

**ALASKA STATE LEGISLATURE**  
**SENATE SPECIAL COMMITTEE ON ENERGY**

July 30, 2008

3:28:44 p.m.

**MEMBERS PRESENT**

Senator Charlie Huggins, Chair  
Senator Bert Stedman, Vice Chair  
Senator Kim Elton  
Senator Lyda Green  
Senator Lesil McGuire  
Senator Donald Olson  
Senator Gary Stevens  
Senator Joe Thomas  
Senator Bill Wielechowski  
Senator Fred Dyson  
Senator Thomas Wagoner  
Senator Lyman Hoffman

**MEMBERS ABSENT**

All members were present

**OTHER LEGISLATORS PRESENT**

Senator Gene Therriault

**COMMITTEE CALENDAR**

SENATE 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."

HEARD AND HELD

HOUSE BILL NO. 3001(efd fld)

"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."

MOVED HB 3001(efd fld) OUT OF COMMITTEE

**PREVIOUS COMMITTEE ACTION**

BILL: SB3001

SHORT TITLE: APPROVING AGIA LICENSE

SPONSOR(S): RULES BY REQUEST OF THE GOVERNOR

06/03/08 (S) READ THE FIRST TIME - REFERRALS  
06/03/08 (S) ENR  
06/03/08 (S) REPORT ON FINDINGS AND DETERMINATION  
06/04/08 (S) ENR AT 10:00 AM TERRY MILLER GYM  
06/04/08 (S) Heard & Held  
06/04/08 (S) MINUTE(ENR)  
06/05/08 (S) ENR AT 9:00 AM TERRY MILLER GYM  
06/05/08 (S) Heard & Held  
06/05/08 (S) MINUTE(ENR)  
06/06/08 (S) ENR AT 10:00 AM TERRY MILLER GYM  
06/06/08 (S) Heard & Held  
06/06/08 (S) MINUTE(ENR)  
06/07/08 (S) ENR AT 10:00 AM TERRY MILLER GYM  
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06/10/08 (S) MINUTE(ENR)  
06/12/08 (S) ENR AT 10:00 AM FBX Carlson Center  
06/12/08 (S) Heard & Held  
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06/16/08 (S) ENR AT 9:00 AM ANCHORAGE  
06/16/08 (S) Heard & Held  
06/16/08 (S) MINUTE(ENR)  
06/17/08 (S) ENR AT 9:00 AM ANCHORAGE  
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06/19/08 (S) ENR AT 9:00 AM ANCHORAGE

06/19/08 (S) Heard & Held  
 06/19/08 (S) MINUTE(ENR)  
 06/20/08 (S) ENR AT 9:00 AM ANCHORAGE  
 06/20/08 (S) 9am - 5pm - Testimony <Invitation Only>  
 06/24/08 (S) ENR AT 1:00 PM MAT-SU  
 06/24/08 (S) Heard & Held  
 06/24/08 (S) MINUTE(ENR)  
 06/26/08 (S) ENR AT 1:00 PM KENAI  
 06/26/08 (S) Heard & Held  
 06/26/08 (S) MINUTE(ENR)  
 07/01/08 (S) BILL CARRIES OVER FROM 3RD SPECIAL SESSION  
 07/01/08 (S) ENR AT 9:00 AM BARROW  
 07/01/08 (S) Heard & Held  
 07/01/08 (S) MINUTE(ENR)  
 07/08/08 (S) ENR AT 1:00 PM KETCHIKAN  
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 07/14/08 (S) MINUTE(ENR)  
 07/22/08 (S) ENR AT 1:00 PM SENATE FINANCE 532  
 07/22/08 (S) Heard & Held  
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 07/24/08 (S) -- MEETING CANCELED --  
 07/25/08 (S) ENR AT 1:30 PM SENATE FINANCE 532  
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07/29/08 (S) Heard & Held  
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07/30/08 (S) ENR AT 2:00 PM SENATE FINANCE 532

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) Subcommittee Assigned  
06/04/08 (H) RLS AT 10:00 AM TERRY MILLER GYM  
06/04/08 (H) Heard & Held  
06/04/08 (H) MINUTE(RLS)  
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 06/24/08 (H) RLS AT 1:00 PM MAT-SU  
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 06/26/08 (H) RLS AT 1:00 PM KENAI  
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 06/26/08 (H) MINUTE(RLS)  
 07/01/08 (H) RLS AT 9:00 AM BARROW  
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 07/01/08 (H) MINUTE(RLS)  
 07/02/08 (H) BILL CARRIES OVER TO FOURTH SPECIAL SESSION  
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 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 RPT 3DP 4DNP  
 07/21/08 (H) DP: KERTTULA, GUTTENBERG, COGHILL  
 07/21/08 (H) DNP: JOHNSON, FAIRCLOUGH, SAMUELS, HARRIS  
 07/21/08 (H) RLS AT 2:00 PM CAPITOL 120  
 07/21/08 (H) Moved Out of Committee  
 07/21/08 (H) MINUTE(RLS)  
 07/22/08 (H) BEFORE THE HOUSE IN THIRD READING  
 07/22/08 (S) ENR AT 1:00 PM SENATE FINANCE 532  
 07/22/08 (S) <Pending Referral>  
 07/23/08 (H) TRANSMITTED TO (S)  
 07/23/08 (H) VERSION: HB 3001(EFD FLD)  
 07/23/08 (S) ENR AT 1:00 PM SENATE FINANCE 532  
 07/23/08 (S) <Pending Referral>  
 07/24/08 (S) READ THE FIRST TIME - REFERRALS  
 07/24/08 (S) ENR  
 07/24/08 (S) ENR AT 2:00 PM SENATE FINANCE 532  
 07/24/08 (S) -- MEETING CANCELED --  
 07/25/08 (S) ENR AT 1:30 PM SENATE FINANCE 532  
 07/25/08 (S) Heard & Held  
 07/25/08 (S) MINUTE(ENR)  
 07/28/08 (S) ENR AT 2:00 PM SENATE FINANCE 532  
 07/28/08 (S) -- Testimony <Invitation Only> --  
 07/29/08 (S) ENR AT 1:00 PM SENATE FINANCE 532  
 07/29/08 (S) Heard & Held  
 07/29/08 (S) MINUTE(ENR)  
 07/30/08 (S) ENR AT 2:00 PM SENATE FINANCE 532

**WITNESS REGISTER**

STEVE PORTER, Legislative Consultant  
 Legislative Budget and Audit  
 Juneau, AK

**POSITION STATEMENT:** Discussed withdrawn partner liability in AGIA.

BONNIE HARRIS, Senior Assistant Attorney General  
 Department of Law  
 Juneau, AK

**POSITION STATEMENT:** Provided legal opinions on withdrawn partner liability and treble damages in AGIA as they relate to HB 3001.

DONALD BULLOCK, Attorney  
 Legislative Legal and Research Services Division  
 Legislative Affairs Agency  
 Juneau, AK

**POSITION STATEMENT:** Answered questions about the interpretation of AGIA (HB 177) as it relates to HB 3001.

MARTY RUTHERFORD, Deputy Commissioner  
Department of Natural Resources (DNR )  
Anchorage, AK

**POSITION STATEMENT:** Answered questions about the treble damages clause in AGIA.

PAT GALVIN, Commissioner  
Department of Revenue  
Anchorage, AK

**POSITION STATEMENT:** Answered questions about the inducements in AGIA as they relate to HB 3001.

TONY PALMER, Vice President  
TransCanada Alaska Development  
Calgary, Alberta, Canada,

**POSITION STATEMENT:** Answered questions about project timelines under HB 3001.

#### **ACTION NARRATIVE**

CHAIR CHARLIE HUGGINS called the Senate Special Committee on Energy meeting to order at [3:28:44 PM](#). Present at the call to order were Senators Wagoner, Wielechowski, McGuire, Hoffman, Stevens, Stedman, Huggins, Green, Elton, Thomas, Olson and Dyson.

#### **SB3001-APPROVING AGIA LICENSE** **HB3001-APPROVING AGIA LICENSE**

[3:28:44 PM](#)

CHAIR HUGGINS apologized for the delay and advised the committee that the meeting would continue with discussion of the issues being considered yesterday, followed by disposition of the bill.

He recalled that Senator Wagoner introduced a letter from Legislative Budget and Audit (LB&A) yesterday and asked what other letters, if any, had been received. Copies of the letters from withdrawn partners were provided to the members. He advised that the LB&A letters do not specifically indemnify the state and asked Mr. Porter to address those letters.

STEVE PORTER, Legislative Consultant, Legislative Budget and Audit said he would walk through the letters in the order they appear in the members' packets. The first letter was received from Pacific Gas & Electric (PG&E). He noted that the second full paragraph said PG&E does not believe they have any rights

to waive with respect to TransCanada Corporation's application; but they do not waive any future rights.

The second one was from SEMPRA Energy dated April 1, 2008. In it they answered two questions: First, they said "to the extent that PITCO has certain continuing rights under the AANGTC agreements, PITCO is not willing to waive any rights as a withdrawn partner." Second, they said they were not aware that TransCanada was violating any obligations under the AANGTC General Partnership Agreement. In other words, TransCanada didn't violate anything in that agreement but if, at some future date, SEMPRA believes the withdrawn partners have rights, they have not waived them.

