ALASKA STATE LEGISLATURE
HOUSE RESOURCES STANDING COMMITTEE
April 24, 2007
2:11 p.m.

MEMBERS PRESENT

Representative Carl Gatto, Co-Chair
Representative Craig Johnson, Co-Chair
Representative Bob Roses
Representative Paul Seaton
Representative Peggy Wilson
Representative Bryce Edgmon
Representative David Guttenberg
Representative Scott Kawasaki

MEMBERS ABSENT

Representative Vic Kohring

COMMITTEE CALENDAR

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."

- MOVED CSHB 177(RES) OUT OF COMMITTEE

PREVIOUS COMMITTEE ACTION

BILL: HB 177
SHORT TITLE: NATURAL GAS PIPELINE PROJECT
SPONSOR(s): RULES BY REQUEST OF THE GOVERNOR

03/05/07	(H)	READ THE FIRST TIME - REFERRALS
03/05/07	(H)	O&G, RES, FIN
03/06/07	(H)	O&G AT 3:00 PM BARNES 124
03/06/07	(H)	-- MEETING CANCELED --
03/08/07	(H)	O&G AT 3:00 PM BARNES 124
03/08/07	(H)	-- MEETING CANCELED --
03/13/07	(H)	O&G AT 3:30 PM HOUSE FINANCE 519
03/13/07	(H)	Heard & Held
03/13/07	(H)	MINUTE(O&G)
03/15/07	(H)	O&G AT 3:00 PM BARNES 124

03/15/07	(H)	Heard & Held
03/15/07	(H)	MINUTE(O&G)
03/19/07	(H)	O&G AT 8:30 AM CAPITOL 106
03/19/07	(H)	Heard & Held
03/19/07	(H)	MINUTE(O&G)
03/20/07	(H)	O&G AT 3:00 PM BARNES 124
03/20/07	(H)	Heard & Held
03/20/07	(H)	MINUTE(O&G)
03/21/07	(H)	O&G AT 5:30 PM SENATE FINANCE 532
03/21/07	(H)	Heard & Held
03/21/07	(H)	MINUTE(O&G)
03/22/07	(H)	O&G AT 3:00 PM BARNES 124
03/22/07	(H)	Heard & Held
03/22/07	(H)	MINUTE(O&G)
03/23/07	(H)	O&G AT 8:30 AM CAPITOL 106
03/23/07	(H)	Heard & Held
03/23/07	(H)	MINUTE(O&G)
03/24/07	(H)	O&G AT 1:00 PM SENATE FINANCE 532
03/24/07	(H)	Heard & Held
03/24/07	(H)	MINUTE(O&G)
03/26/07	(H)	O&G AT 8:30 AM CAPITOL 106
03/26/07	(H)	Heard & Held
03/26/07	(H)	MINUTE(O&G)
03/27/07	(H)	O&G AT 3:00 PM BARNES 124
03/27/07	(H)	Heard & Held
03/27/07	(H)	MINUTE(O&G)
03/28/07	(H)	O&G AT 7:30 AM CAPITOL 106
03/28/07	(H)	Heard & Held
03/28/07	(H)	MINUTE(O&G)
03/28/07	(H)	O&G AT 8:30 AM CAPITOL 106
03/28/07	(H)	Heard & Held
03/28/07	(H)	MINUTE(O&G)
03/29/07	(H)	O&G AT 3:00 PM BARNES 124
03/29/07	(H)	Heard & Held
03/29/07	(H)	MINUTE(O&G)
03/30/07	(H)	O&G AT 8:30 AM CAPITOL 106
03/30/07	(H)	Heard & Held
03/30/07	(H)	MINUTE(O&G)
03/31/07	(H)	O&G AT 1:00 PM BARNES 124
03/31/07	(H)	-- MEETING CANCELED --
04/02/07	(H)	O&G AT 8:30 AM CAPITOL 106
04/02/07	(H)	Heard & Held
04/02/07	(H)	MINUTE(O&G)
04/03/07	(H)	O&G AT 3:00 PM BARNES 124
04/03/07	(H)	Moved CSHB 177(O&G) Out of Committee
04/03/07	(H)	MINUTE(O&G)
04/04/07	(H)	O&G RPT CS(O&G) NT 3DP 2NR 2AM

04/04/07	(H)	DP: RAMRAS, DOOGAN, OLSON
04/04/07	(H)	NR: SAMUELS, KAWASAKI
04/04/07	(H)	AM: DAHLSTROM, KOHRING
04/04/07	(H)	O&G AT 8:30 AM CAPITOL 106
04/04/07	(H)	-- MEETING CANCELED --
04/05/07	(H)	O&G AT 3:00 PM BARNES 124
04/05/07	(H)	-- MEETING CANCELED --
04/10/07	(H)	RES AT 1:00 PM BARNES 124
04/10/07	(H)	Heard & Held
04/10/07	(H)	MINUTE(RES)
04/11/07	(H)	RES AT 1:00 PM BARNES 124
04/11/07	(H)	Heard & Held
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04/23/07	(H)	RES AT 1:00 PM BARNES 124
04/23/07	(H)	Heard & Held
04/23/07	(H)	MINUTE(RES)
04/24/07	(H)	RES AT 1:00 PM BARNES 124

WITNESS REGISTER

MARCIA DAVIS, Deputy Commissioner
Department of Revenue (DOR)
Juneau, Alaska
POSITION STATEMENT: During hearing on HB 177, answered questions and presented a step-by-step comparison of the proposed CS for HB 177, Version K, to CSHB 177(O&G), including references to the Senate's version of the Alaska Gasline Inducement Act.

ANTONY SCOTT, Commercial Analyst
Commercial Section
Central Office
Division of Oil & Gas
Department of Natural Resources (DNR)
Anchorage, Alaska
POSITION STATEMENT: During hearing on HB 177, answered questions regarding the Alaska Gasline Inducement Act.

PATRICK GALVIN, Commissioner
Department of Revenue (DOR)
Juneau, Alaska
POSITION STATEMENT: During hearing on HB 177, answered questions and presented information regarding the various House and Senate versions of the Alaska Gasline Inducement Act.

JOE BALASH, Special Staff Assistant
Office of the Governor
Juneau, Alaska
POSITION STATEMENT: During hearing on HB 177, answered questions.

ACTION NARRATIVE

CO-CHAIR CARL GATTO called the House Resources Standing Committee meeting to order at 2:11:29 PM. Representatives Gatto, Johnson, Wilson, Seaton, Roses, Guttenberg, Edgmon, and Kawasaki were present at the call to order.

HB 177 - NATURAL GAS PIPELINE PROJECT

[Contains discussion of SB 104, companion bill to HB 177.]

2:11:41 PM

CO-CHAIR GATTO announced that the only order of business would be 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." [Before the committee was CSHB 177(O&G).]

2:11:51 PM

CO-CHAIR JOHNSON moved to adopt the proposed committee substitute (CS) for HB 177, Version 25-GH1060\K, Bullock, 4/24/07, as the work draft. There being no objection, Version K was before the committee.

CO-CHAIR GATTO explained that Version K incorporates the committee members' amendments to CSHB 177(O&G) that were adopted on 4/23/07, as well as certain of the [administration's] suggested amendments that were deferred because of the difficulty in deciphering them separately. He stated that Marcia Davis will review Version K for the committee and explain the substantive changes.

2:13:31 PM

MARCIA DAVIS, Deputy Commissioner, Department of Revenue (DOR), explained that many of the administration's suggested changes were intended to make the House and Senate versions of the bill more similar, minus key policy or substantive differences. She relayed that the drafter favors the language in the House version of the bill, and that he did not automatically incorporate each of the administration's suggested amendments into Version K.

MS. DAVIS then explained that the title of Version K no longer contains the clause, "**establishing the gas utility revolving loan fund;**".

[Following was a brief discussion regarding how the committee would be proceeding.]

2:18:38 PM

CO-CHAIR JOHNSON moved to adopt a proposed amendment as follows:

> Page 1, line 4, after "coordinator;"
> Insert "establishing the gas utility revolving loan fund;"

CO-CHAIR GATTO objected.

CO-CHAIR JOHNSON argued that it is appropriate to leave the gas utility revolving loan fund in the bill.

MS. DAVIS, in response to a question, said that the gas utility revolving loan fund is addressed in CSHB 177(O&G), from page 28, line 28, to page 30, line 15.

REPRESENTATIVE KAWASAKI, in response to a further question, explained that the gas utility revolving loan fund was an amendment added in the House Special Committee on Oil and Gas and that the fund would fall under the Alaska Energy Authority.

CO-CHAIR GATTO said that he disagrees with Co-Chair Johnson's proposed amendment because the Alaska Gasline Inducement Act should remain solely that; the concept of a revolving loan fund could instead be offered by someone as a separate bill.

REPRESENTATIVE SEATON concurred.

REPRESENTATIVE GUTTENBERG said he opposes the proposed amendment because he is looking for a way to draw people back to the table, after the Alaska Gasline Inducement Act (AGIA) passes, for the purpose of creating an opportunity for Alaskans to benefit from the gas line.

CO-CHAIR GATTO maintained his objection.

REPRESENTATIVE EDGMON concurred that the subject should be addressed via a stand-alone piece of legislation, adding that he would be interested in looking at such legislation in the future.

CO-CHAIR JOHNSON withdrew his proposed amendment.

2:25:31 PM

MS. DAVIS explained that proposed AS 43.90.100 - found on page 2 now contains a new subsection (b) which states, "(b) Nothing in this chapter precludes a person from pursing a gas pipeline project independently from this chapter."; and that proposed AS 43.90.110(a)(1) - found on page 2 - now contains the clause, "the payment period may be extended under an amendment or modification under AS 43.90.210;". In response to questions, she relayed that proposed AS 43.90.210 is located on page 15, lines 19-29, of Version K. Under that provision, she said, there are now three situations in which a project plan can be

modified: it improves the net present value (NPV) of the project to the state; it is necessary because of an order issued by the Alaska Oil and Gas Conservation Commission (AOGCC); or the change is needed because of changed circumstances outside the licensee's control and not reasonably foreseeable.

2:27:55 PM

MS. DAVIS then drew attention to language on page 3, line 5, "certificate of public convenience", and requested that the words, "or amended certificate" be inserted between "certificate" and "of". This way, she said, [a particular cost] could be considered a qualified expenditure should TransCanada Pipeline Limited be a successful applicant. She explained that [the existing] language occurs in three places in the bill and that the additional language was added in the other two places, but was inadvertently overlooked here. She said it is language that was recommended by the administration.

REPRESENTATIVE SEATON moved to adopt [Amendment 18] as follows:

Page 3, line 5, after "certificate"
Insert "or amended certificate"

There being no objection, [Amendment 18] was adopted.

2:29:25 PM

MS. DAVIS turned attention to paragraph (3) on page 3, lines 13-15. She said this relates to the benefits of a qualified job training program and is the third inducement to a pipeline applicant. However, she explained, this particular section was removed in the Senate version of the bill because the state did not want it to be construed that job trainees can only work on the AGIA pipeline and not any other pipeline. The administration recommends deletion of this particular section, she said. Language regarding the job training program - proposed AS 43.90.470 - is located on page 28, lines 8-11, of Version K.

REPRESENTATIVE SEATON moved [Amendment 19] as follows:

Page 3, lines 13-15
Delete all of paragraph (3)

There being no objection, [Amendment 19] was adopted.

2:31:49 PM

MS. DAVIS then relayed that the substantive change to proposed AS 43.90.120 was the deletion of the clause: ", but the commissioners shall adopt regulations that provide protest and appeal procedures relating to the solicitation of the applications and award of a license that are substantially similar to the provisions of AS 36.30.550 - 36.30.699". She pointed out that proposed AS 43.90.130(2) now contains - on page 4, lines 1-3 - the words: "which may include multiple design proposals, including different proposals for pipe diameter, wall thickness, and transportation capacity, and which shall include". Furthermore, subparagraph (A), via the deletion of the words, ", which may not be the route described in AS 38.35.017(b)", no longer disallows an "over-the-top route" for the pipeline.

CO-CHAIR GATTO indicated that the latter change is of concern because although an "over-the-top" pipeline route is currently prohibited by federal law, that could change.

REPRESENTATIVE SEATON moved Amendment 20, which read [original punctuation provided]:

> Page 4, line 4: After "pipeline"
> Insert ",which may not be the route described in AS 38.35.017(b)"

There being no objection, Amendment 20 was adopted.

2:35:13 PM

MS. DAVIS mentioned that proposed AS 43.90.130(2)(B) requires applicants to provide the location of receipt and delivery points, and their size and design capacity, except that this information is not required for in-state delivery points. The reason for this exception, she explained, is that the five "offtakes" will be difficult to identify with any degree of specificity because negotiations in this regard will not have occurred prior to the filing of applications. However, it was later realized that an application for an in-state pipeline may be received wherein the applicant's in-state delivery points are known and quantifiable, and so the state would want to look at that in the application. The Senate bill currently provides for this scenario by including a clause that states, "unless the application proposes specific in-state delivery points". Ms.

Davis proposed the addition of this clause to the House version of the bill.

2:38:06 PM

REPRESENTATIVE GUTTENBERG moved Amendment 21 as follows:

page 4, line 8, after "points"
insert: "unless the application proposes specific in-state delivery points"

There being no objection, Amendment 21 was adopted.

2:38:45 PM

MS. DAVIS noted that proposed AS 43.90.130(2)(D) now also contain the language, ", implementing practices for controlling carbon emissions from natural gas systems as established by the United States Environmental Protection Agency". Furthermore, proposed AS 43.90.130(2)(D)(ii) no longer contains the words: "pipeline route, system, and capacity proposed to bring North Slope gas to tidewater, including a description of". She said this wording was removed because it was duplicative of the pipeline route requirements outlined within subparagraphs (A), (B), and (C).

2:40:02 PM

REPRESENTATIVE SEATON voiced his concern that there is nothing that specifically requires the pipeline section tariffs and rates to be outlined.

