negotiating with the others.

CHAIR SEEKINS invited questions of the experts relating to Amendment 10A.

11:20:08 AM

SENATOR THERRIAULT called attention to SB 2004, page 7, subsection (e), beginning at line 14, which defines what "collateral agreement" includes. He said he wasn't sure from the discussion whether the legislature would have to approve all these decisions made by these corporations. The definitions narrow it, however, so it is just when the state sets up the business or gets into the business operation. All decisions of the business operations wouldn't be overseen.

CHAIR SEEKINS asked whether this relates to a specific timeframe or is a continuum in time.

SENATOR THERRIAULT opined it's a continuum.

CHAIR SEEKINS concurred with that understanding. He recalled testimony that in Canada it would be a joint venture, rather

than an LLC, and in other states it might be another type of corporation. He asked Mr. Donohue whether that is correct.

JOSEPH K. DONOHUE, Preston Gates & Ellis, Counsel to the Governor, emphasized this collateral-agreement power is a transitional power that the Department of Revenue (DOR) commissioner has for 180 days after the effective date of the authorization Act. That authority relates to agreements entered into by the state with, potentially, the affiliates and parent companies of the producers; it would be an administrative contract that lines up those parties which will actually carry out the contract, with the terms and conditions of the fiscal contract that has been approved.

He said once the "AK Pipe" legislation is enacted, the two commissioners would be able to act on behalf of the public corporation for up to 120 days. Thereafter, the public corporation would take full responsibility for negotiating and executing any remaining LLC agreements. Mr. Donohue said the administration will make every effort to have a template; in fact, he understands it will be more than a template - it will be the mainline LLC agreement, presented when the legislature has the opportunity to review the fiscal contract.

CHAIR SEEKINS asked: After the transition period, would the restriction under Amendment 10A no longer be in effect for any future LLC that the board of directors would enter into?

MR. DONOHUE replied that Amendment 10A reads "as a condition subsequent" and would continue beyond the transitional power.

SENATOR ELTON surmised it's a limitation of the commissioner's ability to negotiate a collateral agreement, and that power lapses 180 days after the effective date of the law that authorizes the contract. He asked whether it's correct that the limitation in the amendment would probably only be applied to the mainline-entity LLC.

MR. JARDELL replied no. He opined the "condition subsequent" would require a continuing obligation to bring those back before the legislature. He said the administration believes the only commercial, viable option is to give that public corporation the ability to enter into those agreements without having to come back each time to the legislature for approval.

[11:26:26 AM](#)

SENATOR GREEN objected to Amendment 10A.

A roll call vote of 4 yeas and 8 nays proved Amendment 10A failed, with Senators Dyson, Wilken, Elton and Wagoner voting yea, and Senators Ben Stevens, Kookesh, Stedman, Bunde, Hoffman, Olson, Green and Seekins voting nay.

[11:27:39 AM](#)

SENATOR HOFFMAN asked Mr. Jardell to address the earlier adoption of Amendment 13B, establishing a period of at least 60 days for the public and members of the legislature to comment.

MR. JARDELL answered that the governor, on a number of occasions, has said the process should be as long as necessary to get adequate information to the public and, more importantly, to listen to the public and the legislature. Today Governor Murkowski would announce the third phase of the public process, which includes going back to communities and having panel-type discussions and more interaction, providing as many means of giving information as possible. Mr. Jardell stated support for leaving it as is, since it provides the most flexibility under the Stranded Gas Act to ensure the process can be completed when there has been adequate information back and forth.

[11:31:03 AM](#)

SENATOR HOFFMAN moved to rescind the committee's action in adopting Amendment 13B.

SENATOR BUNDE objected.

SENATOR HOFFMAN explained that the language says "at least" and thus it could go 60 or 100 days.

CHAIR SEEKINS alluded to Mr. Ostrovsky's opinion, stated that day prior to when Amendment 13B was adopted, that the administration wouldn't object. He asked Mr. Jardell, "Are you objecting?"

SENATOR HOFFMAN said if that was the testimony, he would withdraw his motion.

[11:32:18 AM](#)

MR. JARDELL related the belief that the original Stranded Gas Act provides the greatest flexibility, and with the governor's commitment to get the information out to the public, sticking with 30 days is the way to go. In response to Chair Seekins and Senator Elton, Mr. Jardell reiterated his earlier remarks, including that the governor has committed to taking as much time

as necessary; he clarified it wasn't he who'd testified earlier and said the position hadn't changed.

SENATOR OLSON also recalled the opinion stated earlier by Mr. Ostrovsky.

SENATOR WILKEN spoke in support of 60 days and said it is a moot point, given what Mr. Jardell said about taking the process to the communities. He added that supporting the 60 days would give his constituents an indication of the willingness to take whatever time is needed.

