

ALASKA STATE LEGISLATURE
SENATE SPECIAL COMMITTEE ON NATURAL GAS DEVELOPMENT

July 28, 2006
9:16 a.m.

MEMBERS PRESENT

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

MEMBERS ABSENT

Senator Lyman Hoffman
Senator Albert Kookesh

OTHER LEGISLATORS PRESENT

Senator Gary Stevens
Senator Hollis French
Representative Paul Seaton

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
07/24/06	(S)	Heard & Held
07/24/06	(S)	MINUTE(NGD)
07/25/06	(S)	NGD AT 9:00 AM SENATE FINANCE 532
07/25/06	(S)	Heard & Held
07/25/06	(S)	MINUTE(NGD)
07/26/06	(S)	NGD AT 9:00 AM SENATE FINANCE 532
07/26/06	(S)	Heard & Held
07/26/06	(S)	MINUTE(NGD)
07/27/06	(S)	NGD AT 9:00 AM SENATE FINANCE 532
07/27/06	(S)	MINUTE(NGD)
07/28/06	(S)	NGD AT 9:00 AM SENATE FINANCE 532

WITNESS REGISTER

JIM CLARK, Chief Negotiator
Office of the Governor
PO Box 110001
Juneau, AK 99811-0001

POSITION STATEMENT: Explained SB 3002, Version G, and answered questions about Version G and proposed amendments.

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

POSITION STATEMENT: Explained SB 3002, Version G, and answered questions.

SENATOR HOLLIS FRENCH
Alaska State Legislature
Alaska State Capitol
Juneau, AK 99801-1182

POSITION STATEMENT: Asked questions during the hearing on SB 3002, Version G.

ACTION NARRATIVE

CHAIR RALPH SEEKINS called the Senate Special Committee on Natural Gas Development meeting to order at [9:16:22 AM](#). Present at the call to order were Senators Lyda Green, Gary Wilken, Fred Dyson, Bert Stedman, Donny Olson, Thomas Wagoner, Ben Stevens, Kim Elton and Chair Ralph Seekins; Senator Con Bunde arrived shortly thereafter. Also in attendance were Senators Gary Stevens and Hollis French, and Representative Paul Seaton.

SB 3002-STRANDED GAS AMENDMENTS

[9:17:03 AM](#)

CHAIR SEEKINS announced SB 3002 to be up for consideration. He informed members that the new proposed committee substitute (CS), Version G, was basically the version of SB 2004 passed by the Senate during the last special session.

[9:17:47 AM](#)

SENATOR GREEN moved to adopt SB 3002, Version G, labeled 24-GS2095\G, Bailey, 7/28/06, as the working document. There being no objection, it was so ordered.

[9:19:38 AM](#)

JIM CLARK, Chief Negotiator, Office of the Governor, introduced Version G as essentially the package of amendments put together by Joseph Donohue and presented by the administration [as SB 2004] in the last special session, with some changes made in the Senate during that session.

JOSEPH K. DONOHUE, Preston Gates & Ellis, Counsel to the Governor, noted he is under contract with the Department of Law to provide advice and assistance in the context of the gas pipeline project. He addressed Version G in three parts: Sections 1-13, Sections 14-17 and the remainder.

He described Sections 1-13 as substantive conforming amendments to align the proposed contract with the statutory changes needed to authorize all the contract's elements. Sections 14-17 relate to the distribution of impact payments to be paid by the mainline limited liability company (LLC) to the state; they deal with distribution, appropriation and allocation among local subdivisions, and also provide for consultation with the Municipal Advisory Group (MAG). Mr. Donohue said the third part of Version G is an adjustment to the public education funding provisions, correcting an inadvertent problem created by taking property out of the AS 43.56 tax base and putting it under the payments in lieu of taxes (PILTs) of the contract.

He reminded members that the committee did substantial work on the impact payments and school funding formula [in SB 2004] in the last special session; furthermore, Jim Baldwin had discussed those sections earlier this week. Thus Mr. Donohue said he would focus on the first part of Version G, the new provisions added to SB 3002 as it had been introduced by the governor.

9:23:09 AM

MR. DONOHUE pointed out that provisions in Sections 1-13 are driven primarily by the administration's policy decision during negotiations to become a full commercial partner with the producers in the project. The four components of that decision are: 1) the requirement that the state become an equity owner; 2) the requirement that the state take its royalty gas in kind for the life of the contract; 3) the decision to convert the production tax from an in-value calculation to in-kind gas delivery; and 4) the decision to participate in financing the pipeline by making a shipping commitment over the line, which is also necessary to preserve capacity for the gas that the state takes in kind.

He characterized Section 1 as a technical amendment to the Uniform Arbitration Act to allow for the provision in the contract which stipulates that the Federal Arbitration Act governs mandatory arbitration proceedings under the fiscal contract, Article 26 and Exhibit C. Mr. Donohue noted that under AS 43.82, parties can agree that federal law could apply.

He explained that Section 2, amending AS 43.82.010, expands the purpose of the chapter to provide that fiscal terms under the contract can relate to oil fiscal certainty. Mr. Donohue said it is done in a number of ways. Since oil fiscal certainty isn't related directly to the project, the authority for providing fiscal terms and certainty is separated from the

project and goes to, generally speaking, oil and gas business activities of qualified sponsors in the state. Section 2 also inserts the concept of "related party", repeated throughout the Act and defined in Section 19 as an affiliate of a qualified sponsor that is an owner of a project entity and is an intended beneficiary of fiscal certainty under the Act.

9:27:45 AM

SENATOR BUNDE paraphrased Section 2, paragraph (3), which read:

(3) maximize the benefit to the people of the state of the development of the state's stranded gas resources.

He asked whether this is "feel-good boilerplate" or could actually be used in court if the producers had adroitly used the contract to benefit their shareholders at the expense of Alaskans.

MR. DONOHUE answered that it is more than mere boilerplate. This language generally reflects the requirement of Article VIII of the state constitution to develop and maximize the state's resources for the maximum benefit of the people. Whether or not it is in the bill, he opined that the duty would apply to legislative decisions in the disposition of the natural gas resources. He characterized it as a supervening constitutional requirement, reading paragraph (3) as trying to capture that.

CHAIR SEEKINS suggested it dovetails with Section .430 of the Act. Mentioning the final findings and determinations, and whether any proposed contract or amendments meet the requirements and purposes of the chapter, he said this is a stated purpose of the chapter as well, to his belief.

SENATOR BUNDE requested a legal opinion on the following: If it is believed the system is being gamed, with unfair advantage given to the stockholders over the citizens of Alaska, would the courts view this as a tool to allow breaching of the contract or making substantial changes, if necessary?

MR. DONOHUE answered that there has been lots of discussion in the public arena as to whether the proposed fiscal contract satisfies the constitutional requirement of Article VIII. It is expected that a complaint challenging the fiscal contract, once it is authorized by the legislature, would go to Alaska Supreme Court for ultimate determination of whether this contract, with all its terms, meets that constitutional standard.

[9:31:11 AM](#)

SENATOR BUNDE acknowledged the constitutional duty, but asked whether the purpose of paragraph (3) is to put a finer point on it.

MR. DONOHUE replied that the constitutional standard and paragraph (3) are fairly broad. It's not necessarily a specific test, but is a general test that involves taking into account all the potential benefits, problems, risks and so forth of developing the state's natural gas resources.