REPRESENTATIVE SEATON moved Conceptual Amendment 22, which read [original punctuation provided]:

Page 4, line 28, after "gas,"
Insert "a detailed description of all pipeline access and tariff terms that the applicant would propose to offer,"

MS. DAVIS suggested that the amendment instead be inserted under subparagraph (C) after the word "project" on line 10. This would best address Representative Seaton's concern of ensuring that all projects are captured, she advised, because sub-subparagraph (ii) could be interpreted as being only a project that goes into or through Canada, as well as only a liquefied natural gas (LNG) project, and sub-subparagraph (i) would be

only a Canadian "through-put project." She said that there could conceivably be another project that might not be covered under either sub-subparagraph.

[This suggestion was treated and adopted as an amendment to Conceptual Amendment 22.]

REPRESENTATIVE ROSES pointed out that similar language is already located on page 4, lines 24-26, and suggested that this duplicative language should be deleted from that location.

[This suggestion was treated and adopted as a further amendment to Conceptual Amendment 22, as amended.]

CO-CHAIR GATTO asked whether there were any objections to Conceptual Amendment 22, as amended. There being none, Conceptual Amendment 22, as amended, was adopted.

2:45:57 PM

MS. DAVIS explained that the language, "for the transportation of liquefied natural gas in interstate commerce if United States markets are proposed" - found on page 5, lines 11-12, in proposed AS 43.90.130(2)(D)(ii) - was added for clarity regarding the jurisdiction of the Federal Energy Regulatory Commission (FERC) in LNG situations.

CO-CHAIR JOHNSON inquired as to which agency, the Regulatory Commission of Alaska (RCA) or the FERC, would have jurisdiction if the pipeline traverse an all-Alaska route and the gas is exported to a foreign country.

MS. DAVIS said she believed there was testimony from the FERC to one of the committees that it would be the agency having jurisdiction over the LNG portion.

REPRESENTATIVE GUTTENBERG asked if this means that someone who brings and sells gas to an LNG plant in Valdez is regulated under the FERC if the LNG plant then sells it elsewhere in the [United States] market.

MS. DAVIS explained that "foreign" commerce is not within the purview of the FERC, but "interstate" commerce is. She said that the qualification of "interstate commerce" for transportation of LNG is the basic premise of FERC jurisdiction.

REPRESENTATIVE GUTTENBERG asked if this would still be the case if someone sells the gas in-state to somebody else.

CO-CHAIR GATTO surmised that any oil, for example, taken out of the pipeline and used in-state is regulated by the RCA, and that any oil put onboard a tanker is regulated by the FERC.

REPRESENTATIVE SEATON argued that that is only correct if the gas on the tanker goes to the United States and not overseas.

CO-CHAIR GATTO clarified that he was referring to oil.

REPRESENTATIVE GUTTENBERG surmised that one reason why the oil might be considered "interstate" is that it is vertically integrated with the shippers, so it is all basically one process to get it to the West Coast, and so the FERC clearly covers that.

REPRESENTATIVE SEATON stated that there are export controls on oil, not on natural gas. According to previous testimony, he said, the control on natural gas applies if someone uses the $18 billion loan guarantee, and that that is when it needs to be in the United States; however, if the $18 billion loan guarantee is not used, then the gas could be exported to some other market.

MS. DAVIS, in response to a question, said that the Kenai LNG plant is under FERC jurisdiction and that there are limitations on what can and cannot be exported. She offered her belief that there is extensive control on LNG export through the FERC.

2:50:31 PM

REPRESENTATIVE WILSON moved Amendment 23 as follows:

> Page 5, line 12, after "commerce"
> Delete "if United States markets are proposed"

MS. DAVIS explained that that language clarifies when the provision would apply.

REPRESENTATIVE WILSON withdrew Amendment 23.

MS. DAVIS remarked that she is not a FERC expert and so is hesitant to say that something is necessary when the experts have proposed certain language. She then noted that proposed AS 43.90.130(3)(B)-(C) - located on page 5, lines 20-27 - are the

two sections that require the applicant to initiate action with the FERC regarding the certificate or amended certificate.

2:52:56 PM

MS. DAVIS referred to proposed AS 43.90.130(7) - located on page 6, line 22, through page 8, line 8 - and said that extensive revisions and additions were made to these provisions. Paragraph (7) pertains to the commitment by the applicant to propose and support the handling of expansion costs in front of FERC, she explained.

CO-CHAIR GATTO commented that the important words in those provisions are "expansions", "rolled-in rates", and "incremental".

MS. DAVIS pointed out that one key change was intended to ensure that "expansion cost" included "fuel cost", and that another key change was dividing the cap on the maximum recourse rate into three categories. Regarding the use of "115" percent in sub-subparagraph (iii) versus the use of "15" percent in sub-subparagraphs (i) and (ii), she explained that it involves the way 115 percent works with the weighted average.

CO-CHAIR GATTO commented that the committee can live with the percentages as they are because it is just a question about continuity. Since it involves a volume weighted average of all rates collected, it seems like it is a mathematical expression that demands a total rather than a percent above, he surmised.

The House Resources Standing Committee was recessed at 2:57 p.m. to a call of the chair.

CO-CHAIR GATTO called the meeting back to order at 5:36 p.m. Present at the call back to order were Representatives Gatto, Johnson, Wilson, Roses, Seaton, Edgmon, and Guttenberg.

REPRESENTATIVE ROSES, in response to a comment, suggested that there is no need to change the percentages outlined in sub-subparagraphs (i)-(iii) of proposed AS 43.90.130(7)(B) because both percentages mean the same thing. The reason that they are using 115 percent of the volume-weighted average, he surmised, is because there is a mathematical formula by which one weights something, he said, and opined that it makes no difference which percentages are used, the result is the same.

5:40:01 PM

ANTONY SCOTT, Commercial Analyst, Commercial Section, Central Office, Division of Oil & Gas, Department of Natural Resources (DNR), referred to the questions raised earlier about the language on page 5, lines 11-12 - which states, "for the transportation of liquefied natural gas in interstate commerce if United States markets are proposed" - and explained that gas which moves in interstate commerce is "economically" regulated by the FERC. He gave a hypothetical example of a project that transports gas by pipeline to Valdez where it is liquefied, put on tankers, and then shipped to Mexico. He said that such a project would almost certainly be "economically" regulated by the FERC because, at the end of the day, that gas is involved in interstate commerce - it would flow northwards into North America.

MR. SCOTT then gave a second hypothetical example of gas being liquefied at Valdez and shipped to Japan. That project, he advised, would require an export license from the U.S. Department of Energy (DOE), but it would not be "economically" regulated by the DOE. In this case, the pipeline itself would be "economically" regulated by the RCA. However, he said he did not think that the RCA has jurisdiction over rates for tankers, given provisions of the state pipeline Act, and added that liquefaction facilities raise a new question. He said the RCA does not regulate the receiving terminal in Cook Inlet because it is not an "economically" regulated facility. He defined "economic" regulation as meaning that the rates charged are subject to regulatory approval.

CO-CHAIR JOHNSON referred to previous discussions about vouchers and someone buying gas at the wellhead and transferring it down the gas line. He inquired whether it would be possible for someone to purchase gas at Valdez and then do what they want with it.

MR. SCOTT replied yes.

CO-CHAIR JOHNSON asked who would regulate that.

MR. SCOTT responded that it depends. He reiterated that the pipeline would be "economically" regulated by the FERC if the gas was purchased in Valdez, tankered out, and then eventually transported into North American markets.

CO-CHAIR JOHNSON asked if North America also means Canada and Mexico.

MR. SCOTT answered yes. He explained that it is an inter-connected grid and that he thinks the FERC's position would be that once molecules hit that inter-connected grid, they flow on interstate commerce. He pointed out that on the TAPS, the RCA has jurisdiction for "intra"-state movements of oil. However, on a gas pipeline, moving even a single molecule of gas in "inter"-state commerce makes the whole facility entirely FERC regulated. He advised that the FERC's regulatory jurisdiction preempts the state's economic regulatory jurisdiction; so, in this case, the RCA would essentially have no regulatory role to play.

5:44:17 PM

PATRICK GALVIN, Commissioner, Department of Revenue (DOR), informed the committee that the regulation of LNG is just developing in the U.S. and is therefore in a transition mode. One of the advantages of LNG, he said, is that once it is on a tanker leaving Valdez, it can go anywhere that the shipper wants. However, there are some unknowns. If, for example, a project's initial plan is to export gas to the Asian market, it will receive a DOE export license and the primary regulator of the pipeline will be the RCA. Should there be a change in the market at a later date which results in the project's tankers instead sailing to the West Coast of the U.S., it is currently unknown whether the FERC would preempt the RCA's regulatory control of the pipeline. He relayed that at this time even the FERC cannot say what it will do. Therefore, the state is trying to capture both scenarios in the bill because an applicant's project will have to be for one or the other at the time of application. The regulatory agencies will then need to determine their respective authorities, he said.

COMMISSIONER GALVIN, in response to a question, said the state cannot address this issue because it is basically a question of whether the FERC is going to exercise jurisdiction or not. Federal authority would theoretically preempt the state unless the federal agency is deemed to have exceeded its federal constitutional interstate authority. What the state can do within the context of the bill is to require the licensee to do certain things in exchange for values received from the state. Those things are tied to the licensee's certificate, either from the FERC or from the RCA. The licensee will determine which it will seek based upon its initial project design. The state does not control, nor could it try to control, which agency is ultimately going to regulate the project. However, he added,

that is not the issue being addressed in the bill; instead the issue is that the licensee must seek control from one or the other and the state must have the controls in place for requiring the licensee do so in a timely manner.

CO-CHAIR JOHNSON asked whether the licensee needs to seek control from both if it is an all-Alaska pipeline, given that it is uncertain where the market is going to be.

COMMISSIONER GALVIN responded that the licensee will submit a project design based on the market that it plans to target and so what the chosen market is will determine whether the FERC has jurisdiction. He acknowledged that there is a potential for "gaming" the regulatory program by submitting an export project and then switching later. However, he said, such a tactic would entail going through a huge regulatory hurdle just as the project is about to get to market and after the licensee has already invested a lot of money.

REPRESENTATIVE WILSON surmised that proposed AS 43.90.130(3) outlines what an applicant must do if he/she is going to be regulated by the FERC, and that proposed AS 43.90.130(4) outlines what the applicant must do if he/she is going to be regulated by the RCA.

COMMISSIONER GALVIN concurred.

REPRESENTATIVE ROSES returned attention to the percentages outlined in proposed AS 43.90.130(7)(B), and opined that they cannot be changed because the 15 percent relates to the rate increase and the 115 percent relates to the capacity.

5:50:34 PM

MS. DAVIS drew attention to proposed AS 43.90.130(15), and explained that the substantive changes in [subparagraphs (A)-(D)] add more details regarding an Alaska hire commitment, using Alaska businesses, establishing or using in-state hiring facilities, and the Department of Labor and Workforce Development (DLWD) program. There have also been additions to proposed AS 43.90.130(17) regarding a project labor agreement (PLA), she said.

5:51:39 PM

REPRESENTATIVE SEATON moved Conceptual Amendment 24, which read [original punctuation provided]:

Page 9, line 16 After "use,"
Insert "for jobs not filled under subsection (17)"

CO-CHAIR GATTO objected, saying he had other questions about paragraph (17).

REPRESENTATIVE SEATON explained that Conceptual Amendment 24 establishes the PLA as the default. For any jobs not filled under the PLA, he said, then the term, "as far as practicable" in paragraph (15)(D) will apply to the job centers and associated services of the DLWD. He said that during public testimony it was pointed out that under the current language a job applicant does not have to be a state resident at the time of application and will be treated the same as someone who has been here for 30 days. [Conceptual Amendment 24], he indicated, would allow paragraph (17) to supersede paragraph (15).

5:53:57 PM

REPRESENTATIVE ROSES asked for clarification regarding the intent of Conceptual Amendment 24. He presented an example of a pipe fitter's union member in the Lower 48. He said the union member, by virtue of belonging to an affiliate of the national pipe fitter's union, can pick up his or her book and bring it to an [Alaska] union and be preferentially hired over somebody who has been in the state for 30 days. That person will be considered a member of that particular [Alaska] local the minute his or her book is entered into the ledgers at that union hall, he said.

REPRESENTATIVE SEATON said that his understanding from public testimony is that the priority of the PLA terms is that a worker must be a one-year resident. To have priority under the PLA, a worker must be a resident at the time of application.

CO-CHAIR JOHNSON said he thought that that was partially accurate. From his conversations with union members, he said he thought the one-year residency requirement varied between unions. He said his understanding is that if a person signs up from out of state and then all of the people on the list ahead of him or her are hired, that person will be next on the list regardless of whether he/she has been in the state a year or 30 days, as long as he/she brings his/her book.

REPRESENTATIVE GUTTENBERG offered his understanding regarding a qualified pipe welder; [the union] would first go through all the current members who are residents. Then, after that list is exhausted, a qualified welder who is a resident would be at the top of the list even if he/she is not a member of the union.

CO-CHAIR GATTO surmised that a nonresident could be hired even if he/she has been in the state one day provided that everyone on the list ahead of him/her has been hired.

REPRESENTATIVE GUTTENBERG concurred.

CO-CHAIR GATTO then directed attention to the language in proposed AS 43.90.130(17), "by qualified residents of the state", and asked how this requirement would be satisfied if there is a licensed person who has been in the state only one day.

REPRESENTATIVE GUTTENBERG replied that the state cannot differentiate; that is why project labor agreements are being set up.

5:57:50 PM

JOE BALASH, Special Staff Assistant, Office of the Governor, relayed that the commissioner of the DLWD does not oppose Conceptual Amendment 24. He said the use of DLWD job centers and an Internet-based labor exchange system will be a function of the terms of the PLA contract between the parties. Negotiations between the licensee and labor representatives will determine whether there is one mega-PLA or a series of PLAs with the different trades and crafts. "We do not want to see a tension, which I think is what Representative Seaton is concerned about, between the use of the job centers and any PLA that might be entered into," said Mr. Balash. He said his understanding is that the job centers can be used as referrals through a union hall if the PLA requires that all the jobs be filled through the halls. He relayed that the commissioner checked with staff to make sure that this amendment would work.

CO-CHAIR JOHNSON asked whether the commissioner has a problem with leaving the language of proposed AS 43.90.130(15)(D) the way it is.

