

ALASKA STATE LEGISLATURE
SENATE SPECIAL COMMITTEE ON NATURAL GAS DEVELOPMENT

July 24, 2006

2:04 p.m.

MEMBERS PRESENT

Senator Ralph Seekins, Chair
Senator Gary Wilken
Senator Con Bunde
Senator Fred Dyson
Senator Kim Elton

MEMBERS ABSENT

Senator Lyda Green
Senator Bert Stedman
Senator Lyman Hoffman
Senator Donny Olson
Senator Thomas Wagoner
Senator Ben Stevens
Senator Albert Kookesh

COMMITTEE CALENDAR

SENATE BILL NO. 3002

"An Act relating to the Alaska Stranded Gas Development Act; relating to municipal impact money received under the terms of a stranded gas fiscal contract; relating to determination of full and true value of property and required contributions for education in municipalities affected by stranded gas fiscal contracts; and providing for an effective date."

HEARD AND HELD

SENATE BILL NO. 3001

"An Act relating to the production tax on oil and gas and to conservation surcharges on oil; relating to criminal penalties for violating conditions governing access to and use of confidential information relating to the production tax; amending the definition of 'gas' as that definition applies in the Alaska Stranded Gas Development Act; making conforming amendments; and providing for an effective date."

SCHEDULED BUT NOT HEARD

PREVIOUS COMMITTEE ACTION

BILL: SB3002

SHORT TITLE: STRANDED GAS AMENDMENTS
SPONSOR(s): RULES BY REQUEST OF THE GOVERNOR

07/12/06	(S)	READ THE FIRST TIME - REFERRALS
07/12/06	(S)	NGD
07/13/06	(S)	NGD AT 9:00 AM SENATE FINANCE 532
07/13/06	(S)	Heard & Held
07/13/06	(S)	MINUTE(NGD)
07/14/06	(S)	NGD AT 9:00 AM SENATE FINANCE 532
07/14/06	(S)	Heard & Held
07/14/06	(S)	MINUTE(NGD)
07/24/06	(S)	NGD AT 1:30 PM SENATE FINANCE 532

WITNESS REGISTER

JIM BALDWIN

Counsel to the Office of the Attorney General
Department of Law
PO Box 110300
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POSITION STATEMENT: Testified on SB 3002 and answered questions.

ACTION NARRATIVE

CHAIR RALPH SEEKINS called the Senate Special Committee on Natural Gas Development meeting to order at [2:04:29 PM](#). Present at the call to order were Senators Fred Dyson, Con Bunde, Gary Wilken, Kim Elton and Chair Ralph Seekins.

SB 3002-STRANDED GAS AMENDMENTS

[2:04:29 PM](#)

CHAIR SEEKINS announced SB 3002 to be up for consideration. He highlighted Section 2, amending AS 43.82.505.

JIM BALDWIN, Counsel to the Office of the Attorney General, Department of Law, indicated Section 2 came from SB 2004, considered by this committee in the second special session. It establishes the method by which impact funds payable under the fiscal contract are anticipated and appropriated into a permanent account, established within the Department of Commerce, Community and Economic Development (DCCED) under Section 3 of the bill. To avoid the prohibition against dedicated funds, this \$125 million for local impacts will be available and the legislature may appropriate it.

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SENATOR BUNDE pointed out that subsection (c) of Section 3 talks about a nonprofit organization serving the unorganized borough.

CHAIR SEEKINS indicated that organization was identified earlier as the Tanana Chiefs.

SENATOR BUNDE asked how closely this treads on tribal issues.

CHAIR SEEKINS acknowledged it as a good question.

MR. BALDWIN related his understanding of how the Municipal Advisory Group (MAG) designed this: Among affected communities in the area, there would be one sponsoring group, the Tanana Chiefs. He said this was related in testimony during the last special session, which considered an identical provision.

SENATOR BUNDE voiced concern that many nonprofit organizations in Alaska could convince someone that there had been an economic impact, even in regions remote from the pipeline.

CHAIR SEEKINS asked whether Senator Bunde was suggesting specifically designating that it be a single entity.

SENATOR BUNDE indicated flexibility as to how it is handled, but expressed concern that it is wide open.