MR. CLARK indicated it is direction to the administration's negotiators to ensure they are mindful of the very concern raised by Senator Bunde. Thus added to the contract were Exhibits Q, R, S and Y, all calculated to provide the specifics to deal with that protection.

CHAIR SEEKINS noted a court challenge must be done within 120 days after execution of the contract, according to Section .440 of the Act.

SENATOR BEN STEVENS pointed out that paragraph (3) of AS 43.82.010 has been in the Act since the original 1998 enactment.

SENATOR BUNDE clarified that he was highlighting this as a tool - hopefully never needed - in case some gaming occurred and there was a desire to go to court on this issue. He surmised it would be prudent to say, for the record, that it is in the contract that all participants will be working for the maximum benefit of the people of Alaska.

CHAIR SEEKINS gave his understanding of one requirement, that the commissioner must certify - in his or her final findings and determination - that it maximizes the benefit; there also would be an explanation as to why that belief exists.

[9:34:41 AM](#)

MR. DONOHUE, in response to Senator Elton with respect to paragraph (3), explained that once the Alaska Supreme Court has determined that this contract satisfies the constitutional standards that apply to the development of the state's resources, then this would no longer be a tool to reopen the constitutionality of the contract. Any concerns during the course of the contract that relate to the performance of the

producers would have to be enforced through the contract's arbitration provisions.

MR. CLARK again indicated the administration takes the constitutional measure and the provisions in paragraph (3) as direction from the legislature in terms of what must be in the contract. He said that is why he'd mentioned those exhibits that deal with fiscal certainty on oil, which is what this section goes with.

He opined that Alaskans want a gas contract, but don't want to be flimflammed or gamed, and don't want the state to look foolish. Indicating the administration has been highly cognizant of that, Mr. Clark suggested the measure of whether a good enough job has been done shows up in those exhibits with respect to this particular issue, fiscal certainty.

[9:37:12 AM](#)

CHAIR SEEKINS summarized his understanding: The question of constitutionality isn't for the arbitrators, but is for the courts and must be filed within 120 days after execution of the contract.

AN UNIDENTIFIED SPEAKER affirmed that.

SENATOR BUNDE corrected his earlier remarks with respect to paragraph (3). He gave his understanding that after the constitutionality is determined, this can be used a tool with a board of arbitrators, not in a court; it will be a term in the contract. If the administration says something isn't in the best interest of Alaskans, then this provision could be used with the arbitrators to say that the benefits aren't being maximized, and it would be a cause to appeal to the arbitrators.

MR. DONOHUE, in response to Chair Seekins as well, clarified that the arbitrators would just deal with enforcement of the contract terms, potential breaches and so forth.

MR. CLARK reiterated that this is taken as direction. There are specific provisions in these exhibits to deal with issues relating to fiscal certainty for oil. There is a series of items to ensure the state doesn't get gamed. There is a highly specific set of requirements, regulations and contract terms about how the parties would work with each other.

He again opined that the measure of whether a good enough job has been done already shows up in these exhibits; they are

available for legislators and the public to examine to see whether, in their opinion, that has been prevented from happening. Mr. Clark noted these are the provisions that would be taken to an arbitrator. For example, if it was believed there'd been inappropriate accounting, a notice of dispute would be filed, and the state would use the language of these exhibits to show that a correction was needed.

SENATOR BUNDE mentioned the creativity of the human mind and that someone might find a loophole. He suggested this is a tool to deal with such a loophole.

[9:41:07 AM](#)

MR. DONOHUE continued with Section 2, bringing attention to paragraph (1), which read:

(1) encourage new investment to develop the state's stranded gas resources by authorizing establishment of fiscal terms related to oil and gas agreements and taxes for a qualified sponsor, the members of a qualified sponsor group, or a related party and related to their oil and gas business activity in the state, including gas pipeline expansion pricing that encourages further gas exploration [THAT NEW INVESTMENT WITHOUT SIGNIFICANTLY ALTERING TAX AND ROYALTY METHODOLOGIES AND RATES ON EXISTING OIL AND GAS INFRASTRUCTURE AND PRODUCTION];

He highlighted the phrase "including gas pipeline expansion pricing that encourages further gas exploration," saying that underlined language was added by this committee and the previous language was the proposal from the administration. Mr. Donohue told members that later in this process the administration would suggest possibly putting some of these policy concerns elsewhere in the Act because it is a very narrow, specific policy concern to be placed within the broader purposes clause.

[9:41:58 AM](#)

MR. DONOHUE turned to Section 3, amending AS 43.82.020. He drew attention to paragraph (1), which read:

(1) periodic payment in lieu of one or more taxes that otherwise would be imposed by the state or a municipality on the qualified sponsor, [OR] members of the qualified sponsor group, or a related party; [AS A CONSEQUENCE OF THE SPONSOR'S OR GROUP'S

PARTICIPATION IN AN APPROVED QUALIFIED PROJECT UNDER THIS CHAPTER; AND]

MR. DONOHUE explained that the deleted language, shown in brackets, is to avoid arguments about whether oil fiscal certainty relates to the group's participation in an approved qualified project. He noted it relates to the ability and authority of the state to negotiate terms related to oil.

He addressed paragraph (2) of Section 3, which read:

(2) certain adjustments regarding oil and gas lease agreements, unit agreements, and other agreements [ROYALTY] under AS 43.82.220; in this paragraph, "oil and gas lease agreements" includes royalty provisions of those agreements; and

He told members that this relates to a general broadening of AS 43.82.220, which will be seen later; that provision, under current law, deals only with the state's ability to negotiate changes to its royalty-in-kind (RIK) and royalty-in-value (RIV) provisions, mostly related to timing, notice and valuation methodologies. The fiscal contract as negotiated involves other types of changes to the oil and gas lease agreements and the unit agreements. Mr. Donohue said this provision, along with other changes to AS 43.82.220, is designed to provide broader authority to come up with overall terms so that the state is a full commercial partner with the producers in the project.

[9:44:03 AM](#)

MR. DONOHUE pointed out what he believed was an inadvertent deletion. He turned to paragraph (3) of Section 3, new language that read:

(3) payment of the gas production tax under AS 43.55, or payment in lieu of the gas production tax, by delivery of gas.

He recalled that paragraph (4) [in SB 2004] was deleted by this committee in the last special session. It read:

(4) acquisition by the state of an ownership interest in the project that is the subject of the proposed contract, and terms relating to collateral agreements authorized under AS 43.82.437.

MR. DONOHUE explained that the committee had deleted language relating to collateral agreements in this provision and in subsequent sections of the bill. However, to his recollection, the language in paragraph (4) relating to acquisition of an equity interest was deleted inadvertently. Thus he requested, on behalf of the administration, that the following be reinserted: "acquisition by the state of an ownership interest in the project that is the subject of the proposed contract".

MR. CLARK, in response to Chair Seekins, indicated the administration would prepare such an amendment.

[9:45:51 AM](#)

MR. DONOHUE addressed Section 4 of Version G, amending AS 43.82.200. He highlighted paragraph (1), which read:

(1) terms concerning periodic payment in lieu of one or more taxes on oil or gas or both as provided in AS 43.82.210, and terms related to credits for investment in a project that is the subject of a contract developed under this chapter;

He advised members that the first portion deals with clarification of the administration's authority to include fiscal certainty on oil taxes, including taxes on production income and property. The second part relates to the provision in the proposed fiscal contract for credits within the PILT for production taxes, credits related to investment in the gas treatment plant (GTP). Mr. Donohue said these credits aren't in the petroleum production tax (PPT) proposed by the administration; therefore it was felt that independent authority was needed to clarify that the commissioner of revenue could negotiate for those credits within the contract.