MR. BALASH replied that he did not know.

CO-CHAIR JOHNSON inquired whether the administration favors the current language of proposed AS 43.90.130(15)(D).

MS. DAVIS answered yes, and pointed out that the language of paragraphs (15) and (17) was submitted by the administration. In response to a question, she relayed that in discussions with the commissioner of the DLWD and others, she learned that the aspiration of having only Alaskans work on the gas line is actually not desirable. The lesson learned from the workforce buildup for the Trans-Alaska Pipeline System (TAPS) was to develop a core of resident, skilled, craft laborers who will have sustained employment over the course of the construction as well as the expansions and the process, and the peaks are staffed with nonresident laborers. This way, she said, resident laborers are not put in the situation of a brief moment of great hire that is suddenly followed by no work and then being forced to leave the state to pursue their livelihoods. Therefore, a good workforce plan actually envisions a component of out-of-state hire along with an in-state hire component in order to manage economic stability for Alaskans.

REPRESENTATIVE WILSON surmised that what is being said is that only as many Alaskans as there are permanent jobs will be hired and the rest will not get any jobs.

MR. BALASH responded, "Speaking for the governor - 'No!'"

MS. DAVIS clarified that the goal is to employ every Alaskan who wants a job, but that there cannot be a commitment that every one of the jobs filled by an Alaskan will be a life-long job.

REPRESENTATIVE WILSON posited that there are numerous Alaskans who will only want the shorter term jobs so that they can make their money and then return to their homes.

6:03:48 PM

REPRESENTATIVE SEATON opined that there was no coordination between the PLA and the expansion to use job centers. The intent of Conceptual Amendment 24 is to coordinate the provisions of paragraphs (15) and (17). It would make the PLA, which everyone agrees is necessary for a mega-project, the overriding thing to ensure that the jobs go to qualified residents of the state. If the jobs are not filled this way, then hiring will go through the DLWD "as far as practicable".

REPRESENTATIVE EDGMON relayed that he went to one of the PLA presentations and got the impression that positions in engineering and management would not necessarily be the function of the PLA. If that is true, then Representative Seaton's proposed language simply clarifies the clause "as far as practicable".

CO-CHAIR GATTO withdrew his objection.

CO-CHAIR JOHNSON objected. He inquired whether a Canadian member of the union is protected by the North American Free Trade Agreement (NAFTA) and given somewhat of a resident status.

COMMISSIONER GALVIN replied that he did not have an answer, but would research that issue further. He stated that the language under paragraph (15)(D), "use, as far as practicable," is conditional, and the language under paragraph (17), "commit to negotiate ... a project labor agreement" is mandated. Adding the amended language, he opined, takes the job centers out of being potentially used with the PLAs. He said he believes that a PLA can be crafted to include a provision, and [the administration] would support this, that the job centers be used as much as practicable. He relayed that although the commissioner of the DLWD said Conceptual Amendment 24 is okay, the current language is also fine.

COMMISSIONER GALVIN stated that he believes Conceptual Amendment 24 would make PLAs and job centers exclusive of each other even though that is not necessarily the intent. He said it is [the administration's] intent that the PLA requirement is number one and the job center requirement is supplemental, and so that is why "as far as practicable" has been set as a limitation.

REPRESENTATIVE ROSES expressed his concern with tying the two together and said he thinks they need to stand alone. He reported from personal experience that when a union has placed all of its in-state workers on jobs, it will reach out to the unions in other states. He said that he does not want a union member from the Lower 48 to have priority over a non-union Alaskan, and expressed his fear that [Conceptual Amendment 24] might possibly allow this to happen.

6:12:08 PM

A roll call vote was taken. Representatives Seaton and Edgmon voted in favor of Conceptual Amendment 24. Representatives Wilson, Roses, Kawasaki, Guttenberg, Johnson, and Gatto voted

against it. Therefore, Conceptual Amendment 24 failed by a vote of 2-6.

MS. DAVIS turned attention to proposed AS 43.90.130(19), and noted that it no longer contains the words: "; the affiliates of the applicant; all partners, members of a joint venture,". She then directed attention to proposed AS 43.90.150(c), and noted that a question has arisen regarding to whether this subsection is needed given that the applicant's ability to challenge an award has been eliminated.

6:14:05 PM

REPRESENTATIVE SEATON offered Amendment 25, which read [original punctuation provided]:

Page 11, lines 2 - 5
Delete subsection (c)

REPRESENTATIVE WILSON objected and asked Commissioner Galvin to reiterate what he said about this subsection the previous day.

COMMISSIONER GALVIN stated that the language in subsection (c) is moot given that the ability to challenge has been eliminated. An area of concern, however, is whether, during the legislative approval phase, an unsuccessful applicant lobbies to have the successful application rejected. He said it doesn't seem fair that the unsuccessful applicant's confidential information does not have to disclosed as is the case for the successful applicant. But, he said, he could not think of a way to address this problem. In response to a question from Co-Chair Gatto, Commissioner Galvin stated that he agrees with Amendment 25.

REPRESENTATIVE GUTTENBERG opined that if someone was challenging the successful applicant, their confidential information should also be made available as a matter of public policy.

COMMISSIONER GALVIN responded that Representative Guttenberg is correct and this is why subsection (c) was added in the first place. However, language was added to a separate provision which says that in order to apply, an applicant must commit not to challenge; therefore subsection (c) is no longer relevant. He said a lobbying effort is not a legal challenge and cannot be regulated, therefore it will be incumbent upon the legislators being lobbied to ask for that confidential information.

CO-CHAIR JOHNSON inquired as to what the "hammer" is for keeping unsuccessful applicants from challenging.

MS. DAVIS replied that one of the criteria in the application is that the applicants agree to waive their right to contest or challenge. Thus, submission of an application is akin to a contractual provision.

CO-CHAIR GATTO surmised that this is why subsection (c) is superfluous.

MS. DAVIS concurred.

REPRESENTATIVE WILSON withdrew her objection.

CO-CHAIR GATTO asked whether there were any further objections. There being none, Amendment 25 was adopted.

6:19:15 PM

MS. DAVIS turned attention to proposed AS 43.90.170(a), which now contains the clause "consider public comments received under AS 43.90.160(a)," thereby making it explicit, rather than implicit, that the commissioners shall consider public comment.

REPRESENTATIVE GUTTENBERG asked whether anything was changed in proposed AS 43.90.160(c).

COMMISSIONER GALVIN instead explained that through [the applicants'] signing of the confidentiality agreements, access is granted to the legislative auditor, the fiscal analyst who serves as head of the legislative finance division, agents and contractors of the legislative auditor and the fiscal analyst, and members of the legislature. It is the administration's interpretation that this provision also applies to the applications that are rejected by the commissioners. Therefore, he said, the confidential information included in the applications would also be available through the confidentiality agreements to the legislature when this process moves on to the legislative round. In response to a statement by Co-Chair Gatto, Commissioner Galvin agreed that nothing in subsection (c) allows confidential information to be released to the public.

REPRESENTATIVE SEATON referred to proposed AS 43.90.150(b), and asked why the commissioners would be required to return information that is not proprietary or a trade secret.

COMMISSIONER GALVIN explained that if an applicant submits information that he/she claims is a trade secret but the commissioners disagree, the applicant will be given the opportunity to decide whether to keep this information in its application for consideration by the commissioners. Information that is deemed nonconfidential, but still a part of the application, will be released as public information. Therefore, this provision allows the applicant to request that the information be returned and not be considered as part of its proposal.

6:23:09 PM

MS. DAVIS then pointed out that a conforming change to make Version K similar to the Senate version of the bill now has proposed AS 43.90.170(b) providing discount rates of two, six, and eight percent.

REPRESENTATIVE SEATON said he thought he heard in earlier testimony that "five" was the percentage used in previous analyses and that "five" was inserted so that there could be a comparison between previous analyses.

MS. DAVIS concurred, and said the DNR runs its analyses using models built around five percent, but the Senate said it would like models using six percent to be run as well.

COMMISSIONER GALVIN stated that previous economic reports done on the "stranded gas contract" ran the number at six percent. He relayed that the administration prefers five percent because it is the number that the administration provided in its slides and it is the number recommended as the appropriate discount rate from a governmental standpoint for looking at cash flows. While the administration recognizes that there may be a desire to have additional percentages thrown in and will look at running those additional numbers, he opined that five percent is the appropriate rate.

CO-CHAIR GATTO commented that five percent makes for a nice linear comparison.

6:25:49 PM

REPRESENTATIVE SEATON moved Amendment 26 as follows:

> Page 12, line 6
> Delete "six"

Insert "five"

There being no objection, Amendment 26 was adopted.

REPRESENTATIVE GUTTENBERG stated that if there is a conference committee, both bodies will have a chance to debate this number.

6:26:53 PM

MS. DAVIS mentioned that proposed AS 43.90.170(b)(2) now uses the term "net back" instead of "wellhead". For financial reasons, "net back" is a more precise term that clarifies where the value stops because then the various deductions that vary lease by lease do not have to be considered; this change was recommended by the DNR.

CO-CHAIR GATTO commented that this was the underpinning of the whole AGIA bill - net back value and the likelihood of success.

MS. DAVIS offered that proposed AS 43.90.170(b)(2) now also includes the words "and treatment"; this captures the gas treatment valuation as well as transportation [valuation], and so is more thorough.

6:28:12 PM

MS. DAVIS pointed out that proposed AS 43.90.170(b)(5) now reflects the change that resulted from the adoption of Amendment [11a] and reads: "(5) other factors found by the commissioners to be relevant to the evaluation of the net present value of the anticipated cash flow to the state, including the value of state income tax or equivalent payment in lieu of tax and supplemental profit-sharing to the state if contractually stipulated." In response to comments, she indicated that this change addresses a perception issue regarding the state's matching contribution.

REPRESENTATIVE GUTTENBERG referred to proposed AS 43.90.170(c), and asked whether there was any change made to the way the commissioners will be evaluating the likelihood of success.

MS. DAVIS stated that no substantive change was made to proposed AS 43.90.170(c).

COMMISSIONER GALVIN, in response to questions, replied that the administration does not oppose reinserting the language, "the amount of the contribution by the state under AS 43.90.110(a)(1)(A) and (B) proposed by the applicant under AS

43.90.1230(9)" - from CSHB 177(O&G), proposed AS 43.90.170(b)(5) - back in as an explicit consideration. However, if that language is left out, the contribution will be factored in under the "catch-all provision."

CO-CHAIR JOHNSON expressed concern that Version K is merely a Senate committee substitute.

MS. DAVIS offered that 65-70 percent of Version K is not reflected in the Senate's version of the bill, though Version K does contain some drafting changes.

6:35:24 PM

REPRESENTATIVE ROSES moved Conceptual Amendment 27, to insert a new paragraph in proposed AS 43.90.170(b) that would reinsert the language:

> the amount of the contribution by the state under AS 43.90.110(a)(1)(A) and (B) proposed by the applicant under AS 43.90.130(9);

REPRESENTATIVE WILSON objected for discussion purposes.

REPRESENTATIVE ROSES said he is making the amendment conceptual because of the references to title numbers that may no longer be applicable. The legislature has been very prescriptive and consistent in outlining the 20 "must haves", he stated; therefore, it is inconsistent to leave up to the commissioners what will be considered.

REPRESENTATIVE WILSON withdrew her objection.

CO-CHAIR GATTO asked whether there were any further objections. There being none, Conceptual Amendment 27 was adopted.

6:38:06 PM

COMMISSIONER GALVIN, in response to comments, explained that he and Ms. Davis are identifying all of the changes incorporated into Version K from the Senate that were not in CSHB 177(O&G). He said there are two types of Senate changes: those changes that were recommended by the administration and those changes that the administration is uncomfortable with. He assured the committee that he and Ms. Davis will make it clear which category a change falls into; he said the committee will be made

aware of all of the changes in the Version K that deviate from CSHB 177(O&G).

MS. DAVIS, referring to proposed AS 43.90.170(c)(1), noted that it no longer contains the clause, "the degree to which the applicant intends to" was deleted; also, the words, "the plan for encouraging" were replaced with the word, "encourage". In response to a question, she reiterated that she did not consider this to be a substantive change. She then mentioned that proposed AS 43.90.180(a) has been rewritten to clarify that consideration of public comments is to be done prior to evaluating completed applications, and that a license refers to a license issued under this chapter.

6:41:37 PM

MS. DAVIS then relayed that proposed AS 43.90.180(a)(2) now reads, "publish notice of intent to issue a license under this chapter with written findings addressing the basis for the determination; and"; that proposed AS 43.90.180(b) now reads, "If, after the evaluation of complete applications under AS 43.90.170, the commissioners determine that no application sufficiently maximizes the benefits to the people of this state and merits issuance of a license under this chapter, the commissioners shall issue a written finding that addresses the basis of that determination."; and that proposed AS 43.90.180(c) no longer contains the words, "for purposes of appeal to the superior court".

MS. DAVIS then mentioned that proposed AS 43.90.180 no longer contains the language, "(d) Within 90 days after a determination under (b) of this section, the commissioners may issue a new request for applications for a license under AS 43.90.120.", adding that this provision is picked up, in part, in the legislative review process wherein the commissioners, without a set time limit, are authorized to issue a new request for applications if there is a denial of the application.

COMMISSIONER GALVIN clarified that if the commissioners do not receive any qualifying applications, or reject all applications, or choose not to issue a license after receiving qualifying applications, they are not authorized to start the process over again unless the legislature fails to approve a selected licensee.

CO-CHAIR GATTO said it was his understanding that the commissioners could not "fix the structure."

COMMISSIONER GALVIN responded that such would require a legislative change wherein everything would have to be re-addressed.

REPRESENTATIVE GUTTENBERG inquired whether deleting the words "for purposes of appeal to the superior court" changes any of the legal actions that can be taken.

MS. DAVIS replied that that language referred to an appeal that no longer exists.

