

**ALASKA STATE LEGISLATURE
HOUSE RULES STANDING COMMITTEE**

July 21, 2008

2:07 p.m.

MEMBERS PRESENT

Representative John Coghill, Chair
Representative John Harris
Representative Anna Fairclough
Representative Craig Johnson
Representative Ralph Samuels
Representative Beth Kerttula
Representative David Guttenberg

MEMBERS ABSENT

All members present

OTHER LEGISLATORS PRESENT

Representative Jay Ramras
Representative Bob Roses
Representative Mark Neuman
Representative Bob Buch
Representative Paul Seaton

COMMITTEE CALENDAR

HOUSE BILL NO. 3001

"An Act approving issuance of a license by the commissioner of revenue and the commissioner of natural resources to TransCanada Alaska Company, LLC and Foothills Pipe Lines Ltd., jointly as licensee, under the Alaska Gasline Inducement Act; and providing for an effective date."

- MOVED HB 3001 OUT OF COMMITTEE

PREVIOUS COMMITTEE ACTION

BILL: HB3001

SHORT TITLE: APPROVING AGIA LICENSE

SPONSOR(s): RULES BY REQUEST OF THE GOVERNOR

06/03/08	(H)	READ THE FIRST TIME - REFERRALS
06/03/08	(H)	RLS
06/03/08	(H)	WRITTEN FINDINGS & DETERMINATION

06/04/08	(H)	RLS AT 9:00 AM CAPITOL 120
06/04/08	(H)	Heard & Held; Assigned to Subcommittee
06/04/08	(H)	RLS AT 10:00 AM TERRY MILLER GYM
06/04/08	(H)	Heard & Held
06/04/08	(H)	MINUTE(RLS)
06/05/08	(H)	RLS AT 9:00 AM TERRY MILLER GYM
06/05/08	(H)	Heard & Held
06/05/08	(H)	MINUTE(RLS)
06/06/08	(H)	RLS AT 10:00 AM TERRY MILLER GYM
06/06/08	(H)	Heard & Held
06/06/08	(H)	MINUTE(RLS)
06/07/08	(H)	RLS AT 10:00 AM TERRY MILLER GYM
06/07/08	(H)	Heard & Held
06/07/08	(H)	MINUTE(RLS)
06/08/08	(H)	RLS AT 1:00 PM TERRY MILLER GYM
06/08/08	(H)	Heard & Held
06/08/08	(H)	MINUTE(RLS)
06/09/08	(H)	RLS AT 10:00 AM TERRY MILLER GYM
06/09/08	(H)	Heard & Held
06/09/08	(H)	MINUTE(RLS)
06/10/08	(H)	RLS AT 10:00 AM TERRY MILLER GYM
06/10/08	(H)	Heard & Held
06/10/08	(H)	MINUTE(RLS)
06/12/08	(H)	RLS AT 10:00 AM FBX CARLSON CENTER
06/12/08	(H)	Heard & Held
06/12/08	(H)	MINUTE(RLS)
06/13/08	(H)	RLS AT 10:00 AM FBX CARLSON CENTER
06/13/08	(H)	Heard & Held
06/13/08	(H)	MINUTE(RLS)
06/14/08	(H)	RLS AT 10:00 AM FBX CARLSON CENTER
06/14/08	(H)	Heard & Held
06/14/08	(H)	MINUTE(RLS)
06/16/08	(H)	RLS AT 9:00 AM ANCHORAGE
06/16/08	(H)	Heard & Held
06/16/08	(H)	MINUTE(RLS)
06/17/08	(H)	RLS AT 9:00 AM ANCHORAGE
06/17/08	(H)	Heard & Held
06/17/08	(H)	MINUTE(RLS)
06/18/08	(H)	RLS AT 9:00 AM ANCHORAGE
06/18/08	(H)	Heard & Held
06/18/08	(H)	MINUTE(RLS)
06/19/08	(H)	RLS AT 9:00 AM ANCHORAGE
06/19/08	(H)	Heard & Held
06/19/08	(H)	MINUTE(RLS)
06/20/08	(H)	RLS AT 9:00 AM ANCHORAGE
06/20/08	(H)	Heard & Held
06/20/08	(H)	MINUTE(RLS)

06/24/08	(H)	RLS AT 1:00 PM MAT-SU
06/24/08	(H)	Heard & Held
06/24/08	(H)	MINUTE(RLS)
06/26/08	(H)	RLS AT 1:00 PM KENAI
06/26/08	(H)	Heard & Held
06/26/08	(H)	MINUTE(RLS)
07/01/08	(H)	RLS AT 9:00 AM BARROW
07/01/08	(H)	Heard & Held
07/01/08	(H)	MINUTE(RLS)
07/02/08	(H)	BILL CARRIES OVER TO FOURTH SPECIAL SESSION
07/08/08	(H)	RLS AT 1:00 PM KETCHIKAN
07/08/08	(H)	Heard & Held
07/08/08	(H)	MINUTE(RLS)
07/09/08	(H)	RLS AT 1:30 PM TERRY MILLER GYM
07/09/08	(H)	Heard & Held
07/09/08	(H)	MINUTE(RLS)
07/10/08	(H)	RLS AT 8:00 AM TERRY MILLER GYM
07/10/08	(H)	Heard & Held
07/10/08	(H)	MINUTE(RLS)
07/11/08	(H)	RLS AT 9:00 AM TERRY MILLER GYM
07/11/08	(H)	Heard & Held
07/11/08	(H)	MINUTE(RLS)
07/12/08	(H)	RLS AT 9:00 AM TERRY MILLER GYM
07/12/08	(H)	Heard & Held
07/12/08	(H)	MINUTE(RLS)
07/13/08	(H)	RLS AT 12:30 AM TERRY MILLER GYM
07/13/08	(H)	Heard & Held
07/13/08	(H)	MINUTE(RLS)
07/14/08	(H)	RLS AT 9:00 AM TERRY MILLER GYM
07/14/08	(H)	Heard & Held
07/14/08	(H)	MINUTE(RLS)
07/15/08	(H)	RLS AT 9:00 AM CAPITOL 120
07/15/08	(H)	-- MEETING CANCELED --
07/21/08	(H)	RLS AT 2:00 PM CAPITOL 120

WITNESS REGISTER

TONY PALMER, Vice President
Alaska Development
TransCanada Alaska Company, LLC
Alberta, Canada

POSITION STATEMENT: Answered questions during the hearing on HB 3001.

PATRICK GALVIN, Commissioner
Department of Revenue

Anchorage, Alaska

POSITION STATEMENT: Testified and answered questions during the discussion of HB 3001.

ACTION NARRATIVE

CHAIR JOHN COGHILL called the House Rules Standing Committee meeting to order at [2:07:04 PM](#). Representatives Fairclough, Johnson, Samuels, Kerttula, Guttenberg, Harris, and Coghill were present at the call to order. Representatives Ramras, Roses, Neuman, Buch, and Seaton were also in attendance.

HB 3001 - APPROVING AGIA LICENSE

[2:07:22 PM](#)

CHAIR COGHILL announced that the only order of business would be HOUSE BILL NO. 3001, "An Act approving issuance of a license by the commissioner of revenue and the commissioner of natural resources to TransCanada Alaska Company, LLC and Foothills Pipe Lines Ltd., jointly as licensee, under the Alaska Gasline Inducement Act; and providing for an effective date."