The Third letter was from David Sokol with Mid-American, who said they do not have an ownership interest as a withdrawn partner; so the state would have to track down whoever owns their interest.

Fourth, Williams was actually polite enough to send LB&A a letter on April 11, 2008 saying they were working on it. On June 2, 2008 they sent another letter, which said they were not willing to waive their rights under the AANGTC partnership agreement without being adequately compensated; but they didn't have enough information to know if they had any rights to negotiate.

Three parties were still outstanding.

CHAIR HUGGINS asked if anyone held us harmless.

MR. PORTER answered no, but said that is understandable. No lawyer would let its client waive potential rights.

CHAIR HUGGINS asked for questions.

[3:34:38 PM](#)

SENATOR WAGONER wanted to hear from Bonnie Harris on these letters.

BONNIE HARRIS, Senior Assistant Attorney General, Department of Law, Juneau, AK, said she hadn't had the opportunity to read the letters but agreed with Mr. Porter that an Attorney would be unlikely to advise his clients to waive a liability even if they weren't sure they had one. Personally, she was reluctant to try to interpret the intent of the letter outside what was stated.

CHAIR HUGGINS commented that these just increase his anxiety over the issue of withdrawn partners and that they should try to close any loopholes.

[3:36:37 PM](#)

CHAIR HUGGINS asked Ms. Harris if she would read these letters and comment later. She said she would do so.

[3:37:00 PM](#)

Chair Huggins called a brief at ease.

Chair Huggins called the meeting back to order at [3:37:59 PM](#).

He reminded members that they were talking about the fiscal packages when they adjourned yesterday. He asked Mr. Bullock to come forward to address production taxes and treble damages.

[3:38:44 PM](#)

SENATOR WAGONER asked if Mr. Bullock would address the ramifications of an amendment on indemnification at this late date.

SENATOR MCGUIRE said she intended to offer an amendment on indemnification as a requirement for issuance of the license rather than as an amendment to AGIA.

[3:39:50 PM](#)

DONALD BULLOCK, Attorney, Legislative Legal and Research Services Division, Legislative Affairs Agency, Juneau, AK said he was involved in drafting and reviewing AGIA. He asked what the committee specifically wanted him to address.

CHAIR HUGGINS explained that they want to know, given a fiscal regime, what would trigger treble damages in scenarios that affect TransCanada and other parties.

[3:40:39 PM](#)

MR. BULLOCK said it was best to start with the treble damages statute AS 43.90.440 and quoted from that statute:

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, 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 ....

So first of all, he said, it would have to be for the purpose of encouraging a competing natural gas pipeline project. That means a project designed to accommodate throughput of more than 500 Mcf/day of North Slope gas to market. A proposed tax regime aimed at a particular competing project would raise the issue of whether it would carry gas from the North Slope to market and whether it was given for the purpose of favoring a competing project. If both of those were true, it would fall under the treble damages clause.

He said there was discussion during the passage of ACES (Alaska's Clear and Equitable Share, Petroleum Production Tax amendments of 2007) about the relative value of gas versus oil. The general rule is 6 Mcf of gas is equivalent to a barrel of oil and it is taxed on a barrel-equivalent basis. If there was ever an adjustment to the tax rate for gas that applied generally, it wouldn't really favor any competing pipeline. For example, if the legislature amended the tax on the production of natural gas across the board, he did not believe it could be interpreted to favor a competing gas line because one of the elements [to trigger the treble damages clause] is that it has to be given for the purpose of facilitating the competition.

[3:44:38 PM](#)

CHAIR HUGGINS asked Mr. Bullock to turn that around and tell him what the parameters are for doing unique fiscal regime items for TransCanada.

DON BULLOCK answered that if they changed the requirements with regard to TransCanada, that would affect other potential applicants who would have benefited as well and raise the possibility of litigation as to whether the state followed reasonable principles of public contracting.

[3:46:21 PM](#)

CHAIR HUGGINS asked if appointing a pipeline coordinator for another project would trigger the damages.

DON BULLOCK responded that by issuing the license, the state is saying that this is their favorite project and the inducements provide a coordinator for it. The position is established in AS 43.90.250 and AS 43.90.260 talks about the expedited review and action by state agencies. He referred to the words of the statute, saying it is to "expedite consideration." So if there were 2 projects going at the same time, the licensed project would be expedited by this coordinator. If a coordinator was provided for another project and that coordinator moved things along faster than the coordinator dedicated to the licensee, it could be a violation of the treble damages clause.

[3:48:41 PM](#)

CHAIR HUGGINS asked Bonnie Harris to comment on the issue of pipeline coordinators.

BONNIE HARRIS said her legal take on it is consistent with Mr. Bullock's in that the pipeline coordinator is an inducement for the AGIA licensee; so if the state gave preferential treatment in some way to another pipeline, that could raise the treble damages issue. However, the permitting question is addressed in AGIA section 43.90.440 (b), which says:

The review, processing, or facilitation of a permit, right-of-way, or authorization by a state agency in connection with a competing natural gas pipeline project does not create an obligation on the part of the state under this section.

So the Act exempts the routine permitting, processing and facilitation of permits and rights-of-way from susceptibility to treble damages. She thought it would be an unlikely scenario that would raise the treble damages clause, although hypothetically one might be able to think of something that would.

CHAIR HUGGINS asked Mr. Bullock if he had anything to add to that.

[3:51:25 PM](#)

DON BULLOCK said if there were two competing pipelines, the licensee would have the coordinator shepherding him through the process while the competing project would not. If there were two competing coordinators trying to expedite their pipelines and

the competing project was over 500 mcf of North Slope gas, it would raise the issue.

[3:52:23 PM](#)

SENATOR ELTON said it was his understanding that in most major projects, the project sponsor has the right to pay the state to assign a person to work on their permits. It was also his understanding that if a competing project did pay for their own expeditor, it would not trip the treble damages. He asked if his understanding was correct.

MR. BULLOCK said that question would be better directed to the Department of Natural Resources, which gets directly involved in that. He referred Senator Elton to AS 43.90.260 for the specific things the coordinator gets involved in.

CHAIR HUGGINS asked Mr. Bullock if he would read that for them.

MR. BULLOCK read:

(a) A review conducted and action taken by a state agency relating to the project shall be expedited in a manner consistent with the completion of the necessary approvals in accordance with this chapter. (b) Notwithstanding any contrary provision of law, a state agency may not include in any project certificate, right-of-way, permit, or other authorization issued to the licensee a term or condition that is not required by law if the coordinator determines that the term or condition would prevent or impair in any significant respect the expeditious construction and operation or expansion of the project.

(c) Unless required by law, a state agency may not add to, amend, or abrogate any certificate, right-of-way, permit, or other authorization issued to a licensee if the coordinator determines that the action would prevent or impair in any significant respect the expeditious construction, operation, or expansion of the project.

What this refers to, he said, is the actual requirements for the license. To the extent that these go to the standards themselves, it really doesn't matter if somebody else is reviewing it or not. It's just that, for this project, the coordinator is going to be following what the requirements are for each permit and each right-of-way and each authorization the

department will issue to make sure that nothing is being done to slow the process for the licensee's project.

[3:55:11 PM](#)

SENATOR ELTON reserved follow-up until the department was at the table. He wanted to be sure his understanding was clear.

[3:56:12 PM](#)

MARTY RUTHERFORD, Deputy Commissioner, Department of Natural Resources (DNR), Anchorage, AK, said Senator Elton was correct. They testified to that effect a year ago when they were working on AGIA. The Department has the right to facilitate any large project. They also have the large project review process whereby an applicant can pay for an expedited review of their permit and coordination activities and this would in no way conflict with those prerogatives. That was part of the record when they passed AGIA.

[3:57:12 PM](#)

SENATOR GREENE wanted to confirm that nothing would impede a competing project.

CHAIR HUGGINS recalled hearing from Commissioner Galvin that the pipeline company could pay for a coordinator. He asked if one would be expedited over the other.

DEPUTY COMMISSIONER RUTHERFORD assured him that nothing would conflict with DNR's ability to provide that kind of assistance to an alternative project. She believed this section was added to clarify the issue that having another coordinator or review process would in no way conflict with AGIA and therefore would not trigger treble damages.

[3:58:44 PM](#)

BONNIE HARRIS clarified that section 43.90.440 does not apply the treble damages to the permitting, coordinating function. It says that "if the state extends to another person preferential royalty or tax treatment or grant of state money..." So from that and the exception in (b) which says it does not apply to the processing, facilitation of rights-of-way or permits, she felt she could argue strongly that it does not apply at all to a coordinator position.

[3:59:47 PM](#)

PAT GALVIN, Commissioner, Department of Revenue, Anchorage, AK said the question seems to be whether there are potential limitations to what additional inducements could be provided to

TransCanada specifically or exclusively; and the answer is that it depends upon what is proposed. As Mr. Bullock said, the question of preferential versus non-preferential drives the treble damages issue. Any proposals that comes forward will be brought before the legislature and all issues associated with potential limitations will be fully debated in the context of the specifics that proposal. He could not make any general statement about what is or is not allowable.

CHAIR HUGGINS asked if there was a menu of things that might be allowable.