6:45:21 PM

MS. DAVIS relayed that changes were made to proposed AS 43.90.190 for the purpose of conforming to Senate language so as to address procedural concerns regarding the legislative approval process. Specifically, subsection (b) now also included the language, "passes the legislature within 90 days after the last date a presiding officer receives a determination by the commissioners under AS 43.90.180,", and there is a new subsection (c) in tended to address the administration's concern regarding the legislative rule that prevents bills from being carried forward for more than 30 days during a special session. Furthermore, what is now subsection (d) reads: "(d) If the legislature fails to approve the issuance of the license, the commissioners (1) may not issue the license that the legislature failed to approve; and (2) may request new applications for a license under AS 43.90.120." The purpose of this change is to make it explicit, rather than implicit, that the legislature has the right to preclude the executive branch from entering into a contract that the legislature has disapproved of. This doesn't raise any constitutional issues, she said, because if a provision is ruled unconstitutional, it is unconstitutional whether it is stated explicitly or implicitly.

REPRESENTATIVE SEATON characterized 90 days as a lot of time spent in special session.

MS. DAVIS clarified that the Senate bill has a 60-day limit, and that the House Special Committee on Oil and Gas had approved a 90-day limit but it did not get included in CSHB 177(O&G).

6:49:25 PM

REPRESENTATIVE SEATON moved Amendment 28 as follows:

Page 14, line 5, before "days"
Delete "90"
Insert "60"

Page 14, line 12, after "the"
Delete "90"
Insert "60"

CO-CHAIR GATTO objected saying that [such a change] would not add any information or help.

COMMISSIONER GALVIN stated that the original structure of the bill was basically the equivalent of a legislative veto that had to be exercised in 30 days otherwise the license would become effective. The bill was then changed to an approval process under a timeframe to be chosen by the legislature, thus the administration cannot move forward until the legislature approves the bill that approves the license. He commented that deadlines often drive the timeline for making a decision; if it is a 60-day timeline then it will likely take 60 days to reach a decision. He relayed that the administration would be more comfortable with 60 days than 90 days, and more comfortable still with 30 days than 60 days.

CO-CHAIR GATTO said he is thinking of a 30-day, or perhaps even a 45-day limit.

REPRESENTATIVE SEATON submitted that 60 days allows a bill to be carried over from one special session to another without having to re-introduce it, but a bill cannot be carried over to the first regular session of a legislature. He opined that two special sessions should be enough.

REPRESENTATIVE ROSES agreed.

REPRESENTATIVE WILSON pointed out that it took two special seasons to address the production profits tax (PPT) legislation.

6:53:34 PM

CO-CHAIR JOHNSON noted that a bill currently being considered, [HB 117], would require the governor to give the legislature a 30-day notice prior to calling a special session. He asked whether the time limit would begin at the time of notice or at the start of special session should this bill become law.

COMMISSIONER GALVIN explained that the clock would start as soon as the notice is received by the presiding officer, regardless of whether the legislature is already in session or needs to be called into special session.

CO-CHAIR JOHNSON surmised that [under a 60-day timeframe] the legislature would only have 30 days to act following the 30-day notice.

COMMISSIONER GALVIN concurred.

CO-CHAIR GATTO pointed out that a 30 day timeframe would mean no time for the legislature to act.

COMMISSIONER GALVIN said that if [HB 117] passes, that would be the case.

CO-CHAIR JOHNSON stated that he thinks 90 days should be the number until it is known whether that other legislation passes. He objected to Amendment 28.

6:56:53 PM

A roll call vote was taken. Representatives Seaton, Roses, and Gatto voted in favor of Amendment 28. Representatives Edgmon, Kawasaki, Wilson, Guttenberg, and Johnson voted against it. Therefore, Amendment 28 failed by a vote of 3-5.

MS. DAVIS drew attention to proposed AS 43.90.200(a) and (f), which now refers to an administrative appeal, and stated that this is an important change because it restricts the time period within which the applicant must move forward with the certificate. Once administrative appeals, which would come before the FERC, have been exhausted, a court process cannot then be undertaken.

REPRESENTATIVE SEATON asked whether there is a need to have an "amended certificate" addressed in this section.

MS. DAVIS responded that such would be a good clarification to include.

6:59:58 PM

REPRESENTATIVE SEATON moved Amendment 29 as follows:

Page 14, line 22, after "certificate"

Insert "or amended certificate"

REPRESENTATIVE ROSES asked that Amendment 29 be considered conceptual in order that the additional wording could be inserted wherever appropriate throughout the document.

REPRESENTATIVE SEATON agreed.

MS. DAVIS also agreed that this would be helpful because Conceptual Amendment 29 would apply to subsections (b) and (c), as well.

CO-CHAIR GATTO asked whether there were any objections to Conceptual Amendment 29. There being none, Conceptual Amendment 29 was adopted.

7:01:56 PM

MS. DAVIS mentioned that proposed AS 43.90.200(b) and (c) now contain the caveat, ", at the time the certificate is awarded,", and surmised that it was merely added by the drafter as a clarifier. However, she said, this additional language causes the administration concern because subsections (b) and (c) are both requirements for an applicant. The licensee must move forward to project sanction once a FERC certificate is received. Subsection (b) states that the licensee must move forward to project sanction within a year after the effective date of the certificate once the licensee has credit support. She said she believes that the drafter was trying to identify the point in time at which credit support is obtained.

MS. DAVIS said that the administration has even more concern about the change to subsection (c) because "at the time the certificate is awarded" means that a licensee that does not have credit support has five years within which to ultimately sanction the project. She relayed that the administration's view of that provision had been that it will take the licensee a period of time to get credit support, for example, two months after being issued the certificate, at which point the licensee would then be expected to move forward to sanction. The administration saw this as a fluid timeline, she argued, and inserting "at the time the certificate is awarded" changes it to an absolute timeline.

CO-CHAIR GATTO inquired whether the aforementioned additional language needs to come out subsection (c), but be retained in subsection (b).

MS. DAVIS stated that it definitely needs to come out of subsection (c).

COMMISSIONER GALVIN advised that the clause needs to come out of both subsection (b) and (c). He said that it needs to be clear that if the licensee has credit support, he/she gets a year; if he/she doesn't have credit support, he/she gets five years from the time the license is issued. He relayed that the administration believes this clause creates a different intent than originally envisioned.

CO-CHAIR GATTO surmised that identifying the timeframe when the licensee has credit support is unnecessary.

COMMISSIONER GALVIN concurred; the licensee will obtain credit support either before or after receiving the certificate, and the administration wants the one-year time period to kick in at that point. In response to a question, he recommended that on page 14, lines 24 and 30, following "If", the words ", at the time the certificate is awarded," should be deleted.

7:07:00 PM

REPRESENTATIVE ROSES moved Amendment 30 as follows:

Page 14, line 24
Delete ", at the time the certificate is awarded,"

Page 14, line 30
Delete ", at the time the certificate is awarded,"

There being no objection, Amendment 30 was adopted.

REPRESENTATIVE WILSON drew attention to proposed AS 43.90.200(f), which defines the term, "time the certificate is awarded", and asked whether this definition was still needed.

MS. DAVIS indicated that subsection (f) should instead define the phrase, "the effective date of the certificate", which is used in subsection (b) and (c) of proposed AS 43.90.200.

REPRESENTATIVE WILSON moved Amendment 31 as follows:

Page 15, line 17, after "section,"
Delete "time the certificate is awarded"
Insert ""the effective date of the certificate"

There being no objection, Amendment 31 was adopted.

7:10:13 PM

MS. DAVIS referred to proposed AS 43.90.200(d)(1), and noted the insertion of the words, "from the Federal Energy Regulatory Commission or the Regulatory Commission of Alaska, as applicable,", and that the words, "and transfer the certificate" were inadvertently omitted.

REPRESENTATIVE WILSON moved Amendment 32 as follows:

Page 15, line 8, after "abandon"
Insert "and transfer the certificate"

There being no objection, Amendment 32 was adopted.

7:12:22 PM

MS. DAVIS pointed out that proposed AS 43.90.200(d)(2) now reads: "(2) assign to the state or the state's designee all project data, engineering designs, contracts, permits, and other data related to the project that are acquired by the licensee during the term of the license before the date of the abandonment or transfer." She then relayed that proposed AS 43.90.200(e) remains unchanged. It states that failure to accept a certificate that is final, or failure to sanction a project after a year following receipt of credit support, or failure to sanction a project within five years if the licensee did not have credit support, will be at no cost to the state. However, in the administration's version of the bill, an exception was made for the last category wherein the applicant proceeded and worked hard, but through no fault of his/her own, did not receive the credit support to proceed further. For this scenario, she said, the administration had allowed for that transfer to be at the licensee's net cost. She relayed that the Senate's version of that language was the same as the administration's version.

COMMISSIONER GALVIN submitted that it is the administration's belief that changing this language is a more commercially reasonable offer.

MS. DAVIS proposed that the committee consider the following amendment: on page 15, line 15, insert "or" between "(a)" and "(b)", and delete ", or (c)"; on page 15, line 16, add a new

sentence stating, "A transfer under (c) of this section is at the licensee's net cost."

7:15:33 PM

REPRESENTATIVE SEATON moved Conceptual Amendment 33: on page 15, line 15, insert "or" between "(a)" and "(b)", and delete ", or (c)", and on page 15, line 16, add a new sentence, "A transfer under (c) of this section is at the licensee's net cost."

REPRESENTATIVE GUTTENBERG objected and asked how the net cost would be established and who would establish it, as this cost could be hundreds of millions of dollars.

COMMISSIONER GALVIN responded that the net cost is intended to capture the expenditures of the licensee less the state contribution that was received. In response to a further question, he said the cost could be $500 million or more, but the state contribution is capped at $500 million.

MS. DAVIS noted that what the state would be paying for is the assignment under subsection(d)(2) for the data, engineering designs, contracts, permits, and other project data which will have clear invoices and costs.

REPRESENTATIVE GUTTENBERG withdrew his objection.

REPRESENTATIVE ROSES objected and stated that his understanding of what is being talked about in [proposed AS 43.90.200(c)] is force majeure, an act of God. He said he did not see how the failure to get financial backing was an act of God.

COMMISSIONER GALVIN responded that the administration does not consider to this to be a force majeure issue. He relayed that if the licensee goes through the effort to get financing, but fails to get credit support and cannot move the project forward by the end of the full five years, then this is the situation described in [proposed AS 43.90.200(c)]. The question in this instance, he said, is whether the state should be able to obtain all of the work product for free. The House Special Committee on Oil and Gas believed that the state should; however, he stated, the administration does not think it represents a fair offer.

REPRESENTATIVE ROSES argued that applicants will have committed to the 20 "must haves" regarding financial stability, credit

lines, and financing plans, therefore they should not be let "off the hook for free".

COMMISSIONER GALVIN acknowledged that the aforementioned is true. However, he contended, there is the potential situation of an applicant's financing being contingent on getting gas commitments that then don't materialize. The question then becomes whether the state should be able to get all of the licensee's data for free or reimburse those costs.

7:21:26 PM

REPRESENTATIVE ROSES noted that there is a clause elsewhere in the bill that says if a licensee abandons the project, his/her data must be given to the state. The ability to finance the project and the kind of credit backing that an applicant has should be the key criteria, he opined.

COMMISSIONER GALVIN clarified that the abandonment provision provides that the state will receive the data at net cost should the commissioner and licensee agree that the project is uneconomic. He reiterated the administration's belief that it is reasonable for the state to acquire the data and move forward on its own should the licensee be unable to make the project happen after a period of time. However, he said, one must also look at it from the applicants' point of view. When applicants are considering the risks and the investment of hundreds of millions of their own dollars in the [project], the state could be viewed as being overreaching. The administration is concerned this might deter someone from applying, he related.

CO-CHAIR GATTO said that was also his thought.

REPRESENTATIVE WILSON said she agrees that it might keep someone from applying because of the prospect of the producers not showing up for the open season as a way to force the project to start over again.

REPRESENTATIVE SEATON submitted that there are two situations. The first one is where the project is uneconomic and the state would buy the data. The second one is where the project is economic but still doesn't happen for some reason, such as the producers not committing gas at open season. In this second case, the state is left with no project, no certificate, and no data. There needs to be some kind of future leverage and liability if it is an economic project, he contended, and this

seems reasonable, from a commercial standpoint, for the state to get applicants to the table.

REPRESENTATIVE ROSES argued that the bill references a lack of credit support, not a lack of an FT commitment. One of the "must haves" is the financial viability to complete this project and [Conceptual Amendment 33] would make it a "might have".

COMMISSIONER GALVIN read aloud from subsection (c). It is all tied together, he maintained, because FT commitments may be relied upon in full or in part as a basis for credit support. He explained that FT commitments are only one of the building blocks upon which financing might be based. "It is the nature of the offer that the state is making," he said, as to whether the state gets the information for free or buys it at the licensee's cost should the licensee become unable to get the necessary credit support.

7:29:47 PM

CO-CHAIR JOHNSON asked if it would be possible to have a scenario wherein a licensee spends the [state's] $500 million on something else and spends his/her own money on "this" so that the state must pay back the licensee in addition to being out the $500 million.

COMMISSIONER GALVIN responded that the $500 million can only be spent on those activities that bring the licensee to a FERC or RCA certificate.

CO-CHAIR GATTO surmised that if half of the licensee's money and half of the state's money have gone into the project up to that point, then the licensee's net costs would exclude the portion put up by the state.

COMMISSIONER GALVIN concurred.

REPRESENTATIVE ROSES inquired whether Commissioner Galvin saw this as compromising or contradicting any of the "must haves" in the application process.

COMMISSIONER GALVIN responded no.

REPRESENTATIVE ROSES withdrew his objection.

CO-CHAIR JOHNSON objected.

A roll call vote was taken. Representatives Seaton, Guttenberg, Edgmon, Wilson, and Gatto voted in favor of Conceptual Amendment 33. Representatives Roses, Kawasaki, and Johnson voted against it. Therefore, Conceptual Amendment 33 was adopted by a vote of 5-3.

The House Resources Standing Committee was recessed at 7:35 p.m. to be continued at approximately 7:45 p.m.

CO-CHAIR GATTO called the meeting back to order at 7:52:38 PM. Representatives Gatto, Johnson, Roses, Guttenberg, Edgmon, Wilson, Kawasaki, and Seaton were present at the call to order.