[2:07:52 PM](#)

REPRESENTATIVE HARRIS, speaking as chair of the House Rules Standing Committee subcommittee on AGIA, reviewed the subcommittee's work on HB 3001. He then submitted the subcommittee report regarding HB 3001 for the consideration of the full House Rules Standing Committee.

REPRESENTATIVE SAMUELS offered his appreciation to the representatives from TransCanada Alaska Company, LLC ("TransCanada"). He expressed his belief that legislators now understand this issue and the fundamental choices to be made. He opined that the meetings held across the state have provided legislators and the public with the opportunity to see debate on all sides of the issue. He concluded that the process has educated the legislators tremendously.

[2:11:39 PM](#)

REPRESENTATIVE KERTTULA thanked the chair and the administration for the access to experts and the answers that were provided to the legislature. She also thanked members of the public for their participation and support across the state.

CHAIR COGHILL acknowledged that his opinion about meeting across the state changed from skepticism to appreciation of the discussions and the community involvement.

2:13:35 PM

CHAIR COGHILL indicated that the proposed amendments would be considered. He advised that testimony would be limited to invited participants since public testimony has been taken on the bill. He noted that the bill is simple. Chair Coghill introduced the bill that read:

Section 1. The uncodified law of the State of Alaska is amended by adding a new section to read:

APPROVAL OF ISSUANCE OF LICENSE UNDER THE ALASKA GASLINE INDUCEMENT ACT. The commissioner of revenue and the commissioner of natural resources are authorized to issue a license under AS 43.90.010 - 43.90.990 to TransCanada Alaska Company, LLC and Foothills Pipe Lines Ltd., jointly as licensee.

Sec. 2. This Act takes effect immediately under AS 01.10.070(c).

CHAIR COGHILL said that HB 3001, Version A, was before the committee and invited a motion.

2:15:58 PM

REPRESENTATIVE JOHNSON [although no formal motion was made] objected to moving HB 3001 from committee.

REPRESENTATIVE FAIRCLOUGH requested a discussion about whether amendments could be made to HB 3001. She recalled a press conference "talking about people trying to derail the process and the hard work that this body and all legislators have done during this process." She opined that this discussion before amendments are taken would raise the comfort level in "our ability, from a legal perspective, to amend."

2:17:18 PM

REPRESENTATIVE SAMUELS referred to a legal memorandum dated January 23, 2008, and read the conclusion, as follows:

In conclusion, the legislative consideration of the issuance of a license under AGIA is limited to the approval and disapproval of a license. However, the legislature also has the power to amend AGIA if it finds existing law does not result in the project that the legislature finds is in the best interests of the state.

REPRESENTATIVE SAMUELS stated that "pretty much sums it up." He opined that philosophically speaking, the legislature is a separate and equal branch of government, and even if the administration and TransCanada oppose the proposed amendments, it is the legislature's duty [to deliberate on legislation]. He said, "We do not work for the executive branch. Period."

REPRESENTATIVE FAIRCLOUGH clarified for the public that the memorandum Representative Samuels referred to is dated January 23, 2008; the subject is a work order 25-LS1375 and he is referring to page 2 of the document in a concluding remark.

[2:18:37 PM](#)

CHAIR COGHILL offered his belief that HB 3001 is amendable, but noted that the significant consequences of doing so should be considered. He surmised that amending the bill could be a way of opposing HB 3001, and he and encouraged members who oppose the license to "just say that straight up." In response to Representative Kerttula, Chair Coghill noted Mr. Bullock's presence.

[2:19:45 PM](#)

REPRESENTATIVE KERTTULA offered her belief that an amendment "kills the whole process," and thereby the legislature would be back to the start of the process. She opined that the legislature is in a unique position, in that it has a contract before it, and if "we start to change things, pull that thread, the contract falls apart, and we're back at square one without anything in front of us." She offered her point of view that if the bill is amended on the House floor, the legislators have "killed the whole deal."

CHAIR COGHILL noted his willingness to entertain all of the amendments. He explained that if it is necessary to obtain a legal opinion the possibility exists that the legislature could have "dueling legal opinions." This was the source of his reluctance to invite testimony at the outset of the hearing. He

opined that it is the legislature's decision as to whether to amend the bill; however, he stressed that knowing the consequence is important due to the fact that "the practical effect of a significant change in the requirements of this license is really a 'no' vote."

[2:21:07 PM](#)

REPRESENTATIVE FAIRCLOUGH questioned whether changes could be agreed to by the legislature, the administration, and TransCanada through a process such that the legislature would amend AGIA, the governor could sign the AGIA license, and "the third way, sort of being able to cascade down so that you've gotten all parties to the table at the end, and TransCanada then in the form of accepting any portion of the \$500 million would agree to those same terms."

CHAIR COGHILL surmised that a change begins to diminish the parties' willingness to honor AGIA since [AGIA created] an expectation both at the application and the awarding stage of AGIA. He suggested that the committee discuss the policy debates and if that issue becomes the salient question, "we can probably get the 'dueling' legal opinions." He stressed that despite the best legal opinions, the committee will ultimately make a policy call.

[2:22:59 PM](#)

REPRESENTATIVE SAMUELS indicated that one of his amendments touches on the actions of the state and not of TransCanada. In addition, one amendment pertains to indemnification of the \$16 billion, which is in the best interests of the state, he opined. He advised that the amendments relate to policy calls and are not "reaching in and making substantive changes to must haves or things that were in the [Request for Proposal (RFP)] or things that were in the TransCanada proposal, other than indemnification." He pointed out that the state could not address the issue of indemnification prior to the licensee being selected.

REPRESENTATIVE KERTTULA disagreed and asked for the amendments to be offered.

[2:24:44 PM](#)

REPRESENTATIVE JOHNSON made a motion to adopt Amendment 1, labeled 25-GH3055\A.2, Bullock, 7/14/08, that read:

Page 1, line 1, following "Act":

Insert "relating to the extension of inducements to a natural gas pipeline project that would transport natural gas from the North Slope to a market in the state or for export from the state by marine transportation;"

Page 1, following line 5:

Insert a new bill section to read:

"* **Section 1.** AS 43.90.440(a) is amended to read:

(a) Except as otherwise provided in this chapter, the state grants a licensee assurances that the licensee has exclusive enjoyment of the inducements provided under this chapter before the commencement of commercial operations. If, before the commencement of commercial operations, the state extends to another person preferential royalty or tax treatment or grant of state money for the purpose of facilitating the construction of a competing natural gas pipeline project in this state other than a natural gas pipeline project that is wholly within the state and transports natural gas to a market in the state or for export from the state by marine transportation, and if the licensee is in compliance with the requirements of the license and with the requirements of state and federal statutes and regulations relevant to the project, the licensee is entitled to payment from the state of an amount equal to three times the total amount of the expenditures incurred and paid by the licensee that are qualified expenditures for the purposes of AS 43.90.110 that the licensee incurred in developing the licensee's project before the date that the state first extended preferential treatment to another person. The payment under this subsection is subject to appropriation. Upon payment by the state of the amount owed under this section, the licensee shall, at no additional cost to the state, assign to the state or the state's designee all engineering designs, contracts, permits, and other data related to the project that were acquired by the licensee during the term of the license. The payment under this subsection is in full satisfaction of all claims the licensee may bring in contract, tort, or other law related to the events that gave rise to the payment."

