

HOUSE FINANCE COMMITTEE

April 28, 2007

12:56 p.m.

CALL TO ORDER

Co-Chair Chenault called the House Finance Committee meeting to order at [12:56:18 PM](#).

MEMBERS PRESENT

Representative Mike Chenault, Co-Chair
Representative Kevin Meyer, Co-Chair
Representative Bill Stoltze, Vice-Chair
Representative Harry Crawford
Representative Richard Foster
Representative Les Gara
Representative Mike Hawker
Representative Reggie Joule
Representative Mike Kelly
Representative Mary Nelson
Representative Bill Thomas, Jr.

MEMBERS ABSENT

None

ALSO PRESENT

Pat Galvin, Commissioner, Department of Revenue; Marty Rutherford, Deputy Commissioner, Department of Natural Resources; Tom Irwin, Commissioner, Department of Natural Resources; Representative John Coghill; Representative Woodie Salmon

PRESENT VIA TELECONFERENCE

None

SUMMARY

HB 177 "An Act relating to the Alaska Gasline Inducement Act; establishing the Alaska Gasline Inducement Act matching contribution fund; providing for an Alaska Gasline Inducement Act coordinator; making conforming amendments; and providing for an effective date."

CSHB 177 (RES) was heard and HELD in Committee for further consideration.

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HOUSE BILL NO. 177

"An Act relating to the Alaska Gasline Inducement Act; establishing the Alaska Gasline Inducement Act matching contribution fund; providing for an Alaska Gasline Inducement Act coordinator; making conforming amendments; and providing for an effective date."

PAT GALVIN, COMMISSIONER, DEPARTMENT OF REVENUE, introduced HB 177.

Representative Joule asked if there is a sectional analysis. Commissioner Galvin reported that there is not one yet.

Commissioner Galvin pointed out that HB 177 creates a new chapter in AS 43 entitled "Alaska Gasline Inducement Act". He addressed Sec. 43.90.010, the purpose of the chapter, which is to encourage construction of a natural gas pipeline. Article 2 deals with the Alaska Gasline Inducement Act (AGIA) license. Sec. 43.90.100 allows the Commissioner of Revenue and the Commissioner of Natural Resources to award one AGIA license. It also clarifies that nothing in AGIA precludes a party from pursuing an alternate gas pipeline project.

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Commissioner Galvin described Sec. 43.90.110 as the project construction inducements. The licensee is entitled to receive state matching contributions not to exceed \$500,000,000 to be paid to the licensee during a five-year period, which could be extended. Up to the first binding open season, the contribution rate can be up to 50 percent. Following the first binding open season, the contribution rate can be up to 80 percent. Those contribution rates will be a bid variable and will be included in the proposals and evaluated as part of the competitive process. This section also describes what a qualified expenditure is; those that are directly and reasonably related to obtaining a certificate from the Federal Energy Regulatory

Commission (FERC) or the Regulatory Commission of Alaska (RCA).

Co-Chair Chenault returned to Article 2 and read, "nothing in this chapter precludes a person from pursuing a gas pipeline project independently from this chapter." He wondered if anything would preclude the department or the state from assisting another entity in pursuing such a pipeline project while AGIA is in place. Commissioner Galvin responded that nothing would preclude the state from its normal course of business in approving or assisting in the permitting process or discussion under existing statutes and regulations. There is a project licensee assurance section of AGIA that does preclude the state from offering monetary values to a competing project.

Representative Joule asked if the 50 percent and 80 percent matching contributions would not exceed \$500 million. Commissioner Galvin said that is correct.

Representative Gara asked about the percents before and after open season on page 2 of the bill. He wanted assurance that the companies could not shift some of its costs to after the first open season to get the 80 percent match. Commissioner Galvin replied that the decision as to when to hold the first open season will be part of the application proposal. It will be a factor in evaluating a number of things including the likely success of the project. The project will be defined to the extent that the work has been done up to that point. He explained that the amount the licensee intends to be expended will be known ahead of time. Representative Gara asked if the language is strong enough to prevent putting money in after the open season. Commissioner Galvin referred to page 8, line 20 to answer. As part of the application the licensee has to propose a percentage and total dollar amount for the state's matching contribution, for before and after open season. Those proposed expenditures will be evaluated.