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MR. BALDWIN explained the genesis of Section 3. The administration received it as a proposal from MAG during the second regular session; the language closely followed the existing National Petroleum Reserves-Alaska (NPR-A) grant program. During hearings in the second special session, it came out that modifications were needed. Thus this committee made changes with respect to the transparency of the grant-making process, including subsections (e) and (f), the latter being where the public notice requirements are imposed for grants received. Public notice is also required for the intention to make grants, which must sit 30 days before final awards are made. Another change is a tighter standard for determining the amount of impact that qualifies for a grant, or whether a particular impact qualifies; thus on page 3, line 3, it requires a direct or severe impact from gas-pipeline construction.

He noted "direct or severe impact" is defined on page 4, line 18, to give a standard for eligibility decisions by the granting agency. It requires a clearly demonstrable effect on a

community that proximately contributes to a material change to transportation, infrastructure, law enforcement, emergency services, health and human services, education or labor force. Mr. Baldwin reminded members that these changes, meant to provide more accountability and transparency, were in the version passed by this committee and were favorably received by the Senate as a whole.

He also recalled testimony in this committee on the purposes for which grants may be made; those purposes, proposed by MAG, appear in subsection (e), lines 16-19. Mr. Baldwin pointed out that whereas MAG had proposed "or for socio-cultural impacts", this committee had changed "or" to "and" in the previous legislation.

SENATOR BUNDE restated his concern, that all Alaskans in the unorganized borough will have some socio-cultural impact from this multibillion-dollar construction project.

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SENATOR WILKEN expressed satisfaction that the changes to SB 2004 were retained in SB 3002; he pointed out that the big change between the two is in Sections 1-14, not relating to municipalities. Returning to the grants, he requested confirmation that they are restricted to \$125 million, that this program doesn't continue as long as the pipeline exists, but ends as soon as the impact fund is depleted.

MR. BALDWIN affirmed that, explaining that based on the law, there is no other source of money for this particular fund. Although the proposed changes to AS 43.82.505 set up a conduit; the statute could sit there as a "dead letter," he noted.

CHAIR SEEKINS surmised there would be attempts to make it ongoing.

SENATOR WILKEN recalled proposed state and federal legislation to put impact funds in place, to be funded by the revenue streams, but said that is a discussion for another day.

MR. BALDWIN pointed out that AS 43.82.505 talks about a contract term that provides for the impact fund.

SENATOR BUNDE inferred the impact would begin when there is some activity relating to construction. However, Sections 1 and 2 are retroactive to January 1, 2004. Saying it seems like

another large, open door, he asked why that length of retroactivity was proposed.

MR. BALDWIN replied that the January 2004 date is intended to cover the period during which the administration has been negotiating to place these kinds of terms in the fiscal contract. Thus the fact that this term was negotiated and that this structure was set up would be retroactively covered. It isn't intended to create any eligibility other than what has already been negotiated.

SENATOR BUNDE said that seems reasonable, but perhaps there should be clarification that retroactivity doesn't include claims for any activity prior to actual construction.

CHAIR SEEKINS asked the reason for making the terms retroactive under the Alaska Stranded Gas Development Act ("Stranded Gas Act").

MR. BALDWIN replied that he believed retroactivity was more legally significant for some contract provisions in previous legislation.

CHAIR SEEKINS suggested it was SB 2003.

MR. BALDWIN said for this particular contract provision, retroactivity isn't as important; it was made that way because it was negotiated during that period of time. The goal is to ensure what was done is covered against a potential claim.

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CHAIR SEEKINS recalled discussion in the Senate Judiciary Standing Committee, which he chairs. He gave his understanding that the contract must be negotiated to meet the purposes of the Stranded Gas Act, not necessarily to comply with the Act itself to the letter, and that it will meet a loose interpretation of establishing fiscal terms to get this stranded gas to market. He opined that if the legislature authorized signing of a contract, likely the language would include the following: "Notwithstanding any other provision of law, the legislature hereby authorizes the administration to execute the attached contract." Chair Seekins asked whether any exercises to make the Stranded Gas Act retroactive would just be extra work.