Page 1, line 6:

Delete "**Section 1**"
Insert "**Sec. 2**"

Renumber the following bill section accordingly.

CHAIR COGHILL objected for the purpose of discussion.

REPRESENTATIVE JOHNSON explained that he continually heard testimony from around the state and his district emphasizing that Alaska needs natural gas for Alaskans. He expressed his uncertainty about whether providing gas for Alaskans is "spelled out" under the AGIA license; in fact, the treble damages clause "handcuffs" the state on this point. He acknowledged that Amendment 1 may be a substantive change; however, the people of Alaska have vocalized their belief that acquiring natural gas for Alaskans is the "top issue." Amendment 1 allows any pipeline project wholly within the state for market in the state or for export from the state by marine transportation, such as the "all-Alaska line," the "bullet line," or any number of other options such as a pipeline from Cook Inlet to the [North Slope], to exceed [the limit of] 0.5 [billion cubic feet per day (bcf/d)] and provide natural gas for Alaskans. He urged members to support Amendment 1 in order to answer the call of Alaskans throughout the state.

[2:26:56 PM](#)

CHAIR COGHILL offered his belief that a natural gas pipeline from the north to Interior Alaska and along the Railbelt is "absolutely important." However, he questioned whether Amendment 1 raises the issue of whether a pipeline that transports more than 0.5 bcf/d natural gas would be considered a competing pipeline. He related that AGIA ensures that the state agrees to license TransCanada by offering protections that the state will not support a competing project. He offered that he has been convinced that 0.5 bcf/d will provide enough natural gas for Alaskans' use in the Interior; however, he expressed concern whether that amount would be sufficient to provide enough natural gas to operate the refinery located in his district. He said that he agrees with the provision in Amendment 1 to provide gas for in-state use, but expressed concern over the provision to allow the marine transportation of gas for export that may be considered competition for the TransCanada pipeline. Therefore, he stated his objection to Amendment 1.

REPRESENTATIVE JOHNSON indicated that he might be amenable to an amendment to Amendment 1 that would delete the reference to export from the state by marine transportation. He related that 0.5 bcf/d may provide enough natural gas for in-state use, but the bill reads, "designed to carry", which means that if it starts at 0.4 bcf/d the state could be subject to treble damages. He said he believes that Amendment 1 "takes that completely off the table; this gets gas for Alaskans." He offered his concern in removing "export" from Amendment 1, but said he would entertain such an amendment. Representative Johnson commented that every member of the legislature has a right to vote on this legislation, and that the committee should advance this amendment and allow the process to work. He characterized Amendment 1 "as an opportunity for me and others to stand up for our constituents and ask for our gas."

[2:29:55 PM](#)

CHAIR COGHILL said that he agrees that the entire body should have an opportunity to consider this language, except that public testimony has supported the 0.5 bcf/d, and to make a change would be disingenuous to the applicant. Additionally, Amendment 1 sets up an erroneous expectation that the state would not ask for offtake points from the main line. He cautioned that the amendment causes a range of issues to arise and he maintained his objection.

CHAIR COGHILL, in response to Representative Harris, agreed to allow testimony specifically to answer questions from the members.

REPRESENTATIVE HARRIS related his understanding that Amendment 1 would disallow treble damages in the event that the license is granted to TransCanada and a project is built within the state for in-state use of gas and for marine transportation to the export market.

REPRESENTATIVE JOHNSON agreed that is the intent of Amendment 1.

REPRESENTATIVE HARRIS asked for confirmation from Mr. Palmer.

[2:33:18 PM](#)

TONY PALMER, Vice President, Alaska Development, TransCanada Alaska Company, LLC ("TransCanada"), said that at the initial open season, TransCanada will provide opportunities to customers along the route of the pipeline to Alberta or to Valdez, to

nominate gas simultaneously to those locations. Each customer will have to meet the same terms and conditions to Valdez, Tok, Fairbanks, or Alberta. He said, "So, yes, they will have the opportunity if they come forward with the same conditions that any other customer would have - that we would construct a pipeline to Valdez or to Alberta or both simultaneously if we get sufficient gas to both places."

[2:34:09 PM](#)

REPRESENTATIVE GUTTENBERG offered his understanding that if a pipeline of over 0.5 bcf/d was built out of Cook Inlet, the Nenana Basin, or Glennallen, to provide gas for in-state use, it would not be considered as competition with the TransCanada pipeline.

MR. PALMER observed that he did not have the AGIA statutes in front of him, but recalled that "the competitive nature goes to gas from the North Slope ... which is north of 68 degrees." He said, "Clearly gas from the Cook Inlet is south of that 68 degrees; the 500 million a day limit refers to gas coming from the North Slope, not from gas south of there."

REPRESENTATIVE JOHNSON asked whether it would be more acceptable to TransCanada if the language - "export from the state by marine transportation" - were removed from Amendment 1, even if the in-state use rises above 0.5 bcf/day.

MR. PALMER said he had not reviewed Amendment 1, but remarked:

Clearly, anytime that you are changing to a volume that is north of 500 million a day you are affecting the available gas for the pipeline that we hope to construct, if you give us the license. ... We evaluated this based on an expectation that in-state use is less than 500 million a day. ... All the studies that we have seen would indicate that it is less today and is expected to be less for many, many years. In the event that you open it up for exports, well, you've opened it up to an unlimited volume, clearly. The world market is very large and that makes it much more challenging. If you leave it at in-state gas and you still exceed 500 million per day, you may also be affecting the value that we think we achieve by making our application, which is that a competitive pipeline seeking North Slope gas would not

be pulling away more than 0.5 bcf/day from our prospective project.

[2:36:51 PM](#)

CHAIR COGHILL reiterated his concern about changing the criteria after having accepted the application and taken public testimony. He offered his belief that the five offtake points would serve Alaska, if the TransCanada pipeline is built. Thus, the license is valuable in that regard, he stated.

REPRESENTATIVE JOHNSON concluded that the time gap would be considerable between the timing of the five offtake points and the timing of the bullet line. He stated his belief that people in Fairbanks or in his own district are inclined to wait the five to fifteen years that it will take to obtain gas. He stated that he would still like to advance this proposed change to the full body, recognizing that it may not pass due to the arguments just raised.

[2:38:07 PM](#)

CHAIR COGHILL opined that 0.5 bcf/day for in-state use is significant and adequate for all personal home heating and electrical uses. He stated that with or without Agrium, Inc., he is convinced that the refinery in his district "will be sufficient." He offered his belief that the balance of the economics of the five offtake points provides a reason to vote against Amendment 1. However, he stressed that he is not against in-state gas use.

REPRESENTATIVE JOHNSON stated that he would like all members to have an option to vote on the language contained in Amendment 1.

[2:39:11 PM](#)

REPRESENTATIVE FAIRCLOUGH made a motion to adopt an amendment to Amendment 1, that read:

Page 1, Lines 3-4,
Delete, "or for export from the state by marine transportation;"

Page 1, Lines 16-17,
Delete, "or for export from the state by marine transportation"

[2:40:22 PM](#)

REPRESENTATIVE HARRIS objected.

[2:40:31 PM](#)

A roll call vote was taken. Representatives Fairclough and Coghill voted in favor of the amendment to Amendment 1. Representatives Johnson, Samuels, Kerttula, Guttenberg, and Harris voted against it. Therefore, the amendment to Amendment 1 failed by a vote of 2-5.