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Representative Gara gave a hypothetical situation. He wondered if the proposals are negotiable, such as under the old Stranded Gas Act. Commissioner Galvin related that the intent of AGIA is to establish, in the form of a RFA, a set of bid requirements. The competitive nature of the proposal requests would make it unnecessary to negotiate.

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Representative Kelly asked how the success of the binding open season relates to the 50 percent and 80 percent match. Commissioner Galvin related that there is a change in the risk profile of the project, particularly from the licensee's prospective, depending upon whether or not that initial open season is a success or not. A competitive response would allow for a contingency after the open season. If the open season is successful, then the state's contribution would drop off. The risk issue for the licensee is not the same, moving forward from there. The 80 percent cap is recognized as more likely to be reached in the event of an unsuccessful open season. The state's exposure in terms of the \$500 million is somewhat dependant on the success of the open season. That expectation, in part, is why the upstream inducements are put toward the open season.

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Commissioner Galvin continued on page 3, line 11, the benefit of an AGIA coordinator is an inducement for the licensee. There is a reference to adopting regulations for determining qualified expenditures in lines 13 - 15.

Commissioner Galvin reviewed Sec. 43.90.120, the request for applications (RFA). The RFA will be issued by the commissioners as soon as practicable. The commissioners can use independent contractors to assist them in developing the application and in evaluating them. The procurement code does not apply to the RFA process.

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Commissioner Galvin related that Sec. 43.90.130 is the list of requirements of the RFA.

Representative Thomas asked if the request for the application process has begun. Commissioner Galvin replied that it has begun in-house and with the use of contractors.

Commissioner Galvin returned to Sec. 130., application requirements. The first requirement is to meet the deadline established by the commissioners. Another is to provide a detailed description of a proposed natural gas

pipeline project, which may include multiple design proposals recognizing that, after open season, there may be a change in design. He addressed the route proposed, the location of receipt and delivery points, an analysis of economic and technical viability of the project including access and tariff terms, and a viable work plan, timeline, and budget. Language was added in a previous committee to ensure that an applicant will commit to implementing practices for controlling carbon emissions as regulated by the EPA, and also will comply with all applicable state, federal, and international requirements.

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Commissioner Galvin related the requirements if the proposed project involves a pipeline into Canada or marine transportation.

Commissioner Galvin turned to subsection (3) on page 5 of the bill, the certification process and FERC or RCA regulations. He discussed expansion options - after the first binding open season the licensee must commit to assess the market demand for additional pipeline capacity at least every two years, and commit to expand the proposed project in reasonable engineering increments and on commercially reasonable terms.

Commissioner Galvin related that subsection (7) deals with rolled-in rates. The applicant must commit to using rolled-in rates for expansion capacity so long as the rolled-in rate does not exceed 15 percent above the original rate. Detailed information recognizing that the initial rate is not a singular rate is included. There is a recourse or default rate that FERC or RCA would set, and 15 percent above that for those who fall within the recourse rate. If parties have negotiated a lower rate, then their 15 percent cap is based upon their negotiated rate. If they come in later at an expansion time, their rate would be capped at 15 percent at the weighted average of initial recourse or negotiated rates.

Commissioner Galvin addressed, on page 7, exceptions to rolled-in rates. An expansion and the use of rolled-in rates may bring the costs up to or past the 15 percent cap. In that case there are provisions so that rolled-in rates

would be used to get to that cap and then incremental rates may be used beyond that.

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Representative Hawker wondered why 15 percent was chosen. Commissioner Galvin said it was based on engineering information and looking "at what rate do we get through initial compression and begin to see the looping to expand the capacity." There also was a recognition that FERC requirements allow for an increase in the rate under the rolled-in rate provision up to a certain level based upon the concept of what would be considered a subsidy. Factored in are existing governmental subsidies from the federal enabling statute that provides for accelerated depreciation and other factors that would potentially lower the tariff. Also looked at would be how the \$500 million would affect the rate. From FERC's previous decisions, the 15 percent would seem to be the level before FERC would look into it. Representative Hawker asked if the state is trying to second-guess FERC. Commissioner Galvin said no, but rather anticipating the optimum level where it would be approvable by FERC.

Representative Crawford asked about who orders expansions. Commissioner Galvin replied that it is the pipeline owner who is responsible for the expansion. They would seek approval by FERC to expand. The AGIA requirements would establish an expectation that it be a voluntary expansion application by the licensee. They are required to expand if the demand is there.