MR. DONOHUE turned to paragraph (2), which read:

(2) terms developed under AS 43.82.220 concerning oil and gas leases, unit agreements, and other agreements under AS 38, including terms relating to

- (A) timing and notice of the state's right to take royalty in kind or in value; and
- (B) royalty value;

He observed that this relates to the expanded authority sought from the legislature under AS 43.82.220 to deal with modifications of oil and gas lease and unit agreements. This is

to clarify that if there are any differences between the fiscal contract and these agreements, the fiscal contract will supersede them.

[9:47:43 AM](#)

MR. DONOHUE continued with Section 4, amending AS 43.82.200. He turned to paragraph (6), which read:

(6) terms and conditions for
[ADMINISTRATIVE] termination of a contract [UNDER
AS 43.82.445]; and

He informed members that AS 43.82.445, repealed at the end of the bill, set up an administrative process within the Department of Revenue (DOR) for determining whether the contract should be terminated. Under the proposed fiscal contract, termination is a contract matter. Article 28 of the contract has an administrative termination provision, and the work commitment article has termination provisions; these are intended to substitute for the department's administrative process. Thus Mr. Donohue noted this is a conforming amendment to align the contract with the statutory authority.

MR. DONOHUE turned to paragraph (7) of Section 4, which read:

(7) other terms or conditions that **the commissioner determines** are
(A) **reasonable and promote** [NECESSARY
TO FURTHER] the purposes of this chapter,
**including the implementation of AS 43.82.020 -
43.82.270**; or
(B) in the **long-term fiscal** [BEST]
interests of the state.

He described this as broadening the catchall authority under AS 43.82.200. This is in lieu of a laundry list of authority initially proposed and attached to the preliminary fiscal interest findings published by the commissioner of DOR; he recalled that was Exhibit I. Mr. Donohue added that, from a litigation standpoint, it was deemed safer to compress some incidental provisions that deal with implementation of the contract - credits and offsets and other items that are fairly standard in these fiscal contracts - into paragraph (7). This is to avoid a litigation dispute, after the contract is authorized, about how detailed AS 43.82.200 needs to be to authorize the many contract provisions that couldn't possibly be referenced in this statutory list.

MR. DONOHUE characterized the change in subparagraph (B) as a consistency edit proposed in the last special session [to SB 2004]. He said this is because the commissioner of DOR is asked, both in the preliminary and final findings, to decide whether the contract is in the long-term fiscal interest. Mr. Donohue indicated the administration felt the same standard should be applied within the contractual-development section. This is a technical edit to bring it into conformity with the standard applied, to his belief, in six or seven other provisions under AS 43.82.

[9:52:00 AM](#)

MR. DONOHUE turned to Section 5 of Version G, which read:

*** Sec. 5.** AS 43.82.200 is amended by adding a new subsection to read:

(b) Terms relating to arbitration and alternate dispute resolution may provide for a waiver, with the concurrence of the attorney general, of the state's immunity from suit. The waiver may include waiver of the state's sovereign or other immunity and consent to entrance and enforcement of an arbitration award in any state court in the United States that has jurisdiction over the State of Alaska. The authority granted in this subsection is effective only after the arbitration award is entered and enforcement is sought in the superior court of the state.

CHAIR SEEKINS addressed formatting issues. He observed there is no subsection (a) under Section 4, and yet Section 5, which also amends AS 43.82.200, proposes a new subsection labeled (b). He asked whether it perhaps should be paragraph (8) instead of subsection (b).

MR. DONOHUE surmised it was proposed initially as separate subsections because it deals with implementation of a term identified in paragraph (5) [of Section 4], which, arguably, could be expanded with the same concepts.

CHAIR SEEKINS said he didn't object to having (a) and (b), but there would have to be an (a).

MR. DONOHUE gave his understanding that it would be left to the revisor, but agreed with the need for that.

[9:54:01 AM](#)

MR. DONOHUE explained that Section 5 deals with the waiver by the attorney general (AG) of the state's immunity from suit. First, the very agreement by the state to enter into arbitration, especially under the Federal Arbitration Act, likely requires an express waiver of sovereign immunity. Second, if the state were to lose an arbitration dispute, that award could be confirmed and reduced to a judgment. Thus the provisions allow the producers to enforce judgments in other jurisdictions against the State of Alaska. This reflects the agreement in Article 26 of the contract - the mandatory dispute resolution article - and the accompanying Exhibit C.

He reported that the producers argue they want this waiver and the ability for enforcement outside of Alaska because once a judgment is entered in Alaska, the only enforcement allowed under state law is to come to the Alaska State Legislature and request an appropriation. Mr. Donohue reminded members that there is a standing waiver of sovereign immunity for many types of tort and contract claims. Every year, people who have succeeded in lawsuits against the state have their judgments reduced to an appropriation request, handed in by the Department of Law, and those have always been paid. If perchance the legislature didn't make an appropriation in this instance, however, the producers could take that judgment to another state and, based upon the waiver of sovereign immunity, could try to pursue enforcement against assets in other jurisdictions.

CHAIR SEEKINS read from subsection (b) of Section 5 and asked: If the purpose of the waiver is to authorize arbitration under the state's arbitration statutes, shouldn't that purpose be specified?

MR. DONOHUE replied that was an excellent point. He recalled at one time the administration had proposed language that said "including arbitration" after the word "suit", to clarify the point just made by Chair Seekins.

[9:58:33 AM](#)

CHAIR SEEKINS observed that Section 5 mentions state courts. He asked whether federal courts should be included as well.

MR. DONOHUE answered that under the circumstances of this particular contract, federal courts don't have jurisdiction over the State of Alaska. In response to Senator Dyson, he clarified that federal leases aren't implicated in this fiscal contract.

[10:00:01 AM](#)

MR. DONOHUE, in response to Senator Stedman, said he wasn't aware of other states that had expressly waived sovereign immunity to allow enforcement of judgments outside their jurisdiction. Assuming the Federal Arbitration Act is applicable, which is in the contract, he surmised the other purpose for the waiver is this: The contract specifies that if a producer files a motion to confirm an award in Alaska Superior Court and 365 days have elapsed without court action, then - under the contract and the Federal Arbitration Act - the producer could have that award confirmed in a Lower 48 state superior court. That is the other reason for using the Federal Arbitration Act.

He highlighted whether the Alaska court would take 365 days to act. Mr. Donohue said it is unlikely. Unless there was a motion to vacate by the state, it would be an administrative act and thus the court likely would deal with it within a few months, regardless of how busy its schedule was.

MR. CLARK added that the concern was what would happen if the legislature didn't make the appropriation and then the court nullified an arbitration decision by simply sitting on the case. He reminded members that the state's superior courts have six months in which to make a decision or else the judge stops getting paid. He offered his view that this nails down a point in the contract that has a 0.0001 percent chance of occurring, since the legislature hasn't ever refused to appropriate for an arbitration award or to satisfy a judgment. Mr. Clark also reported that he was unaware of any superior court judge who'd ever attempted to nullify a decision of a prior court by simply sitting on it, as opposed to ruling on it. Thus the circumstances under which this would apply are narrow indeed.