[Following was discussion regarding rescinding a committee action.]

The committee took an at-ease from 7:53 p.m. to 7:54 p.m.

REPRESENTATIVE ROSES moved to rescind [the committee's action in adopting] Conceptual Amendment 33.

CO-CHAIR GATTO objected.

REPRESENTATIVE ROSES pointed out that under the current provisions of the bill, there is a 50/50 match for the licensee up to the open season, and after the open season it is an 80/20 split up and through the certification process. If the licensee spends $200 million to get to the open season, then the state and the licensee will each have spent $100 million under the 50/50 split provision. If the licensee then spends $500 million for the next phase, the state's share under the 80/20 split will be $400 million and the licensee's share will be $100 million. The total cost is now $500 million to the state and $200 million to the licensee. If, at this point, the licensee loses the full credit support that it had at the time of its application, [Conceptual Amendment 33] allows for the licensee to now get out of the contract and be reimbursed by the state for that information - resulting in a cost of $700 million to the state and zero to the licensee. Is this really what the state wants to do, he asked.

CO-CHAIR GATTO inquired whether it is possible for the state to expend more money than the licensee.

COMMISSIONER GALVIN indicated that such could be the case. At the time of application, the applicant does not have to demonstrate that it has the credit secured to finance the entire

project. Rather, the applicant is providing a financial plan that is conditional upon certain things occurring in the future, such as FT commitments or government support. It is not a question of the credit support vanishing, he stated, but rather that it didn't ever materialize.

COMMISSIONER GALVIN said that while he is swayed by Representative Roses's scenario, from the perspective of the applicant, should the credit support that is being planned on not materialize, then the applicant is left with nothing. The biggest risk, he said, is creating a framework that is deemed too much of a commercial risk by potential applicants, thereby scaring off the very people that the state is trying to attract. In trying to strike a balance, the question is, which risk is the state willing to take. At this particular point in time, he stated, the administration feels it is more appropriate to create an attractive situation without impediments, while recognizing that it could put the state in a position of spending additional monies to get the product.

8:03:02 PM

REPRESENTATIVE ROSES acknowledged that point, but noted that witnesses have stated several times that the best work and best analysis must be done prior to getting to the open season. He expressed his concern that a situation is being set up whereby applicants are being encouraged to invest as little as possible and do the least amount of analysis possible because there is little risk since they would be able to get their money back. He stressed his belief that having something at risk going in is what ensures that the applicants will do their best work up front.

REPRESENTATIVE ROSES explained that his intent in asking the committee to rescind its action in adopting Conceptual Amendment 33 is to re-offer it with a change: instead of the state paying 100 percent of the licensee's net cost, the buy back would be at 50 percent of the licensee's net cost. This would strike a happy medium, he said, because this way a licensee would have to expend at least $100 million of its own money.

REPRESENTATIVE WILSON noted that during the discussions with producers and pipeline companies, both had said that there were times when no applications were received for the open season. Both said that this then resulted in negotiating a different rate. Therefore, she asked, at what point is the licensee abandoning the project and working toward another open season.

COMMISSIONER GALVIN advised that after an unsuccessful open season under AGIA, the licensee would be required to continue moving and making expenditures towards getting the certificate. During that period of time, the licensee would be free to hold additional open seasons to try to obtain the needed commitments. At some point the certificate will be received and then, under the section being discussed, the clock will start. Upon receipt of FT commitments and credit support, the licensee has one year to sanction the project and begin to move. However, if the open seasons continue to be unsuccessful, the licensee has five years to continue holding open seasons, refine the project, and negotiate ways to get those commitments. If during this time the licensee gives up, then a different section of AGIA applies and the state obtains the information through that other means, he explained. If it goes all the way through that five year period, it becomes the scenario described by Representative Roses. Under Conceptual Amendment 33, he said, the question becomes whether the licensee must forfeit all of the work product to the state for free or receive payment for net costs.

REPRESENTATIVE ROSES withdrew his motion to rescind the committee's action in adopting Conceptual Amendment 33.

8:10:19 PM

REPRESENTATIVE ROSES moved Conceptual Amendment 34, to change the new sentence added to page 15, line 16, via Conceptual Amendment 33 to read: "A transfer under (c) of this section is at 50 percent of the licensee's net cost." There being no objection, Conceptual Amendment 34 was adopted.

COMMISSIONER GALVIN stated his support or Conceptual Amendment 34, but noted that it causes a potential conflict if the section on abandonment is not similarly amended.

MS. DAVIS drew attention to proposed AS 43.90.210 wherein two additional conditions were added - on page 15, lines 21-23 - that would justify a modification to the project plan; the new language reads, "improve the net present value of the project to the state, are necessary because of an order issued by the Alaska Oil and Gas Conservation Commission,". She noted that language on page 15, lines 25-29, now provides that an amendment or modification may not diminish the net present value to the state of the project or the likelihood of success for the project unless the amendment or modification was required by the AOGCC.

COMMISSIONER GALVIN pointed out a typographical error on page 15, line 27, wherein the word "Conservation" was omitted.

8:14:31 PM

REPRESENTATIVE SEATON moved Amendment 35 as follows:

> Page 15, line 27, between "Gas" and "Commission"
> Insert "Conservation"

There being no objection, Amendment 35 was adopted.

MS. DAVIS referred to proposed AS 43.90.220(b) wherein the words ", books, and files" was added to expand what may be audited. The remaining portion of subsection (b) was rephrased to accommodate a change in language throughout the bill where the word "contribution" was changed to either "state money" or "money". She noted that proposed AS 43.90.220(c) of Version K now contains the language found in proposed AS 43.90.220(b)(2)-(3) of CSHB 177(O&G).

MS. DAVIS said that proposed AS 43.90.220(d) gives the state a seat at the table in perpetuity. However, she pointed out, under the administration's version of the bill, that authority would have ended with commencement of commercial operations; the administration believes it is unnecessary to have a seat at the table once the pipeline commences operation because the administration's primary concern is related to the period from issuance of the license until financing of the construction. A seat at the table in perpetuity would create difficulty for the state regarding how to assign someone these duties and ensure that he/she does not communicate inappropriately to others within the state. Therefore, she advised, the administration recommends returning to the language, "until commencement of commercial operations"; this language would be inserted on page 16, line 11, in place of the words, "so long as the terms of the license continue to apply".

CO-CHAIR GATTO noted that language on line 12 only states that the licensee "shall allow the commissioners", and, therefore, there is no necessity for the commissioners to attend any meeting.

MS. DAVIS responded that having a right usually presumes exercise of that right in some fashion. She acknowledged that Co-Chair Gatto is correct, but that the state's legal rights

could be compromised somewhere down the road if the state has objections or concerns about actions that were taken by the pipeline company. The pipeline company could then argue that the state had a right to be at the table but waived its rights to object by choosing not to attend.

REPRESENTATIVE GUTTENBERG asked whether the administration considers that the terms of the license no longer apply at the point of commercial operation.

MS. DAVIS answered no, the administration believes the license would continue to apply so long as the pipeline is operating.

8:20:49 PM

REPRESENTATIVE WILSON moved Amendment 36 as follows:

> Page 16, line 11, after "and"
> Delete "so long as the terms of the license continue to apply"
> Insert "until commencement of commercial operations"

CO-CHAIR GATTO asked for the definition of "commercial operations".

MS. DAVIS said language on page 28, lines 20-21, defines "commencement of commercial operations" to mean "the first flow of gas in the project that generates revenue to the owners".

REPRESENTATIVE ROSES objected to Amendment 36. Although not exercising a right could put the state in a cumbersome position in the event of adjudication, would the state not also be in a difficult position if it was a member of the board and the state chose to adjudicate, he asked.

MS. DAVIS responded that being on a board with the power to sway votes and influence the outcome of meetings would put a party in the position of being bound by not acting. Having the right of observation puts a party in the situation wherein it is aware of information so that a failure to act could be argued as being a waiver. However, in terms of the state being bound by the actions being taken, she said she did not believe that would be an issue here because of the observation rights as opposed to the ability to influence votes.

REPRESENTATIVE ROSES inquired whether there could be a situation at a meeting wherein the information is deemed proprietary by

the licensee and therefore [the state representative] would be unable to share the information, thus defeating the purpose of the state being at the table.

MS. DAVIS explained that part of having this right of access and right to information is what brings the state within the veil of any argument that that information is proprietary. By essence of this being law, the licensee has waived any argument that the state cannot access the information.

REPRESENTATIVE ROSES withdrew his objection.

CO-CHAIR asked whether there were any further objections. There being none, Amendment 36 was adopted.

8:23:53 PM

MS. DAVIS relayed that proposed AS 43.90.220(e) now reads, "(e) A licensee shall maintain the records and reports required under this section for seven years from the date the licensee receives state money under this chapter.", and that proposed AS 43.90.230(a)-(d) now reads:

> (a) A licensee is in violation of the license if the commissioners determine that the licensee has
> (1) committed money received from the state under this chapter for an expenditure that is not a qualified expenditure under AS 43.90.110;
> (2) substantially departed from the specifications set out in the application without state approval of a project plan amendment or modification under AS 43.90.210;
> (3) violated any provision of this chapter or any other provision of state or federal law material to the license; or
> (4) otherwise violated a material term of the license.
> (b) The commissioners shall provide written notice to the licensee identifying a license violation. The commissioners and the licensee have 90 days after the date the notice is issued to resolve the violation informally.
> (c) The commissioners may suspend disbursement of state matching contributions to the licensee beginning on the date that the notice of violation issued under (b) of this section is sent to the licensee. The commissioners may resume disbursement on the date that

the commissioners determine that the violation is cured.
(d) If the commissioners and the licensee are unable to resolve the violation within the time specified in (b) of this section, the commissioners shall provide the licensee with notice that the violation has not been cured and provide the opportunity for the licensee to be heard. If after notice and hearing the commissioners determine that the violation has not been cured, the commissioners shall issue a written decision that is a final administrative action for purposes of appeal to the superior court in the state.

MS. DAVIS noted that one of the changes to proposed AS 43.90.230(d) ensures that the State of Alaska has jurisdiction. She also mentioned that proposed AS 43.90.230(e)(1)-(4) now reads:

(e) If the determination issued under (d) of this section finds an unresolved violation, the commissioners may impose one or more of the following remedies:
(1) discontinuation of state matching contributions under this chapter;
(2) recoupment of state money that the licensee has received under this chapter to date, with interest, regardless of whether the licensee has expended or committed that money;
(3) license revocation;
(4) assignment to the state or the state's designee of all project data, engineering designs, contracts, permits, and other data relating to the project that are acquired by the licensee during the term of the license; and

MS. DAVIS recommended that proposed AS 43.90.230(f)(2) be amended by inserting the words "or the state's designee" between "state" and "all". This wording is needed throughout the bill because there may be instances where it is appropriate for the product, or material, to be in the hands of a designee.

8:27:46 PM

REPRESENTATIVE ROSES moved Conceptual Amendment 37, to insert the words, "or state's designee" after the word, "state" on page 17, line 31, and to add this wording throughout the bill where needed.

REPRESENTATIVE GUTTENBERG objected to express disfavor with the entirety of subsection (f).

CO-CHAIR GATTO asked whether there were there were any objections to Conceptual Amendment 37. There being none, Conceptual Amendment 37 was adopted.

REPRESENTATIVE GUTTENBERG, referring to subsection (f), asked how that provision relates to enforcement.

COMMISSIONER GALVIN referred to subsection (e), which provides a list of remedies available to the commissioners should it be determined that a violation has occurred. That list includes license revocation and assignment of the data. He conveyed that the House Special Committee on Oil and Gas wanted to specify that if license revocation is chosen as the remedy, then assignment of the data is required, and subsection (f) ensures that this occurs. In response to a question, he said that should it be determined that a violation has occurred that has not been resolved, then the commissioners can determine which remedy is appropriate or if all of them are appropriate. In regard to whether subsection (f) is necessary, it is simply a matter of whether a revocation of the license should automatically be tied to a requirement of assigning all of the data.

8:31:34 PM

REPRESENTATIVE GUTTENBERG inquired whether subsection (f) provides the authority to have everything that has been done by the licensee assigned to the state.

COMMISSIONER GALVIN indicated that it did; the state already has that authority under the current language in subsection (e), and, again, subsection (f) simply eliminates the commissioners' discretion to revoke the license and choose not to require assignment of all of the data. He relayed that the administration opposed this change by the House Special Committee on Oil and Gas, and would therefore not be opposed to deletion of subsection (f).

CO-CHAIR JOHNSON asked whether the definition of "matching" on page 17, line 6, would also encompass the "80/20."

MS. DAVIS said it applies regardless of whether the ratio is 50/50 or 80/20.

REPRESENTATIVE SEATON commented that subsection (f) prevents re-application by the licensee as well as assigns the data.

COMMISSIONER GALVIN concurred. He acknowledged that this is potentially troubling because there could be a scenario in which events occur that would preclude the commissioners and the licensee from modifying the project plan because doing so would reduce the NPV of the project. This could force a violation to occur even if the licensee acted in good faith and the state wanted to allow the licensee to compete in the next phase with new information becoming available. Having the licensee precluded may potentially run counter to what would be in the state's interests at that particular time, he argued.

COMMISSIONER GALVIN, in response to a question, presented a scenario in which an applicant comes in with a certain project design but is forced to request a modification because it turns out that the gas isn't there or something else affects the licensee's ability to deliver that type of a project. Even if the commissioners support the proposed modification, they do not have the authority to authorize it if it lowers the project's NPV. The project may still be economic, but cannot be modified and the licensee now cannot fulfill the application. This would result in having to go through the violation and revocation provision or result in a voluntary relinquishment on the part of the applicant.

8:36:10 PM

REPRESENTATIVE ROSES remarked that he cannot understand how that scenario could occur because after the open season the criteria allows the licensee to modify the project to fit that open season.

COMMISSIONER GALVIN responded that this applies only if a contingency clause was included in the licensee's original proposal. If there is no such contingency clause in the original proposal, then only those changes allowed under the modification provision can be undertaken and they cannot reduce the NPV of the project.