[11:35:50 AM](#)

SENATOR HOFFMAN withdrew his motion to rescind the committee's action in adopting Amendment 13B.

The committee took an at-ease from [11:36:26 AM](#) to [1:32:47 PM](#).

[1:33:29 PM](#)

MR. BARNES explained a chart, "Annex 2: Possible Gas Pipeline Structure," attached to a memo he'd submitted a week ago. He said it's a possible structure of what he thinks is contemplated by the fiscal contract; it shows a general corporate structure, with parent entities and subsidiary organizations including marketing affiliates of the prospective parties in the fiscal contract.

He pointed out that there'd be a pipeline-owning affiliate for each party, for example. The entities would be connected by the flowing gas, and there would need to be coordination among them and also some financing arrangements, perhaps including use of the federal loan guarantee. Mr. Barnes noted SB 2003 sets up governance arrangements for "AK PipeCo."

He explained that "AK GasCo," the gas-owning entity that may be an arm of the state or separate state corporation, is the "state capacity holder" under the fiscal contract; it would have its own governance arrangements and would have the ship-or-pay commitment. Whether it would be guaranteed by the state or some other financing arrangement remains to be seen. Noting the fiscal contract seems to contemplate concerted action by the parent entities in arranging regulatory approval - in Canada and Alaska, and perhaps in the Lower 48 - Mr. Barnes said it seems there should be "undertaking coordination" and perhaps a guarantee arrangement.

[1:39:39 PM](#)

SENATOR WILKEN asked about the significance of the vertical solid and dotted lines on the chart.

MR. BARNES answered that the colored boxes are already established entities, and the solid lines indicate the relationship is known. For example, BP already has a gas-marketing affiliate, to his belief. For the state's entities, however, it isn't known; there is pending legislation on AK PipeCo, but apparently not on AK GasCo.

The committee took an at-ease from [1:41:24 PM](#) to [1:41:43 PM](#).

SENATOR BUNDE moved to adopt conceptual Amendment 15 to SB 2004, to delete Section 11. He explained that although there'd been substantial input from various entities about Section 11, relating to collateral agreements, it isn't ripe for action yet and there isn't enough information.

SENATOR BEN STEVENS proposed also deleting page 2, lines 27-29, relating to collateral agreements.

[1:43:30 PM](#)

SENATOR BUNDE accepted that as a friendly amendment.

CHAIR SEEKINS asked whether there was any objection to adopting Amendment 15 as amended. There being no objection, it was so ordered.

[1:44:06 PM](#)

SENATOR WILKEN moved to adopt Amendment 14, labeled 24-GS2046\A.18, Bailey, 6/5/06, which read:

A M E N D M E N T 14

OFFERED IN THE SENATE BY SENATOR WILKEN
TO: SB 2004

Page 1, line 5, following "**contract;**":

Insert "**relating to determination of full and true value of property and required contributions for education in municipalities affected by stranded gas fiscal contracts;**"

Page 10, following line 1:

Insert a new section to read:

"* **Sec. 16.** AS 43.82 is amended by adding a new section to article 7 to read:

Sec. 43.82.650. Calculations of education funding. To determine the amount of required local contribution under AS 14.17.410(b)(2) and (c) for a school district in a revenue-affected municipality, and to perform its duties under AS 14.17.510, the Department of Commerce, Community, and Economic Development shall adopt regulations. The regulations must establish assessment standards for any property that would have been assessed under AS 43.56 but is instead generating a payment to a revenue-affected municipality in lieu of a municipal property tax as provided in a contract developed under this chapter. The regulations must ensure that the property is included in the full and true value of the city or borough school district for the purpose of determining required local contributions for education funding under AS 14.17.410(b)(2) and (c)."

Renumber the following bill sections accordingly.

Page 10, line 23:

Delete "Sections 1 - 12, 15, 16, and 18"

Insert "Sections 1 -12, 15 - 17, and 19"

Page 10, line 25:

Delete "Section 17"

Insert "Section 18"

SENATOR WILKEN objected for discussion purposes. He provided a spreadsheet, "Local School Funding Worksheet: Comparison with Oil & Gas Properties Included and Excluded from the Full & True Value," prepared by Steve Van Sant, the state assessor. Senator Wilken explained that the Foundation Formula has a provision that depends on basic need or 45 percent of prior basic need; because of going to a throughput method of valuation, the "full and true value" component would be pulled with respect to education funding.

He noted this affects any borough using AS 43.56 to fund its schools, but particularly Valdez and the North Slope Borough. Fairbanks would lose about 2 percent of its funding and Kenai 6 percent, whereas the North Slope Borough would lose 80 percent and Valdez 30 percent. Amendment 14 is to fix this problem. Senator Wilken deferred to Mr. Jeans and Mr. Van Sant.