[4:02:04 PM](#)

COMMISSIONER GALVIN thought they could look at the history of this discussion and get a sense of the full suite of things the shippers might want to discuss, such as fiscal predictability, production taxes on gas, royalties and all of the things that were part of the stranded gas discussions. From the administration's perspective, when they came forward with AGIA, they felt the inducements provided addressed the only potential legitimate barriers to getting shipping commitments and they did not see that any additional modifications to the state's fiscal system were needed in order to provide an attractive climate for gas being shipped in a line within the state. He cautioned that as they go forward and have discussions with shippers, they may find some things that need to be changed. What those might be and whether they will apply to all projects or to any particular one will be based on the factors Mr. Bullock identified and that they have talked about in terms of the limitations within AGIA and those associated with having gone through a competitive process to get here.

AGIA provides certainty with regard to the length of time on the production tax rate. He said that has been discussed during these license hearings in terms of whether 10 years will be sufficient and it might come up again; but whether the administration would support a change along those lines, would be based upon a determination that it is a reasonable and appropriate request.

[4:05:05 PM](#)

SENATOR STEDMAN asked for a brief at ease.

CHAIR HUGGINS called the meeting back to order at [4:05:46 PM](#). He asked Commissioner Galvin about the \$3.5 million requested to support inducement efforts over the next 10 months.

COMMISSIONER GALVIN said they expect to spend that money primarily in response to proposals that come to them from the shippers; they do not intend to generate any proposals themselves. In order to address those timely, they need to have access to the funds as needed.

[4:07:30 PM](#)

CHAIR HUGGINS asked him to characterize how he sees the meetings and the process for spending that \$3.5 million unfolding.

[4:08:01 PM](#)

COMMISSIONER GALVIN said they don't see TransCanada as their agent whatsoever as it relates to the fiscal system. When it comes to discussions regarding changes in the fiscal system, those would be between the state and potential shippers. The administration believes there is an expectation on the part of the shippers that there will be changes to the state's fiscal system in order to accommodate their commitments to ship gas, and that it will lead to further discussions. They want to be in a position to be nimble, responsive and timely.

[4:09:41 PM](#)

CHAIR HUGGINS wondered whether or not the legislature would be involved in those discussions.

[4:09:53 PM](#)

COMMISSIONER GALVIN answered that they would expect members of the administration to be involved primarily; however, it would be beneficial in the long run to include the legislature in the process.

[4:10:47 PM](#)

SENATOR GREEN asked him at what stage the legislature would be involved.

COMMISSIONER GALVIN speculated that it would be as the discussions evolve fairly early on and throughout. In response to an earlier question, he answered that they would be responding primarily to requests for certain changes in the system. The nature of those discussions will be defined as they move forward; so the interaction of the legislature will have to be decided throughout the process.

[4:12:32 PM](#)

SENATOR GREEN challenged, with all due respect, what guarantees exist in AGIA to ensure that would be the case if Commissioner Galvin moved on to another job in 5 or 6 years.

COMMISSIONER GALVIN answered that nothing in AGIA guarantees it, just as nothing in state law guarantees the administration will involve the legislature in the development of legislative proposals; but in the end, the legislature would have to agree to anything that would be offered by the state in terms of changes to the fiscal system. That is the absolute guarantee that the legislature will be involved. It then becomes a question of the work process and how much legislative involvement will increase the opportunity for success.

[4:13:41 PM](#)

SENATOR GREEN opined that he would probably not object to a letter of intent to that effect.

COMMISSIONER GALVIN hedged that it depends on what is in it.

SENATOR GREEN suggested that he start writing it then.

[4:14:09 PM](#)

MR. BULLOCK pointed out that the administration's ability to provide inducements to get the producers to commit to the licensed project is limited by their powers within the statute. If they need a tax exemption or a change in the tax rate, they can not do that without the approval of the legislature. Similarly, if they want changes in the royalty contracts to the lease agreements, they would have to be within the bounds of the law that empowers them to negotiate certain provisions in those; they could not do it unilaterally.

CHAIR HUGGINS said it is good news that [the legislature] will be involved in the fiscal regime going forward.

[4:15:45 PM](#)

MR. PORTER responded to Senator Huggins' question regarding what general principals they might apply to AGIA to help them know what they can and can't do by offering a general principal of contract law and relating it to the AGIA process.

He said that the bidders all bid on a certain scope of project; once the bids are in, the proposal cannot be changed as that would allow for collusion and corruption. A tax is a law of general application; it is not specifically laid out in the AGIA process. AGIA provides certainty, but the amount isn't specified, so they can change a law of general application on a tax without violating AGIA. Interestingly, fiscal certainty is very specific in AGIA for 10 years; so they can't change that

without violating the principals of contract law. So it really depends upon what they want to change. If it is a specific element in AGIA, they can't change it. Once they award the license, they have to "float all ships equally". He asked if Mr. Bullock had anything to add.

[4:19:05 PM](#)

MR. BULLOCK agreed with Mr. Porter's explanation.

[4:19:12 PM](#)

CHAIR HUGGINS said it did raise a question in his mind about all of the people who thought about applying and didn't. Let's say, he conjectured, that they changed [the fiscal certainty] from 10 to 15 years at some point. At what point would those other parties no longer be able to come back and say that if the state had done (whatever) during the AGIA application process, they would have applied?

[4:19:38 PM](#)

COMMISSIONER GALVIN said that is a legal issue that would be based on a number of factors and deferred the question to Ms. Harris.

[4:14:50 PM](#)

MR. PORTER said that if they decided to change the fiscal certainty term, it would be because they believe it is substantive and that would mean floating one boat higher than another. There is a window of time however, when all of those fiscal incentives actually go away. For instance, if TransCanada failed its first open season, they have to propose a second open season without any of the fiscal incentives in the current bill; and in that environment, he said, they could actually propose a law and provide fiscal certainty for a term on both TransCanada's proposal and a non-licensee proposal going forward.

[4:21:19 PM](#)

MS. HARRIS said she agreed with some of Mr. Porter's application of contract law to the AGIA license, but wouldn't apply the principals of contract law to constrain the legislature's ability to make and change laws. If the legislature made changes to AGIA, they would be changing the terms. That might also be true if they put certain conditions on a license that would retroactively affect the AGIA process. She did not believe, from a legal analysis perspective, that AGIA precluded the legislature from using their authority to make tax laws, royalty laws or other general application laws.

[4:23:11 PM](#)

CHAIR HUGGINS presumed that, if they can make those changes after passing the license, they can do it before. This isn't an up or down vote so from a legal standpoint, they can amend AGIA. He asked if that is correct.

[4:23:35 PM](#)

MS. HARRIS responded that she didn't understand the question.

CHAIR HUGGINS repeated that he thought she had said AGIA does not bind the legislature from taking action, that the state can change the fiscal terms and other things; and he assumed that was true either before or after issuing the license.

MS. HARRIS said she was referring to laws outside of AGIA. She was referring to the legislature's broad authority to make tax law and was not suggesting that the legislature, with the license before it, could go back and change the fiscal terms. She pointed out that "fiscal certainty" or "fiscal terms" are rather broad expressions; but as she understood they were used in this context, they meant giving gas producers some kind of tax stability that gives them certainty. She believed it was possible to do that without triggering the treble damages but was not suggesting the legislature would go back and retroactively amend AGIA.

[4:25:02 PM](#)

MR. PORTER said he agreed in principle with what he thought Ms. Harris had said; they can change the tax; what they might have a disagreement on is changing the fiscal terms of 10 years. He asked if Ms. Harris was saying they can do that without violating the principals of AGIA or contract law.

[4:25:26 PM](#)

MS. HARRIS said she believes that if they changed the fiscal terms of AGIA they would be amending AGIA and would risk turning the process that is before the legislature back at least a year.

MR. PORTER said they are in agreement.

[4:25:48 PM](#)

MR. BULLOCK stated that, in addition to inducements offered to the licensee within AGIA, there are inducements to the producers who will be making gas available for the pipeline. When AGIA was enacted, it said the taxes would be subject to certain exemptions for a certain period of time and this is something he

expected the applicants would have looked at. It goes right to the feasibility of the project and whether the producers have an incentive under AGIA to commit their gas under it. He explained that there were really two things going on. With regard to AGIA, the question is if this actually is a solid incentive that TransCanada and other applicants can look at to ensure gas is going to be available. But this is only one part of general tax policy because, when the legislature enacts tax law, although they generally do make it a general application, they do have targeted tax credits for certain favored investments. So the gray area is if the legislature amends the special conditions that were enacted as part of AGIA that relate to making a commitment during the first binding open season.

[4:27:39 PM](#)

SENATOR WIELECHOWSKI commented that they just have to read the language in AS 43.90.440, which says: "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 gasline project in this state..." then they're subject to damages. If the state doesn't do it to facilitate the construction of a competing project, they don't owe anything. In his mind it was as clear as day that if the state (meaning the state?) wants to provide fiscal certainty, fiscal stability, as long as they do it on a level playing field they do not breach the contract.

[4:28:38 PM](#)

MS. HARRIS agreed and felt the court would too. She thought it was unlikely the state would inadvertently trigger the treble damages. If it chose to make a business decision at some point that would result in treble damages, the state has assurances of the limitation of its liability through this provision.

[4:29:57 PM](#)

SENATOR DYSON said he is willing to stay all night if necessary to honor their commitment to get this out of committee.

[4:30:40 PM](#)

CHAIR HUGGINS said they are all committed that and will do whatever is required to move the process forward. He announced a short break.