[10:03:26 AM](#)

SENATOR DYSON remarked that he could appreciate why the companies might want this. The worst case for the people of Alaska, however, is if the industry can influence the political process and get a governor - and by extension a commissioner - who does everything the industry wants. Calling attention to Section 7, he expressed concern that such a commissioner could figuratively give away the farm.

MR. CLARK replied that it would take a lot more collaboration than that. It would take going past the arbitration award; a decision by the legislature not to pay; and a superior court decision to sit on the arbitration award and do nothing, although the judge would no longer be paid after six months. He

reiterated that a contract point has been nailed down, but he believes the likelihood of this ever arising is miniscule.

SENATOR DYSON expressed concern that if that end point were reached, however, Section 7 appears to give an amazing amount of power to change significant parts of the agreement.

MR. DONOHUE explained that one issue in terms of determining the scope of authority being granted in some of these sections is complicated by the fact that retroactive authority is being requested to modify lease and unit agreements and so forth. He noted, however, that there is a contract to compare the requested authority with how the administration has exercised that authority and applied it; thus he opined that the issue should be of lesser concern. He suggested someone from the Department of Natural Resources (DNR) could discuss with the committee the differences between the fiscal contract and long gas lease agreements and unit agreements.

[10:07:21 AM](#)

SENATOR STEDMAN asked: Wouldn't fees and penalties be added to the judgment if the legislature refused to pay it, making it harder to deal with financially in the next legislature? Wouldn't it therefore be in the state's best interest to pay it off earlier rather than later, or to come up with a payment plan if it was a large settlement?

MR. DONOHUE answered that the judgment would continue to accrue interest. If a claimant were denied relief in one legislature, it would come back to the next and ask for the interest as well. To his belief, there would be no specific penalties. He emphasized that this relates to the doctrine of sovereign immunity, that the State of Alaska, pursuant to its constitution, can define what claims can be brought against the state; where they can be brought; and what sorts of relief are available, and how that relief should be granted. In Alaska, the legislature has enacted laws that essentially restrict recovery to legislative appropriations.

[10:09:13 AM](#)

SENATOR HOLLIS FRENCH, Alaska State Legislature, asked Mr. Donohue to comment on any effect this section would have on indemnity provisions, helping the producers collect on the state's promise to pay under the contract.

MR. DONOHUE explained that arbitration awards under the contract are divided into two types. Article 22.1 has four specified

indemnification claims, referred to as "indemnification payments." Pursuant to Article 37.3, enforcement for those is limited to coming to the state legislature; if a producer gets an award from the state and reduces it to a judgment, that type of award cannot be taken outside the State of Alaska for enforcement purposes. Hence this waiver only applies to the ability to enforce arbitration awards unrelated to the indemnification payments specified in Article 22.1.

SENATOR FRENCH relayed his understanding that indemnification payments are only collectible either through the legislature or as an offset against other payments that the producers might make to the state through corporate income tax, a PILT for production tax, royalties and so forth. They never can be collected outside the state in another court.

MR. DONOHUE affirmed that, specifying that the remedies of the producers are limited to recoupment and offset under Article 22, as well as coming to the legislature for an appropriation.

[10:12:08 AM](#)

SENATOR ELTON returned to Section 5, paraphrasing the portion that says "may provide for a waiver, with the concurrence of the attorney general". He asked whether his understanding was correct that a future AG couldn't change the state's position, revoking a previous decision two or four years down the road.

MR. DONOHUE affirmed that. He provided the administration's view that the aforementioned language is implemented by the AG's signing of the fiscal contract at the time and agreeing to the terms that relate to a waiver in the fiscal contract.

SENATOR ELTON surmised that AG's opinion would be binding on future AGs, which isn't the usual case in other circumstances.

MR. DONOHUE replied that this is more than an opinion. The AG will have statutory authority to do this, assuming this provision passes. After that, it would become a matter of contract. The AG at the time would make that decision, and it would be binding for future administrations.

CHAIR SEEKINS suggested this is a blanket concurrence, rather than a case-by-case concurrence.

MR. DONOHUE affirmed that.

[10:14:11 AM](#)

SENATOR STEDMAN said he understands the negotiation process, with multiple points of give-and-take and compromise. He asked: If there is such a remote possibility that this may be triggered, why is it in the state's best interest to include it?

MR. CLARK answered that as the administration went through this and other articles, the desire was to nail everything down to protect the state's interests and mitigate the fact of taking the gas in kind. In terms of payment provisions, this reflects the producers' nailing down the assurance of getting paid if the legislature decides otherwise and the judge sits on it. The effort by all was to address almost every contingency and eventuality in order to have clarity and certainty for future legislators, arbitrators and people who must administer this contract.

SENATOR STEDMAN remarked that it appears the state has always been in a strong financial position, to the point of never having trouble paying its obligations, and that it has been forthright in issues which have come forward. He suggested the state might have a better historical record than the producers in terms of ability and timeliness in paying claims.

MR. CLARK offered his belief that the state has never missed a payment requested by the AG in the ordinary course of business, and indicated the legislature has never failed to appropriate money requested by the AG to pay an arbitration award.

[10:17:15 AM](#)

MR. DONOHUE turned to Section 6, amending AS 43.82.210(a). He pointed out that the primary amendments here involve adding the concept of a related party and deleting "as a consequence of participating in an approved qualified project". He explained that this is to avoid disputes about whether providing oil fiscal certainty relates to the participation in an approved qualified project.

He returned to Section 7, which read:

*** Sec. 7.** AS 43.82.220(a) is amended to read:

(a) Notwithstanding any contrary provisions of AS 38 or regulations adopted under that title, the commissioner of natural resources, with the concurrence of the commissioner of revenue and, if necessary, the affected parties holding a state lease or unit agreement, may develop proposed terms for inclusion in a contract under AS 43.82.020 that modify

[THE TIMING AND NOTICE] provisions of the applicable oil and gas leases, [AND] unit agreements, and other agreements under AS 38, including provisions

(1) pertaining to the state's rights to receive its royalty on gas in kind or in value if

(A) [(1)] the viability of the approved qualified project depends on long-term gas shipping commitments [PURCHASE AND SALE AGREEMENTS];

(B) [(2)] certainty over time regarding the quantity of royalty gas that the state may be taking in kind is needed to enter into long-term gas shipping commitments or marketing agreements [SECURE THE LONG-TERM PURCHASE AND SALE AGREEMENTS];

(3) THE SPECIFIED PERIOD OF THE STATE'S COMMITMENT TO TAKE ITS ROYALTY SHARE IN VALUE OR IN KIND DOES NOT EXCEED THE TERM OF THE PURCHASE AND SALE AGREEMENTS]; and

(C) [(4)] the modification does not impair the ability of the approved qualified project or the state to meet the reasonably foreseeable demand in this state for gas within economic proximity of the project during the term of the contract developed under AS 43.82.020; and

(2) relating to lease or unit expenses for separation, cleaning, dehydration, gathering, salt water disposal, and preparation for transportation on or off the lease.

MR. DONOHUE highlighted the deleted language, in brackets. He explained that the initial 1998 legislation related to providing authority to the state to negotiate terms and conditions with respect to long-term agreements to take royalty either in value or in kind. That was to facilitate long-term purchase and sale agreements either by the producers or by the state if it decided to take its gas in kind.

He indicated the administration proposes modifying the aforementioned "purchase and sale agreement" concept, converting it to the state's ability to enter into long-term shipping commitments. Mr. Donohue noted this ties in with the decision, in the contract, that the state will take its royalty gas in kind for the life of the agreement, and will convert its production tax payments to gas in kind, also for the life of the agreement. This is designed to conform to the different type of position taken by the state in this contract. It isn't

significantly different from the underlying statute, but is done in the contract in the context of the overall broadening of authority to modify other provisions of Title 38.