[1:46:53 PM](#)

EDDY JEANS, Director, School Finance, Department of Education and Early Development (DEED), explained that DEED receives an annual report from the Department of Commerce, Community & Economic Development (DCCED), from the state assessor, showing the full-value determination for each municipality; his department uses that to calculate the required local contribution. Amendment 14 requires the state assessor to continue, for the purposes of DEED, to include the value of the oil and gas under AS 43.56 in making that full-value determination. It keeps the program as it currently is for calculating required local effort for public schools.

[1:48:10 PM](#)

SENATOR STEDMAN asked whether, with Amendment 14, it would be treated as today, with one-half of the assessed value over 1999 included.

MR. JEANS replied it would continue as is. This tells the state assessor how to calculate the full-value determination for a given year. It preserves both parts of the Foundation Formula for the required local contribution in terms of 1) how the full value is determined and 2) how it is applied in the formula. The "50 percent" provision referred to by Senator Stedman, in another section, isn't affected.

SENATOR STEDMAN asked whether today the Trans-Alaska Pipeline System (TAPS) is treated differently from other real property, with an assessed value at 100 percent, not the 1999 level plus one-half the growth after 1999.

MR. JEANS indicated he didn't know.

[1:50:10 PM](#)

SENATOR WILKEN informed members that the Municipal Advisory Group (MAG) had provided Resolution 2006-03, Issues Related to Effects of the Stranded Gas Act Contract on Education Funding, which led to this amendment.

[1:51:03 PM](#)

STEVE VAN SANT, State Assessor, Division of Community Advocacy, Department of Commerce, Community & Economic Development, answered Senator Stedman's question, saying TAPS is treated like other real property. This amendment assures that the full value continues to contain the value for oil and gas properties; the department will come up with regulations. This will preclude any revenue loss for Valdez or the North Slope Borough. He

noted the second page of his spreadsheet shows the North Slope Borough would lose about \$15.7 million and Valdez almost \$1 million in additional school funding if the value of oil and gas weren't included in the full and true value.

SENATOR OLSON voiced appreciation, saying his constituents would be incensed if this weren't equilibrated in some way.

JIM BALDWIN, Counsel to the Office of the Attorney General, informed members that he agreed with everything Mr. Jeans had said with respect to the effect of Amendment 14.

[1:53:31 PM](#)

CHAIR SEEKINS asked whether there was any objection to adopting Amendment 14. There being no objection, it was so ordered.

The committee took an at-ease from [1:53:44 PM](#) to [1:56:44 PM](#).

SENATOR THERRIAULT returned attention to Amendment 13A. He informed members that he'd asked the drafter to work on language following this morning's discussion, but hadn't received anything yet. Noting concern had been expressed about where that requirement was placed in the process, he reported the drafter had suggested it would be "replaced in the process that we're already well into." Thus he'd asked the drafter to recast the language. He referred to page 1, lines 11-13, of the amendment, which read:

(3) submit to the governor all documents related to the ownership, governance, management, control, and operation of the project and participating entities at the same time the contract is submitted under (2) of this subsection.

He indicated that the language he'd asked the drafter to shrink it to would read: "all documents related to the ownership, governance, management, control, and coordination of the project and participating entities". This would be inserted where the underlined language is on line 20 of the amendment, which read: "the documents required under AS 43.82.400(a)(3)". Thus Senator Therriault said that information would be required at a point in the process not yet reached.

[1:58:06 PM](#)

CHAIR SEEKINS noted Amendment 13A relates to Section 11, collateral agreements, deleted by Amendment 15. He suggested Amendment 13A therefore should lie on the table.

SENATOR THERRIAULT concurred, saying it seems if there is going to be a collaborative process and there is some discussion with the administration about the need for the legislature to have details about those entities, it could wait until then.

CHAIR SEEKINS said that is the intent. He announced no action would be taken on Amendment 13A.

The committee took an at-ease from [1:58:57 PM](#) to [2:00:04 PM](#).

SENATOR WAGONER informed members that during the coming roundtable discussions he'd like to address page 2, lines 21-24, of SB 2004, regarding oil and gas lease agreements and unit agreements. In particular, he'd like consultants on both sides to discuss leases that are rolled into the contract, including the effect on current leases and what the state stands to gain or lose. He opined that this amendment would put quite a bit more authority into the commissioner's toolbox, and he suggested it should be looked at thoroughly before doing so.

[2:03:06 PM](#)

SENATOR WILKEN moved to adopt Amendment 16, labeled 24-GS2046\A.17, Wayne, 6/5/06, which read:

A M E N D M E N T 16

OFFERED IN THE SENATE

TO: SB 2004

Page 3, line 26:

Delete "a new subsection"

Insert "new subsections"

Page 4, following line 2:

Insert a new subsection to read:

"(c) Nothing in a contract under this chapter diminishes the legal authority of the Regulatory Commission of Alaska or indemnifies any person or entity from future decisions of the Regulatory Commission of Alaska or a successor to the Regulatory Commission of Alaska."