CHAIR HUGGINS called the meeting back to order at [4:53:15 PM](#).

MR. BULLOCK pointed out that within 440 the first sentence refers to enjoyment of inducements provided under this chapter, which brings in the coordinator position; so there is some ambiguity.

[4:54:31 PM](#)

CHAIR HUGGINS revisited the 10 month negotiation period that Commissioner Galvin alluded to and the involvement of the legislature in that. He said he assumed some of the negotiations would have to go on behind closed doors and asked if that was correct. He also asked if Commissioner Galvin would like to add anything to his previous testimony.

[4:55:22 PM](#)

COMMISSIONER GALVIN answered no, he had nothing to add. With regard to the issue of confidentiality, the administration had no way of knowing what would transpire or in what forum; the process would not be unilateral but would be based upon agreements between parties going forward.

[4:56:24 PM](#)

CHAIR HUGGINS asked if he was saying that confidentiality may have a bearing on the process.

[4:56:37 PM](#)

COMMISSIONER GALVIN replied yes.

[4:56:59 PM](#)

CHAIR HUGGINS questioned how, assuming a license is granted, he foresees the administration updating the legislature timely about progress toward a pipeline under AGIA?

[4:57:27 PM](#)

COMMISSIONER GALVIN responded that there will be continual reimbursement within the general structure of AGIA and some formality to that aspect of the process. He also expected that, given the magnitude of the project, they would be updating the legislature on a fairly regular basis and having fairly open discussions about how things are moving forward. From the vantage point of the license itself, there will be a more formal review periodically.

[4:59:12 PM](#)

CHAIR HUGGINS said one recommendation they have received is a quarterly report to LB&A on the status of the project, cost overruns, impacts to the tariff, risk factors, modifications, and compliance by the licensee. He asked if the administration

would object to the legislature defining what elements they should report on, the timing of that and who they report to.

4:59:59 PM

COMMISSIONER GALVIN said he believes it is inherent in the relationship between the legislature and the administration that they can ask for that kind of information and thinks it would be very helpful to ensure that the administration understands their expectations.

5:00:30 PM

CHAIR HUGGINS asked a representative from DNR to come forward to talk about right-of-ways and if there is any exclusivity.

5:00:53 PM

DEPUTY COMMISSIONER RUTHERFORD, Department of Natural Resources (DNR), said AS 38.35, which is the Right-of-Way Leasing Act, is very explicit that right-of-way grants are not exclusive even after a project is built; however, once a project is built the state has a responsibility to protect its operational integrity. So to some degree, once a project is in the ground, it has a preferential right; but the department could literally put grants of right-of-way on top of one another until a particular project is built.

CHAIR HUGGINS asked who the AGIA pipeline coordinator reports to.

DEPUTY COMMISSIONER RUTHERFORD answered that it reports directly to the governor.

CHAIR HUGGINS asked who the coordinator for "Stedman Pipeline Company" would report to.

DEPUTY COMMISSIONER RUTHERFORD said the Joint Pipeline Office (JPO) is supported by federal and state agencies. For the state of Alaska, the lead is the State Pipeline Coordinators' Office, in the Department of Natural Resources. If they had a coordinator working to move another project forward, they would try to integrate that as much as possible with the Joint Pipeline Office. In fact, Drue Pearce, the federal coordinator, is working to coordinate their activities as much as possible with the Joint Pipeline Office, Bureau of Land Management (BLM) and the federal Department of Transportation. The goal is to integrate oversight through the JPO to maintain the same types of records and oversight capabilities.

[5:03:36 PM](#)

CHAIR HUGGINS said it concerns him when people with the same function are reporting to different agencies. He asked if there was any way she could envision that would be a fully integrated parallel system that dovetails into the same decision-making process.

[5:04:05 PM](#)

DEPUTY COMMISSIONER RUTHERFORD admitted they had recommended that the AGIA coordinator be located within the Department of Natural Resources so it could function with the Joint Pipeline Office; but there is nothing to preclude the governor from directing the pipeline coordinator under AGIA to coordinate with the Joint Pipeline Office. Obviously that is the intention, to try to coordinate to avoid redundancy and so the paperwork systems and regulatory oversight are aligned as much as possible.

CHAIR HUGGINS asked if she would be recommending that course of action to the governor.

DEPUTY COMMISSIONER RUTHERFORD answered yes, they have been talking about it but wanted to be sure there was actually a project moving forward under AGIA before spending money.

[5:05:00 PM](#)

CHAIR HUGGINS repeated that he felt it was important to have some unity of effort in command and supervision.

[5:05:16 PM](#)

SENATOR THOMAS asked if the state has a right-of-way between Delta and the border.

DEPUTY COMMISSIONER RUTHERFORD said there is no right-of-way alignment. When the federal government granted lands to Alaska, they provided easements over those lands and the same is true for most of the lands that were granted to the Alaska Native Claims Settlement Act (ANCSA) Corporations. So she didn't anticipate any serious problems in creating a right-of-way.

SENATOR THOMAS asked how that coordinates with any right-of-way TransCanada may have through that area.

DEPUTY COMMISSIONER RUTHERFORD explained that the work TransCanada did previously on rights-of-way is being revoked and they are reapplying for all of their federal and state rights-of-way. So there is no conflict; but they had a long meeting

with Drue Pearce a week and a half ago and she reconfirmed that the federal rights-of-way are not exclusive.

[5:06:41 PM](#)

CHAIR HUGGINS asked if the state had been involved in negotiating tariffs and rates with TransCanada in the past 10 years.

DEPUTY COMMISSIONER RUTHERFORD answered yes, there were discussions between the state, TransCanada and others during the Stranded Gas Development Act negotiations. They were not on tariffs, but on commercial issues directed toward tariff structure.

CHAIR HUGGINS wondered if any of the items discussed should be brought before the committee.

DEPUTY COMMISSIONER RUTHERFORD said she did not believe so. The negotiations with parties other than the three majors were never completed and no "papering" of contracts was done.

[5:07:54 PM](#)

CHAIR HUGGINS asked if she was part of that process.

DEPUTY COMMISSIONER RUTHERFORD affirmed that she led the negotiations between the state of Alaska, TransCanada and MidAmerican.

CHAIR HUGGINS asked if the \$500 million or treble damages were part of that process.

DEPUTY COMMISSIONER RUTHERFORD said they didn't get far in that process and nothing was committed to contract. It was a very different approach than was conceived in AGIA and the types of risk were slightly different from those supported by the AGIA concept. There were trade-offs between the types of risk the state was taking versus those the company would have taken.

[5:09:06 PM](#)

MS. HARRIS urged Ms. Rutherford to be cautious, as those matters are confidential under the Stranded Gas Act and answering what wasn't in there could lead to disclosure of confidential information. She also said she believes that information is available to the legislators in a data room if they sign a confidentiality agreement.

[5:09:40 PM](#)

CHAIR HUGGINS understood, but stressed that all of the legislators are concerned about making things public and asked when they could anticipate that stranded gas information would be available to Alaskans.

MS. HARRIS said once the information was made confidential under The Act, there was no provision for it ever to be made public because it dealt with proprietary business information.

[5:10:45 PM](#)

CHAIR HUGGINS said "So you don't anticipate it being released?"

MS. HARRIS said not under the terms of the Stranded Gas Act, which is still in effect.

[5:10:59 PM](#)

SENATOR GREEN said she understood that the state had indeed agreed to release the information and TransCanada asked that it not be released due to confidentiality issues.

[5:11:57 PM](#)

MS. HARRIS said the state does not have the ability to release the information that was made confidential under the Stranded Gas Act; that confidentiality is still in place. The state did release those documents it could, those that were confidential under deliberative process and did not disclose proprietary information.

[5:12:41 PM](#)

SENATOR GREEN ventured that it would be up to TransCanada to come forward and provide them with that information; she asked if that was correct.

MS. HARRIS said TransCanada could provide information within its possession; she does not know what constraints they may have. The Stranded Gas Act imposes confidentiality on information received by the state.

SENATOR GREEN reiterated that it was her understanding the administration agreed to the release of the information and said it was up to TransCanada to release it.

MS. HARRIS said she is not aware of that.

[5:13:33 PM](#)

CHAIR HUGGINS said some of his neighbors have asked about the \$10 billion.

[5:14:25 PM](#)

DEPUTY COMMISSIONER RUTHERFORD said the \$10 billion was with regard to the North Slope producers in the Stranded Gas Act and that information, insofar as it was calculated by the state and not confidential, has been made available.

SENATOR GREEN interposed that is the information she referred to.

DEPUTY COMMISSIONER RUTHERFORD commented that there is an extensive body of information that was not released for any of the negotiations with TransCanada or the 3 major producers, which is still required to be held confidentially. The \$10 billion figure is the result of an Econ One report submitted at LB&A's request for their analysis and that is online as part of the LB&A reports.

[5:15:10 PM](#)

SENATOR WAGONER said he and Mark Myers, Director of Oil and Gas, calculated the first figure, which was \$13.2 billion in upstream concessions, during the Stranded Gas Act negotiations. He sent a letter to the administration asking them to verify their facts and figures or to respond with a corrected amount. Because he never received a response, he thought that letter must have contained information that was accurate. Econ One then came up with a figure of \$10.2 billion in upstream concessions, a difference of \$2 billion.