MR. BALDWIN replied he'd thought about the need for retroactivity while working on these bills over time. He acknowledged Chair Seekins' point as a good one, that perhaps

this has been "overlawyered" to preclude potential for someone to reach back and allege that whatever was done was without proper authority. The question will be whether the operative effect of the contract and the attending obligations are properly authorized after the contract is signed. Thus retroactivity might not be needed.

He further responded that the state and other parties to the contract will be concerned with whether the contract is valid and enforceable under state law from the date when their obligations come due. Drafters of these provisions, including himself, have worried that, as part of the whole development of the contract under the Stranded Gas Act, the administration has had to depart from the Act in the kind of terms proposed for consideration by the public and the legislature. Thus there has been concern about covering this retroactively, though Mr. Baldwin reiterated that he doesn't believe it is absolutely legally necessary. He also pointed out that there are vote requirements and so forth in the legislature.

He requested the ability to reflect on this matter and come back before the committee prior to a decision on whether to eliminate retroactivity. Mr. Baldwin cautioned it could have serious effects if there were no retroactivity, and suggested it might not help, but probably wouldn't hurt.

CHAIR SEEKINS acknowledged this contract doesn't meet the letter of the law, but said that is why it is a proposed contract, and why the legislature needs to decide whether to change the law to accommodate some of those deviations. He emphasized the legislature's ability to squelch any claim that the contract doesn't comply with the law, by changing the law accordingly.

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SENATOR BUNDE observed it is easier to hit a bull's eye if the target is drawn after the shot is made. That might be the attempt here, he suggested.

MR. BALDWIN turned to Section 4, noting it was requested by MAG to extend MAG's life until after final distribution of the impact money. That group is given an advisory role for the grant program as well, in the preceding section, and he said it makes sense that MAG be around. Existing law needed to be changed, since MAG was set to expire on the date of final action on the application for which the group was appointed.

SENATOR BUNDE asked whether the intent is that the expenses for reimbursement are limited to typical per diem given to other advisory groups.

MR. BALDWIN said he believed that to be "our understanding."

SENATOR BUNDE interpreted that to be the intent for the record.

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MR. BALDWIN explained that Section 5 fixes a problem in how the Foundation Formula is calculated. He said Eddy Jeans, who testified 6/5/06 on SB 2004 but wasn't available today, understands its inner workings. A problem had been raised because a payment in lieu of taxes (PILT) is considered by the state assessor to be a contractual payment, not a tax; without other direction from the legislature, this effectually changes how the assessor calculates the full and true value for purposes of the Foundation Formula.

He reminded members that this problem was identified for two municipalities in particular: Valdez and the North Slope Borough. Mr. Baldwin said it involves the way they are allowed to determine the required local contribution for purposes of calculating their public school funding. Section 5 allows development of regulations so the PILT is treated the same as the tax. The effort is to leave the parties in basically the same position as before the fiscal contract entered the picture.

He indicated he'd been advised that with this authority, they could fix the problem identified by the state assessor. Referring to a two-page spreadsheet from Steve Van Sant, State Assessor, labeled "Local School Funding Worksheet" and provided during discussion of Amendment 14 to SB 2004 on 6/5/06, Mr. Baldwin requested its incorporation into the record, since it outlines the impact of failure to fix this problem.

CHAIR SEEKINS highlighted the need to cross-reference some issues with SB 2004. He requested a definition of "community."

MR. BALDWIN replied it isn't in this bill, but there are various definitions in the statutes relating to DCCED.

CHAIR SEEKINS suggested perhaps part of Senator Bunde's concern relates to what constitutes a community and whether it gets to the question of tribal communities versus incorporated communities. For example, does a large family qualify for impact funds under this section because of proximity? He

offered details relating to impacts from pipelines in Alaska and Canada, highlighting the need to define community and socio-cultural impacts.

SENATOR BUNDE recalled a couple who'd worked on the oil pipeline and then later requested assistance in readjusting to a normal salary in Anchorage. He said it needs more definition.

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MR. BALDWIN expressed willingness to look at more specific language to satisfy the aforementioned concern, but stated the intention: to provide a means of meeting impacts on unincorporated communities that lack the structure or recognition by the state as a municipality or borough, to reach villages and other communities that aren't under the traditional government structure recognized in Title 29.