SENATOR THERRIAULT explained that Amendment 16 relates to an issue of concern to him since discussions at Centennial Hall. He recalled legislation a couple of years ago that proposed to limit the powers of the Regulatory Commission of Alaska (RCA) in

regulating the oil pipeline. Now the proposed gas contract suggests FERC will be relied upon to regulate this "monopoly transportation system." However, FERC is a federal creation and may not exist in the future.

He related his understanding of the contract language: If FERC doesn't exist, the only regulation would be through business agreements; RCA couldn't step in. Senator Therriault questioned prohibiting RCA, the state's own entity, from acting as a buffer between this monopoly and the consumers in this situation. Thus the amendment would direct the administration that the contract isn't to increase RCA's powers, but wouldn't diminish them either; it would apply to RCA or its successor agency.

He also said the contract language suggests that even if RCA acted in its regulatory role and caused an impact to the companies, the state would somehow indemnify them. Senator Therriault told members he couldn't think of when the state would do that, except to mitigate the effect of a tariff believed to be too high. If a tariff is too high, it would be subtracted from the state's wellhead value, he suggested, and thus the RCA would be doing exactly what was desired - maintaining a lower tariff, to the benefit of consumers and the State of Alaska.

[2:07:01 PM](#)

CHAIR SEEKINS surmised the intent is not to set up dueling regulatory agencies, but to look for a successor if FERC "goes away."

SENATOR THERRIAULT clarified it's also if FERC determines a portion of the operation doesn't fall within its jurisdiction.

[2:07:36 PM](#)

CHAIR SEEKINS asked Mr. Shepler what chance there is that FERC will dissolve without a successor.

MR. SHEPLER noted he hadn't thought about it much, but pointed out that FERC dates from 1938 in various forms. Although nothing prohibits Congress from amending the Natural Gas Act - the source of FERC's power over this pipeline system - he opined there isn't a very high probability. More problematic, however, is that some pieces of the contemplated system might not be found to be subject to FERC's jurisdiction.

He said everyone agrees the pipeline itself would be subject to FERC regulation. The treatment plant, in his opinion, probably

would be. For feeder lines or gas-transmission lines and the natural gas liquids (NGL) plant, though, Mr. Shepler said it is unclear, the further upstream one goes, whether FERC will assert jurisdiction or be affirmed in that jurisdiction.

CHAIR SEEKINS asked whether RCA would have regulatory authority outside Alaska.

MR. SHEPLER said he wouldn't think so. He noted RCA has its own statutory regulatory authority.

[2:10:44 PM](#)

CHAIR SEEKINS surmised spur lines, for example, wouldn't be regulated by FERC, and thus would be regulated by RCA.

MR. SHEPLER said that could be. In further response, he specified this applies where FERC either doesn't assert authority or is found to lack authority. For a line taking gas from the main line to Fairbanks or Anchorage, for instance, RCA would have jurisdiction under current federal statutes.

CHAIR SEEKINS cautioned against possibly setting up dueling authorities under the proposed language.

[2:12:30 PM](#)

SENATOR BUNDE suggested there will always be gray areas between FERC and RCA jurisdiction. This precludes the opportunity for someone to escape regulation by either entity.

[2:13:12 PM](#)

CHAIR SEEKINS confirmed Mr. Loeffler was on teleconference now and read from Amendment 16.

BOB LOEFFLER, Morrison & Foerster, Counsel to the Governor, began by saying the intent of the contract provision relating to RCA was to clarify where federal jurisdiction lies, as part of the overall effort toward fiscal certainty; in his mind, there was no intent to change the jurisdiction. He opined that it corresponds to federal law, which on this project would include the main line; the gas treatment plant (GTP); and, to his belief, the upstream feeder lines, which wouldn't be making deliveries in Alaska, but would be feeding into an interstate pipeline.

He agreed it is a remote possibility that FERC could go away, although it has been in business, in some form, since 1938. Mr. Loeffler highlighted a constitutional question as to whether

the federal government has authority to regulate an area. If it changes the form of regulation, does that open the area for regulation by the state?

He cited the Narragansett case, relating to electricity, as suggesting states cannot step in and regulate interstate commerce, even if the federal government hasn't acted to regulate that area. Therefore, in the hypothetical and remote case that Congress decides FERC should have a different form of regulation or not regulate part of the interstate gas business, Mr. Loeffler said he couldn't give the opinion that the state could step in.

He turned to Amendment 16, noting he hadn't seen it previously. After reading portions out loud, he said, "Yes, the contract does contain a possible indemnification, with a lot of hurdles and limitations before you get to it. So, from the point of view of the administration, we couldn't agree to that, consistent with the tentative contract that we ... will put before you."