[5:16:19 PM](#)

CHAIR HUGGINS asked if Deputy Commissioner Rutherford was actually one of the architects of AGIA.

She answered "Yes."

CHAIR HUGGINS asked who proposed the \$500 million figure.

DEPUTY COMMISSIONER RUTHERFORD did not recall but did recall that it was based upon the state taking on part of the risk for moving the project forward in the early stages as well as the concept that it would take about 1\$ billion to get to a FERC [Federal Energy Regulatory Commission] certificate.

[5:17:26 PM](#)

CHAIR HUGGINS asked if that was boiler-plated during this administration or previously.

DEPUTY COMMISSIONER RUTHERFORD said discussions about what it would cost to get to FERC certification were part of the Stranded Gas Negotiations; and those came about because they were trying to embed the contracts with protections to ensure the project would move forward. She didn't quite recall when the concept [with regard to AGIA] came about.

[5:18:06 PM](#)

CHAIR HUGGINS asked about the concept of treble damages.

DEPUTY COMMISSIONER RUTHERFORD said she believed that emerged as part of the AGIA discussions.

CHAIR HUGGINS asked who the architect of that thought process was.

DEPUTY COMMISSIONER RUTHERFORD believed it was part of the discussion about how they could encourage participants in the AGIA process to take on the risks of moving a project forward and how they could be assured the state would not move away from them at some point after they had made a significant investment. It was a way to encourage participation in the RFP or RFA.

CHAIR HUGGINS asked if those discussions were staffed with any pipeline company representatives.

DEPUTY COMMISSIONER RUTHERFORD answered "No sir."

[5:19:21 PM](#)

SENATOR STEDMAN asked if Ms. Rutherford could walk them through the process of the 50 percent match and how it evolved, as well as the reimbursement if the licensee passes a successful open season.

[5:20:12 PM](#)

DEPUTY COMMISSIONER RUTHERFORD reiterated that the 50 percent was to encourage participants to come in during the early stages of the project, when there are a great many unknowns and the highest risk. The state recognized that it was asking potential applicants under AGIA to accept the responsibilities associated with the "must haves," including the debt-to-equity ratio, open season commitments, expansion commitments, and other things that would be a burden; so the \$500 million was intended to be a commitment by the state of Alaska to participate in that highly risky period of time and to encourage applicants to make the commitment to move the project, not only to an open season, but beyond toward certification. In doing so, there would be a great

deal of valuable information gleaned through the field work and the regulatory process; so even if the project never reached fruition, at least the state would have that information to help move the project forward with someone else.

[5:21:42 PM](#)

SENATOR STEDMAN asked why they should provide reimbursement beyond a successful open season when the midstream risk is diminished.

DEPUTY COMMISSIONER RUTHERFORD replied they want to ensure the project actually does get a certificate and that they will have the information available as things progress. They also want to show a commitment by the state of Alaska in this project. The \$500 million is an investment that is of benefit to the state for multiple reasons; it is buying commercial terms such as: low debt-to-equity structure; open access pipeline in terms of regular solicitation of new gas; regular open seasons every 2 years; and the commitment that the \$500 million will not be built into the rate structure. So over the 25 year life of this project, the state will get a reduction in the tariff that will not only return the original \$500 million but \$2 million more. In addition, those open season elements that are part of the "must haves" will ensure that the other players have a fair, open playing field so they can make investments and, if they find new gas, can get it to market.

SENATOR STEDMAN said when they worked through the AGIA process, they thought there would be a lot of participation and several successful applicants. It turned out there was only 1 and some of the legislators would not consider that a very competitive selection process.

[5:24:58 PM](#)

What happened, he asked, between the time they put AGIA together and today?

DEPUTY COMMISSIONER RUTHERFORD stressed that it was a competition. None of the applicants knew how many others would be participating in that competition, therefore they had to make their proposal the best they could find corporate approval to offer. They heard from a couple of other players that there was consideration by companies such as BG [BG Group plc] and MidAmerican in the participation. MidAmerican felt there was too much insecurity in the state of Alaska right now for them to participate.

CHAIR HUGGINS asked her to expand on why MidAmerican pulled out.

DEPUTY COMMISSIONER RUTHERFORD said they indicated there was political uncertainty.

SENATOR DYSON interjected "Specifically the corruption stuff going on here."

CHAIR HUGGINS agreed that there were investigations going on through the state.

DEPUTY COMMISSIONER RUTHERFORD continued that BG indicated they had lost the pipeline partner with whom they were putting together a proposal. They also felt that getting an export license approved in Washington DC, given this political environment and the energy situation, was going to be very difficult. Finally, they weren't at the point, as a producer, that they had identified proven reserves of gas. So it was that combination of factors that drove them away from the competition.

None the less, when applications were put together by various parties, they did not know who else would be participating in that competition; so she believed they got the best offers the various companies did submit.

[5:27:33 PM](#)

SENATOR STEDMAN asked if Alaska wouldn't have been better off just to negotiate with TransCanada.

DEPUTY COMMISSIONER RUTHERFORD believed it was completely appropriate for the state to identify what it requires in order to move this gasline project forward. To a large degree, that is what AGIA does, it establishes the foundation under which Alaska is willing to participate by value transfers; and the upstream inducements under AGIA are value transfers.

The legislature made a commitment not to change the fiscal regime for 10 years from first gas. There are commitments on royalties, Alaska's ability to switch in-kind to in-value and the reverse, and how they value the royalties. That is a value exchange to the upstream participants in this project. The midstream requirements, the "must haves" establish the foundation by which the state of Alaska is willing to transfer value from their side of the pie to someone else's by providing protections on the debt-to-equity ratio, the solicitation of new gas, and the expansion of the pipeline. Those are all incredibly

important for Alaska's long-term economic interests. They are the elements that will ensure viable exploration and development activity on the North Slope and that Alaskans have long-term upstream jobs.

[5:30:42 PM](#)

SENATOR MCGUIRE advised Deputy Commissioner Rutherford that constituent emails made it very clear that many people are skeptical about AGIA for a lot of reasons. Among them are concerns that there is only 1 player and that there will be a transfer of control over Alaska's sovereignty and resources. The biggest however, is what it will look like after an award of this exclusive license. She asked Ms. Rutherford to describe what practical things will occur in her department and elsewhere and to explain what will happen if they get to an open season in 2 years and don't get the FT's [firm transportation commitments] that are needed.

[5:32:57 PM](#)

DEPUTY COMMISSIONER RUTHERFORD responded that, as Commissioner Galvin indicated multiple times, they expect to begin discussions with the producers. Under the Denali Project, the producers indicated they were only willing to move to open season with additional state concessions and AGIA provides the vehicle for some concessions.

[5:33:40 PM](#)

CHAIR HUGGINS assumed that will be the producers' position no matter what the project; they will want some fiscal certainty. He asked if that is correct.

[5:34:09 PM](#)

DEPUTY COMMISSIONER RUTHERFORD said yes, the producers indicated they will want that and AGIA does have some upstream fiscal certainty both on royalties and the tax side; so they see AGIA as the appropriate vehicle for moving the project forward. In fact, it is the appropriate vehicle because they have some inducements, some value, and the fiscal terms that protect the state's interests. As Commissioner Galvin indicated, they expect that the producer companies will want to discuss something further, as was the case during the Stranded Gas Development Act negotiations, and they want to be able to fully vet those. During the previous 9 months of evaluation, they learned a great deal about the economics of this project and where the risks lie; one of the things they learned is that this is a very viable project under most scenarios.

[5:36:21 PM](#)

SENATOR MCGUIRE asked Commissioner Galvin again whether he had been a party to any other processes in this administration, that attempted to engage all of the parties.

DEPUTY COMMISSIONER RUTHERFORD answered that there had been no efforts to sit down and mediate; but prior to the introduction of AGIA they did reach out to the various companies and ask them what the state might provide in terms of inducements to encourage their participation. The producers did not display a lot of interest in that dialog. They weren't comfortable with the AGIA process from the beginning; but the administration did try to embed AGIA with those elements they thought were reasonable.

[5:38:01 PM](#)

SENATOR MCGUIRE said she doesn't mean pitching AGIA, she means what efforts were made prior to that time besides asking them to be part of AGIA. What efforts were made to bring together the people who are needed to get a gasline built?

DEPUTY COMMISSIONER RUTHERFORD responded that, having sat through 2 ½ years of negotiations that didn't result in any timeline to move the project forward, any commercial structure that would keep the tariff low, or any commitment to expand the pipeline when new gas was available, she doesn't think there is anything else they could have done to create a different proposal than what was floated under stranded gas. "If you continue to do the same thing the same way and expect a different outcome, it's the definition of insanity" she said, so they decided not to try that again. It was clear that Alaskans and the legislature did not support that proposal; so it was time to change the dynamic and AGIA was the outcome.

[5:40:15 PM](#)

SENATOR MCGUIRE said the one other place she gets nervous about is that there are a lot of "must haves" on the front end about getting gas into the line, tariffs, etc. But there are very few on the back end where the construction has to begin. Specifically, Alaska is pretty low on TransCanada's project schedule. Mackenzie Delta is high on their priority list, then there is Keystone and other things. She asked what they can do to assure her that this project doesn't get stacked up and locked into a timeline that does not coincide with the state's.