CHAIR COGHILL announced that Amendment 1 was before the committee. He asked if there was any discussion, and there was none.

[2:41:00 PM](#)

A roll call vote was taken. Representatives Samuels, Harris, and Johnson voted in favor of Amendment 1. Representatives Kerttula, Guttenberg, Fairclough, and Coghill voted against it. Therefore, Amendment 1 failed by a vote of 3-4.

[2:41:27 PM](#)

REPRESENTATIVE SAMUELS made a motion to adopt Amendment 2, labeled, 25-GH3055\A.5, Bullock, 7/21/08, that read:

Page 1, line 3, following "Act;":

Insert "**prohibiting the commissioner of natural resources from issuing a state lease for a right-of-way for a natural gas pipeline project that has not been issued a certificate of public convenience and necessity;**"

Page 1, following line 5:

Insert new bill sections to read:

"* **Section 1.** AS 38.35.015 is amended to read:

Sec. 38.35.015. Powers of the commissioner. The commissioner has all powers necessary and proper to implement the policy, purposes, and provisions of this chapter, so as to subserve, as the exercise of reasoned discretion determines, the public interest, convenience, and necessity, including but not limited to

(1) granting leases of state land for pipeline right-of-way purposes, except that a lease

for right-of-way purposes for a natural gas pipeline may not be granted before that pipeline has received a certificate of public convenience and necessity from the Regulatory Commission of Alaska or the Federal Energy Regulatory Commission, as appropriate;

(2) leasing, purchasing, or otherwise acquiring (including condemning by declaration of taking) easements or other interests in land in this state for the purpose of utilizing or granting leases of the land, easements, or interests for pipeline right-of-way purposes;

(3) purchasing interests in pipelines in accordance with options included in right-of-way leases;

(4) investigating any matters concerning any lessee with a view to assuring compliance by it with its right-of-way lease, this chapter, and any other applicable state or federal law;

(5) developing from time to time and maintaining a comprehensive master plan for pipeline transportation development;

(6) developing and promoting programs to foster efficient, economical, and safe pipeline transportation services in the state;

(7) coordinating the activities of the commissioner under this chapter with the transportation and other relevant activities of other public agencies and authorities;

(8) constructing, extending, enlarging, improving, repairing, acquiring, operating, or engaging in transportation, service, or sale by any pipeline or providing for these by contract, lease, or other arrangement on those terms that the commissioner may consider necessary, convenient, or desirable with any agency, corporation, or person, including but not limited to any carrier or any state agency, when the commissioner determines that a lessee carrier is not willing to undertake and complete the action within a reasonable time, and to sell, lease, grant, and dispose of any property constructed or acquired in the exercise of this power.

* **Sec. 2.** AS 38.35.100(a) is amended to read:

(a) The commissioner shall promptly determine, in a written finding, on an application filed under AS 38.35.050, whether the applicant is fit, willing, and able to perform the transportation or other acts proposed in a manner that will be required by the

present or future public interest. In making a determination, the commissioner shall consider whether or not

(1) the proposed use of the right-of-way will unreasonably conflict with existing uses of the land involving a superior public interest;

(2) the applicant has the technical and financial capability to protect state and private property interests;

(3) the applicant has the technical and financial capability to take action to the extent reasonably practical to

(A) prevent any significant adverse environmental impact, including but not limited to erosion of the surface of the land and damage to fish and wildlife and their habitat;

(B) undertake any necessary restoration or revegetation; and

(C) protect the interests of individuals living in the general area of the right-of-way who rely on fish, wildlife, and biotic resources of the area for subsistence purposes;

(4) the applicant has the financial capability to pay reasonably foreseeable damages for which the applicant may become liable on claims arising from the construction, operation, maintenance, or termination of the pipeline;

(5) the applicant has agreed that, in the construction and operation of a pipeline within the right-of-way, the applicant will comply with, and require contractors and their subcontractors to comply with, applicable and valid laws and regulations regarding the hiring of residents of the state then in effect or that take effect subsequently; and

(6) if the proposed use of the right-of-way is for the construction and operation of a natural gas pipeline, the applicant has received a certificate of public convenience and necessity for that pipeline issued by the Regulatory Commission of Alaska or the Federal Energy Regulatory Commission, as appropriate.

* Sec. 3. AS 38.35.100(b) is amended to read:

(b) If the commissioner makes the determinations under (a) of this section favorably to the applicant, then the commissioner may grant the whole or part of the application. If the commissioner makes the determinations under (a)(1) - (5) of this section favorably to the applicant but determines that the

applicant is not then fit, willing, and able to perform under the application, the commissioner may grant the application under a conditional lease subject to conditions established by the commissioner that will ensure that the applicant will, within a prescribed period of time not exceeding 10 years, establish that the applicant is fit, willing, and able, under (a) of this section, to perform the transportation or other acts that will be required by the present or future public interest. An applicant is not entitled to a notice or authorization to proceed to construction, or its equivalent, under a conditional lease until the commissioner determines in writing that the applicant has satisfactorily established that the applicant is then fit, willing, and able to perform under (a) of this section. Otherwise, the commissioner shall deny the application. If the commissioner finds under (a)(6) of this section that a certificate of public convenience and necessity has not been issued to the applicant, the commissioner may not grant the application."

Page 1, line 6:

Delete "**Section 1**"

Insert "**Sec. 4**"

Page 1, following line 11:

Insert a new bill section to read:

"* **Sec. 5.** The uncodified law of the State of Alaska is amended by adding a new section to read:

PROVISIONS NOT SEVERABLE. Notwithstanding AS 01.10.030, secs. 1 - 4 of this Act are not severable."

Renumber the following bill section accordingly.

REPRESENTATIVE GUTTENBERG objected to Amendment 2.

REPRESENTATIVE SAMUELS explained that certain places in the state have right-of-ways (ROWS) called "pinch points" such as the Yukon River or Antigon Pass. Amendment 2 would prohibit the commissioner of the Department of Natural Resources from issuing a ROW without the issuance of a Federal Energy Regulatory Commission (FERC) or a Regulatory Commission of Alaska (RCA) certificate. He said, "The point of AGIA at its real crux is to give TransCanada leverage to move forward with the pipeline so that you can get all of the 'must haves' and the expansion

possibilities that have been discussed 'ad nauseam'" He opined that providing TransCanada the ROW, in instances where there can be no competing ROW, gives TransCanada too much leverage. He related that this specific issue should be set aside and the process can continue without change to any provision in the AGIA bill or in TransCanada's application, but it will preclude the commissioner or the administration from issuing the ROW. He stated that this would "slow down on the issuance of right-of-ways until we get further down the road."

2:43:20 PM

CHAIR COGHILL related his understanding that the expectation under AGIA is that a pipeline coordinator within the Department of Natural Resources would be appointed to assist TransCanada during the permitting and right-of-way process. Other applicants would be allowed to "rent their own workers" during the ROW process. Since the amendment directs that a ROW could not be granted unless TransCanada obtained a certificate of public convenience from FERC, he inquired as to where the FERC certificate would "fall in the timeline."

