HOUSE FINANCE COMMITTEE
May 9, 2007
2:13 p.m.

CALL TO ORDER

Co-Chair Chenault called the House Finance Committee meeting to order at 2:13:09 PM.

MEMBERS PRESENT

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

MEMBERS ABSENT

Representative Richard Foster

ALSO PRESENT

Pat Galvin, Commissioner, Department of Revenue; Marcia Davis, Deputy Commissioner, Department of Revenue; Marty Rutherford, Deputy Commissioner, Department of Natural Resources; Representative Paul Seaton; Representative Bob Roses; Representative Mark Neuman

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."

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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."

Vice Chair Stoltze MOVED to ADOPT the work draft for HB 177, labeled 25-GH1060\V, Bullock, 5/9/07. There being NO OBJECTION, it was so ordered.

Representative Gara asked which draft is before the committee. Co-Chair Chenault said it is the latest draft the administration has brought forward.

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MARCIA DAVIS, DEPUTY COMMISSIONER, DEPARTMENT OF NATURAL REVENUE, made a comparison of the old House Resources CS, version O, and the new House Finance CS, version V. Ms. Davis referred to a minor change on the bottom of page 1 of version V. "To ship" was a correction because a producer commits to ship gas to a gas pipeline system.

Co-Chair Chenault introduced Commissioner Galvin and Deputy Commissioner Marty Rutherford.

PAT GALVIN, COMMISSIONER, DEPARTMENT OF REVENUE, addressed the changes in the new CS, version V.

Ms. Davis noted legislative legal drafting changes on page 2. She explained a change in Sec. 43.90.110 (1) (C) that relates to the manner in which the state provides matching funds of up to $500 million. It defines what qualified expenditures are. There has been some broadening of what a qualified expense can be. Previously it had to relate to the obtaining of the FERC or RCA certificate. It is now recognized that there are other permits and requirements that would qualify.

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Ms. Davis pointed to drafting changes on page 3. She listed items that would not qualify, such as expenditures for work product or assets that have be acquired or developed by the licensee before the license is issued. Sec. 43.90.130 (2) deals with a word change from "detailed" to "thorough" to better comply with a FERC standard.

Ms. Davis explained that on page 4, subsections (C) and (D) contain edits from legislative legal. The word "thorough" in subsection (i) was again changed from "detailed". Page 5 includes a listing of all items that must be included in an application. In subsection (3) (B) is an important addition which was included as a result of concerns expressed by Trans Canada regarding pre-filing procedures before FERC.

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Ms. Davis acknowledged drafting changes on page 8. She pointed to subsection (8), where a change is needed from the word "owned" to "used". Commissioner Galvin clarified that the V version contains this change. Ms. Davis referred to page 9 and the addition in subsection (16) of "rejection of an application as incomplete, the". She explained that this is the provision that requires an applicant to waive the right to file legal challenges against the application process. The new wording narrows the focus. The waiver does not affect a party that is not an applicant.

Ms. Davis turned to page 10, subsection (20). It deals with an applicant's financial and technical ability, as well as with the applicant's safety, health, and environmental compliance. Representative Hawker asked if the word "detailed" belongs in the section. Ms. Davis explained it is used in a different way here and is acceptable.

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Ms. Davis spoke to Sec. 43.90.140, regarding the process being fair to applicants. All applications will remain unopened until a specific date. There is a short period of time in which requests for additional information are made, but no one can resubmit or change information. Subsection (e) was added to make clear that once the applications come in they are available to the legislature including complete and incomplete applications.

Ms. Davis explained that Sec. 43.90.150 removes a definition of "proprietary or trade secret" and places it elsewhere. Previously all information of a winning applicant would be made public. Now, confidential information will remain confidential.

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Ms. Davis discussed Sec. 43.90.160, which provides for public review and comment. Subsection (c) adds a phrase "when the commissioners determine the applications are complete", and allows the legislature and their agents and contractors, to see confidential information. Representative Joule asked a question about the word "when" in the O version of the bill, which changed to "after" in the V version. Ms. Davis thought it was a drafting preference.

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Ms. Davis turned to page 12, which shows the deletion of a phrase. Representative Hawker agreed with the deletion and surmised that the language was put there by one of the potential applicants. Commissioner Galvin responded that

the language was put there by a legislator based on testimony from the Port Authority. The department disagreed with the amendment because of its questionable value to the state. The language muddied the water.

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Ms. Davis said page 13 has legal corrections and drafting preferences. Sec. 43.90.190 changes the time period of 60 days to 90 days for the legislature to approve the issuance of a license. Co-Chair Chenault thought 90 days was enough time for the legislature to consider all of the bids because there is time during the public process to evaluate them.