[2:17:48 PM](#)

MR. LOEFFLER emphasized there are limitations on loss that apply to the indemnification clause as well as any other loss under the contract; they remove the largest potential exposure if there ever is a loss situation. "So we don't agree, as far as I know, with the indemnity language in the amendment, because it's inconsistent with what we've negotiated," he told members. Mr. Loeffler also questioned what the first half of the sentence does beyond stating a truism: if RCA doesn't have jurisdiction, it isn't changed, and if it does, it isn't changed.

[2:18:52 PM](#)

SENATOR STEDMAN suggested Amendment 16, targeted to go under AS 43.82.200, contract development, doesn't seem to fit well. He asked why it isn't under AS 43.82.610, regulation.

SENATOR THERRIAULT explained that he'd written this language last night and had asked the drafter where it fits. Stating the intention that RCA's ability to utilize its statutory power wouldn't be precluded in the contract, Senator Therriault requested an example where RCA exercises its power such that it needs to be indemnified under the contract. With respect to RCA's regulation of this transportation system where the feeder lines come into it, he surmised it would be to ensure the tariff isn't too high.

He also wondered whether that is what the current contractual language tries to indemnify in case RCA makes that determination in the future. If they do, Senator Therriault said, his opinion is that it would be to the benefit of consumers and the State of Alaska, because the tariff would be subtracted from the state's wellhead value.

[2:20:33 PM](#)

MR. LOEFFLER replied that if RCA attempted to set the tariff on the feeder lines and they were subject to federal regulation, that exercise would be preemptive. No loss would arise. Assuming federal regulation, RCA could "just not set different tariffs." He offered to reiterate his previous explanation of the oil line and gas line with respect to this if necessary. He added that if somehow the federal government didn't regulate the tariff of the feeder line into the interstate system - which is contrary to his understanding - and RCA had jurisdiction and said the profit element was too high on the feeder line, then the contract would kick in and there couldn't be, under his view of the contract, an indemnity for those lost profits.

He read from Article 37.2 of the contract, which says it is negotiated in consideration of the parties' consent to limit recovery of certain loss; no party is liable to any other party for loss of federal rights relating to this contract or any breach of it, or any consequential or incidental damages including lost profits. Mr. Loeffler told members that if RCA says the tariffs are too high because the profit element is too high, he reads the contract provisions, taken together, as follows: In a dispute, after other procedural hurdles are cleared, one cannot be indemnified by the state for lost profits.

He highlighted the only situation he could think of where there might be an indemnity: If RCA attempted to impose contract carriage on a feeder line - attempting to displace existing shippers with new shippers - then the displaced shipper might argue it suffered a loss. But whether it really had suffered a loss would depend on facts downstream, including whether it was advantaged by not having to ship at a particular time. Furthermore, Mr. Loeffler said, it would assume that an attempt to impose contract carriage on a flow of gas through an interstate pipeline, which depends on that flow, didn't also interfere with the operation of that pipeline.

[2:24:49 PM](#)

MR. SHEPLER pointed out that in the 2004 federal legislation, Congress established specific rules over federal regulation of an Alaskan pipeline project; in the future, Congress could again make rules having nothing to do with FERC's regulation for the last 70 years in the Lower 48, and could surgically remove federal regulation of the Alaskan project or some portions of it. He noted this "what goes around, comes around" scenario doesn't depend on massive deregulation or abolition of the FERC.

MR. LOEFFLER added that under the commerce clause the federal government, through Congress, chooses how to regulate entities. It is the province of the federal government to decide how to regulate; the fact that it can surgically change an element of regulation doesn't remove that from federal jurisdiction, and the state cannot just step in to fill a gap or institute its own regulation.

[2:27:38 PM](#)

SENATOR THERRIAULT remarked he is always a bit leery of taking comfort in protections afforded by another government. The state controls RCA, which isn't subject to changes by Congress. Noting the amendment refers to indemnification, he pointed out that Article 8.3 of the contract talks about reimbursement for a loss to a participant, which could include costs to cover transportation or other appropriate relief.

He related his concerns: If a section of pipeline doesn't fall under FERC jurisdiction but falls under the regular RCA powers, wouldn't the desire be to have RCA continue to exercise those powers to protect the consumers and the state? And if exercising those powers caused a loss, should the state have to reimburse for that? Senator Therriault noted if a future legislature disagreed, RCA's powers could be modified then. He specified that the intention isn't to increase RCA's powers or cause any overlap, but is to preserve those powers as they are, under law established by the legislature.

[2:29:58 PM](#)

CHAIR SEEKINS read from Amendment 16. He asked whether it would be better to clarify that it only refers to decisions regarding areas under RCA authority, which might read better for the layman. He suggested the following conceptual wording:

Nothing in a contract under this chapter diminishes the legal authority of the RCA regarding areas under RCA authority or indemnifies any person or entity from future decisions of the RCA or a successor to the RCA

regarding areas under RCA authority - or decisions under RCA authority.