Representative Crawford gave a hypothetical example of an expansion that would cost more than 15 percent. Commissioner Galvin said his understanding is that under AGIA, the licensee would comply with the requirements of expansion. The purpose of the regulatory agency is to oversee problems. In Representative Crawford's example, under AGIA, the pipeline licensee would have to make application for that expansion. If it were already at the 15 percent cap, it is up to the pipeline to make a proposal and the shippers to make a request and FERC to approve it. All AGIA would require is that the licensee pursue expansion.

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Representative Hawker pointed out that the bill mandates expansion until a point is reached where the initial risk takers are subsidized up to 15 percent. He asked why it isn't a rebuttable presumption instead of a mandate. Commissioner Galvin replied that the mandate is that the company will apply for rolled-in rates and FERC will decide if that is reasonable. He addressed the question if the 15 percent is considered a subsidy. He said it is a matter of debate. He explained that an expansion taking place during a transportation term commitment does not obligate a company to pay the higher rate. He referred to rolled-in rates in Canada. At some point the market will recognize a higher transportation value.

Representative Hawker emphasized that the point of AGIA is making sure there is only one way to market. He termed the "opt out" as disingenuous. Commissioner Galvin related that he did not intend to downplay the risk associated with taking on the initial shipping commitment. The cap is at 15 percent because risk is recognized. Representative Hawker thought there should be no second guessing of economic circumstances.

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MARTY RUTHERFORD, DEPUTY COMMISSIONER, DEPARTMENT OF NATURAL RESOURCES, addressed rolled-in rates and why the state does not rely on the FERC rebuttable presumption. Rolled-in rates are so significant to the state's interest for seeing expansion gas coming into the pipeline over the course of the next thirty years, that DEC feels that since the state is putting some value into this project, that in return there are certain things that must be protected. Ensuring that expansion gas is economic to get into the line is a very significant factor. The rebuttable presumption will remain at FERC and the AGIA shipper will propose to FERC that, up to the 15 percent cap, the tariff structure be rolled in. Anything beyond 15 percent can be proposed by the shipper as incremental. It is plausible that FERC may determine that anything beyond 15 percent can be rolled in similar to what Canada does. Representative Hawker asked if the state retains the right to rebut the presumption. Ms. Rutherford replied that it does.

TOM IRWIN, COMMISSIONER, DEPARTMENT OF NATURAL RESOURCES, pointed out that the reason it is in the bill is to protect state's rights; to ensure that the huge gas volume has an

opportunity to be explored for, if it's found, monetized, and gotten into the lines. He gave an example of engineered increments. He explained what happens with expansion and rolled-in rates. The next expansions are cheaper for all. Looping starts raising the costs, but at the second stage of looping 100 percent is reached heading toward the 15 percent increment. The state and explorers can expand the line and everyone gains during that period.

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Commissioner Irwin related that there is a presumption that there will immediately be a large amount of federal gas which will crowd out the benefits of the state gas. Commissioner Irwin said, "If you look at location and the quantities of gas fields and the known gas, right now, to step off large distances and explore, you'll see these companies exploring very close to the original pipelines." The reality is that the exploration "starts in and works out". Rolled-in rates are standard in Canada.

Representative Gara summarized that rolled-in rates would encourage future development; future explorers know that they will have an affordable price to get into the gas line. He voiced concern if there are not rolled-in rates, the viability of the gas pipeline is affected. No one will build a pipeline unless there is a very good chance that there will be a long-term gas supply. He asked Commissioner Irwin to comment. Commissioner Irwin thought that for the original pipeline and the quantities of gas that are available, the producers would construct the gas line to their benefit, not to the benefit of the state. He voiced concern that without rolled-in rates, the state could end up without a fair, defined tariff, and the risk of explorers coming in and not getting a fair shot.

Representative Joule asked for a description of the length of the Alaskan route and the Canadian route. He wondered how McKenzie gas relates to the project.

Commissioner Irwin replied that the McKenzie line is not a competitor with the Alaskan line as far as where gas is delivered. Two of the large companies stated that the McKenzie line will go first, which is a concern. He could not estimate the distance of the two lines.