REPRESENTATIVE ROSES stated that was one of the reasons for his amendment that allowed an applicant to propose various pipe capacities in order to make adjustments for possible variations in the FT at the open season. Given this parameter, why allow a

licensee to re-bid on a project that should have been bid properly in the first place, he asked.

COMMISSIONER GALVIN replied that it is a matter of when the state goes back out for applications. Should a licensee be automatically precluded from submitting a new bid or allowed to compete with a new proposal based upon what will be new information, he asked.

8:37:53 PM

REPRESENTATIVE ROSES argued that the licensee should not be allowed to re-bid because the other bidders are not allowed to participate once they are rejected. He contended that this allows the licensee who bid incorrectly to compete with a bidder who may have had the correct proposal to start with but was not chosen.

MS. DAVIS reminded the committee that in the evaluation criteria there is a specific provision relating to track record, experience, business integrity, and other elements that can be scrutinized. She commented that should a subsequent application be received from a previous licensee, it will receive close scrutiny as opposed to an application that was right the first time.

MS. DAVIS said the licensee is going to be a named entity, and in all likelihood it will be a large limited liability corporation consisting of multiple parties. She predicted that it would be difficult to form a new entity for submitting a bid the next time around, or that there would be a different mix of players. It would be problematic for the state to assess whether or not the same licensee is submitting a new application, she opined, because there would be no guidance as to whether being the same means more than 50 percent of the same ownership. The state could find itself in a very bad position trying to administer this provision, she argued. The administration's belief is that subsection (f) creates more difficulty than it solves, she relayed, particularly since there is another mechanism in place to solve the aforementioned problem.

CO-CHAIR GATTO commented that the part of the project plan that caused the licensee to default would probably be changed in the new application.

REPRESENTATIVE WILSON inquired whether the administration wished to remove subsection (f).

MS. DAVIS said just paragraph (1) of subsection (f) needed to be removed.

COMMISSIONER GALVIN clarified that he would prefer the removal of all of subsection (f).

MS. DAVIS, in response to a comment, clarified that if subsection (f)(1) is removed, the state still has a means under the application evaluation criteria to identify whether the same licensee is coming back through the second round. She further stated that she did not believe subsection (f)(2) was necessary given that subsection (e) provides that the commissioners may apply "one or more of the following remedies" which include license revocation and assignment of the data.

8:42:30 PM

REPRESENTATIVE WILSON moved Amendment 38, to delete proposed AS 43.90.230 (f).

[The committee decided that the change proposed by Conceptual Amendment 37 would still apply throughout the remainder of the bill.]

CO-CHAIR GATTO asked whether there were any objections to Amendment 38. There being none, Amendment 38 was adopted.

8:43:31 PM

MS. DAVIS directed attention to proposed AS 43.90.240(a), which now uses the word, "inducement" rather than the word, "entitlement". Proposed AS 43.90.240(b) no longer contains references to the Commercial Arbitration Rules of the American Arbitration Association; inserted in its place is the clause "under the substantive and procedural laws of this state". She said this change was made to the Senate's version of the bill because there was concern that reference to Commercial Arbitration Rules would be confusing given Alaska's adoption of the Uniform Arbitration Act. Furthermore, subsection (b) specifies that a judgment may be entered in the state's superior court.

MS. DAVIS, in response to a question, explained that the word "entered" as used in subsection (b) is a legal term meaning that

an arbitration award has the same force and power as a superior court decision. In response to further questions, she relayed that once an arbitration award is entered as a judgment in the State of Alaska, it can then be enforced in other states, and that an arbitration award can be enforced in other countries provided the United States' treaty with a particular country recognizes enforceability of judgment agreements.

MS. DAVIS mentioned that subsection (b) now clarifies that all arbitrators shall be selected from the American Arbitration Association's National Roster. In response to comments and a question, she said that the administration is not "forum shopping" relative to choice of law; the administration has decided to abide by state law.

MS. DAVIS, in response to another question, explained that the words in subsection (a), "under (f) of this section and AS 43.90.220" refers to subsection (f) of proposed AS 43.90.240 and to the entirety of proposed AS 43.90.220. She noted that proposed AS 43.90.240(b)(1) now longer contains the words, "project shall be abandoned" because the administration is trying to get away from having project abandonment be a decision point and instead stay focused on whether the project is economic.

8:51:00 PM

MS. DAVIS relayed that proposed AS 43.90.240(b)(2) now reads, "(2) not uneconomic, the obligations of the licensee and the state continue as provided under this chapter and the license.", and that proposed subsection (c) is essentially a new subsection defining the term, "uneconomic" so as to provide guidance to the arbitrators regarding whether a project is uneconomic.

CO-CHAIR GATTO surmised that "preponderance of the evidence" is a lower bar than "clear and convincing".

MS. DAVIS concurred; the state could be the party seeking to prove something is uneconomic and, thus, this standard will keep things fair. She then explained that the definition of "uneconomic" has two prongs. The first prong, proposed subsection (c)(1), states that either the applicant or the state would need to demonstrate that the "project does not have credit support sufficient to finance construction of the project". She pointed out that ownership and control of gas resources does not qualify as credit support. This is because a producer affiliate-owned pipeline would be unable to demonstrate that it

had no control of gas, therefore this type of pipeline owner would be precluded from ever showing that a project is uneconomic. A producer affiliate-owned pipeline could certainly have a situation, she offered, where a project was uneconomic due to such things as commodity pricing of the gas, construction material, and market conditions.

8:53:04 PM

MS. DAVIS referred to the second prong of the definition of "uneconomic" - proposed subsection (c)(2) - and relayed that the gas team had extensive discussions as to what constitutes uneconomic, and determined that an objective test would be for the arbitrator to look at whether there would be shippers willing to ship gas on the pipeline under the economic assumptions of a fully loaded pipeline and the market prices predicted for the time that the gas would be brought on. Thus, paragraph (1) is a subjective standard, she said, and paragraph (2) is an objective standard.

CO-CHAIR GATTO commented that the words "typically" and "prudent" as used in paragraph (2) could be interpreted differently depending on which side of the fence a person is on.

MS. DAVIS stated that proposed AS 43.90.240(d) relates to the burden of proof. However, she reported, this language creates a problem because under Alaska law, the burden of proof is already adequately dealt with through the statutory structure of the Uniform Arbitration Act. Therefore, the administration would not oppose deletion of this subsection in order to avoid confusion.

8:55:32 PM

REPRESENTATIVE SEATON moved Amendment 39, to delete subsection (d) from page 19, lines 3-4, and renumber the rest of the subsections accordingly. There being no objection, Amendment 39 was adopted.

MS. DAVIS noted that proposed AS 43.90.240(f) now reads:

> (f) If the commissioners and the licensee agree that the project is uneconomic or an arbitration panel makes a final determination that the project is uneconomic, the licensee shall deliver to the state or the state's designee all engineering designs, contracts, permits, and other data relating to the

project that are acquired by the licensee during the term of the license upon reimbursement by the state of the net amount of expenditures incurred and paid by the licensee that are qualified expenditures for the purposes of AS 43.90.110.

MS. DAVIS said that this language is consistent throughout the rest of the bill and clarifies that the data being turned over is data and information acquired during the term of the license.

MS. DAVIS next directed attention to proposed AS 43.90.250, regarding the Alaska Gasline Inducement Act coordinator. She relayed that much of the debate on this issue is focused on language in subsection (b), regarding the coordinator's appointment being subject to confirmation by the legislature. She said that according to the drafter, this position does not fit within the list of positions that require confirmation under the Alaska State Constitution.

8:57:47 PM

REPRESENTATIVE EDGMON moved Amendment 40, which read [original punctuation provided]:

Page 19, lines 26-29:

Delete: "The initial appointment is subject to confirmation by the legislature and an appointment is subject to reconfirmation by the legislature during the first regular legislative session after a general election at which a governor is elected."

CO-CHAIR JOHNSON objected for the purpose of discussion.

CO-CHAIR JOHNSON inquired whether there is a way for the legislature to appoint the coordinator without him/her being a commissioner. He voiced his opinion that the legislature should have a say in who is appointed.

COMMISSIONER GALVIN conveyed that the drafter has identified this as being a constitutional issue, and that there had been an amendment to overcome that by making it a commissioner-type of position. He said the administration has no recommendations as to how to overcome the legal issue. He relayed that he was previously the director of the Division of Governmental Coordination within the governor's office and was responsible for coordinating the policy decisions amongst the resource agencies. It was very similar to the function of the

coordinator position described in HB 177 as far as being responsible for working with all the departments and ensuring that the regulatory programs are operating as efficiently as possible, as well as using the influence of the governor's office to establish what the decision should be within the bounds of each agency's respective authority. His position was appointed by the governor, he said, and was not subject to confirmation by the legislature. Therefore, it is not an unprecedented type of authority or position, he argued, and the question becomes whether the legislature feels comfortable creating such a position under the constitutional limitations pointed out by the drafter.

9:02:08 PM

REPRESENTATIVE EDGMON remarked that he, too, was skeptical until hearing the description from the commissioner and learning that the position is mostly that of a facilitator and does not have fiduciary responsibilities like commissioners do. This is a clear line in the sand, he said, regarding whether the person holding this position should be confirmed by the legislature or be selected by the governor.

COMMISSIONER GALVIN added that the position's authority is extremely limited since the coordinator does not have authority to adopt regulations, and has no oversight of a budget or staff. The coordinator's role is only that which is established in subsections (b) and (c) of proposed AS 43.90.250. The coordinator is subject to support by the governor's office as well as removal for any cause, he stated.

CO-CHAIR GATTO commented that the word "coordinator" sounds like a liaison position.

COMMISSIONER GALVIN agreed. He said the coordinator's most significant role will be acting as an information liaison between state agencies, federal agencies, and pipeline proponents.

CO-CHAIR GATTO stated that given there is no staff, he is reluctant to establish the position at a commissioner level.

REPRESENTATIVE ROSES observed that a previous amendment of his that failed was not advocating for adding another commissioner, but for simply having the opportunity for a confirmation process if that was so chosen. Amendment 40, he said, is a matter of whether to risk running into a constitutional issue by leaving

the language in or to avoid that possibility by taking the language out.

CO-CHAIR JOHNSON withdrew his objection, but said that approval of the coordinator is something that he would like to pursue.

CO-CHAIR GATTO asked whether there were any further objections. There being none, Amendment 40 was adopted.

The committee took an at-ease from 9:06 p.m. to 9:15 p.m.

REPRESENTATIVE EDGMON moved Amendment 41, to delete the word, "typically" from page 18, line 31. There being no objection, Amendment 41 was adopted.

9:16:38 PM

MS. DAVIS mentioned that proposed AS 43.90.250(b), on page 19, line 29, the word, "person" was replaced with the words, "individual serving as the Alaska Gasline Inducement Act coordinator" and that no changes were made to proposed AS 43.90.250(c)-(d) or proposed AS 43.90.260. Furthermore, what is now proposed AS 43.90.300(a) no longer contains a reference to the tax exemption in AS 43.90.320 and changing the inducement to being contractual. She said this change was made in the Senate version of the bill and relates to the debate regarding the constitutionality of the tax exemption provision. Proposed AS 43.90.300(b), beginning on page 21, line 3, is a new subsection relating to a new voucher, and language establishing the voucher can be found in proposed AS 43.90.330.

COMMISSIONER GALVIN returned the committee's attention to proposed AS 43.90.240(f), and recommended that the committee consider adding a "50 percent" limitation similar to what was added via Conceptual Amendment 34 to proposed AS 43.90.200(e).

REPRESENTATIVE ROSES moved Amendment 42 as follows:

> Page 19, line 17, after the second "of"
> Insert "50 percent of"

REPRESENTATIVE ROSES stated that he had intended for [Conceptual Amendment 34] to apply throughout the entire bill.

COMMISSIONER GALVIN suggested that such a change be done separately throughout the bill, rather than globally, because

there are different justifications each time for what the distribution of the costs might be.

CO-CHAIR GATTO asked whether there were any objections to Amendment 42. There being none, Amendment 42 was adopted.

9:22:08 PM

REPRESENTATIVE GUTTENBERG, referring to page 21, lines 1-2 - proposed AS 43.90.300(a) - requested further explanation of the inducement in proposed AS 43.90.310 being contractual.

MS. DAVIS explained that when HB 177 was originally introduced, it had two provisions for inducements for resource owners - a royalty provision and a tax exemption provision. The royalty provision clearly needed to be contractual, she said, because it affects the royalty terms in the lease. The administration also originally wrote the tax exemption as contractual because it called for a tax certificate to be signed by the commissioner and the resource owner. Under terms of the tax certificate, the state would provide the tax exemption in exchange for the resource owner committing gas at the initial open season and agreeing to the rolled-in rate treatments that the pipeline company was bound by.

MS. DAVIS relayed that the administration believes this to be a superior approach because it considers AGIA to be a law of general application and, because the constitution states that the taxing power may be contracted away, the contractual structure did not conflict with constitutional requirements. However, she said, the Senate believes that this exemption is granted by contract and not by general law, and therefore [the Senate] stripped out the contractual underpinnings for the exemption. So, she stated, it becomes a debate of whether AGIA is a law of general application that then allows a contract to be entered into versus does it just provide a tax exemption because of the contract.

REPRESENTATIVE GUTTENBERG offered his understanding that the Senate thought having it as a law of general applicability was stronger constitutionally than contractually.

MS. DAVIS offered her belief that the Senate felt it was a stronger exemption, she said, as no contractual provision preserves the ability of future legislatures to make changes. She pointed out that under the Constitution of the United States, future legislatures are prohibited from impairing

contracts authorized by earlier legislatures, provided it is expressly stated that that original contract was intended by that legislature to be treated as a contractual commitment.

REPRESENTATIVE GUTTENBERG opined that one legislature does not have the authority to bind future legislatures, but acknowledged the administration has a different position.

REPRESENTATIVE ROSES said the state is going to offer a license to someone for years to come and if the next legislature can decide to undo it, then no one will ever want to bid on anything the state is going to do, he opined.

REPRESENTATIVE GUTTENBERG submitted that for the bidders it is an uncertainty that has to be overcome. He stated that he wants to make sure that if that law is struck down it cannot be locked in and that it doesn't become an excuse for [the licensee] to stop the contract.