SENATOR THERRIAULT agreed that still encapsulates his intent.

[2:31:45 PM](#)

MR. LOEFFLER responded that the first half sort of restates existing law and thus he would reference AS 42.06.245. He read from the following portion of that statute:

The requirements of this chapter pertaining to permits and certificates of public convenience and necessity do not apply to the construction of a pipeline facility exclusively subject to federal jurisdiction or to the interstate portion of the business of a pipeline or pipeline carrier exclusively subject to federal jurisdiction.

He said the first part, though he wouldn't agree with it, is a truism. The second, a legitimate public policy issue, recognizes that limits are being placed on the reimbursement. Mr. Loeffler added, "There are a set of procedural hurdles, even before you get to the possibility of reimbursement for a loss, if you can construct a loss other than lost profits, I feel constrained, as a representative of the administration, not to agree with, because it's contrary to the negotiations that occurred on the draft contract."

[2:33:15 PM](#)

SENATOR STEDMAN again asked why the language proposed in Amendment 16 goes under AS 43.82.200, contract development, instead of AS 43.82.610, regulation.

SENATOR THERRIAULT explained that he'd informed the drafter that this is to instruct the administration to not impact RCA's powers as the administration constructs the contract. The drafter then had suggested it belonged in that section.

[2:34:26 PM](#)

SENATOR STEDMAN asked whether Senator Therriault could identify any diminishment of RCA's authority in the contract.

SENATOR THERRIAULT suggested that is why there was testimony that it sort of restates current statute. He said the operative part is where it gets to indemnification or reimbursement triggered if RCA actually takes on its statutory role. He added that he wasn't sure why, if the state regulatory agency is doing

as the statutes instruct, there should be indemnification for a resulting loss if, in fact, it is ensuring that tariffs aren't too high or that there is access to lines.

[2:35:21 PM](#)

SENATOR GREEN asked whether it was Mr. Loeffler who'd presented that information at Centennial Hall.

MR. LOEFFLER affirmed that.

SENATOR GREEN asked whether he'd used the term "overstepping" with regard to RCA's potential actions.

MR. LOEFFLER said he could have.

SENATOR GREEN requested a hypothetical scenario in which a dispute could arise and lead to litigation.

MR. LOEFFLER gave an example from the existing RCA statute. He noted AS 42.06.240 requires a North Slope natural gas pipeline to apply for a certificate, but also says the requirement for a certificate doesn't operate to impose state regulation that has been preempted under federal law. He opined that if RCA asked the applicant for the main line to apply for a certificate of public convenience and necessity under state law, and as part of that application to address how much will be intrastate service, it would be inconsistent with the requirements of the federal statute, which requires a certificate of public convenience and necessity.

He suggested RCA could step into the jurisdiction of FERC, which looks at gas markets and potential shippers and is required to look at how much transportation capacity will be set aside for intrastate uses. There could be dueling agencies. Mr. Loeffler said the idea of Article 8.3 is that before anyone starts claiming a dispute or loss, there is a cooling-off period during which the state and federal governments can talk and clarify jurisdictional issues before the point of dispute resolution and a claim for loss.

[2:39:22 PM](#)

SENATOR GREEN asked whether the contract proposes that the state assist in indemnifying the other partners for RCA's actions.

MR. LOEFFLER noted there are limitations on the loss, but replied that if RCA caused a loss to the producers and the loss

was adjudicated and proved, this amendment would prevent the state from reimbursing for that loss.

[2:40:23 PM](#)

MR. SHEPLER informed members he was looking at Article 8.3 of the contract in light of Mr. Loeffler's testimony. He noted the contract itself is triggered if FERC doesn't assert jurisdiction. The second sentence on page 87 of the contract says if FERC doesn't assert jurisdiction, no party may seek or support jurisdiction in the RCA and so forth. Mr. Shepler said he was having trouble getting back to Mr. Loeffler's point that somehow there would be a "constitutional crisis" between state and federal regulation.

He opined Amendment 16 just says nothing in the contract diminishes whatever authority RCA might have in that circumstance, as set forth in its statutory mandate. Contemplated in the contract is that FERC would not assert jurisdiction as the triggering event, Mr. Shepler said, adding that he believes, subject to confirmation by Senator Therriault, that the intent is to clarify there is no change being made by this contract to RCA's existing authority.

[2:42:17 PM](#)

SENATOR GREEN suggested the real thrust is the language "or indemnifies any person or entity from future decisions of the Regulatory Commission of Alaska", which relates to the contract provision.