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Commissioner Galvin reported that the Alberta line is half in Alaska and half in Canada. He explained that Alaska recognizes that Canada will have rolled-in rates. Alaska does have an economic interest in any gas produced. He referred to a vision that encompasses exploration and development of oil and gas on state land, federal land, and off shore, all of which will have tremendous value for the state. That would happen through terms seen as beneficial to explorers so that they will make those initial investments in order to take advantage of rolled-in rate opportunities.

Representative Kelly pointed out the FERC would determine the rates. He wondered about handicapping the 15 percent. Commissioner Irwin explained about FERC's involvement, which is in deference to the pipeline owners. He pointed out that the three big producers are back in Washington suing to change the language in a FERC ruling, which could change the climate.

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Commissioner Galvin observed that there is value in having the provisions go in as part of the original application.

In response to a question by Representative Kelly, Commissioner Galvin explained that the 15 percent would have a decreasing cost to the shipper.

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Commissioner Galvin returned to page 8, line 7, an explanation which applies to how a gas treatment plant would be included in the application process. More detailed information is required in the proposal if the applicant is going to include the gas treatment plant as part of their integrated system. Subsection (10) requires the applicant to commit to using the 70/30 debt-to-equity ratio for the gas treatment plant. If the plant is not part of their integrated system, they would have to provide information on how it would be owned and operated.

Representative Hawker observed that there is no current gas treatment plant that could handle the gas pipeline proposal. He questioned the use of "proposes to deal with" on page 8, line 7. Commissioner Galvin thought that the

intent of the entire paragraph was clear; however he was not opposed to revising the language.

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Commissioner Galvin discussed subsection (9). He explained that there is a 70/30 debt provision.

Representative Gara said it seems obvious in subsection (8), on page 8, that the gas treatment plant gets incorporated into the pipeline tariff. Commissioner Galvin noted that it is proposed as an intergraded system, but could be a separate tariff. Representative Gara asked if one way or the other would provide a greater benefit to the state. Commissioner Galvin explained it would be a matter of cost efficiency, and he did not think that it should be mandated. He pointed to page 8, line 18, which would require the applicant to describe "the means by which the applicant will work to minimize the effect of the costs of the facility on the tariff".

In response to a question by Representative Hawker, Commissioner Galvin explained how the 70/30 was chosen and its impact on the ability to secure financing. He noted that 70 percent seemed to be the best floor based on a number of factors. He addressed the potential impact of 70/30 on the ability to carry financing, noting that the mechanism is not mandated. He felt that 70/30 was a reasonable rate-making structure that should not impact a legitimate financial plan's ability to have the debt-to-equity ratio needed to finish the project.

Representative Kelly summarized that there could be 100 percent equity financed, but that this would be the floor of the rate-making part of the formula. Commissioner Galvin agreed, noting that FERC will ultimately decide.

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Commissioner Galvin reviewed subsection (11): "describe the means for preventing or managing cost overruns for the proposed project, and the measures for minimizing the effect from any overruns". This is directed towards the shippers. There is evaluation criterion that recognizes the ability of the licensee, as the pipeline owner through the open season, to share risks with the shipper with regard to cost overruns. The proposal will reflect the methods in which the shipper will manage costs and minimize the impact on the tariff and on the shippers.

Commissioner Galvin reviewed (12): "commit to provide a minimum of five delivery points of natural gas in this state".

Commissioner Galvin discussed (13): "commit to offer firm transportation service to delivery points in this state as part of the tariff regardless of whether any shippers bid successfully in a binding open season for firm transportation service to delivery points in this state, and commit to offer distance-sensitive rates to delivery points".

Commissioner Galvin explained that subsections (14) and (15) contain Alaska hire provisions - a commitment to establish a local headquarters in Alaska, hire Alaska residents, contract with businesses in Alaska, establish hiring facilities in Alaska, and use Alaska job centers. He reported that these subsections tie in with subsection (17), a commitment to negotiate a project labor agreement.

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Representative Thomas spoke to subsection (A), which says to hire qualified residents from throughout the state for management, engineering, construction, operations, maintenance, and other positions on the proposed project. He questioned what happens if the workers do not belong to a trade union.

Commissioner Galvin explained that the project labor agreement was designed to be non-discriminating between union and non-union workers. The intent is to have a state training program, which allows Alaskans to be trained for the trades, but is not be exclusive to the AGIA project.