REPRESENTATIVE SAMUELS answered that the timing on Amendment 2 may not be the best. He acknowledged that it may delay the process too long because the pipeline builder may need more information. However, he noted that the concern is that the license will be issued and the governor or a subsequent governor will "pick a winner in the marketplace" at these points where only one ROW can exist. He characterized that as problematic. He said the legislature would cede its power over the process and leverage would be given to a particular party. For example, he said the governor would "pick a party" for some of the problems in Antigon Pass. He recalled that he discussed the concept of the amendment with the consultant, Mr. Porter. Although time constraints did not allow him to "fine tune" his concerns, primarily with the two "pinch points," he stressed that he wanted to be certain the concept was raised as a concern. He pointed out that if TransCanada has too much leverage and the governor either provides additional leverage to TransCanada or to another pipeline builder, the "leverage picture" changes even though that is not something that the legislature intended when it passed AGIA.

REPRESENTATIVE SAMUELS said that he would work with Mr. Porter to improve the language for an amendment that will address his concern. He characterized the point of Amendment 2 as an

attempt to not have " ...government picking winners and losers in the marketplace further than we're already doing."

[2:46:29 PM](#)

CHAIR COGHILL pointed out, though, by the time the certificate of public convenience is issued by FERC, a pipeline builder would have its ROW. He maintained his objection.

REPRESENTATIVE KERTTULA offered her understanding that the Department of Natural Resources already has a process to deal with duplicates on ROW leases through statute or in its regulations. She agreed with the point of the amendment and that the commissioners should be careful about [this possibility], although she said she would not support an amendment.

REPRESENTATIVE HARRIS posed a scenario in which the license is granted to TransCanada without the amendment and [Denali - The Alaska Gas Pipeline ("Denali project")] proceeds to a successful open season. Further, the Denali project does not ask for fiscal certainty on the slope. He asked whether Amendment 2 says that the commissioner cannot deny the ROW to the Denali project because of AGIA.

REPRESENTATIVE SAMUELS further explained that his concern is that, even with dual ROW permits, the administration could pick one in order to leverage its choice, and that could become problematic. He opined that the permitting process should not be used to provide more leverage than is already granted via the AGIA legislation. He concluded that permits and taxes can be used to manipulate the process in favor of either way, and the amendment is an attempt to prevent that by making a procedural change. He offered to withdraw the amendment, although the amendment does nothing to affect the economics of the project or TransCanada's application.

REPRESENTATIVE KERTTULA remarked:

If it doesn't go towards any of the things, and I believe you that it doesn't, then why would we want to jeopardize the whole thing? And why don't we sit down with the commissioner and work this out through the regulatory process? The pinch point is a good point, but I - having worked at the joint pipeline office [and] having written pipeline right-of-ways - ... feel

that there's got to be an obvious answer and it can be taken care of in a different manner.

REPRESENTATIVE SAMUELS withdrew Amendment 2.

[2:51:15 PM](#)

REPRESENTATIVE JOHNSON made a motion to adopt Amendment 3, labeled, 25-GH3055\A.6, Bullock, 7/21/08, that read:

Page 1, line 3, following "Act;":

Insert "prohibiting the reimbursement of qualified expenditures before the commissioner of natural resources finds that certain gas will be available to the project on or before the commencement of commercial operations;"

Page 1, following line 11:

Insert new bill sections to read:

"* **Sec. 2.** The uncodified law of the State of Alaska is amended by adding a new section to read:

AVAILABILITY OF POINT THOMSON GAS BEFORE REIMBURSEMENT OF QUALIFIED EXPENDITURES. (a) The commissioner of revenue and the commissioner of natural resources may not reimburse the licensee for qualified expenditures under AS 43.90.110(a)(1) before the commissioner of natural resources finds that natural gas produced from the Point Thomson Unit will be available for transportation by the project on or before the commencement of commercial operations.

(b) A dispute between the commissioner of natural resources, the licensee, and the owners and operators of the Point Thomson Unit over the issue of whether natural gas from the Point Thomson Unit will be available for transportation by the project on or before the commencement of commercial operations shall be resolved under AS 44.62.330 - 44.62.630 (Administrative Procedure Act) or other form of alternative dispute resolution agreed to by the licensee, the owners and operators of the Point Thomson Unit, and the commissioner of natural resources, in consultation with the attorney general.

(c) In this section,

(1) "commencement of commercial operations," "licensee," and "project" have the meanings given in AS 43.90.900;

(2) "Point Thomson Unit" means the Point Thomson Unit defined by the Department of Natural Resources on the effective date of this Act.

* **Sec. 3.** The uncodified law of the State of Alaska is amended by adding a new section to read:

PROVISIONS NOT SEVERABLE. Notwithstanding AS 01.10.030, secs. 1 and 2 of this Act are not severable."

Renumber the following bill section accordingly.

CHAIR COGHILL and REPRESENTATIVE GUTTENBERG objected.

REPRESENTATIVE JOHNSON recalled the original understanding that Point Thomson was critical to getting the gas and having gas for an open season; Amendment 3 was intended to address that point. He explained that Amendment 3 would prohibit the reimbursement of the \$500 million until the Point Thomson issue is solved by any means. Without this amendment, he opined, "I don't think we get a gas pipeline, regardless of who builds it." Amendment 3 puts pressure on the administration to solve the Point Thomson issue expeditiously, one way or another, and that is what is wanted by TransCanada and the state. In fact, that is what is needed to get to an open season, he said.

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REPRESENTATIVE GUTTENBERG referred to the previous comment about slowing down the project. He opined that Point Thomson is an example of the state exercising its sovereignty and so he did not see the need to penalize TransCanada for the state's actions. He restated that the overriding consideration was changing the nature of the contract with TransCanada, and doing so, under the circumstances, was unfair.

REPRESENTATIVE JOHNSON said that it was not the intent of Amendment 3 to penalize TransCanada. He spoke of being expeditious. He offered his understanding that "we could have anywhere from six to eighteen months." He noted that when reimbursements come about is yet to be determined. He stated, "I don't believe we get a pipeline that's going to do what the State of Alaska and the citizens ... [want] ... unless we make available all the gas that the state has to this project." Representative Johnson pointed out that he does not care how the issue is resolved; however, [gas from Point Thomson] has to be available for this pipeline to be successful.

CHAIR COGHILL agreed that the Point Thomson Unit is central, but he said he may not agree with how the state addresses that issue. The legislature has given some authority to the commissioner; therefore, because the case is in litigation, "stepping in the middle is awkward."

REPRESENTATIVE KERTTULA cautioned that the legislature does not want to usurp the court or the commissioner. She opined that this is an artificial way of resolving the issue, regardless of how one feels about what has happened at Point Thomson.

[2:57:59 PM](#)

REPRESENTATIVE JOHNSON pointed out that Amendment 3 does not provide direction regarding the solution to the problem. He restated the purpose of the amendment.

CHAIR COGHILL indicated that Amendment 3 would prohibit reimbursement and thus "tie the hands of going to an open season or getting the financial interest determinations or the things that FERC needs to make that decision." In fact, it pulls the incentives out of the bill, he added.

CHAIR JOHNSON stressed his belief that Amendment 3 merely attempts to resolve that issue and would result in a better deal for the state. While there are drawbacks, if the legislature is going to advance the project it should not be set up for failure because the gas was not available.

[3:00:27 PM](#)

REPRESENTATIVE FAIRCLOUGH emphasized that she also felt that the pipeline was dependent on gas from Point Thomson; nevertheless, she was not comfortable withholding qualified expenses. She opined that, although the legislature has a right to change AGIA, this is a substantive change.