[5:42:21 PM](#)

DEPUTY COMMISSIONER RUTHERFORD said AGIA required the applicants to provide a specific timeline for an open season, FERC certification and the beginning of construction (assuming a successful open season). That is why they need a significant amount of money, to ensure a successful open season. They are totally committed to having a successful open season by 2018 and she believes TransCanada is also committed to that. She recognized that the appropriation request for the first year is high; but if the producers are motivated, the administration wants to be able to quickly analyze their requests, discuss them with the legislature and move the project forward, because open season is the key.

[5:44:14 PM](#)

SENATOR MCGUIRE wanted her assurance as Deputy Commissioner of the Department of Natural Resources, that when there are competing projects that could exceed the 500 mcf, DNR will uphold its obligation to process those applications and do what is in the state's best interests.

DEPUTY COMMISSIONER RUTHERFORD assured her and the committee that the department is committed to the laws of Alaska and will facilitate any project to the best of their ability within the law.

[5:46:12 PM](#)

SENATOR GREEN asked if, were they to have the opportunity to start writing AGIA over, it would contain different provisions.

DEPUTY COMMISSIONER RUTHERFORD said there are small changes that could be made, but she thinks AGIA is a good product and will create a project.

SENATOR GREEN referred to Deputy Commissioner Rutherford's comment about how hard she had worked on this for the last 2 ½ years, and noted that takes her back to the Murkowski administration. She asked if Ms. Rutherford remained committed to the attempts to create a contract under the Stranded Gas Development Act throughout that process.

DEPUTY COMMISSIONER RUTHERFORD answered that she remained committed to getting a deal under Stranded Gas Development Act that was good for the state. She was uncomfortable with some elements being negotiated under the Stranded Gas Act which she felt were outside the law, outside what the legislature had directed them to pursue. For example, they had been instructed not to include royalties, but royalties were in there. They were

not to look to other areas where they had begun negotiations and she was uncomfortable with that; and she was uncomfortable with the level of risk the state was being asked to undertake. But she was absolutely invested and committed to the state's interests in trying to move this project forward.

[5:49:01 PM](#)

SENATOR GREEN commented that she was not in on the project to the end.

DEPUTY COMMISSIONER RUTHERFORD said she left November 1, 2005.

SENATOR GREEN asked Ms. Rutherford to review her work history and employment for the last 10 years or so.

[5:49:42 PM](#)

DEPUTY COMMISSIONER RUTHERFORD acquiesced. She said she worked for DNR from about 1990-2003. In 2003 she resigned and became a partner at Jade North with John Shively and Patty Belowski for 10 or 11 months. She decided she did not want to work in the private sector, so she sold out and rejoined DNR under Tom Irwin. In November 2005 however, when Tom Irwin was asked to resign, she went to work for the Mental Health Trust Authority. She took a leave of absence from there on December 7th of Governor Palin's term and then left the Trust Authority permanently in March to return to DNR.

SENATOR GREEN asked who her clients were while working at Jade North.

DEPUTY COMMISSIONER RUTHERFORD said she worked with Core [Core Oil & Gas Limited]. She did a couple of projects for a small oil and gas company that worked in the Cook Inlet and which had a contract with Foothills Pipelines, and worked with a company doing EIS work for the federal government.

SENATOR GREEN asked if she had any direct dealings with TransCanada or if it was only through Foothills.

DEPUTY COMMISSIONER RUTHERFORD said she worked on two different projects with Foothills as a partner with Jade North, which had a standing contract with Foothills.

[5:52:18 PM](#)

SENATOR DYSON said he and Senator McGuire probably pay more attention to what goes on in Canada than their colleagues do and it has always been his view that building a pipeline across

Canada without a major Canadian partner is problematic. He thought just about everyone, including the producers, agreed. During the stranded gas negotiations, he asked Frank Clark and Governor Murkowski on several occasions if they understood and agreed with that. Mr. Clark kept assuring him that the Stranded Gas Act was designed to push the producers into finding a partner on the Canadian side, but it never happened. It bothered him because he never saw the "hooks" in the Stranded Gas Act that added any incentives to do that. Mark Meyers said Alaska needs a general law to facilitate bringing the parties together and that the AGIA process would encourage a "marriage of convenience" because an independent pipeline company that has the right-of-way permits and the surplus capacity going east from the hub is a huge asset. He felt what they had done was to change the paradigm from one that was led by the producers and didn't work, to the opposite, one that has produced an independent company that happens to be Canadian. He added that the economics are compelling enough to force the two to get together.

He also pointed out that, with regard to the order of TransCanada's projects, at least one of them was already under contract so it was logical to go forward with the expansion of that. He believed Mr. Palmer would say that Hal's remarks weren't about what the company's priorities are, but about the logical progression of work. He had expected the Mackenzie Valley project would be in place already and said he thought they'd received a letter from TransCanada about the matter but couldn't locate it at that moment.

[5:56:32 PM](#)

SENATOR MCGUIRE asked if they would have an opportunity to speak with Mr. Palmer.

CHAIR HUGGINS said he would be coming forward after Deputy Commissioner Rutherford. He asked Senator Dyson if he could find the TransCanada letter he referred to before Mr. Palmer comes forward.

[5:54:40 PM](#) Senator Bunde joined the meeting.

[5:57:07 PM](#)

SENATOR STEDMAN said when they went through this process, there was a document that came out in the Resources Committee that used the "insanity quote" and asked the deputy commissioner if she was the author of that quote. He thought it was a little over the top to say the least.

DEPUTY COMMISSIONER RUTHERFORD said it is something she is in the habit of saying but that she did not embed that comment in the letter. As head of the gasline team, she apologized for it, as she felt the quote was inappropriate in that context.

SENATOR STEDMAN asked if she knew who the author was.

DEPUTY COMMISSIONER RUTHERFORD said she did not.

SENATOR STEDMAN asked if she was curious enough to ask.

DEPUTY COMMISSIONER RUTHERFORD said things were moving very quickly at that time and sometimes escaped without adequate review. She agreed that she could go back and see if anyone remembers who did that.

SENATOR STEDMAN said he would appreciate it if she would get that information back to the committee.

5:58:50 PM

CHAIR HUGGINS set up a scenario for the deputy commissioner's consideration and comment. It assumes that TransCanada has the license; Stedman Pipeline has expanded to Stedman-Thomas Pipeline and bought out Denali. They have financing and had a successful open season in which Conoco Phillips, BP and Exxon committed gas. He wanted to know how she would see things playing out between Stedman-Thomas Pipeline and TransCanada.

DEPUTY COMMISSIONER RUTHERFORD said she was on record as having said that should an alternative project, it is free to do so without any state inducements. If they want to avail themselves of the AGIA inducements without triggering treble damages, they would have to become partners with TransCanada.

CHAIR HUGGINS asked what happens if the project is running a parallel course to the TransCanada project.

DEPUTY COMMISSIONER RUTHERFORD said if the alternative project moved forward, got to an open season and received gas, moved on to all of the field, regulatory, engineering design and commercial work necessary to get a FERC certificate and was not asking for anything from the state, it would be like any other project. It would be going through the normal processes and every applicable agency would be working to facilitate it as they would any project. The only problem would be if they wanted inducements from the state.

6:02:09 PM

CHAIR HUGGINS asked her to help him out with the disposition of the status of their partners, TransCanada, in this scenario.

DEPUTY COMMISSIONER RUTHERFORD said she thinks TransCanada understands that if another project decides to proceed on its own without any state inducements, it is absolutely free to do so. TransCanada, if it becomes the AGIA licensee, understands that is a risk they've accepted. She assumes TransCanada would just meet the other project at the border; they've indicate that's their fall-back alternative all along.

CHAIR HUGGINS wondered if there was any timeline on the termination of our relationship with TransCanada in that case.

DEPUTY COMMISSIONER RUTHERFORD said she could not speak to that, but it would probably become fairly obvious to both parties at the time they had in-service, or even at construction, if an alternative project proceeded without inducements.

CHAIR HUGGINS clarified that he was concerned about how long the state would continue to grind through that \$500 million if another project appeared to be proceeding along a successful timeline.

DEPUTY COMMISSIONER RUTHERFORD explained that part of the state's assurance under the AGIA license is a commitment for this project to proceed to [FERC] certification, even through an unsuccessful open season. If that stimulates an alternative project to proceed alongside it, that isn't a bad thing; but she doubts that will occur.

6:04:37 PM

DEPUTY COMMISSIONER RUTHERFORD admitted that she failed to talk about AGIA's 43.90.240 abandonment of the project. The state and the licensee can mutually agree to abandon the AGIA license, but there is no time-line embedded in that section.

CHAIR HUGGINS reiterated that his concern regarding the timeline is how long the state continues to spend that \$500 million, because at some point they need to cut their losses. He said he'd like to build some schools with that \$500 million, if it's available.

DEPUTY COMMISSIONER RUTHERFORD reiterated that the \$500 million is a commitment to work through this project. If the state said

it was not going to proceed after a failed open season, then she assured him there would be a failed open season. So this is a commitment on the state in exchange for commercial values and to move the project to the [FERC] certificate. There is risk on both sides; but she believed the state would end up with a project that progresses in unison.

[6:06:03 PM](#)

SENATOR DYSON said that he found the letter that turned out to be a reaffirmation of TransCanada's commitment to meet the timelines.