Representative Thomas referred to re-training for the fishing industry. He noted the difficulty of getting hired without job experience.

Representative Kelly asked who was at the table for the non-union contractors. He emphasized the importance of hiring Alaskans from all communities.

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Representative Gara pointed out that on page 9, line 3, only distance-sensitive rates can be charged. He thought that was a good solution toward making in-state gas affordable. He wondered how the producers felt about it. Commissioner Galvin noted that the primary concern is the

risk of straining capacity on the downstream line. The intent in the bill is that the capacity would be built commensurate with the respective distances that are needed to bring the gas to market. If there is an off take point midstream, then the capacity above that would be built to deliver gas to that location. There wouldn't necessarily be the same amount of capacity below that line. At each expansion there would be an opportunity for in-state demand to step in. The pipeline company should be able to straightforwardly manage for demands.

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In response to a question by Co-Chair Meyer, Commissioner Galvin noted that there is a training program within AGIA. The intent is to provide, as an inducement to the licensee, that there would be qualified workers within Alaska ready to work on the project. He estimated that the fiscal note would be \$6.8 million in the coming year. Co-Chair Meyer asked if there was any way to shift training costs to the producer.

Commissioner Galvin noted that the idea of a sponsor initiating a training program was contentious. He explained that training was not considered a part of the producer's business model. In order to fulfill the requirement of training, it was turned around and made into an inducement program. He felt that it would be appropriate and more efficient for the state to offer training.

Ms. Rutherford added that there was resistance by the producers due to the timing. Money for training would be needed upfront, before there is any income. An advantage is that training skills would be transferable to the upstream activity. Some of the risks of moving through regulatory permitting were reduced, which are expensive, and the costs of training Alaskans were removed.

Co-Chair Meyer expressed concern with training a workforce for the producers, but acknowledged the benefit to Alaskans.

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Vice Chair Stoltze noted that he would like to hear more from labor groups.

Representative Gara stressed that the intent is to provide the greatest opportunities for Alaskans and questioned if the state could accept a proposal of local hire as a non-binding factor, in recognition that an Alaskan hire proposal cannot be forced.

Commissioner Galvin stressed that they worked with the Department of Law to find the best method. He noted that there comes a point that there could be a potential constitutional challenge for preferential treatment of Alaskan workers. He felt the language in the bill was the best framework as a safe harbor.

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Representative Gara felt that the language could be clarified. He offered to work with Commissioner Galvin on it. Commissioner Irwin stressed that the impact to other businesses in the state could not be forgotten. The state needs to make sure training is robust for all the job possibilities.

Representative Kelly observed that the unemployment rate is low and that it is hard to hire employees.

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Commissioner Galvin continued on page 9, subsection (16), an obligation on the part of any applicant to waive the right to appeal the issuance of the license to another applicant or to appeal if the Commissioner decides that no applicant merits a license.

Representative Hawker clarified that the provision would only apply to applicants. Commissioner Galvin agreed.

Commissioner Galvin discussed subsection (18), which says that the applicant must commit that the state matching contribution received by the licensee may not be included in the applicant's rate base and shall be used as a credit against the licensee's cost of service.

Commissioner Galvin reviewed subsection (19), a detailed description of the applicant and other entities. The language was changed to provide more specific requirements in terms of the type of description, in particular, the

nature of the affiliation for each person in their commitment to the project.

Representative Hawker noted that a significant deficiency in the last version of the bill was no requirement of corporate guarantees. Commissioner Galvin reported that the nature of the process is that the applicant is not known at this time. The evaluation would be made once the terms are brought forth. The intent is to have the most complete picture of who the applicant is, including backing by parent companies. Representative Hawker stressed that the applicant must have "skin in the game".

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Commissioner Galvin reviewed page 10, subsection (20), the applicant must otherwise demonstrate the readiness and ability to perform the activities specified in the application, including following the detailed work plan, timeline, and operation within the associated budget.

Commissioner Galvin discussed the process in Sec.43.90.140:

(a) The commissioners shall review each application filed under AS 43.90.130 to determine whether it is consistent with the terms of the request for applications and meets the requirements in AS 43.90.130. The commissioners shall reject an application that does not meet the terms of the request for applications or the requirements in AS 43.90.130.