REPRESENTATIVE SEATON observed that proposed AS 43.90.310 is the royalty inducement, not the tax inducement. Since the tax inducement is not specifically cited as being contractual, it can be presumed that it is not contractual. Under general law, he said, tax and royalty are treated separately.

COMMISSIONER GALVIN suggested that further discussion in regard to contractual issues be postponed until the actual tax provisions are reviewed in later sections of the bill.

9:30:02 PM

MS. DAVIS went on to explain that proposed AS43.90.300(b) was inserted to address the situation wherein a gas producer is receiving a voucher, which is a mechanism whereby a buyer of gas can purchase gas on the North Slope and acquire capacity in the pipeline even though the buyer is not a producer, and the buyer can then ship gas down the pipeline. This ensures that AGIA incentivizes not only gas producers to acquire pipeline capacity, but also buyers of gas. She relayed that utility companies and other gas buyers wanted to receive the benefit of the resource inducements. The voucher allows the gas buyer to transfer royalty and tax benefits to the producer in return for a lower gas purchase price. She said that currently on the oil side, buyers typically buy at a flat rate plus the tax and royalty because the producers do not want to take the risk that tax and royalty might vary over time. Vouchers will enable a

producer to establish a price and then get the benefit of reduced royalty and tax.

REPRESENTATIVE SEATON asked about the time period referenced in proposed AS 43.90.330(b).

MS. DAVIS referred to the clause in proposed AS 43.90.330(b), which states, "entitles the holder of the voucher to the resource inducements in AS 43.90.310 and AS 43.90.320". She explained that the inducements in AS 43.90.310 and AS 43.90.320 are tied to the duration of the capacity commitment, so it is an indirect reference to that period. Separately, she said, proposed AS 43.90330(c) provides that once a buyer delivers the voucher to the producer, the voucher's duration is the earlier of the duration of the buyer's gas purchase agreement with the producer or the expiration of the inducement by operation of law. Thus the expiration of the inducement ties back to AS 43.90.310 and AS 43.90.320. The tax is 10 years and the royalty is the duration of the FT commitment; they are different which is why there are references to operation of law.

REPRESENTATIVE SEATON asked whether it makes a difference that one is contractual and the other is operation of law.

MS. DAVIS replied no.

9:35:21 PM

MS. DAVIS turned attention to proposed AS 43.90.310(a) - specifically the language that says, ""or shipped in the firm transportation capacity described in a voucher received by the gas producer under AS 43.90.330; this new language references the royalty inducement and ties in the voucher provision. She then noted a typographical correction that was made to the end of proposed AS 43.90.310(a)(2)(D): insertion of the word "and" after the semicolon.

REPRESENTATIVE GUTTENBERG asked whether "the royalty settlement agreement" was in court.

COMMISSIONER GALVIN responded that a settlement agreement was reached; the 1980 royalty settlement agreement for Prudhoe Bay permitted certain deductions, so "this" is just acknowledging "those."

MS. DAVIS mentioned that proposed AS 43.90.310(a)(3)(A) no longer references a "qualified person", but rather just "other

person". She explained that the word, "qualified" was an artifact from earlier draft when the intention was to define a qualified person, and that the voucher essentially embodies that concept. She pointed out that the wording in proposed AS 43.90.310(a)(3)(B) has simply been reordered. She referred to proposed AS 43.90.310(b)(1) wherein there is a reference to the requirement that the initial regulations enacted by the commissioner of the DNR could be contractually incorporated and amended and put into the lease. Every two years thereafter the commissioner of the DNR is to review the regulations and revise them if they were not producing the benefits promised by AGIA, and there could be a second election by the producer to incorporate the revised regulations. The drafter placed these two concepts into two subparagraphs, she said; subparagraph (A) references the incorporation of the new regulations, and subparagraph (B) references the election and incorporation of revised regulations. Ms. Davis noted that proposed AS 43.90.310(b)(2) now contains subparagraphs (A) and (B) due to the adoption of an amendment on 4/23/07.

9:39:18 PM

REPRESENTATIVE SEATON moved Amendment 43, which read [original punctuation provided]:

Page 22, line 26 After "notice"
Insert "to two years"

REPRESENTATIVE KAWASAKI objected.

COMMISSIONER GALVIN said that while the administration has been thinking of two years with regard to altering the current 90-day notice provision, it has not done any evaluations and is therefore envisioning that these provisions would be established through regulations, which would allow for comments from the parties that the state is trying to attract into this inducement. He said that at this point he is uncomfortable with establishing a fixed time. The bill makes a clear statement that the intent is to provide an inducement that is attractive and meets the lessees' commercial concerns, and the length of the notice period and the remainder of the commercial risk taken on by the state will have to be addressed via regulations.

REPRESENTATIVE ROSES surmised, then, that the administration is asking for some flexibility.

COMMISSIONER GALVIN said he is suggesting that it may not be in the state's best interest to specify a number at this time because the information upon which to make such a decision is not available.

REPRESENTATIVE SEATON inquired whether the 90-day limitation for switching between [royalty in-value (RIV) and royalty in-kind (RIK)] is established in regulation or in the lease terms.

COMMISSIONER GALVIN stated that it is established in the lease terms, though not in all leases. He said 90 days is used because it is the most common timeframe. In response to a question, he said that contractual terms are offered during a particular lease sale, and are at the discretion of the DNR commissioner within a certain statutory framework.

REPRESENTATIVE SEATON noted that a term of two years has been used throughout many discussions. He requested that in future presentations it be made clear that a negotiated timeframe may be longer than two years.

REPRESENTATIVE SEATON withdrew Amendment 43.

COMMISSIONER GALVIN clarified that the details of the inducement provision would be established via regulations and would be set prior to the open season and not subject to individual negotiations; after regulatory development and public comment period, the DNR would decide what the notice timeframe should be. He said he is only suggesting that there is not enough information at this point to establish that timeframe, but it will be established sometime before open season.

9:46:41 PM

MS. DAVIS noted a typographical error on line 15, page 22, wherein the words, "incorporate into the lease terms of the relevant regulation as fixed contract terms" ought to be replaced with the words, "incorporate as fixed contract terms the relevant revised regulatory provisions".

REPRESENTATIVE ROSES moved Amendment 44 as follows:

> Page 22, line 15, after "and"
> Delete "incorporate into the lease terms of the relevant regulation as fixed contract terms"
> Insert "incorporate as fixed contract terms the relevant revised regulatory provisions"

There being no objection, Amendment 44 adopted.

9:49:04 PM

MS. DAVIS pointed out the addition of the words, "lessee's or person's", on page 23, line 15 - proposed AS 43.90.310(c); subsection (c), furthermore, no longer contains the words, "if the Federal Energy Regulatory Commission does not have a policy in effect that presumes that rolled-in rates apply to the recovery of expansion costs for the project;".

REPRESENTATIVE SEATON moved Amendment 45, which read [original punctuation provided]:

> Page 23, line 17 After "AS 43.90.130(7)"
> Delete "."
> Insert "if the Federal Energy Regulatory Commission does not have a policy in effect that presumes that rolled in rates apply to the recovery of expansion costs for the project;"

REPRESENTATIVE KAWASAKI objected.

A roll call vote was taken. Representatives Wilson, Seaton, Roses, Edgmon, Gatto, and Johnson voted in favor of Amendment 45. Representatives Guttenberg and Kawasaki voted against it. Therefore, Amendment 45 was adopted by a vote of 6-2.

9:52:23 PM

REPRESENTATIVE SEATON moved Amendment 46, which read [original punctuation provided]:

> Page 24, line 18 After "AS 43.90.130(7)"
> Delete ";"
> Insert "if the Federal Energy Regulatory Commission does not have a policy in effect that presumes that rolled in rates apply to the recovery of expansion costs for the project;"

The committee took an at-ease from 9:53 p.m. to 9:57 p.m.

REPRESENTATIVE GUTTENBERG and WILSON objected to Amendment 46.

REPRESENTATIVE SEATON stated his opinion that the House Special Committee on Oil and Gas struck a very good balance because if

the FERC has the presumption of rolled-in rates, the pipeline entity must propose and support rolled-in rates. Amendment 46 says shippers only get the inducement if the FERC is presuming rolled-in rates and then the shippers can argue whatever they want; if the FERC changes and eliminates the presumption of rolled-in rates, then the shippers are required to support rolled-in rates. This affords some balance between the inducement and the requirement for rolled-in rates, he opined, because rolled-in rates are what [the legislature] is trying to get to ensure exploration.

COMMISSIONER GALVIN conveyed the administration's opposition to Amendment 46. He indicated that the language being added via Amendment 46 is not the language that the administration started with. The administration believes that if a company is going to obtain the value of the upstream royalty and tax inducements, then it should not be able to counter the state's interest on the rolled-in rates. The state fought for the FERC presumption, he said, because rolled-in rates are so valuable to the state. The administration prefers keeping the existing language, he advised, to preclude a company from making such a challenge.

A roll call vote was taken. Representatives Seaton, Roses, and Johnson voted in favor of Amendment 46. Representatives Wilson, Guttenberg, Edgmon, Kawasaki, and Gatto voted against it. Therefore, Amendment 46 failed by a vote of 3-5.

REPRESENTATIVE GUTTENBERG moved to rescind the committee's action in adopting action on Amendment 45.

REPRESENTATIVE SEATON objected.

A roll call vote was taken. Representatives Guttenberg, Edgmon, Kawasaki, Wilson, and Gatto voted in favor of rescinding the committee's action. Representatives Seaton, Roses, and Johnson voted against it. Therefore, the committee's action in adopting Amendment 45 was rescinded by a vote of 5-3.

10:05:21 PM

MS. DAVIS referred to proposed AS 43.90.320(b), and explained that it no longer references the execution of a signed certificate; this change removes a contractual element for the tax exemption. Subsection (b) now references the inducement in connection with the voucher for buyers. Proposed AS 43.90.320(c) now uses the words, "person claiming the exemption" in place of the words, "exemption issued"; the words, "shall

agree" replaces the reference to a contractual agreement; and the rebuttal presumption is no longer included.

COMMISSIONER GALVIN explained that eliminating the contractual aspect eliminates durability, thereby eliminating the expectation on the part of the party that is receiving the inducement to know that it will have the value of the tax freeze for the entire 10 years. As written, the intent of this change was to promise an exemption in an amount equivalent to the change in the tax rate, but the exemption can be removed at any time by the legislature. The aforementioned was not included in the original legislation and was not an intended inducement. Throughout, the administration has acknowledged that what was proposed would be subject to a court challenge and constitutional challenge. Furthermore, no assurance was made that it would be proven constitutional. The language in Version K basically eliminates the concern of a constitutional challenge because there is no binding effect on a future legislature, and thus the question is whether it is of much value to the parties that AGIA looks to induce. Mr. Galvin noted that it is a significant change, which he characterized as a lessening of the potential perceived value.

10:10:18 PM

MS. DAVIS, in response to a question, explained that this change was not part of CSHB 177(O&G); it was incorporated into Version K by the drafter because it was a change made in the Senate's version of AGIA.

REPRESENTATIVE WILSON surmised that this change means there will no longer be a 10-year period of certainty.

MS. DAVIS responded that it takes away the language that was in the tax exemption that established the exemption as a matter of contract, so that makes it changeable. In further response, she said that it could be fixed through a conceptual amendment that restores the language to what was in CSHB 177(O&G). She said the conceptual amendment would apply to subsections (b) and (c), [lines 9 and 15, respectively,] as well as to page 21, line 1.

CO-CHAIR GATTO asked what happens if the difference is less than zero.

MS. DAVIS answered that the focus is not whether the number would be zero, but whether it would be a negative number. The goal is to ensure that the individual does not end up with a

credit that is carried forward. The issue is the tax rate in effect at open season versus a future tax rate. If the tax rate went down in the future as compared to what it was during open season, this would prevent the difference from being considered a tax credit that could be carried forward. Such language is embodied in other tax statutes, she remarked.

10:14:11 PM

COMMISSIONER GALVIN, in response to questions, clarified that it is the tax rate in effect "at the time" of open season. If a 22.5 percent tax rate was reduced to 20 percent just prior to open season, then the effective tax rate reference point would be 20 percent. If a 22.5 percent tax rate was increased to 25 percent just prior to open season, then the effective tax rate reference point would be 25 percent.

MS. DAVIS further stated that it doesn't matter what the tax rate is "before" open season, only what it is "at" open season. The tax rate "at" open season is the reference point. Whatever the tax rate is "at" open season is what can be banked on and used in the licensee's commercial models.

COMMISSIONER GALVIN gave the following example: If the tax rate is 25 percent "at" open season and it goes down to 20 percent, the licensee then pays 20 percent. If the rate goes up to 23 percent, then the licensee pays 23 percent. But if it is goes up to 26 percent, the licensee will receive a 1 percent credit.

REPRESENTATIVE ROSES inquired whether this locked-in rate is for a successful open season or just an open season.

COMMISSIONER GALVIN answered that it is for the initial open season for the licensed project.

MS. DAVIS further stated that it is the initial open season at which that producer commits its gas.

COMMISSIONER GALVIN explained that it is the initial open season for the licensed project - whatever gas is committed there. If there is a subsequent open season and someone commits gas, even if it is the first time that he/she commits gas, he/she does not get the credit. An initial open season will be identified in the license and will be clearly designated as the one that receives [the locked in rate], he said.

REPRESENTATIVE ROSES expressed concern that if [the state] goes to open season and no one commits and [the state then] goes to a second open season, it only counts at time of commitment.

COMMISSIONER GALVIN, in response to another question, stated that a commitment made at a second open season will receive no inducement whatsoever. For example, if a party commits a certain amount of gas during the first open season at a tax rate of 20 percent and then the same party commits another amount of gas at a second open season at which the tax rate has risen to 25 percent, only the amount of gas committed at the first open season will receive the inducement of using the 20 percent tax rate as the point of reference.

REPRESENTATIVE ROSES presented a scenario of no one committing gas in the first open season and then three years later there is a second open season. Does this mean no one will receive the 10-year fixed rate, he asked.

COMMISSIONER GALVIN replied yes.