SENATOR THERRIAULT replied it's in regard to the loss and said RCA is precluded if there is federal jurisdiction. If, however, FERC says it won't regulate, he wants to preserve RCA's right to follow its statutory direction from the legislature and step in to see whether it has jurisdiction over that area, since RCA has been set up to protect consumers and the state.

MR. LOEFFLER clarified that RCA, an independent regulatory agency, is excluded from the definition of the state. Nothing in the contract restricts RCA from asserting lawful jurisdiction in that circumstance. In further response to Senator Therriault, he affirmed that the state itself, by this language, couldn't ask for RCA jurisdiction, but he pointed out there would be many interested parties.

SENATOR THERRIAULT suggested there could be a strange situation in which the state has written its laws to direct RCA and

believes those laws should be exercised, but would be precluded from encouraging RCA to use those laws.

CHAIR SEEKINS related his understanding of AS 42.06.245, that nothing limits the power of the commission in that chapter, except as preempted by federal law. He asked if that covers these circumstances, and surmised it cannot be contracted away.

[2:46:06 PM](#)

SENATOR THERRIAULT noted there could be a situation in which RCA wants to assert jurisdiction. Under the contract, the state - which wrote the law - wouldn't be able to support that activity, even if it was in the state's best interest.

CHAIR SEEKINS suggested perhaps saying that "nothing in the contract under this chapter supersedes the requirements of Section 42.06.245", which basically says that nothing limits the powers of the commissioner except as preempted by federal law.

SENATOR THERRIAULT replied that he thought it would have the intended effect. However, he didn't want to rely on having a company such as Pioneer protect the state in the future. He agreed the reference to .245, coupled with the indemnification, probably would encapsulate his intention.

[2:47:53 PM](#)

SENATOR GREEN objected to Amendment 16.

CHAIR SEEKINS, in response to Senator Elton, clarified that although he'd talked about a conceptual amendment to Amendment 16, he hadn't offered it. He said the first part is a truism that already exists. He asked whether the second part, regarding indemnification, is a truism as well, or introduces new law that says it's okay to preempt federal law as long as it is done a certain way.

[2:49:22 PM](#)

SENATOR GREEN referred to discussion of Article 8.3, which says the state will indemnify the partners for any actions by RCA that cause a loss or diminishment. She said that consideration has to be given, but questioned whether it is right. She noted the amendment allegedly protects RCA, but also says the state won't indemnify any other person and so forth. She said she didn't know the reasoning behind the indemnification.

MR. LOEFFLER said he'd try to explain. The language is that if RCA asserts jurisdiction and takes regulatory actions that are

inconsistent with the principles of FERC policy or commercial agreements that result in a loss, the state shall reimburse the participant for the loss. He emphasized it isn't automatic.

He gave the following as the rationale: The producers want clarity as to the regulatory arrangement; they don't want, at a later date, to be faced with a change in those arrangements that causes an unanticipated loss. In the allocation of risk, the state should be responsible - within the limitations, hurdles and procedures - for any ultimate loss to the companies from RCA's actions inconsistent with those standards, since RCA is a state creation. Some companies had pressed hard for that, Mr. Loeffler reported, and the negotiation session at which this was agreed to involved some other economic trades; those who were there felt this was a fair trade.

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SENATOR GREEN proposed adding "unless RCA's actions were inconsistent with FERC principles" to the amendment. She suggested this is key language in the contract provision.

CHAIR SEEKINS suggested "federal regulations". He requested Mr. Shepler's opinion if the end of the paragraph were to say "inconsistent with federal law or FERC regulation".

MR. SHEPLER proposed "if such actions are inconsistent with federal law or regulations".

SENATOR GREEN asked whether he'd said "FERC" or "federal".

MR. SHEPLER indicated either could be used.

CHAIR SEEKINS inquired whether that would fit within Senator Therriault's intent.

SENATOR THERRIAULT noted there won't be jurisdiction if it's preempted by federal law. However, he was thinking that if RCA is exercising its power to protect consumers and the state, a power that the legislature has granted, why would there be indemnification if it ran contrary to a FERC principle and a loss occurred. He surmised "smaller players" in Alaska might see some protection from RCA if there was a piece of infrastructure not covered by federal authority. If they chose to exercise that to get protection for themselves and the state, why would the state pick up any resulting loss?

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CHAIR SEEKINS said he understood that, but wasn't willing to say there couldn't be indemnification for something contrary to federal law. If a decision by RCA were later shown to be preempted by federal law, he'd have a problem with it.

SENATOR THERRIAULT opined that "federal law" and "a principle of FERC" are probably two different things. Clearly, RCA cannot operate contrary to federal law.

CHAIR SEEKINS suggested the following language: "Nothing limits the powers of the commission except to the extent they are preempted by federal law, under existing law today." However, he again expressed concern about indemnifying against something unenforceable because it is preempted by federal law.