Commissioner Galvin observed that if requirements are not met, the commissioners would reject the application. He noted that discussions have occurred regarding whether this provision should be discretionary or mandatory. He stressed the state must be clear in what it is asking of the applicants. If there is a sense that one of the "must haves" should be negotiable, then there needs to be more discussion. He felt that the terms were reasonable.

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Representative Hawker did not see protection from "bid shopping" after bids have been submitted. All responses should be evaluated as they are provided. Commissioner Galvin stated that the intent is to allow the request for additional information before a decision is made to reject

any particular application. In addition, there is a provision that protects the applicant from having the additional information be based upon information provided in another application. It is not intended to be used as a negotiating or leveraging tool. Representative Hawker agreed. He stressed the need for transparency. Commissioner Galvin related that the communication associated with subsection (b), where the request for additional information, and a response, is made, would be part of the proposal when it becomes public. There would be a letter asking for more information. That communication would part of a public notice.

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Representative Gara asked if the process is common and questioned if it should be included in negotiations on the bid. Commissioner Galvin pointed out that it is a form of contracting commonly used by the government. The proposal is the contract and is engaged in due to the public nature of the process. The concern is once the applications are entered that they not be give priority based on other factors. He added that the end result will be complicated and political. A negotiation process could derail the timeline. The AGIA concept is to have a fairly clean and blunt exchange through a rigorous process. He acknowledged the loss of a potential benefit, but felt that it was outweighed by the risk.

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Representative Gara expressed concern that the major producers are not interested in helping the independents and would threaten to withhold the gas. He feared that terms could be inflated if the major producers are the only bidders. Commissioner Galvin responded that AGIA allows the decision to be made based on applications. The state needs to retain the reality and perception of competition. If competition does not occur, the state will have to look at the applications closely.

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Representative Kelly hoped that there is nothing that would prevent the state from improving the deal once it "leaves the gate." Commissioner Galvin assured him that it would not.

Co-Chair Meyer summarized that the commissioners would choose the winner and questioned if the legislature would have a chance to review all the applicants. Commissioner Galvin said it would. The legislature has access to the applications at the time they are made public.

Commissioner Galvin reviewed Sec. 43.90.150 - proprietary information and trade secrets. He explained subsection (a) "At the request of the applicant, information submitted under this chapter that the applicant identifies and demonstrates is proprietary or is a trade secret is confidential and not subject to public disclosure under AS 40.25, unless the applicant is granted a license under this chapter. After a license is awarded, all information submitted by the licensee under this chapter, shall be made public."

The intent is to keep the information confidential throughout the application process. Information for the winning licensee would become public with the award.

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Commissioner Galvin addressed on page 11, line 4, Sec. 43.90.160 - notice, review, and comment. The commissioners will publish notice and provide a 60-day comment period. The applications, absent the confidential information, will all be made public during that time. Any confidential information will be required to include a summary of the information so that the public will be aware of the nature of it. Line 15 deals with legislative access to that information.

Commissioner Galvin turned to page 11, line 22, Sec. 43.90.170 - application evaluation and ranking. This section has been substantially revised to reflect the two primary drivers of the valuation process. The net present value of the application to the state based on the cash flow potentially generated by the project is weighted by the likelihood of success of the project. The commissioners would then rank the projects accordingly.

Commissioner Galvin explained that subsection (b) on line 29 goes into detail about what would be included in the net present value analysis which will be done using an undiscounted rate at a minimum of 3 discount rates. The remainder of the section describes the types of cash flows

included. Subsection (c) describes the factors in the evaluation of the project's likelihood of success. These are driven by the applicant's plan and whether it is reasonable. The track record of the applicant is reviewed. The commissions will do an evaluation of the prospects for success, do a ranking, and provide justification for the ranking.

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Representative Hawker thought that net present value was the most important factor. Commissioner Galvin opined that net present value and likelihood of success are equally valuable. Representative Hawker commented further on the bidding process and questioned how to manage the more vague realities of the bidding process.

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Commissioner Galvin responded by saying that in Representative Hawker's example, the likelihood of success would be the determining factor. He further noted that for projects that have similar economics, it would take a significant amount of judgment to decide how likely this particular applicant's plan is going to succeed. He noted that the legislation will make a determination in the end.

Representative Hawker asked if the judgment will be based solely on what is in the application. Commissioner Galvin responded that information in the application will be used to evaluate the applicant; however, other sources of information and expertise will also be used.