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Ms. Davis turned to Sec. 43.90.200, the timeline obligations on the part of the applicant having received a FERC certificate. She talked about subsection (a), which describes when the applicant should accept the certificate. In version O there was a provision that the applicant had to accept the certificate after exhausting administrative rights of appeal. In the V version, the reference to "administrative" was removed, and "or earlier at the licensee's discretion" was added. Subsection (c) on page 15 contains a change which gives the licensee two years after the effective date of the certificate or 5 years after open season to get credit support. Subsection (f) references when a FERC certificate is in effect.

Ms. Davis addressed Sec. 43.90.210 and a change on page 16. What has been inserted is an exception for when a modification or amendment is required because of an order or requirement of a regulatory agency with jurisdiction over the project. Previously, it required if any modification in any way diminished the net present value of the project to the state, it resulted in the state's inability to grant or authorize that modification. "Net present" was deleted in front of value because there are other less restrictive terms.

Commissioner Galvin added that this change was not picked up in Version V and would have to be corrected.

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Representative Hawker emphasized that he had previously raised these concerns and they were his own, not the industry's. He emphasized that he has spoken with no one about this language. He related that he is a fan of AOGCC as a checks and balance system. He voiced concern with language that puts side bars on AOGCC.

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Commissioner Galvin agreed with Representative Hawker's concerns. The language in this section is not intended to put any restrictions on AOGCC. A decision made by AOGCC that ends up making a licensee change a project can be accommodated by the commissioners. It is intended to ensure independence by AOGCC. Representative Hawker agreed that is the intent, but thought the words did not allow for that.

Ms. Davis read the paragraph as it is intended to flow. The second sentence clarifies that orders or requirements of a regulatory agency take priority. Representative Hawker summarized his understanding of the section. He suggested a word change.

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Representative Gara wanted to ensure AOGCC's authority is what it should be. He gave an example. Commissioner Galvin said that the department recognizes the potential problem with AOGCC's off take rate. The administration has put forth a request for clarification on off take rate issues.

Representative Hawker concluded that the language in Sec. 43.90.110 does accomplish the intended purpose.

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Ms. Davis explained that Sec. 43.90.220 gives the state its right to audit the records of a licensee and to participate in the governing bodies associated with the project as it proceeds. Subsection (c) deals with ensuring that the commissioners have the right to attend the governing body or bodies and receive relevant notices and information. She referred to the top of page 17 and related an important change that deals with not disclosing sensitive information.

Ms. Davis addressed Sec. 43.90.230, the license violation section. Subsections (1) and (2) and (3) list when the licensee is in violation of the license. Subsection (4) was added to clarify the consequences of failure to accept a certificate.

3:06:00 PM

Representative Kelly asked about Sec. 431.90.210 where AOGCC's order could result in the project's success being diminished. He wanted assurance that under girding all of that was commissioner approval. Commissioner Galvin assured him it was so.

Ms. Davis said the changes on page 18 are style changes. The change on page 19 is substantive and addresses a concern. In dealing with abandonment of project, subsection

(c) is the definition that an arbitrator would use to determine whether or not a project was uneconomic. Subsection (l) adds other "external" sources of financing at the request of the producers. Representative Hawker noted it is protection for any large company. Ms. Davis said that is correct. In response to a question by Representative Hawker, Ms. Davis said it does provide credit support if there are firm transportation commitments. Representative Hawker opined that "external" was problematic. Ms. Davis commented that "if the economics determine that they should be shipping, they won't be able to prove up element two."

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Ms. Davis turned to subsection (e). There was a deletion of a provision in the O version that talks about reimbursement to a successful licensee who has established that the project is not economic. The reimbursement by the state to such a licensee would have been for 50 percent of all qualified expenditures. In Version V this amount was increased to all qualified expenditures.

Ms. Davis turned to deletions in Sec. 43.90.250 as shown on page 20. The deletions relate to what the AGIA coordinator is entitled to receive.

Sec. 43.90.260, on page 21, addresses royalty inducements. In subsection (C) a reference to gas processing was move into another section. On page 22 in version O, a provision that provided for a royalty in kind, royalty in value, election option that the shipper or resource owner that makes a commitment for capacity in the first finding open season would have a right to elect to. They could elect to require the state to take its gas in value. In turn, the entity would agree to sell part of its gas instate, but under terms that were equivalent to the value price that the state would be receiving for its gas outside. The royalty experts worked on this and found many problems. She highlighted various problems with the mechanism. The language for that provision was deleted.

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Ms. Davis drew attention to page 22, subsection (B)(2), language which provides more detail and binders on what the state needs to do with respect to ensuring that when it makes its election for taking gas in kind, that it doesn't create an undue burden on producers relative to their transportation costs. It was set forth as an earlier direction to the Commissioner of Natural Resources, that they not impact transportation unduly and that they give ample notice. This provision provides more detail about the first point.

Representative Gara asked about the change on page 22, whether it impairs the state's ability to switch between royalty in value or royalty in kind. Ms. Davis said it does not. Commissioner Galvin said it indicates a change in the timing. The state may choose not to make a switch. There is a value to it and that's why it is being offered as an inducement.