10:19:49 PM

REPRESENTATIVE SEATON surmised that the policy call is whether to say that taxes will be contractually obligated or be by general law.

MS. DAVIS responded that the administration is creating an exemption by general law which is AGIA, and the direction from the legislature is to implement that general law by instructing the commissioners to enter into contracts for those specific provisions.

REPRESENTATIVE ROSES remarked that this is the result of the committee's request to have the administration's stack of [54] amendments put into a CS for the committee's consideration and now the committee is dealing with having to take things out that it might never have put in had the amendments been addressed individually. The question is whether to have the CS conform with the Senate Judiciary Standing Committee's language on this issue or with what came out of the House Special Committee on Oil and Gas.

10:21:50 PM

REPRESENTATIVE ROSES moved Conceptual Amendment 47, to replace the language in proposed AS 43.90.320(b)-(c) with "the appropriate language" from CSHB 177(O&G).

CO-CHAIR GATTO objected.

COMMISSIONER GALVIN clarified that Conceptual Amendment 47 would not include the oil and gas section that was the subject of the previous motion on the FERC presumption language.

MS. DAVIS pointed out that Conceptual Amendment 47 would also not include the voucher language currently on page 24, lines 12-14.

REPRESENTATIVE ROSES concurred.

MS. DAVIS inquired whether Representative Roses wished to also include within Conceptual Amendment 47 the language from page 21, line 1, which says, "The inducement in AS 43.90.310 is contractual".

REPRESENTATIVE ROSES clarified that Conceptual Amendment 47 provides that the language on page 24, lines 9-21 is to be replaced with the "appropriate" language from CSHB 177(O&G) and the change would need to be carried throughout the legislation to include the referenced points.

REPRESENTATIVE GUTTENBERG objected. He commented that in many ways this is just an argument regarding how to get to the same place in the safest way. The administration has the opinion that this can be done while others say that it cannot. He said he would stick with the language currently in Version K because there was a lot of work done to make other people feel secure.

REPRESENTATIVE SEATON posited that the Senate Judiciary Standing Committee developed the Senate's language as the safest legal way to implement the 10-year tax exemption.

CO-CHAIR GATTO expressed his confidence in those who purport the constitutionality of a 10-year fixed rate.

10:26:25 PM

REPRESENTATIVE ROSES relayed his understanding that the administration believes the language in Version K would not actually lock in the rates for 10 years.

MS. DAVIS replied that this is correct with respect to the changes that are currently in Version K because the contractual underpinnings have been stripped out and because the purpose of stripping out that language is to ensure no durability for 10 years. She relayed that what the administration is hearing from the producers is that they are making a huge investment and can assume the risks associated with the costs of materials and the costs of the commodity, but that they do not want to assume the risk that the fiscal regime can be changed. She said she could not speak to whether they would be happy with 10 years.

REPRESENTATIVE ROSES voiced his concern that taking away the inducement language and turning it into a potential incentive diminishes the effectiveness of its intent.

10:29:59 PM

REPRESENTATIVE GUTTENBERG argued that with Version K's current language there won't be a constitutional challenge because the grounds for a challenge have been removed, whereas the language in CSHB 177(O&G) guarantees a constitutional challenge. The intent is to not have the bill be constitutionally challenged.

COMMISSIONER GALVIN opined that offering the inducement gives a potential gas committer the ability to make a determination regarding what the inducement's value is. One factor in determining the value relates to the chance of the tax rate increasing during the 10-year period. The second factor in determining the value relates to how much the legislature can be relied upon to keep that aspect of the promise. Supporting the amendment, he said, adds another factor relating to whether this can be counted on as being constitutional so that if the legislature does change its mind, there will be protection provided by the court. This amendment provides that last stopgap.

CO-CHAIR GATTO stated that if he were a bidder he would consider the existing language as an addition to his NPV.

REPRESENTATIVE GUTTENBERG advised that the industry knows both the people and the geology of the state very well. In 2002 there was an 8.+ earthquake and the Trans-Alaska Pipeline moved about 80 feet, which was right within the industry's disaster planning parameters. The industry also knows the parameters of how the state's people operate - since 1975 the tax rate has gone down.

REPRESENTATIVE ROSES inquired whether, in the event of a "political earthquake" causing a "shift", a future legislature could undo this language and choose to have the fixed rate apply for 30 years.

COMMISSIONER GALVIN replied yes.

REPRESENTATIVE ROSES asked whether [future] legislatures could extend the tax rate to 30 years under the language in CSHB 177(O&G).

COMMISSIONER GALVIN answered yes, primarily because the party is going to accept it as a contractual provision.

REPRESENTATIVE SEATON referred to testimony presented by the producers wherein they indicated that they do not trust the state and that unless the state also fixes their oil tax, corporate income tax, property tax, and other things, they have no security in the 10 years of the contract because the state could just raise one of the other taxes. He said it seems to him that the law of general applicability provides the assurance.

A roll call vote was taken. Representatives Roses, Wilson, and Johnson voted in favor of Conceptual Amendment 47. Representatives Guttenberg, Edgmon, Kawasaki, Seaton, and Gatto voted against it. Therefore, Conceptual Amendment 47 failed by a vote of 3-5.

10:37:50 PM

MS. DAVIS pointed out that proposed AS 43.90.330 pertains to the previously described inducement vouchers, which give gas buyers the ability to indirectly partake in the resource inducements by trading the vouchers to producers. Referring to proposed AS 43.90.400, she relayed that it now uses the term "matching contributions" on page 25, lines 14, 24, and 26. In response to a question, she noted that the Senate's version of the bill no longer contains the sentence beginning on line 15 that states, "Money appropriated to the fund may be spent for the purposes of the fund without further appropriation.", or the sentence beginning on line 18 that states, "Nothing in this subsection creates a dedicated fund."

MS. DAVIS offered that proposed AS 43.90.420 now uses the phrase, "court of the state of competent jurisdiction" as a clarification of jurisdiction. Proposed AS 43.90.440, regarding

licensed project assurances, deals with payment of 300 percent of the costs if the state gives preference to a competing project. She noted that subsection (a) no longer uses the term, "monetary treatment" because there was concern that this term was too vague; subsection (a) now just refers to, "preferential royalty or tax treatment or grant of state money". On line 19, she noted the insertion of a comma after the word, "state" and the addition of a new sentence on lines 25-26: "The payment under this subsection is subject to appropriation."

CO-CHAIR GATTO inquired whether failure to make the appropriation would be a contract violation.

REPRESENTATIVE ROSES responded yes.

MS. DAVIS remarked that the party could sue and get more money than the first 300 percent of qualified expenditures.

COMMISSIONER GALVIN clarified that this only kicks in if preferential treatment is given to a separate project, not if there is a failure to appropriate.

10:41:34 PM

MS. DAVIS mentioned that the last sentence of proposed AS 43.90.440(a) now refers to, "all engineering designs, contracts, permits, and other data related to the project", adding that the drafter will be making conforming changes throughout the bill where necessary. She further noted that this last sentence no longer uses the words, "are owned or"; this ensures that what the state is receiving is data and materials that were acquired from the date the state issued the license and forward.

MS. DAVIS reported that proposed AS 43.90.440(b) now reads:

> (b) In this section,
> (1) "competing natural gas pipeline project" means a project designed to accommodate throughput of more than 500,000,000 cubic feet a day of North Slope gas to market;
> (2) "preferential royalty or tax treatment" does not include
> (A) the state's exercise of its right to resolve disputes involving royalties and taxes;
> (B) the state's exercise of its right to modify royalties as authorized by law in effect on the effective date of this section; or

(C) the benefits of a large project permit coordinator authorized by a law in effect on the effective date of this section.

MS. DAVIS offered that the language in paragraph (1) clarifies that the project is delivering gas to market and is not just a recycling project that keeps the gas on the North Slope, and that the language in paragraph (2) clarifies what preferential royalty or tax treatment does not include. This latter clarification was made at the administration's request, she said, because of concerns expressed by the industry that this provision sets up an exclusivity situation; the new language makes it clear that the state does not give up its right to resolve disputes involving royalties and tax. Ms. Davis explained that paragraph (2)(B) excludes the DNR's existing authority under statutes to make changes to royalty rates regarding field terminations and other challenging situations, and that this is based on laws in effect as of the date of the Act. She said that paragraph (2)(C) references DNR's existing authority to provide large project coordination.

MS. DAVIS relayed that proposed AS 43.90.450(a) now reads in part: "(a) A licensee may transfer all or part of the license, including the rights and obligations arising under the license, if, after publishing notice of the proposed transfer, providing notice to the presiding officer of each house of the legislature, and providing a period not less than 30 days for public review and comment," This language addresses the concern that there should be public and legislative notice when the license is being assigned. She said that in proposed AS 43.90.450(b), on line 23, the word, "regarding" was inserted after "AS 43.90.220". Proposed AS 43.90.450 now contains a new subsection (d) that deals with the assignment of vouchers, and puts voucher assignment on par with the assignment rights of a resource owner having the resource inducements, she said. Vouchers can only be assigned with transfer of the complete capacity that was acquired by that buyer at the initial binding open season.

10:46:45 PM

REPRESENTATIVE GUTTENBERG moved Conceptual Amendment 48, which read [original punctuation provided]:

Page 28, line 12
add
Sec. 43.90.480

The Alaska Oil and Gas Conservation Commission and the Department of Revenue shall jointly develop a report that analyzes the oil production and state oil revenue impacts of increasing the gas off take rates from North Slope fields.

The report shall be delivered to the presiding officers of each house of the legislature by March 1, 2008.

CO-CHAIR JOHNSON objected.

REPRESENTATIVE GUTTENBERG said Conceptual Amendment 48 asks the AOGCC and the DOR for a report analyzing the impact of increasing gas off-take rates on oil production. He said that the AOGCC already does a British Thermal Unit (BTU) analysis and this amendment asks the AOGCC to also do an analysis on revenue in order to get a better understanding of what the state is looking at in value for the off-takes. The March 1, 2008, date is arbitrary. It is important to have a better understanding of what is happening on the North Slope as far as value of the product, he opined. The AOGCC will not do an off-take analysis without a request and it cannot do the analysis without the assistance of the DOR.

10:49:11 PM

COMMISSIONER GALVIN remarked that the issue of oil off-take impact is highly complex. It is primarily an engineering question about the impacts to the reservoir when it is depressurized by taking off the gas and the ultimate impact that this will have on long-term oil recovery. Within the DOR, he said, there is no expertise that would allow such an analysis. What is being attempted here is to make a distinction between what the AOGCC evaluates when it exercises its statutory obligations to prevent physical waste. The goal of the AOGCC is to ensure that the maximum number of molecules gets pulled out of the ground, regardless of how much those molecules are worth and whether it will ultimately result in less value coming out of the ground. It is recognized, he said, that the state may reach a point where this analysis needs to include the economic value of the resource when the decision is made as to how much gas can be taken off. But, he emphasized, it is not the DOR that will be making that evaluation. The administration is in discussions with the AOGCC as to the proper way to request the AOGCC to move forward with an analysis of the appropriate off-take point. Conceptual Amendment 48 will not drive that any

further along, he opined, nor will it address the economic issues that may ultimately need to be dealt with once more is known.

COMMISSIONER GALVIN, in further response, clarified that the AOGCC may have the expertise to do the analysis of economic value, but it does not have the authority to do so.

REPRESENTATIVE GUTTENBERG withdrew Amendment 48.

CO-CHAIR GATTO inquired what enabling legislation is necessary to obtain a report.

COMMISSIONER GALVIN reiterated that the administration is in the process of evaluating that. The first step, he said, is to have the AOGCC look at the physical waste in order to know whether the next step of an economic analysis is necessary because the physical evaluation may be sufficient enough. The economic expertise may be within the DNR because, as it relates to the state's oil and gas resources, the department conducts analyses regarding management of the economic value of those resources. He noted that there may be authorities within the DNR's unit management prerogatives that would allow the department to do this type of analysis as it pertains to particular units and the treatment of the gas/oil relationship.

CO-CHAIR GATTO commented that the state does not want to destroy the field and wants to ensure the longest field life and maximum withdrawal of product.

10:56:52 PM

MS. DAVIS directed attention to proposed AS 43.90.900(15), and noted that the definition for open season was modified and tightened by referencing the specific standard that applies, and defines what an open season has to be for an Alaska natural gas pipeline; paragraph (15) reads:

> (15) "open season" means the process that complies with 18 C.F.R. Part 157, Subpart B (Open Seasons for Alaska Natural Gas Transportation Projects);

MS. DAVIS referred to Section 2, proposed AS 36.30.850(b)(45), and noted that the words, "whether a project is uneconomic" were inserted in order to track the arbitration provisions. Referring to Section 5 of Version K, she explained that it now pertains to the first request for applications for the license.

Section 6 of Version K relates to expedited consideration of court cases, and passage of this court rule change provision requires a two-thirds vote of the House and Senate; this provision requests the court system to give expedited consideration to cases arising under proposed AS 43.90.

CO-CHAIR GATTO inquired whether the courts would ignore the legislature despite a two-thirds vote.

COMMISSIONER GALVIN replied that this language is taken from the redistricting statutes and that the court responded to the most recent redistricting in a timely manner. He said that the administration believes that this provision does add value because it makes it clear that this is an issue of paramount importance to the state, adding that he did not think there will be a problem.

MS. DAVIS, after noting that Section 7 - the severability clause - remains unchanged, relayed that Version K no longer contains provisions pertaining to the gas utility revolving loan fund. Section 8 of Version K is the immediate effective date clause.

11:02:22 PM

REPRESENTATIVE WILSON moved to report the proposed CS for HB 177, Version 25-GH1060\K, Bullock, 4/24/07, as amended, out of committee with individual recommendations and the accompanying fiscal notes. There being no objection, CSHB 177(RES) was reported from the House Resources Standing Committee.

REPRESENTATIVE ROSES commented that the amendments he offered that did not pass were meant to provide flexibility, and expressed his hope that the administration is 100 percent correct in its belief that the bill already offers the flexibility that is needed.

[CSHB 177(RES) was reported from committee.]

ADJOURNMENT

There being no further business before the committee, the House Resources Standing Committee meeting was adjourned at 11:05 p.m.