MR. DONOHUE drew attention to paragraph (3) of Section 7. He explained that this is being deleted because it restricts the state's ability to enter into a long-term agreement to take its royalty gas in kind.

[10:20:15 AM](#)

MR. DONOHUE described paragraph (2) of Section 7 as relating to some provisions in the fiscal contract that deal with the state's decision to pay various types of conditioning costs; to take gas at different delivery points than otherwise might be provided for in the contract; to share in the cost of the disposal of impurities; and to take on certain field costs not otherwise provided for in the lease agreement.

He added that the Prudhoe Bay leases already have field-cost provisions, agreed to in the early 1980s as part of a settlement with the producers. Mr. Donohue said he believed that field-cost amount was captured in the contract. What is being talked about here, therefore, is primarily changes to other leases issued subsequent to the initial Prudhoe Bay lease sale.

[10:21:37 AM](#)

SENATOR ELTON drew attention to new language in Section 7, "**and other agreements under AS 38, including provisions**". He requested confirmation that this doesn't limit changes to what is subsequently listed and covered in Title 38.

MR. DONOHUE replied that the commissioner, as part of this agreement, can modify obligations in unit agreements, oil and gas leases or other agreements pertaining to those leases. Noting there is a Point Thomson article in the fiscal contract, for example, Mr. Donohue said there is an ongoing dispute between the producers and the state about whether Point Thomson is being developed properly and timely in accordance with the lease obligations and unit obligations. The article provides for suspension of those disputes, and tries to incorporate the planning and development of Point Thomson into the planning and development of the gas project as a whole.

[10:23:15 AM](#)

SENATOR ELTON alluded to subsection (a) of Section 7, asking whether the commissioner of DOR has veto power over what the commissioner of DNR may want to determine.

MR. DONOHUE answered that it is a collaborative effort. There are issues that the commissioner of DNR has the lead on, and issues that the commissioner of DOR has the lead on. In the end, because natural resources and revenue issues are involved, it has to be a joint decision on most of the major issues.

10:24:31 AM

CHAIR SEEKINS addressed Mr. Clark, recalling conversations regarding whether the integration clause of the contract would allow the administration to renegotiate, by agreement, the taxes and royalties as part of that agreement after it was approved. He highlighted the need to discuss this further.

MR. CLARK replied that, at the appropriate point, the administration would have some language in this regard.

MR. DONOHUE turned to Section 8, which read:

*** Sec. 8.** AS 43.82.220(c) is amended to read:

(c) The commissioner of revenue shall include any proposed terms [RELATING TO ROYALTY] developed in accordance with this section in the proposed contract under AS 43.82.400.

He explained that AS 43.82.220 has now been broadened to deal with issues beyond RIK, RIV, royalty valuation, timing and notice.

MR. DONOHUE turned to Section 9, which read:

Sec. 9. AS 43.82.220 is amended by adding a new subsection to read:

(e) An agreement by the state to take royalty gas in kind as part of a contract developed under this chapter that satisfies (a)(1)(A) - (C) of this section is not subject to the provisions of AS 38, or regulations adopted under that title, relating to decisions to take royalty in kind.

He explained that Section 9 just clarifies that, with respect to compliance with the provisions of AS 43.83.220(a) in terms of whether it is appropriate to make a long-term shipping commitment, those statutory standards prevail over any potential conflicting statutory standards in Title 38. Mr. Donohue specified the intent to clarify that the royalty advisory board doesn't have a role in this particular decision. While that

board might have a role in subsequent years in terms of purchase and sale, it is an issue for legislative deliberation and doesn't have to be decided at the front end of the contract.

MR. DONOHUE turned to Section 10, which read:

* **Sec. 10.** AS 43.82.250 is amended to read:

Sec. 43.82.250. Term of contract; effective date.

The term of a contract developed under AS 43.82.020 [MAY BE FOR NO LONGER THAN IS NECESSARY TO DEVELOP THE STRANDED GAS THAT IS SUBJECT TO THE CONTRACT; HOWEVER, THE TERM OF THE CONTRACT] may not exceed 35 years from the commencement of commercial operations of the approved qualified project, excluding suspensions of contract obligations that are covered by the force majeure terms of any contract developed under this chapter. However, the term of contract may not exceed 45 years from the effective date of a contract approved under AS 43.82.435.

He explained that this relates to the overall term of the contract. Current law provides a maximum of 35 years from commencement of commercial operations. The new underlined language provides that the 35-year period can be expanded for periods of suspensions caused by force majeure terms of the contract; however, the total cannot exceed 45 years. The deletion of the language shown in brackets relates to trying to avoid debates about how long this period is. Mr. Donohue recalled that members had been briefed that the success of this project, in part, depends on finding unknown reserves to fill the line towards the second half of its life. The debate to be avoided is whether unknown gas is "stranded" or not.

[10:28:21 AM](#)

MR. DONOHUE turned to Section 11, reminding members that this was an amendment [to SB 2004] by this committee during the last special session. Section 11 read:

* **Sec. 11.** AS 43.82 is amended by adding a new section to read:

Sec. 43.82.255. Terms of contract provisions related to oil. (a) The provisions of this section apply to a contract developed under AS 43.82.020 that provides for periodic payment in lieu of taxes on oil under AS 43.55.

(b) For the period of the contract term beginning immediately after the date of full project

funding or the date of issuance of a certificate of public convenience and necessity for construction and initial operation of the Alaska Natural Gas Pipeline, whichever date is later, and ending 14 years after that date, the commissioner may modify those terms of the contract relating to payments in lieu of the taxes on oil set out in AS 43.55. For the period of the contract term covered by this subsection, the payments in lieu of taxes may be established with as much certainty as the Constitution of the State of Alaska allows.

(c) For the period of the contract term beginning immediately after the period described in (b) of this section, and ending on a date not later than 25 years after the effective date of the contract, the amount of the payment in lieu of tax on oil under AS 43.55 must be equal to the amount of the tax levied by law. However, the commissioner may develop a contract term that, in the event of a material change in the taxes enacted after the effective date of the contract, establishes a procedure for restoring the parties to substantially the same economic position they had as of the end of the period described in (b) of this section immediately before the change.

(d) Implementation of a contract provision authorized in (c) of this section may be made subject to the dispute resolution procedures of the contract.

MR. DONOHUE described Section 11 as providing for a 25-year period that begins with the effective date of the contract and is divided into three phases. The first, subsection (b), is from the beginning of the contract and up through full project funding, a term defined in AS 43.82 that is equivalent to "project sanction" used in connection with the contract. There would be no fiscal certainty during this phase, and taxpayers would pay production tax under AS 43.55.

He explained that the second phase, 14 years beginning with full project funding or project sanction, would have a provision for oil and gas fiscal certainty. Mr. Donohue emphasized that during this 14-year period, the producers clearly would be subject to dispute resolution provisions of the contract.

He referred to subsection (c), relating to the third and final phase. He reminded members that it has a fiscal-balancing concept whereby the taxpayer would be outside the contract and

would pay production taxes in accordance with the law. However, a contractual term would provide for balancing should the taxes change materially or otherwise materially affect the economics of the project. Mr. Donohue went on to say that subsection (d) clarifies that the taxpayers still have rights to resolve disputes about whether there has been a material change to their circumstances in accordance with dispute resolution procedures required by the fiscal contract.