[6:06:51 PM](#)

CHAIR HUGGINS asked if there were any further questions for Deputy Commissioner Rutherford. Seeing that there were none, he called a brief at ease.

CHAIR HUGGINS called the meeting back to order at [7:43:04 PM](#).

[7:43:11 PM](#)

TONY PALMER, Vice President of Alaska Development for TransCanada, Calgary, Alberta, Canada, introduced himself.

CHAIR HUGGINS asked him to give TransCanada's take on some figures in a report he had provided to Mr. Palmer, which was prepared by the National Bank of Canada, and alluded to how much gas was owed to Canada based on certain scenarios.

MR. PALMER said he had the opportunity to see the report for the first time during the supper break. It is a document produced by a former stock analyst for National Bank Financial. There is a 1 page cover note dated November 2002 that refers to a 10 page study that someone, in a hand written note, indicated was a 2001 report. He offered to put some of this in context for the members. Reading from the third paragraph of the cover note, the writer stated that:

The contents of the memorandum, unless indicated otherwise, reflect solely the results of our study and at times our provocative interpretation of certain issues. This may challenge mainstream thinking and if, and to the extent it does, we view our underlying objective of stimulating thought and discussion as met.

He went on to say that the writer does, in fact, have some very provocative views. He reminded them that this was written almost

six years ago and directed their attention to page 4, where the writer recommends that if Alaska moves gas through a pipeline, he favors the Northern, submarine route from the North Slope to the Delta and thence along the Mackenzie Valley. In fact he gives some other alternatives including gas by wire, conversion of gas to electricity in the arctic and transmission to markets; gas to liquids conversion; gas by liquifaction, or LNG and shipment by ice-strengthened tankers to markets in the Atlantic Basin and the Pacific Rim; and lastly and most controversial, is a gas by seafood/meat, "conversion of gas through fermentation into a product consisting of 70.6 percent protein for fish farming in southern Alaska and elsewhere, meat and poultry industries and probably human consumption."

CHAIR HUGGINS interrupted to ask if it was a Canadian or an Alaskan who did this study.

MR. PALMER answered that this gentleman is a Canadian. He continued, "This product generates by far the highest value added for arctic gas." So converting by seafood and meat into fish farms seems to be his recommendation. Speaking to the specific issue that Senator Huggins asked him to respond to, Mr. Palmer said the writer does make reference to what he calls "the nasty little secret," which he refers to as the understanding between the USA and Canada, that in return for "gas exported through the pre-build facilities of the (never-completed) Alaska Natural Gas Transportation System (ANGST) prior to its completion," the USA would repay Canada with Alaskan gas, once an Alaskan gas pipeline (AGP) is completed. The writer goes on to say more than 12 tcf of Canadian gas has been exported, hence the US may wish to avoid building an Alaska Gas Pipeline "lest the 'nasty little secret' be awakened from its slumber."

MR. PALMER asked what Chair Huggins would like him to comment on.

CHAIR HUGGINS asked if Alaskans should be concerned by any scenario that might come to light in which Alaskan gas is obligated to Canada. He added that document was given to him by a participant earlier in the week.

[7:48:21 PM](#)

MR. PALMER said there is nothing in the treaty between Canada and the United States that relates to this. He stressed that even if that were the case, Canada does not need Alaska's gas; Canada is exporting more than 50 percent of its production of gas. Western Canada produces approximately 16 bcf/day of gas and

exports 9 bcf/day to the Lower 48. When this Alaska gas project is projected to be in place, it is expected that Canada will continue to have a surplus of 6 to 7 bcf/day. He affirmed that Alaskan gas, if delivered at that time, will reduce the transportation costs for Western Canadian producers; but Canada does not need Alaskan gas. They don't need it for the oil sands; they don't need it for electric generation; and they don't need it for residential, commercial or industrial use.

CHAIR HUGGINS said when he was down in the oil sands, he heard an expectation that there would be a growing demand for a source of energy to make the tar sands work, and one thing that was discussed was Alaska's natural gas. He also read in newspapers in and about Alberta that exploration and development was decreasing because of the commerciality of natural gas as opposed to the tar sands.

[7:51:34 PM](#)

MR. PALMER agreed that there is expected to be a significant demand increase in Western Canada for natural gas and that Western Canadian supply will be relatively flat. But that growing demand in the oil sands is expected to be in the area of 2 bcf/day in the next decade, which means there will still be a surplus of 6 to 7 bcf/day of Western Canadian gas to be exported to the Lower 48 market.

[7:52:28 PM](#)

SENATOR DYSON was intrigued by the idea that the Canadian government could somehow commandeer our gas. He said that, as he understands it, the shippers will put their gas into a pipeline and it will be delivered to a market they have determined; TransCanada is no different from a railroad that someone ships freight on. He asked Mr. Palmer under what circumstances either commercial interests or the government of Canada could commandeer Alaska gas.

[7:53:14 PM](#)

MR. PALMER responded that Canada and the United States have a treaty Canada and the United States that protects gas in transit from one country through the other and back into the originating country. That protection will be afforded to Alaskan gas. TransCanada, if granted this license and if they construct this project, will not own the gas or direct it; they will be exactly like a railway, moving gas to where their customers indicate it should go. So, he said, he was not aware of any way in which the government of Canada could commandeer Alaska's gas.

SENATOR DYSON said he assumed the shippers would have a long-term contract.

7:54:45 PM

MR. PALMER corrected that most gas is now sold into the short-term market. Shippers can still enter into a long-term commitment, but often choose not to do so. They generally sell their gas into a liquid hub or into a city gate and do not have a long-term market.

7:55:22 PM

CHAIR HUGGINS thanked him and apologized if he was offended by his bringing up the document discussed earlier; but maintained that, if the questions are raised they should be asked.

MR. PALMER insisted that he took no offense.

SENATOR MCGUIRE referred to conversations about the importance of the Mackenzie line and said she would like an explanation in layman's terms of how this would all "marry up" in time because, as Senator Dyson said earlier, the expectation was that the MacKenzie line would have already been built. She asked how the reality will play out when there are two projects that require steel, manpower and TransCanada's attention as a company.

7:57:24 PM

MR. PALMER noted that TransCanada has a modest role (3 to 5 percent) in the Mackenzie project, which is led by an Exxon subsidiary called Imperial Oil, and includes Shell and Conoco Phillips. There is also a partnership called the Aboriginal Pipeline Group that has the opportunity to take a significant position in the project and TransCanada is funding that. He said that project is still in the regulatory process and has been for more than four years. They expect to get a decision next year. If that occurs and if the sponsors have reached a resolution with the government of Canada on fiscal terms, they believe it can be completed (in service) by 2014 to 2015. The schedule TransCanada has put forward projects that, if they are granted this license, they will move forward [with the Alaska pipeline] and be in service by 2018, assuming they are successful in getting regulatory approval and attracting customers. They believe that if those projects remain 2 to 4 years apart for in-service, that will be optimum for both in terms of staging labor and materials. If they start to overlap, that could be problematic for both projects.

The government of Canada has stated publicly many times that they would prefer to have Mackenzie gas finished first; however, they have also committed in a treaty with the government of the United States to expedite this project, and that treaty remains in place. That assumes that the project is built by TransCanada; Foothills is the named Canadian sponsor under that treaty. So it appears that if Mackenzie works its way through the regulatory process as expected, they should move ahead without conflict. If MacKenzie is delayed, this project may experience some higher costs. If this project is approved by the legislature and has a successful open season, it will be in construction by 2015 and in production by 2018.

[8:02:18 PM](#)

SENATOR MCGUIRE questioned what TransCanada's position will be if there is a delay and the project schedules bump into each other.

MR. PALMER answered that their obligation would be clear. If TransCanada has this license, is successful with the regulatory process on this project and can attract customers, they have an obligation to this project. He stressed that they want to see this project completed. He admitted that they also thought the Mackenzie project would be completed by this time. He pointed out that when TC originally started working on this project, they thought it would be in service by 2008, but it too was delayed. "We have no control over the regulatory process" he said.

[8:05:16 PM](#)

SENATOR MCGUIRE ventured, "So this project goes through a special office, not the NEB; and you are saying that if everything works as it is supposed to, you will continue to operate in the logical economic manner to complete this project regardless of political pressures."

MR. PALMER advised that the project has to be economic, from a customer standpoint and everyone else's. If it is, they will be highly motivated to complete it.

[8:08:09 PM](#)

SENATOR THOMAS asked if, with the concern to open the continental shelf and ANWR, there is a possibility of MacKenzie going by an "over the top" route.

MR. PALMER said TransCanada was one of the original 30 companies involved in the Arctic gas project, which did not receive

regulatory approval. TransCanada has not looked at that alternative in at least seven years; but they did look at the potential savings of going off-shore and determined that the savings as opposed to going down the highway were too minimal to offset the additional risks. There were also environmental, political and other issues.

[8:12:25 PM](#)

CHAIR HUGGINS asked again whether TransCanada was prepared to indemnify the state of Alaska regarding the withdrawn partners.

MR. PALMER said that issue has been addressed by a number of parties; TransCanada has, through its commitment not to attempt to recover damages, has already indemnified the state of Alaska for the roles it intends to play. With regard to the debate by some parties that somehow FERC would grant the inclusion without TransCanada having requested it, he said he has never seen that occur in his 23 years in front of the National Energy Board. Furthermore, he does not believe the FERC would grant it even if they did seek it.