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A roll call vote was taken. Representatives Johnson and Samuels voted in favor of Amendment 3. Representatives Kerttula, Guttenberg, Harris, Fairclough, and Coghill voted against it. Therefore, Amendment 3 failed by a vote of 2-5.

[3:01:57 PM](#)

REPRESENTATIVE SAMUELS made a motion to adopt Amendment 4, labeled, 25-GH3055\A.7, Bullock, 7/21/08, that read:

Page 1, line 3, following "Act;":

Insert "requiring certain indemnification from TransCanada Alaska Company, LLC and Foothills Pipe Lines Ltd., jointly as licensee, before the state reimburses qualified expenditures;"

Page 1, following line 11:

Insert new bill sections to read:

"* Sec. 2. The uncodified law of the State of Alaska is amended by adding a new section to read:

INDEMNIFICATION FOR LIABILITIES TO WITHDRAWN PARTNERS. (a) The commissioner of revenue and the commissioner of natural resources may not reimburse the licensee for qualified expenditures under AS 43.90.110(a)(1) before the licensee indemnifies the state against any loss of revenue because of a liability of the licensee to withdrawn partners. The indemnification is required regardless of whether the state receives its royalty share of the production of natural gas in kind or in value. In this subsection, "licensee" includes the licensee and a successor in interest to the licensee subject to AS 43.90.

(b) As soon as practicable after the license is issued, the commissioner of revenue, in consultation with the commissioner of natural resources and the attorney general, shall

(1) review the partnership agreement and other documents associated with the Alaskan Northwest Natural Gas Transportation Company, commonly referred to a ANNGTC;

(2) identify the partners and the successors in interest to the partners in the Alaskan Northwest Natural Gas Transportation Company;

(3) determine the extent of any liability or potential liability of the licensee to each partner or successor to a partner based on any partnership agreement or other agreement between the partners of the Alaskan Northwest Natural Gas Transportation Company;

(4) determine the effect on revenue to the state should the licensee be found liable to a partner or successor to a partner under the partnership agreement and other agreements between the partners and their successors in the Alaskan Northwest Natural

Gas Transportation Company; the effect on revenue to the state includes

(A) the costs associated with delays in the construction of the project;

(B) an effect on the tariff;

(C) an effect on the state's taxes and royalties;

(D) the effect on a person acquiring an ownership interest in the project; and

(E) other effects on revenue to the state identified by the commissioner; and

(5) determine the form and amount of indemnification required to be provided by the licensee to the state to shield the state from the possible effects on revenue determined under (4) of this subsection.

(c) A dispute between the commissioner of revenue and the licensee over the extent of any liability of the licensee determined under this section and the form and amount of indemnification required by the licensee shall be resolved under AS 44.62.330 - 44.62.630 (Administrative Procedure Act) or other form of alternative dispute resolution agreed to by the licensee and the commissioner of revenue, in consultation with the attorney general.

(d) The commissioner of revenue shall report to the legislature the finding of a potential liability of the licensee to a partner or successor in interest to a partner of the Alaskan Northwest Natural Gas Transportation Company, the potential effect on revenue to the state, and the form and amount of indemnification required to be provided to the state by the licensee. The report shall be made before the 10th day of the first special or regular session of the legislature after the determination by the commissioner of revenue of the form and amount of required indemnification.

(e) In this section,

(1) "licensee" and "project" have the meanings given in AS 43.90.900;

(2) "withdrawn partners" means the partners and successors in interest to the partners of the Alaskan Northwest Natural Gas Transportation Company identified by the commissioner of revenue in (b)(2) of this section.

* **Sec. 3.** The uncodified law of the State of Alaska is amended by adding a new section to read:

PROVISIONS NOT SEVERABLE. Notwithstanding AS 01.10.030, secs. 1 and 2 of this Act are not severable."

Renumber the following bill section accordingly.

CHAIR COGHILL objected to Amendment 4.

REPRESENTATIVE SAMUELS explained that Amendment 4 addresses the issue of the potential liability of TransCanada's withdrawn partners. He related that legal counsel for the administration and the state has advised that the liability cannot be rolled into the tariff; however, counsel was silent on the question of whether the liability attaches to a new partnership between TransCanada and the state. Additionally, testimony from ExxonMobil Corporation indicated that it would want to buy ownership in the pipeline equal to its firm transportation (FT) commitments and TransCanada's proposal indicated its willingness to sell. Representative Samuels questioned whether, without the indemnification, if the state becomes a partner and owner, that liability will [attach]. On the other hand, if the state is taking gas in value and holds 12.5 percent of gas, he opined that negotiations on commercial terms would not close in Alaska's favor. He concluded that Amendment 4 ensures that the state is indemnified in all circumstances; in fact, reimbursements from the state to TransCanada cannot start until after indemnification occurs.

The committee took an at-ease from 3:05 p.m. to 3:09 p.m.

[3:09:53 PM](#)

REPRESENTATIVE SAMUELS offered an amendment to Amendment 4, which read:

Page 2, line 13, following "commissioner":
Insert "of Revenue"

There being no objection, the amendment to Amendment 4 was adopted.

REPRESENTATIVE HARRIS asked Mr. Palmer to explain the circumstances surrounding TransCanada's withdrawn partners.

CHAIR COGHILL restated that Amendment 4 [as amended] requires indemnification to the state against the loss of revenue by

TransCanada's withdrawn partners and prevents payment of reimbursable expenses until indemnification occurs.

REPRESENTATIVE SAMUELS concurred with that summation.

[3:12:14 PM](#)

MR. PALMER explained that this contingent liability came about to an entity to which TransCanada subsidiaries are a party. Thirty years ago the Alaskan Northwest Natural Gas Transportation Company (ANNGTC) put forward the original project for the Alaska section of an Alaska gas pipeline project. The ANNGTC was comprised of primarily U.S. pipeline companies and was joined by TransCanada in 1980. That partnership spent some \$250 million to perform valuable work, including environmental, engineering, regulatory, and other work, to advance the project. However, the project did not go forward in the early 1980s and the original partners have withdrawn, except for two TransCanada subsidiaries that are the only remaining partners. Mr. Palmer clarified that those two TransCanada subsidiaries are not the entities that have filed under AGIA, nor do they have direct relationships with said entities. He continued to explain that when the original partnership was struck in 1978, any party that withdrew lost all rights as a partner because the partnership agreement did not include any "noncompete" provisions. At the request of the administration, TransCanada has filed that partnership agreement and all this information directly with the state for posting on the state's web site. Mr. Palmer continued:

Those partners did receive one single right: ... In the event that the project was to be completed by that partnership, by ANNGTC, [and] secondly, put into service by ANNGTC, and thirdly, ANNGTC could pay the original cost plus interest without undue hardship to that partnership, then those original withdrawn partners would have the right to reimbursement.

MR. PALMER then related that last year, the two remaining TransCanada entities decided they could not viably put forward a competitive proposal under AGIA. The aforementioned was decided because, although the [partnership] does hold some assets such as the original engineering, the original right-of-way, regulatory assets, and some geotechnical work, those assets are not equal to the contingent liability. In fact, this summer TransCanada is taking action to dissolve that partnership. He noted that the Legislative Budget and Audit Committee wrote a

letter to each of the withdrawing partners notifying them that TransCanada had made an application with different subsidiaries under AGIA. Following that action, last fall, TransCanada, made an application under AGIA through the separate legal entities of TransCanada Alaska Company, LLC, and Foothills Pipe Lines Ltd. He indicated that the aforementioned two entities have nothing to do with the original entities from 30 years ago. Furthermore, they did not use any of the assets created by the original entity and will not use any of those assets going forward. Mr. Palmer said, "TransCanada also made the commitment, pursuant to its AGIA application, that it would not seek, ever, to include in its rates, in its tolls and tariffs to its customers, ... to recover any liability that ever comes home to TransCanada as a result of those withdrawn partner liabilities." He opined that these facts illustrate TransCanada's confidence that those obligations will not come home to TransCanada.