[10:31:08 AM](#)

SENATOR STEDMAN highlighted the importance of Section 11.

CHAIR SEEKINS suggested setting it aside for discussion after Version G was described in full.

MR. DONOHUE turned to Section 12, which read:

* **Sec. 12.** AS 43.82.270 is amended to read:

Sec. 43.82.270. Project plans and work commitments. A contract under AS 43.82.020 must include provisions for implementation of the qualified project plan approved under AS 43.82.140, as may be modified as a result of the development of a contract under this chapter, and provisions for updating the plan at reasonable intervals until the commencement of commercial operations of the approved qualified project. The commissioner of revenue, in consultation with the commissioner of natural resources, may, as a term in a contract under AS 43.82.020, include work commitments or other obligations in the contract to be accomplished before the commencement of commercial operations of the approved qualified project.

He explained that the contract must include provisions for implementation of a Qualified Project Plan as it is modified, both as the result of negotiations - reflected in the contract - and going forward throughout the contract period.

MR. DONOHUE turned to Section 13. He highlighted the only substantive change, in paragraph (4), which read:

(4) establish a period of at least 60 [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.

He opined that this is moot and thus probably no longer necessary, given the administration's actions in extending the comment period.

MR. DONOHUE turned to Section 14, which read:

* **Sec. 14.** AS 43.82.500 is amended to read:

Sec. 43.82.500. Obligation to share payments with municipalities. If the commissioner develops a contract under AS 43.82.020 that includes terms that exempt a qualified sponsor, the members of a qualified sponsor group, or a related party to the contract, and the property, gas, products, and activities associated with the approved qualified project that is subject to the contract, from a municipal tax or assessment in accordance with AS 29.45.810 or AS 29.46.010(b), or AS 43.82.200 and 43.82.210, the commissioner shall include a term in the contract that provides for [THE PARTY PAY] a portion of the periodic payments to be made payable [DUE UNDER THE CONTRACT] to the revenue-affected municipality.

He reminded members that Jim Baldwin had addressed this area earlier in the week.

The committee took an at-ease from [10:33:13 AM](#) to [10:51:18 AM](#).

SENATOR BEN STEVENS began discussion of Amendment 1. Returning to Sections 10 and 11, he recalled that even before May 10, when the PPT concept was introduced, there was discussion of possible fiscal certainty for the duration of the oil terms and gas terms. That was looked at, and a lot of concern was expressed in the last special session. Some concern about oil fiscal certainty was addressed by adding Section 11 [to SB 2004], which at the time he'd thought would mitigate many concerns, including those relating to guaranteeing certainty before there is a project. He emphasized the work done by this committee and the Senate to move the project forward by addressing concerns expressed by the general public, the legislative consultants and the producers and explorers.

[10:54:24 AM](#)

SENATOR BEN STEVENS offered Amendment 1, which read:

A M E N D M E N T 1

OFFERED IN THE SENATE

BY SENATOR BEN STEVENS

TO: CSSB 3002(NGD)-Version G

Page 6, line 6:
Delete "35"
Insert "25"

Page 6, line 10:
Delete "45"
Insert "35"

SENATOR BEN STEVENS noted this relates to AS 43.82.250, Section 10. He recalled that when Amendment 4 to SB 2004 was adopted, adding Section 11, 25 years was the maximum term from the effective date. He referred to two terms in the fiscal contract, one relating to gas and one to oil. He pointed out that Section 11 relates to the provision regarding oil, whereas Amendment 1 relates to gas. It changes the length, saying the term of the contract developed under AS 43.82.020 may not exceed 25 years from commencement of commercial operations; however, the term of the contract may not exceed 35 years.

He explained why he believes this is prudent to consider. Senator Ben Stevens opined that it should be split into two terms, one not to exceed 35 years from the contract's effective date. When the project will be completed isn't known. With 25 years from commencement of commercial operations, from the time of first revenue there'll be 25 years to meet firm transportation (FT) commitments in the first go-round.

He recalled hearing from the Federal Energy Regulatory Commission (FERC) that most FT commitments will range between 15 and 25 years; those terms will be set under the open season. Senator Ben Stevens suggested that having both timelines creates an incentive to complete the project. Completing it within 8 years, for example, would give 27 years of certainty on gas; completing it within 15 years, however, would only give 20 years of certainty.

[10:58:25 AM](#)

SENATOR BEN STEVENS moved to adopt Amendment 1 and asked for unanimous consent.

SENATOR ELTON objected for discussion purposes. Noting this language was recommended by the executive branch, he asked to hear from the administration about the amendment.

MR. CLARK explained that the basis for the term which the administration used was laid out by Dr. van Meurs yesterday. Because of asymmetrical risk taken by the producers to move this project forward, the state sought to provide more opportunity for them to capture the upside. Given that the administration thought getting this infrastructure in place was critical to the state, the administration believed the terms worked out were reasonable. Agreeing that various concerns have been expressed by Alaskans about these terms, Mr. Clark specified that the foregoing was what was negotiated with the producers.

SENATOR WILKEN remarked that the industry standard for long-term gas contracts - the reason for fiscal stability related to gas - seems to be 20 years. Amendment 1 provides 35 years of fiscal certainty, allowing 5 years for sanctioning, 5 for construction, 20 for the initial gas contracts and 5 left over for variables not foreseen during the sanctioning or construction periods. Opining that this is fair, Senator Wilken said this helps him relate in the real world to the need for 35 years, whereas he'd been unable to tell people why it was 45 years. He asked whether this is the correct thing to tell people when they ask, "Why 35?"

SENATOR BEN STEVENS agreed it seems 35 years is a reasonable amount of time for the state to consider certainty during the first 20-25 years of revenue, incorporating 10 years of cash outflow or expenditures, as well as a buffer of 3-5 years on either side. If it is shorter, it is an incentive. If unanticipated hurdles prolong it, there is no penalty. But it maintains a reasonable amount of time, the 20 years, to stay in effect for FT commitments and the financing as presented by FERC, the industry and the consultants.

[11:03:32 AM](#)

SENATOR STEDMAN recalled discussion about these dates over the past year. He surmised that bringing this number down more substantially than Amendment 1 would create additional difficulty in negotiating the contract. He agreed that this timeframe seems reasonable, and said it shouldn't be unreasonable for the producers to agree to.

SENATOR BEN STEVENS emphasized that Sections 10 and 11 are interrelated. Section 10 says the contract lasts from the effective date through 35 years, but he suggested the first 10 years are meaningless because there is no revenue to the state until the project is built; in Section 11, the first term of fiscal certainty for oil is essentially meaningless as well,

because there is no certainty until there is a sanctioned project. When the two are combined, saying there is no certainty on oil until there is a project, the public can be told that if a project is built, there will be certainty; otherwise, the state hasn't committed anything and thus there is no risk to the state. He noted an exception: If the state becomes a partner in the limited liability company (LLC), there will be a commitment of upfront capital for design and expansion, and whatever obligations exist at that point.

He opined that there is no risk from passing either of his two amendments in the first phase of the project. Senator Ben Stevens explained that if there is a project and FERC issues a certificate of public convenience, then phase two of Section 11 applies, which says certainty on oil will last 14 years, until "expenditures equals revenues minus corporate income tax," at which point it changes.