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Representative Kelly asked what the state's prerogative in the agreement is. Commissioner Galvin explained that there are parameters surrounding the state's ability to switch. The intent is to preserve the ability to switch, recognizing that costs and risks are associated with that. It's limited to only the gas committed in open season. Through the structure of leases and regulations will be protection to ensure compliance. Representative Kelly summarized that the existing lease mechanisms are in place until a mutually acceptable agreement replaces them. Commissioner Galvin clarified the structure. The terms of the leases will remain until regulations are updated, then the licensee would have the option of taking the new language. There will always be a contract in place. Ms. Davis referred to a new subsection (d) on page 24, which is to clarify the definition of gas production tax.

3:21:40 PM

Ms. Davis discussed Sec. 43.90.330, inducement vouchers. A new subsection (d) was added to give it a parallel structure to the requirements that are imposed on resource owners relative to receiving these types of benefits for royalty and tax benefits. It sets up a mechanism whereby the owners agree not to oppose the rolled-in rate structures. The correction on the bottom of page 25 was from legislative legal and the attorney general's office.

Ms. Davis noted that on page 26, Sec. 43.90.420 clarifies that constitutional claims by third parties would proceed under existing administrative procedures. Representative Gara asked if the intention is to have a 90-day statute of limitations for challenging the statute on constitutional grounds. Ms. Davis explained that 90-day limit is for constitutionality challenges for the chapter, the statute, as well as for the issuance of a license. Commissioner Galvin noted that statutory or administrative appeals of the decision could also occur. Ordinary citizens may want to challenge. Administrative appeals would occur 30 days from the date of the decision. Constitutional appeals do not generally have a timeframe. The provision would provide a timeframe for constitutional appeals.

3:25:15 PM

Representative Gara asked if there is a limit to the appeal period. He gave an example. Commissioner Galvin reiterated that statutory challenges to an agency decision are limited to the 30-day time period. He referred to a similar decision in Point Thomson. The court dismissed the appeal and noted that it needed to go through an administrative appeal process, which is limited to the 30-day period.

Representative Gara continued to explain that conduct can be challenged that is not covered by the statutory time period. He wanted further assurances that challenges could not occur years from the decision. Commissioner Galvin noted that the provision has been well reviewed. The administration wants to limit and expedite review of an action against a licensing process. The decision would be subject to the 30-day challenge for statutory purposes and on constitutional basis, it would be 90 days.

3:29:07 PM

Representative Gara summarized that if it is not a constitutional challenge it would be subject to the Administrative Procedures Act. He suggested the 90-day limit be tied to the constitutionality of the chapter or the legality or constitutionality of a license. Commissioner Galvin further explained that the concern was that doing so would mean an additional 90-day wait. He added that he felt comfortable with the current approach.

Representative Gara wanted 100 percent assurance that the 30-day limit would apply. Commissioner Galvin assured Representative Gara that he would recheck it with the Department of Law.

3:32:10 PM

Ms. Davis said the bottom of page 26 was an important addition which deals with the state's commitment to provide assurance to the licensee that it would be supported and not have to compete with a competing natural gas pipeline. If for any reason the state does deviate and support a competitor's project through tax, royalty, or monetary treatment, if it makes that payment as a result of that violation, that payment will be considered in full satisfaction of all claims a licensee would have that arise out of that conduct by the state.

Ms. Davis explained that royalty and tax are purely royalty and tax. Other types of permitting are not preferential, so language was removed to that effect. Added is subsection (3) to make it clear that anything the state does with respect to reviewing, processing, facilitating permits, rights of ways and authorizations for a competing natural

gas pipeline, does not invoke the provisions of this project assurance clause. This provision addresses industry concerns that the state could not support other projects.

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Ms. Davis noted that on page 28, a definition section is added. The definition of "amended certificate" intends that someone does not get a certificate after the passage of the license and creates extended deadlines. A definition of "applicant" was added for clarity. A definition of "gas treatment plant" was added, as was a "net present value". A new definition of "point of production" was added on page 30. The definitions of "proprietary" and "trade secret" were also added to this section.

Ms. Davis related that on page 32 there is a reference to the Public Records Act, which was amended. It clarifies that "privileged" was added.

Ms. Davis noted that a new section (8) was added at the bottom of page 33, which clarifies that because AGIA is placed in Title 43 under the Department of Revenue's jurisdiction, having this provision in Title 38 will allow the Department of Natural Resources authority to adopt regulations to implement AGIA.

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Commissioner Galvin indicated that the Department of Law feels soundly that the Administrative Procedure Act, which requires a 30-day period for judicial review, would pertain. Any action brought outside of that would be dismissed on procedural grounds.

Discussion ensued regarding timelines for this legislation.

ADJOURNMENT

The meeting was adjourned at 3:40 PM.