REPRESENTATIVE JOHNSON surmised then that TransCanada has no problem indemnifying the state, and therefore would support Amendment 4.

MR. PALMER clarified:

I did not say that we would provide an indemnity to the state or to any other party. I said that TransCanada is confident that this obligation does not exist, it's a contingent liability to former partners of an entity that we're in the process of dissolving. But that's a very different thing than TransCanada saying to you that we're going to provide you with a blanket indemnity for anything that could happen, ever, on this not knowing what roles the state is going to have. The state has not, to my knowledge, ever indicated that they intend to be a partner of TransCanada by ... taking equity. And I've indicated that as a sovereign royalty collector ... we will not seek to recover any monies from you or from any other customer on this pipeline.

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REPRESENTATIVE FAIRCLOUGH indicated that she is convinced that a liability, if any, would be limited; however, she said that she would vote yes to Amendment 4, as amended, because TransCanada is in a position to indemnify the state.

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REPRESENTATIVE SAMUELS agreed and added that there is a great deal of money in question and many unknowns ahead. He said, "I can't imagine why, sitting here today, why we wouldn't say, 'Just indemnify us,' and then the issue is gone for us; that is between you and your shippers." Regarding the situation of members who are reluctant to amend the bill, he concluded that this issue could not have been addressed before now.

[3:20:18 PM](#)

REPRESENTATIVE KERTTULA reminded members of the previous testimony that [the liability] is not going to be rolled into the tariff, and that is the major problem. In fact, because this would involve a lawsuit, the process would be public and very obvious. She said that she felt protected by the fact that there is no way to miss something like this going into a tariff. In addition, she expressed her confidence that, at this step, the state is much protected.

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REPRESENTATIVE FAIRCLOUGH disagreed. She pointed out that TransCanada cannot guarantee the actions of the National Energy Board (NEB); for example, a former representative of the NEB suggested that the cost of road maintenance could be rolled into a tariff. She restated her personal belief that this is a small issue; however, she cannot dismiss this issue and TransCanada should ensure that Alaska is held harmless.

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MR. PALMER clarified that the contingency has nothing to do with the Canadian section of the project, thus there would be no issue for the National Energy Board.

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REPRESENTATIVE GUTTENBERG offered his understanding that this issue could have been addressed prior to today. He remarked:

I'm concerned that if we make TransCanada indemnify the state, then TransCanada becomes the object. And if the point is to delay the project, then I think there's entities out there that would love to put financial pressure on the company that would cause

delay. And that's something that I think everybody in this building has talked about: delay being a problem. So, for that, I'm going to be voting "no" on this amendment.

REPRESENTATIVE FAIRCLOUGH said:

I take offense to the last remark. I have been trying to listen very diligently to each amendment and have voted what I thought was best for Alaska. And I think that it's best for Alaska, that if it's not an issue, if TransCanada can, in fact, just dissolve the issue for Alaska, then that's what should be done. ... I'd just like, for the record, that I am not trying to delay anything.

REPRESENTATIVE GUTTENBERG said that his comment had nothing to do "with the motives of anyone at this table."

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CHAIR COGHILL opined that the amendment creates a "litigation ladder" when talking about withdrawn partners, and it looks like the wholly owned subsidiary members of TransCanada are under the control of that same board. Therefore, the indemnification issue is "almost in counterbalance of that." He said he understands "protecting Alaska," but said, "It seems to me like they're really ... two different issues."

REPRESENTATIVE SAMUELS offered his understanding that [Amendment 4, as amended] is simply eliminating the litigation problem - not for TransCanada and whoever the shippers may be who will "cut a deal," but for the state, who won't have to worry about cutting a deal, because it will be "covered with Amendment 4."

REPRESENTATIVE KERTTULA said she has been trying to figure out how the state could wind up "in the problem." She pointed out, "It would be a new partner, and the liability won't extend to a new partner."

CHAIR COGHILL said he thinks the sponsor of the amendment would say, "If there's no problem, what's the problem?"

REPRESENTATIVE SAMUELS indicated that with \$16 million at stake, lawyers, while not rolling into the tariff, would certainly drag out the process until a deal is finally cut and they are paid

off. He said it is fine if that is what TransCanada wants to do, but does not want the state to be included in that deal.

REPRESENTATIVE KERTTULA proffered that no matter how much is at stake, the principles of law will remain the same. She stated, "If they tried to put this into the tariff, we would know about it ..., so that's off the table." In terms of partnership liability, she said she cannot figure out "how it would happen."

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PATRICK GALVIN, Commissioner, Department of Revenue, expressed his concerns related to how Amendment 4 would play out. His first concern, he said, is regarding the proposal that he, as commissioner, would be "asked to identify the potential liability that the licensee may have to withdrawn partners." He continued:

In the structure of this amendment, it sort of goes back and forth between whether the liability is strictly related to effects on revenue to the state, or if it goes to just general liability that the licensing may have that would come out of the licensee's pocket. I think the purpose of it is to provide an indemnification that goes to potential impacts on the state, but it kind of goes back and forth between those.

COMMISSIONER GALVIN directed attention to subsection (b), paragraph (4), on page 2, beginning on line 3, which read as follows:

(4) determine the effect on revenue to the state should the licensee be found liable to a partner or successor to a partner under the partnership agreement and other agreements between the partners and their successors in the Alaskan Northwest Natural Gas Transportation Company; the effect on revenue to the state includes

(A) the costs associated with delays in the construction of the project;

(B) an effect on the tariff;

(C) an effect on the state's taxes and royalties;

(D) the effect on a person acquiring an ownership interest in the project; and

(E) other effects on revenue to the state identified by the commissioner;

COMMISSIONER GALVIN, regarding subparagraph (A), said he assumes this has something to do with "time value money and assuming that there's a discount factor built into that." Regarding subparagraph (D), he said, "Now that one eludes me in terms of how that relates to the state revenue, if it's associated with the relationship between the licensee and some other potential person acquiring an ownership interest." He continued:

Given that we're going to have to go through this determination process before we can reimburse the licensee, it may be a matter that becomes fairly unclear, in terms of the actual implementation, and ... in everybody's interest - even those who oppose this - I think we need to have as clear a mandate, in terms of what is expected of us going in, so that I don't end up bringing back a report that is called into question because I didn't do what supposedly somebody wanted. So, I think, that at a minimum, we need to clear up what exactly is being requested.

COMMISSIONER GALVIN also recommended clarification in regard to the ultimate purpose of the indemnification, to ensure that the state would not be "impacted about expected future revenues if it's about liabilities that are not necessarily revenue-related, but liability-related - an expenditure that comes up." He said the purpose of the report should be made clear.