[2:57:49 PM](#)

MR. SHEPLER responded:

I don't think that's the situation. I think the provision of 8.3 contemplates a circumstance where FERC does not assert jurisdiction. So ... FERC has stepped aside or doesn't have the authority to go there in the first place. And your own state statute would say that ... in the absence of FERC federal authority, RCA has such authority. And if in exercising that authority it requires a party to make a refund ... or charge a lower rate, the question comes back as to whether the state ought to be reimbursing the entity that was overcharging for having to roll back its rate.

I think that's the policy question that Senator Therriault is raising of ... the anomaly here, where you have a state agency exercising its authority, implicitly finding that someone has been overcharged, and then the state treasury somehow having to come back and reimburse the overcharging party for some or all of the overcharge.

SENATOR GREEN recalled discussion at Centennial Hall that because the contract was based on the premise of FERC control, everyone was considering FERC rules and regulations as the basis for the contract, rather than RCA's being part of it. She also recalled that was the reason for including indemnification.

[2:59:48 PM](#)

SENATOR THERRIAULT recalled a struggle a few years back involving different protections offered by RCA. Smaller entities in Alaska had seen RCA as a state entity that offered some protection with respect to rates and access. He voiced the desire to preserve that power. If RCA finds a tariff rate is too high and the rate is lowered, he said, the state shouldn't reimburse it from the state treasury.

[3:00:43 PM](#)

MR. LOEFFLER told members he was trying to work within the confines of the structure. He said yes, there is reimbursement. But if the tariff is too high - as RCA found in the TAPS case - because the profit element is too high, there is no requirement, under the language he'd read to the committee, to reimburse for lost profits. He continued:

What I'm trying to carefully say is, there is some limited reimbursement or indemnification possible. But when you work through the language of the section and the operative limitations in the contract, I believe it's quite remote and limited. And so I'm objecting a little bit to hypotheticals that don't fit within the language of the contract.

[3:01:53 PM](#)

SENATOR GREEN maintained her objection to Amendment 16.

A roll call vote of 6 yeas and 6 nays proved Amendment 16 to SB 2004 failed, with Senators Kookesh, Olson, Dyson, Wilken, Elton and Wagoner voting yea, and Senators Stedman, Bunde, Ben Stevens, Hoffman, Green and Seekins voting nay.

[3:02:49 PM](#)

CHAIR SEEKINS informed Senator Therriault that he would look at the amendment differently if the language could be cleared up as to what is indemnified.

SENATOR BUNDE opined that SB 2004 is a work in progress, and that the committee had gone as far as possible until further information is received.

CHAIR SEEKINS indicated Amendment 5B, set aside during yesterday's hearing, wouldn't be addressed.

[3:03:48 PM](#)

SENATOR BUNDE moved to report SB 2004, as amended, from committee with individual recommendations and attached fiscal note(s).

SENATOR ELTON objected.

An initial roll call vote was 10 yeas and 2 nays, with Senators Kookesh, Ben Stevens, Stedman, Bunde, Dyson, Wilken, Green, Wagoner and Seekins voting yea, and Senators Olson and Elton voting nay. Senator Olson changed his vote from nay to yea. Therefore, CSSB 2004(NGD) was reported from the Senate Special Committee on Natural Gas Development by a vote of 11-1.

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SENATOR BEN STEVENS, in response to Senator Elton, clarified that as presiding officer of the Senate he'd ruled that this special committee, which combines the Senate Finance Committee and the Senate Resources Standing Committee, could serve as the finance committee in addressing fiscal matters relating to bills, and thus could satisfy a finance committee referral.

CHAIR SEEKINS pointed out there was a zero fiscal note for SB 2004. In response to Senator Olson, he said the upcoming roundtable discussions would address the concept behind this bill and the entire process relating to natural gas development. He surmised a similar bill could be considered in a future special session.

SENATOR OLSON questioned the purpose of those discussions if SB 2004 has already passed from committee.

CHAIR SEEKINS said he didn't believe the topic had come to an end. SB 2003 was still open, and there could be discussion of the general topic of the natural gas contract. The intent was not to rehash SB 2004, but to talk about the general topic and have an opportunity for discussion involving consultants, the producers, the administration and legislators.

SENATOR DYSON agreed and noted a section of SB 2004 had been stripped that related to collateral agreements, anticipating it would likely show up in other legislation relating to the LLC and so forth. Furthermore, there had been discussion in this committee about needing more information. He said he was looking forward to the discussions.

CHAIR SEEKINS also told Senator Olson he was eager to pursue the relationship between RCA and FERC, and needed more time to

consider the effect of indemnification. He closed the hearing, with CSSB 2004(NGD) reported from committee and SB 2003 held over.

There being no further business to come before the committee, Chair Seekins adjourned the Senate Special Committee on Natural Gas Development at [3:10:18 PM](#).