SENATOR BUNDE remarked that any group with 10 students can qualify as a school, and reiterated the need to flesh out the definition of "community." He also suggested this is a great opportunity to encourage incorporation.

CHAIR SEEKINS asked whether the concern is mitigating the fact that communities might have to pay more in wages to keep public employees from leaving their jobs to work on the pipeline construction.

MR. BALDWIN answered by referencing the broadly stated purpose in subsection (e), page 3, of SB 3002, requiring a showing of a direct and proximate result of development of the gas pipeline. If that case can be stated and proved, he said, it seemed there could be impact funds for such a purpose.

CHAIR SEEKINS asked what happens when the impact fund is depleted and a community must find another funding source to pay its police and firefighters at the inflated wage.

MR. BALDWIN surmised they'd have to resolve it some way.

CHAIR SEEKINS asked whether impact funds would be required, for instance, to provide a transition to a lower wage.

SENATOR BUNDE said as he reads it, the one who has to be convinced of an impact is the commissioner.

MR. BALDWIN agreed that the commissioner is the ultimate decision maker, as clearly stated in the bill. Because of how

the process works, however, the commissioner must make these decisions in the light of day, giving notice of the grant proposals received and the proposed awards, and waiting 30 days before actually making the awards. It is the transparency this committee thought was important during the second regular session, Mr. Baldwin recalled, noting it was an amendment proposed by Senator Wilken.

SENATOR BUNDE expressed concern that other impact money has been used to provide community centers, for instance. He suggested it is preferable to tighten it up, even to the point of being "overlawyered," since ultimately one person will make the decision.

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SENATOR WILKEN suggested perhaps striking "community" on page 4, line 19, in subsection (j), and inserting "municipalities or nonprofit organizations serving the unorganized borough", since "community" only appears in that one place; he opined that might clear up the need for a definition.

He also cautioned that the impact money won't last long, if past municipal grant programs are any indication. While this was modeled after NPR-A, it will serve far more people. Senator Wilken surmised the \$125 million would be gone in the first year or two, leaving communities to deal with impacts on their own. At the same time, however, those places would have an enhanced tax base because of expansion.

MR. BALDWIN pointed out there is a payment schedule covering more than two years, laid out in the fiscal interest finding (FIF) and the contract. It starts six years out and goes for a period after that. He offered to get that information.

SENATOR WILKEN asked whether it is metered out per year.

MR. BALDWIN affirmed that.

SENATOR WILKEN asked how the retroactive effective date of January 1, 2004, raised as an issue by Senator Bunde, relates to the FIF.

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MR. BALDWIN answered that retroactivity has no bearing on it, to his belief, because this will occur in the future. The \$125 million won't become available all at once. He recalled it will start at project sanction, though he wasn't certain. It relates

to when construction actually begins, and comes in annually for a period after that. There are provisions for inflation if it's delayed and goes beyond nine years. Mr. Baldwin added that retroactivity is an issue being considered because of the question of whether there was power at the time to negotiated that kind of provision; he suggested it is a lawyers' issue.

SENATOR WILKEN announced he would look at the FIF.

MR. BALDWIN, in response to Senator Bunde, said the contract states that if payment of the money is delayed because the project is delayed somewhat - beyond nine years, as he recalled - then an inflation factor applies after the ninth year. Until that date, however, the \$125 million isn't inflated.

SENATOR BUNDE suggested if the project is delayed, however, there won't be any money; it will be moot.

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SENATOR ELTON recalled testimony from MAG and offered his understanding that the changes in this bill reflect MAG's recommendations. He suggested it would be helpful at a future meeting to have someone from MAG answer the questions raised by Senator Bunde, for example, or provide a letter affirming their comfort with the language in the bill.

CHAIR SEEKINS related his understanding that MAG is strictly an advisory group, and that the commissioner doesn't have to comply with MAG's advice. He held SB 3002 over.

The committee took an at-ease from [2:52:56 PM](#) to [3:00:48 PM](#).

CHAIR SEEKINS discussed the committee's schedule.

There being no further business to come before the committee, Chair Seekins adjourned the Senate Special Committee on Natural Gas Development meeting at [3:06:57 PM](#).