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Representative Hawker asked if the department will involve the applicants in the review of the application. Commissioner Galvin said it is going to be a public process. Disclosure of the proposals will be public and the applicants will not be excluded.

Commissioner Irwin did not think that the large companies would omit information or lie in the application. He further noted that the process is transparent and the public can review it. There is no game playing. Ultimately, the legislature makes the final determination.

Co-Chair Chenault expounded on Representative Hawker's comments regarding two similar bidders. He questioned what would influence a decision if the higher bidder was a producer. Commissioner Galvin reiterated that likelihood of success would be a large factor in determining the award.

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Representative Gara voiced a concern regarding possible litigation of certain aspects of the criteria of awarding the contract. He questioned if the application process wasn't written in favor of an oil-company-run gas line.

Commissioner Galvin noted there is value in allowing the commissioners to weigh factors in the application review process with the primary drivers being net present value and the likelihood of success. He also noted balance in having both the administration and the legislature give approval. He further noted that the process is one of both quantitative and judgmental evaluation. He responded to Representative Gara's question by noting the realities of the producer/owner applicant being a favorable applicant.

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Representative Gara thought that the long-term value is more relevant than net present value. Commissioner Galvin said that under the structure of the net present value analysis, there is a provision for an undiscounted figure as well as for discounted figures. He focused on the fact that the AGIA bill presents the tools for evaluation.

Representative Kelly asked if a proposal could be accepted outside of the AGIA structure. Commissioner Galvin clarified that a project could move forward as long as it is not asking for preferential treatment or concessions from the state.

Representative Kelly termed his example a "straight commercial deal".

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Commissioner Galvin noted that there is an expectation that the state must do something to make the gas pipeline work. The state is not mandated to do so. However, there are

things that keep the gas line from moving forward. There needs to be value for the state and the producer.

Commissioner Irwin questioned why a company wouldn't participate in AGIA to get the incentives.

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Commissioner Galvin returned to page 13, Sec. 43.90.180, where the commissioners make a determination that one of the applications sufficiently maximizes the benefits to the people of the state and issues a notice of intent to provide a license to the legislature. Included is a written finding addressing the evaluation criterion. Subsection (b) addresses the situation when it has been determined that no application benefits the state and the process stops.

Commissioner Galvin explained that Sec. 43.90.190 is the legislative approval process where the commissioners award the license. Subsection (c) is "savings language" in case the session ends; the bill can carry over to a subsequent special session. If the legislature fails to approve the license, subsection (d), the commissioners cannot issue the license and the process may start over.

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Representative Joule asked if 90 days in subsection (b) was changed. Commissioner Galvin noted that the entire section has changed several times. The original bill included a 30-day timeframe for the legislature to reject the license. He detailed other changes to the bill.

Representative Hawker questioned what happens if the legislature fails to approve the issuance of the license and the governor vetoes the bill. Commissioner Galvin said that there is no requirement for legislative rejection. The process would not continue and there would not be a bill to reject.

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Representative Joule asked if Commissioner Galvin had a preference for 60 or 90 days. Commissioner Galvin preferred 30. Representative Joule thought that 90 days would be better for adequate review.

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Commissioner Galvin pointed out that this is a process where the state speaks in one voice. He said it is the intent to consider the best applicant along with the timeframe in order for the project to move forward. He further noted that once the applicant is approved, information would be available to the legislature to study so that it is in the position to make a decision.

Representative Joule reiterated the challenges for legislators to review and understand the information. He preferred the 90 days.

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Representative Hawker questioned if the department's opinion has evolved regarding whether the legislature needs to sanction the selection of the licensee. Commissioner Galvin said he would support going back to the original version of the bill.

Commissioner Galvin went on to explain Sec. 43.90.200 - certification by regulatory authority and project sanction. He outlined the requirements of the licensee post approval of the application. The licensee must accept the certificate from the regulatory agency. If the licensee has credit support sufficient to finance construction of the project, there is a one-year requirement for sanctioning the project. If the licensee does not have credit support sufficient to move the project, this section allows five years before termination. There is an outline of specific requirements to follow within the five years. The primary goal is to create competition. This provision is one that companies will evaluate when considering applying. He noted the risk involved for companies who can not meet this requirement. If the licensee fails to sanction the project as required, the certificate would transfer to the state and all project data would be assigned to the state.