[11:06:32 AM](#)

MR. CLARK didn't disagree, but asked that the basic economics of the contract be considered. He explained that as the administration has negotiated these terms, the various terms have been "risked" by the producers. The overall economics affect the producers' risk analysis and, consequently, their decision on whether to proceed. The following will affect their risk assessment: 1) having no fiscal certainty prior to project sanction and 2) the shorter time period.

He emphasized the administration's goal of getting the infrastructure in place because of the timeline with respect to the oil pipeline - projected to run out in 2030 - and the lead time to get a gas pipeline in place, about 10 years. "We are playing with a narrow window here," Mr. Clark cautioned.

[11:08:24 AM](#)

SENATOR BEN STEVENS acknowledged that Amendment 1, if passed, would significantly affect negotiations. He mentioned the fiscal interest findings, page 106, and read the following, suggesting this exemplifies why it would be a huge concern for the industry:

Firm transportation agreements are considered liabilities to the shipper. These liabilities are defined as probable future sacrifices of economic benefits arising from present obligations of a particular entity to transfer assets or provide

services to other entities in the future as a result of past transactions or events.

SENATOR BEN STEVENS indicated this was from the Financial Accounting Standards Board (FASB) in 2000. He continued:

Such liabilities may not appear on the balance sheet of the shippers per GAAP procedures. Whether a debt goes off balance sheet or not depends on whether the length of the commitment exceeds 75 percent of the estimated economic life of the asset or whether the present value of the payment exceeds 90 percent of the fair market value.

He remarked that there is no question Amendment 1 would change the dynamics with regard to FASB or generally accepted accounting principles (GAAP), and how they'll be able to list those liabilities on their balance sheets. With respect to the concerns heard about the contract terms, and trying to move the project forward, Senator Ben Stevens suggested it is prudent for the state to allow certainty within the contract, but only in the realm of what is believed acceptable and what falls within the probability of financial realities of the project.

[11:10:46 AM](#)

SENATOR BUNDE spoke in favor of Amendment 1 as a necessary adjustment. He reminded the producers that while they might be used to intricate business deals, the state has a further intricacy in having a "board of directors" of 630,000 residents. Although his constituents tend to be in favor of the oil industry, they are concerned about the certainty and its length. If this period of certainty isn't changed so the public is more comfortable, Senator Ben Stevens cautioned, it will jeopardize having a successful contract.

SENATOR STEDMAN referred to Senator Ben Stevens' comments. Questioning the impact on the aforementioned balance sheet with respect to the potential posting of a particular liability, Senator Stedman said those are normally handled as a footnote on the balance sheet. Instead, he suggested the impact on the balance sheet will be in booking those reserves; it will all flow back to the producers in the end, looking at the subsidiaries and different layers. Senator Stedman predicted it will be a win-win situation when there is the ability to book those reserves. As for shortening the timeframe, he reported that the biggest concern voiced by people who've contacted him is giving up the sovereign right to adjust the taxing authority

as the legislature sees fit. He surmised a shorter timeframe wouldn't materially affect the state's ability to secure construction of the pipeline.

11:14:14 AM

SENATOR WILKEN recalled previous testimony that the critical fiscal-analysis period is from today until 15 or 20 years; this is what makes or breaks a deal, given the "time value" of money, and so both sides are focused on that first 15 or 20 years. He suggested, therefore, that 90 percent of the effort and accuracy should be concentrated in that period; he asked to be corrected if he was wrong. Referring to previous discussion of "reopeners," Senator Wilken cautioned that while he believes this rubs some of the edges off, he doesn't want people to believe this takes care of the reopener issue; he indicated the need to learn more about that issue.

MR. CLARK discussed the rationale for the additional time. He emphasized that the FT commitment is what gets the gas pipeline built. He said 2 years from now, when it gets to the open season, and 6 years before the line is built - under the current timeline in the summary of the Qualified Project Plan - the state is asking the producers to take an FT commitment, a take-or-pay contract. That is the period of probably 15 to 20 years. However, the periods must be added together to think about the period during which there is that commitment.

He explained that the additional period allowed by the state was for the very point raised by Dr. van Meurs yesterday with Senator Dyson: the opportunity for taking that risk, for signing on 6 years ahead of time for a take-or-pay contract. Mr. Clark recalled that Dr. van Meurs had said those would impact the companies \$60 billion to \$80 billion because of making that commitment. Mr. Clark noted that take-or-pay could end up at a low-price scenario or that there could be a construction-cost overrun that justified the remaining term.

11:18:04 AM

CHAIR SEEKINS, following some questions to Senator Ben Stevens, gave his understanding that Amendment 1 provides certainty on the tax rate for gas beginning with execution of the contract; that remains in effect for a maximum of 35 years. For oil, however, certainty isn't established until such time as there is sanctioning of the project; then it goes into the formula established in Section 11.

SENATOR BEN STEVENS affirmed that.

CHAIR SEEKINS requested that Senator Wilken perhaps create another timeline chart for the committee.

SENATOR WILKEN noted he was drawing one already.

[11:21:04 AM](#)

CHAIR SEEKINS asked whether Senator Elton maintained his objection. [Senator Elton shook his head no.] He asked whether there was any objection to adoption of Amendment 1. There being no objection, it was so ordered.

The committee took an at-ease from [11:21:41 AM](#) to [11:27:55 AM](#).

MR. CLARK advised members that his earlier statement that the Alaska State Legislature had never refused to pay a judgment or arbitrator's award might need correction. Mr. Erickson had just brought to his attention several situations in which that might have occurred, whereas a previous Department of Law survey at Mr. Clark's request hadn't reflected those. Mr. Clark announced that he would check the points raised by Mr. Erickson and would correct his statement on Monday, 7/31/06, if necessary.

SENATOR GREEN recalled one case that the legislature had delayed a year or two.

MR. CLARK said he was aware of that one, but would check out the ones raised by Mr. Erickson.

SENATOR BUNDE remarked, "We tend to pay our judgments, whether they make sense or not." He cited the example this year of paying someone a quarter million dollars after that person sued the state for letting him kill his own father.

[11:29:35 AM](#)

SENATOR BEN STEVENS moved to adopt Amendment 2, which read:

A M E N D M E N T 2

OFFERED IN THE SENATE SPECIAL COMMITTEE ON NATURAL GAS DEVELOPMENT
BY B. STEVENS
TO: CSSB 3002(NGS)(24-GS2095\G)

Page 8, following line 8:

Insert new bill sections to read:

"* Sec. 14. 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 may execute [SHALL SUBMIT] the contract [TO THE GOVERNOR].

* **Sec. 15.** AS 43.82.430(c) is amended to read:

(c) The commissioner's final findings and determination under (a) of this section and decision regarding whether to execute the contract under (b) of this section are final agency decisions under this chapter.

* **Sec. 16.** AS 43.82.440 is amended to read:

Sec. 43.82.440. Judicial review. An [A PERSON MAY NOT BRING AN] action challenging the constitutionality of a law authorizing a contract developed under this chapter [ENACTED UNDER AS 43.82.435] or the enforceability of a contract executed under a process authorized by [A] law may not be brought [AUTHORIZING A CONTRACT ENACTED UNDER AS 43.82.435] unless the action is commenced within 120 days after the date that the contract was executed by the state and the other parties to the contract."

Renumber the following bill sections accordingly.