COMMISSIONER GALVIN continued:

There are going to be expenditures in the next quarter to half a year that are going to be requested to be reimbursed, and in the context of coming up with this report, things such as on page 1, line 15, where it says, "natural gas in kind or in value", the sponsor of the amendment referenced if the state were to take up key commitments, that might change the potential liability issues. If the state were to take some (indisc.) equity position at some point, that might change. We're not going to be at a point in a few months to make a determination as to whether or not the state's going to be in either one of those positions, and so it's going to be very difficult to make any sort of a report as to what the potential exposure is, because it's going to be based upon

decisions the state has not made yet, in terms of the participation in this project. And so, that exposure is going to be, basically, something the state's going to have to except at some point in time when the offer's put before us. If it's limited to simply what it seems to state at the beginning - effects on revenue to the state, which would be tied to tariff, which would be tied to netback value - ... both the reports that came back to us from our legal consultants, ... the comments that came in from the critics of this - particularly the producers - have all acknowledged that it's not going to show up in the tariff. And frankly, TransCanada's already indemnified us for that, because they have stated in their application they will not seek to have any of these liabilities put into the tariff. So, if they do, they will be in breach of the license and have to indemnify us for any damages to us. So, as it relates to the tariff, we're already covered; it's already in the nature of the relationship that we have established with the licensee. If we're going beyond that, then we're going to have to have a bit more guidance, in terms of what we're supposed to be looking at, because it's going to be basically speculation about if the state were to choose to take this role in the future, then we may have this potential liability based upon the analysis that we may do, and we're going to need a little bit more guidance in terms of how far into that speculative world we're going to have to go, because, frankly, there's nothing that we're authorized to do, in terms of taking on that kind of liability at this point in time. Unilaterally it's going to have to be something that the legislature would have to participate in.

[3:37:19 PM](#)

COMMISSIONER GALVIN, in response to a question from Representative Fairclough, clarified his understanding is that TransCanada would not "put any potential payments under this liability under the tariff." Furthermore, he pointed out that the FERC analysis has indicated that FERC would not allow that to happen, even if TransCanada were to seek it.

REPRESENTATIVE FAIRCLOUGH said she heard that TransCanada would not seek damages, but what [FERC] could not control was a court award, which she indicated is what is being addressed through

Amendment 4, as amended. Regarding treble damages, she said, "The state was very able to produce a cumulative state exposure of \$874 million, ... based on TransCanada's proposal." However, she said she learned that in terms of TransCanada's cost getting to open season versus other companies with pipeline proposals not before the legislature, the potential liability on treble damages "came up to \$2 billion." She told Commissioner Galvin, "I understand that this might be an issue, but there's a big range that you've worked with before in trying to ascertain risk and range of risk for Alaska." She asked him to comment.

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COMMISSIONER GALVIN, regarding Representative Fairclough's first point, said the question was not put to FERC. He clarified that the question was whether or not the state's "FERC experts" had identified anything within the FERC authority that would allow "them" to put that liability into the tariff, and it was found that "that wasn't something that was within the costs that FERC would transfer into a tariff; it's ... not part of the group of costs that can be requested to be reimbursed through a tariff process." He reviewed, "And so, the issue is sort of two-fold: ... TransCanada has said that they won't - which is fine for what it's worth, but also provides us with the cover that if it gets in there then we get reimbursed; [and] secondly, FERC doesn't have the authority to do it."

COMMISSIONER GALVIN with regard to the potential range, stated:

The issue there is we would ... be put in a position if we said, "What does the state have the authority to do in terms of our relationship with the licensee, and what kind of exposure does it provide us?" And this would be extremely limited if not down to nothing, because the tariff side is covered. If we were then to interpret this to say, "Well, imagine every potential role the state could have up to and including the state actually buying out TransCanada and taking over the whole thing," that brings us out to a whole other world. But that would engender us speculating on the legislature agreeing to take on a role that you would presume, as was discussed in the hearing when the issue actually came up, as Representative Samuels indicated, it's at the time that you decide to enter into an equity relationship that you would deal with a liability or an indemnification issue. We're not entering into that

kind of relationship through this license. And so, we don't know what the exposure is at this time, because ... we're not engaged in that level of a negotiation in terms of having that kind of relationship.

[3:41:52 PM](#)

REPRESENTATIVE FAIRCLOUGH asked whether the administration believes that the exposure is small.

COMMISSIONER GALVIN responded that the administration believes that the exposure, given the current relationship that would be established under AGIA, is small. However, he clarified his point is that the report that he would be asked to provide does not provide him enough guidance to know what answer he is supposed to provide.

REPRESENTATIVE FAIRCLOUGH said she has heard the administration say that voting yes on this project will not derail competition, and that voting yes on AGIA will hold the producer's or potential shipper's "feet to the fire" to commit their gas. She asked Commissioner Galvin to confirm if that is a true statement.

COMMISSIONER GALVIN said [voting yes on AGIA] "puts the question of duty to develop on a track to be resolved," but he would not say it "puts their feet in the fire to commit their gas to the TransCanada project."

REPRESENTATIVE FAIRCLOUGH opined that a yes vote for Amendment 4, as amended, would be telling TransCanada that it must perform, and she said she believes the cost numbers are approximately \$200 million, at a 14 percent accumulative rate every year, which would result in a figure in the billions of dollars as Representative Samuels had indicated. She said she would hope TransCanada "would have it done this summer," and that Commissioner Galvin would never have to prepare a report, because "they would submit that those subsidiaries have relinquished their claims."

[3:44:08 PM](#)

COMMISSIONER GALVIN responded:

My stated concern is that although it is seen as a non-issue, by conditioning reimbursement on us putting together this report that is not very well defined, it

actually makes an issue of it, in terms of being able to advance the project, and that you're actually creating, for the purposes of clarifying this issue, an area that has a lack of clarity that ends up dragging the process down.

[3:45:02 PM](#)

REPRESENTATIVE HARRIS asked how Commissioner Galvin proposes the state could be indemnified - to protect itself from the issues brought forward.

COMMISSIONER GALVIN offered his belief that in regard to the withdrawn partner liability being in the tariff, the state would be protected under the AGIA license. In regard to potential liability that may come to the state should it decide to change its relationship with TransCanada, Commissioner Galvin said the state would have the ability at that time to "engage in the necessary discussions about indemnification based upon a knowledge of the relationship that we're trying to establish, and the risk of exposure that that relationship would create." The state's future relationships may be so diverse that the need for and the type of indemnification is not a matter that can be pinned down; however, the state will have every opportunity to protect itself before entering into any of those relationships. Thus, he said he does not view Amendment 4, as amended, as necessary.

REPRESENTATIVE SAMUELS stated, "Doing it later's not good enough; I want to do it now."

[3:48:00 PM](#)

A roll call vote was taken. Representatives Fairclough, Johnson, and Samuels voted in favor of Amendment 4, as amended. Representatives Guttenberg, Harris, Kerttula, and Coghill voted against it. Therefore, Amendment 4, as amended, failed by a vote of 3-4.

[3:48:42 PM](#)

CHAIR COGHILL, in response to Representative Fairclough, asked Commissioner Galvin to let the committee know where in the AGIA license and the application process the language is that he thinks protects the state.

[3:49:44 PM](#)

REPRESENTATIVE Harris moved to report HB 3001 out of committee with individual recommendations and the accompanying fiscal notes. There being no objection, HB 3001 was reported from the House Rules Standing Committee.

ADJOURNMENT

There being no further business before the committee, the House Rules Standing Committee meeting was adjourned at 3:50 p.m.