Commissioner Galvin pointed to an error in subsection (e) on page 15, line 11. There appears to be an oversight on the part of the CS drafter where an amendment from the House Resources Committee was not included. If the state requires the licensee to transfer the certificate and all work product to the state, if it's done because they don't

want to accept the certificate when it is issued or if it's done because they didn't sanction the project within one year, it is at no cost to the state. If it is done because they were not able to get the credit support after the time expires, then the cost would be 50 percent of the licensee's net cost. This parallels a provision in the abandonment section later on.

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Commissioner Galvin addressed Sec. 43.90.210 - amendment of or modification to the project plan. No modification can be done without approval of the commissioners if a modification is necessary, either due to a decision by AOGCC or because of changed circumstances outside the licensee's control.

Representative Joule questioned if the modifications would go thru the commissioners, not the legislature. Commissioner Galvin said that is correct. Any modification approved by the commissioners may not diminish the net present value to the state or the project's likelihood of success. This ensures that values are maintained along with the competitive nature of the process.

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Representative Hawker went on to question what would diminish the net present value to the state. He gave an example. Commissioner Galvin noted that it is a concern and recognized the importance in trying to maintain competitive fairness and the rapport between the administration and legislature. He noted a wording change in an earlier version of the bill from "diminished value to the state" to "net present value".

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Representative Kelly spoke to Sec. 43.90.210 regarding the commissioners' power to approve a modification. He wondered if they have that power even if it diminishes net present value. Commissioner Galvin replied that the first part is a reference to what modifications can be considered. The second clarifies in the event of an AOGCC ruling.

Representative Kelly felt it was inconsistent, noting that the first appears to give permission for the commissioners

to act. Line 24 seems to say that the commissioners cannot diminish the net present value except by an order by AOGCC.

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Commissioner Galvin said the commissioners could approve it if it diminishes the net present value as long as it was based on AOGCC's ruling. Even if it does diminish the net present value they can still approve the modifications. Commissioner Galvin said the drafter could look at the wording and clarify it.

In response to further questioning by Representative Kelly, Commissioner Galvin repeated that the wording is in the bill to allow the commissioners to modify in the event of an AOGCC ruling.

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Commissioner Galvin continued with Sec.43.90.220 - records, reports, conditions, and audit requirements. This section deals with the requirements of the licensee to maintain records for the purposes of justifying the charges, expenditures, and reimbursements. It continues the commissioner's authority to audit and hold hearings and investigations. The commissioner has access to information from the licensee during the term before commercial operations begin on the line. There is an obligation for the licensee to retain information for seven years.

Commissioner Galvin reported that Sec. 43.90.230 - license violations; damages - provides a process by which the commissioners provide notice if there is potential violation of the license. The licensee has 90 days to work it out with the commissioners. If it is not worked out, the commissioners would provide notice and an opportunity to be heard with intent to proceed to one of the remedies provided for.

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Representative Hawker asked if there was a problem with the possibility of decisions being made by the licensee's owner.

Commissioner Galvin referenced the definitions on page 28 where "governing body" and "equity holders" are defined.

Representative Hawker suggested tightening up the language in this section.

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Commissioner Galvin Key addressed Sec. 43.90.240 - abandonment of project. This section is a key provision in looking at potential scenarios if the licensee or the commissioners believe the project is uneconomic. They can mutually decide to abandon the project. If one or the other makes a claim that the project is uneconomic, and the other party disagrees, then that dispute would go to an arbitration panel.

Commissioner Galvin noted that the most significant part of this section is the definition of "uneconomic". The arbitration panel would look at the claim and rule it was uneconomic only if the panel finds that the party making the claim proves that the project doesn't have credit support and that the predicted cash flow that would be generated by a party putting gas into the line would result in a rate of return that is below what a prudent exploration company would expect for incremental costs associated with engaging in that activity. If the commissioners and the licensee agree that the project is uneconomic, the state would have the option of having the work product assigned to the state at 50 percent of the licensee's net costs.

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Commissioner Galvin continued with page 19, line 10.

Representative Gara requested information on Alaska Oil and Gas Conservation Commission (AOGCC) statutes.

Co-Chair Chenault announced that the presentation would continue on Monday.

ADJOURNMENT

The meeting was adjourned at 4:03 PM.