Page 11, following line 30:

Insert new bill sections to read:

"* **Sec. 24.** The uncodified law of the State of Alaska is amended by adding a new section to read:

APPROVAL AND RATIFICATION. The provisions of the Alaska Stranded Gas Fiscal Contract between the State of Alaska and BP Exploration (Alaska) Incorporated, ConocoPhillips Alaska, Incorporated, and ExxonMobil Alaska Production, Incorporated, as amended to conform to the provisions of this Act, are approved and ratified.

* **Sec. 25.** The uncodified law of the State of Alaska is amended by adding a new section to read:

SUSPENSION OF OTHER LAW. The provisions of the Alaska Stranded Gas Fiscal Contract between the State of Alaska and BP Exploration (Alaska) Incorporated, ConocoPhillips Alaska, Incorporated, and ExxonMobil Alaska Production, Incorporated, as amended to conform to the provisions of this Act, are effective notwithstanding the provisions of any other law, including AS 43.82.200 - 43.82.270. Any inconsistency between the Alaska Stranded Gas Development Act (AS 43.82) and the fiscal contract executed under AS 43.82 are cured and authorized by this section.

* **Sec. 26.** The uncodified law of the State of Alaska is amended by adding a new section to read:

ADVISORY VOTE. At the 2006 general election to be held on November 7, 2006, in substantial compliance with the election laws of the state, the lieutenant governor shall place before the qualified voters of the state a question advisory to the governor and the commissioner of revenue. Notwithstanding other laws relating to preparation of the ballot proposition, the question shall appear on the ballot in the following form:

QUESTION

Shall the commissioner of revenue sign and make binding upon the State of Alaska the Alaska Stranded Gas Fiscal Contract between the State of Alaska and BP Exploration (Alaska) Incorporated, ConocoPhillips Alaska, Incorporated, and ExxonMobil Alaska Production, Incorporated?

Yes [] No []

* **Sec. 27.** If secs. 14 - 16 and 25 of this Act take effect, they take effect on the date that the director of elections certifies the results of the 2006 general election at which a majority of the votes cast on the proposition favor execution by the commissioner of revenue and binding effect on the State of Alaska of the Alaska Stranded Gas Fiscal Contract between the State of Alaska and BP Exploration (Alaska) Incorporated, ConocoPhillips Alaska, Incorporated, and ExxonMobil Alaska Production, Incorporated."

Renumber the following bill sections accordingly.

Page 12, line 7:

Delete "Sections 2 - 14 and 17 - 20"
Insert "Sections 2 - 13, 17, and 20 - 23"

Page 12, following line 9:
Insert a new bill section to read:

"* **Sec. 30.** Sections 24, 25, and 26 of this Act take effect immediately under AS 01.10.070(c)."

Page 12, line 10:
Delete "This"
Insert "Except as provided in sec. 30 of this Act, this"

SENATOR BEN STEVENS objected for discussion purposes. He described Amendment 2 as a simple but complex amendment. He explained that proposed Section 14 goes back to language in the original bill introduced in 1998, saying the commissioner may execute the contract. Mentioning the point at which there is a question of constitutionality, he said Section 15 just reinforces that the commissioner's action is the final agency action. Section 16 is a slight change to the judicial review process; the phrase "process authorized by law" relates to what is established in Sections 14-15 and the whole Act. It doesn't shorten the period of time, but says it may not be brought until the final agency action is complete.

He explained that the remainder of Amendment 2, a new concept to be included in the process, adds ratification of the contract upon a vote of the general public on November 7, 2006. Asserting there is a logjam, and that the majority of Alaskans and Americans want this project to move forward, Senator Ben Stevens opined that it is of national interest from a standpoint of both security and economics. If the legislature passes this Act, it gives the commissioner authority to execute the contract, but it won't be ratified and the effective date won't occur until the general public agrees this is the path to take.

[11:34:38 AM](#)

SENATOR BEN STEVENS further explained that if the public doesn't agree at that time, it will be back to square one. He'd come up with the concept in order to break the logjam, because he believes this is a project of immense complexity and uncertainty, and that the public is mired in minutia. He pointed out there is no way to be certain about what will happen 10 years from now, at first gas. Calling this project a work in progress, he acknowledged both the complexities and certainties

in the contract. Emphasizing his belief that it should move forward, Senator Ben Stevens agreed with elevating this to where every Alaskan of voting age has the ability to vote on it, in spite of its uncertainties.

He gave some history, noting people have made lifetime careers out of trying to move this gas to market. Senator Ben Stevens told members, "This is the closest we've ever come." Referring to multiple options presented over the years, he gave his view that none of them, in 30 years, were as complete as this project, which has: upstream fiscal certainty; a mechanism to build and have access to a GTP; methodologies for expansion and access by future participants; and a methodology and financial backing provided by Congress to build the line to Alberta or the Lower 48. He reiterated his belief that the public has the right to vote on it.

[11:38:29 AM](#)

CHAIR SEEKINS held Amendment 2 over until Monday, 7/31/06. Noting he would propose another amendment then, he explained its concept. Referring to .230 of the Alaska Stranded Gas Development Act ("Stranded Gas Act"), contract terms related to hiring of Alaska residents and contracting with Alaska businesses, Chair Seekins advised members that his new amendment provides the following: Should the state acquire an ownership interest in this project, in the contract the parties shall agree to enter into negotiations for project labor agreements to facilitate construction. To the extent it is lawful, the parties would be required to include provisions in any project labor agreement that would promote hiring of Alaska residents and establish hiring halls in both the rural and urban communities of the state.

He emphasized wanting to ensure the ability - to the greatest extent of the law - to employ Alaskans first on this pipeline. Chair Seekins clarified, however, that he doesn't want to create a situation in which there is a requirement that they become "predatory on other employees." Beyond hiring Alaskans first, under the terms of a project labor agreement, other requirements would stay as they are; he mentioned requirements for advertising about the availability of positions. With respect to extending this into the rural areas, Chair Seekins highlighted looking to that labor force to answer some of the demand and to provide income to people in those communities.

[11:41:57 AM](#)

SENATOR GREEN announced she might not be available Monday. She pointed out that in past discussion of bringing issues to the people for a vote, it has been noted how terribly expensive and unfair some campaigns are. She suggested it is a dangerous path, since it cannot be determined whose money will be placed out there to change opinions.

SENATOR STEDMAN noted he might not be available Monday either.

CHAIR SEEKINS announced that Monday there'd be a report from the consultants, with questions and answers. Discussion of some of the amendments would then begin, but whether they would be voted on he couldn't say. He provided further scheduling details.

[11:47:22 AM](#)

SENATOR BEN STEVENS reiterated earlier points regarding Amendment 2, adding his understanding that the deadline for ballot language is August 18. He emphasized the desire to move this project forward and to consider the option under Amendment 2. In response to Senator Stedman, he explained that a motivation for introducing this has been the cost to the state's economy of postponing the decision on this project another year. The potential is to create sustainable investment in a project that will last 50 years. With postponement, however, the cost to the economy cannot be recouped between now and the sanctioning date.

He explained that he isn't concerned as much about the costs to the state's coffers, which he opined are awash with money even under the existing tax system, but about Alaskan workers, young people who want to move to Alaska to find employment, as well as children in Alaska's education system who want to stay and find jobs in future years. That is what this initiative achieves, Senator Ben Stevens concluded. It creates economy, spending and growth. Thus he urged acting on this provision now.

CHAIR SEEKINS held SB 3002 over.

There being no further business to come before the committee, Chair Seekins adjourned the Senate Special Committee on Natural Gas Development meeting at [11:52:30 AM](#).