CHAIR HUGGINS persisted that his question remains if TransCanada will indemnify the state.

MR. PALMER responded "Senator Huggins, if the state is requesting from TransCanada a blanket indemnification for any possible outcome that one can imagine, that is not something that any corporation will take on lightly." He insisted that TransCanada has been responsive to the roles it thinks the state will have and, in the event that the state chooses to become an equity partner in the future, it will deal with the state of Alaska on that issue as it would any potential equity partner; but that is a very different thing from granting the state of Alaska a blanket indemnity for any possible outcome.

CHAIR HUGGINS pointed out that he did not say "blanket." He asked if they would provide a qualified indemnification.

MR. PALMER returned "With regard to what?"

[8:16:00 PM](#)

CHAIR HUGGINS responded that the letters from withdrawn partners were not comforting; they were unwilling to waive any future rights.

MR. PALMER repeated that the license contains TransCanada's responses to this issue. Their responses are clear; they have agreed not to seek to include any damages in the rates.

CHAIR HUGGINS challenged "If you think we're already indemnified, will you formalize that in an indemnification process that is legal and binding for you and for us?"

MR. PALMER insisted that it is already legal and binding on them; TransCanada has already indicated clearly and repeatedly it will not seek to recover this in the rates.

[8:17:46 PM](#)

SENATOR GREEN asked Chair Huggins if he recalled the FERC representatives saying in a previous meeting that, if there were an adverse court decision regarding withdrawn partners, FERC would consider adding it into the rate.

CHAIR HUGGINS said that is how he remembers it.

[8:19:05 PM](#)

SENATOR GREEN questioned whether, if the state established a partnership with TransCanada, the plaintiffs in any litigation with TransCanada could go to the deep pockets of the state to settle its claim.

[8:19:45 PM](#)

MR. PALMER asked Senator Green to define "partners."

SENATOR GREEN could not do so.

MR. PALMER said he couldn't give a legal opinion, but the state's legal advisors did not feel there was any risk to the state in their current status. He pointed out that if the state became an equity partner at some time, those new agreements might include indemnification.

He reiterated that the regulatory body cannot add any damages into the rates if a pipeline does not seek to pass them on to the shippers and TransCanada agreed not to seek to recover those damages should any occur.

[8:23:15 PM](#)

SENATOR GREEN said the issue, as she understood it when they talked to the FERC, was that if a former partner prevailed [against TransCanada] in a litigation and there was an amount

owing, they could request a rate adjustment in order to pay damages or for the liability.

MR. PALMER declined to comment on that because he was not at the meeting she referred to, but stated that in 23 years of his personal experience, the regulatory body has never added anything into the rate without a request by the pipeline.

[8:25:08 PM](#)

CHAIR HUGGINS announced a brief at ease.

CHAIR HUGGINS called the meeting back to order at [8:30:25 PM](#).

MR. PALMER said he wanted to be clear that he was not misunderstanding Senator Green's question. She said the FERC said if a request came before them, they would consider it; and he was trying to express that the only way it would come before the FERC is if TransCanada sought that recovery, which they would not do. In the event that it did, it was his belief the FERC would not grant it; but clearly TransCanada would not put it before the FERC.

[8:31:21 PM](#)

SENATOR GREEN admitted this is uncharted ground. She said what they discussed was, if there were litigation and the plaintiff won, and the FERC had said that the rate increase would be paid by TransCanada and reimbursed to the litigant.... It was an interesting conversation, she said, and she wished all of it was on the record. It did give her some insight into the workings of FERC. She had thought it was very rigid; but the FERC representatives explained that theirs is a process of deliberation and choices.

MR. PALMER assured Senator Green that, in the event the scenario she painted turned out to be accurate, that there was successful litigation resulting in a liability to TransCanada, the state has their commitment in the license that they will not seek to recover it in the rates.

[8:33:47 PM](#)

CHAIR HUGGINS asked Mr. Palmer if he had said there is a single regulatory agency in Canada.

MR. PALMER amended that Canada has a "single window regulatory agency".

CHAIR HUGGINS asked him to explain that.

MR. PALMER clarified that all regulatory matters for this project will go through a single agency rather than making it negotiate with all the various regulatory offices individually.

[8:34:57 PM](#)

CHAIR HUGGINS asked how many people are in that single window agency.

MR. PALMER said there are two at this time, but hundreds would be seconded to the agency to handle this process when needed.

CHAIR HUGGINS wondered if Mr. Palmer could comment on the fact that the Canadian Government had not made anyone available to speak with the legislature thus far.

[8:36:29 PM](#)

MR. PALMER countered that he could not speak to what the Canadian Government would or would not do.

[8:37:48 PM](#)

CHAIR HUGGINS pressed that he was disappointed, given that there is a treaty, that they haven't been able to have a conversation about process.

MR. PALMER said he does not profess to be an expert in these matters, but he is not aware that Canadian government officials appear in front of other legislative bodies from other governments. At least, he has not seen them appear before other legislative bodies in other countries.

CHAIR HUGGINS asked when he would anticipate that the interface between Alaska and the Canadian Government would start to mature.

MR. PALMER said he understands that the Canadian regulators have been meeting with Drue Pearce, the Federal Coordinator for this project, but he was not privy to the subject of those discussions. He could only say there have been discussions between the two governments.

[8:39:07 PM](#)

SENATOR MCGUIRE said she tried to mediate this matter last week and could only say that, for this to be successful there needs to be a concerted effort to facilitate direct communication between the government of Canada and the State of Alaska. The federal government doesn't always represent what Alaska thinks;

and this is Alaska's project. The respect that people show each other in terms of willingness to participate is really important and, if this is ever to be successful, that has to improve.

8:41:09 PM

MR. PALMER said he understands and appreciates Senator McGuire's feelings. TransCanada has always tried to be respectful of Alaska's process and if the project moves forward, they will certainly express Alaska's views to the Canadian Government.

8:42:11 PM

SENATOR DYSON said he has met with representatives of the Canadian Government and received a very positive response on this matter. He did not see any lack of cooperation, respect, or enthusiasm on their parts and expects that if Alaska had sent a delegation to meet with them, they would have received an equally positive reception.

8:43:51 PM

SENATOR MCGUIRE said she was disappointed last week because she has had such positive interactions with the Canadian government in the past that she hoped to be able to bring the parties together.

8:45:31 PM

CHAIR HUGGINS called a brief at ease.

8:46:18 PM

CHAIR HUGGINS called the meeting back to order and announced that HB 3001 was before the committee.

SENATOR STEDMAN moved to bring HB 3001 (efd fld) before the committee. There being no objection, the motion carried.

CHAIR HUGGINS stated that he would entertain amendments at this time. Copies were passed out to the committee members.

8:47:01 PM

SENATOR MCGUIRE moved to adopt Amendment 1.

25-GH3055\AA.8  
Chenoweth/Bullock

**AMENDMENT 1**

OFFERED IN THE SENATE  
TO: HB 3001(efd fld)

Page 1, following line 10:  
Insert a new bill section to read:

"\* Sec. 2. The uncodified law of the State of Alaska is amended by adding a new section to read:  
CONTINGENT EFFECT OF LICENSE APPROVAL: INDEMNIFICATION FOR LIABILITIES TO WITHDRAWN PARTNERS. (a) The provisions of sec. 1 of this Act are contingent on the commissioner of revenue and the commissioner of natural resources obtaining from the licensee the licensee's written agreement that the state will 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) To implement this section, 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 the state if the state acquires an ownership interest in the project; and
  - (E) other effects on revenue to the state identified by the commissioner of revenue; 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) Unless the parties otherwise agree, an agreement entered into under this section may provide that 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 to be provided 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) 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."

SENATOR ELTON objected.

SENATOR MCGUIRE spoke to Amendment 1, saying it would put in place a clarification that the state of Alaska is indemnified for the liabilities that may be outstanding on the part of TransCanada or TC Alaska to its withdrawn partners. She was unfamiliar with this method of contracting, wherein a statute, a request for information and a license application form what is to be the legally binding document, and said she would be more comfortable if it was made very clear in Alaska law. As for the statement that amending this [bill] would negate the process, she cautioned the body against such a pattern if it were to continue. That said, she continued, this would make it a contingent effect of license approval, which is completely within their power.

[8:53:36 PM](#)

She insisted that adding this condition is distinct and different from amending AGIA, which could perhaps trigger a due process challenge. She added that, even in that case, a due process challenge would only be brought if TC Alaska decided that it was not its intent to indemnify the state; and everything she had heard so far indicated that they would not bring that claim.

SENATOR MCGUIRE read the following legal precedent into the record. (From Cooley Treatise on Statutory Limitations, First Edition.)

But it is not always essential that a legislative act should be a completed statute which must, in any event, take effect as law at the time it leaves the hands of the legislative department. A statute may be conditional, and its taking effect may be made to depend upon some subsequent event.

The effective date put into Alaska's laws does have meaning; it triggers the operational effect of the law. A statute may be conditional and it may be made to be conditional upon a subsequent event. In this case, the subsequent event would be a grant of indemnification to the state of Alaska for the withdrawn partner liability.

She read the following additional legal passages from case law in the Ninth Circuit Court: "It may be the case that a statute is not operative as law until the date at which it takes effect..." and "The taking effect of an enacted statute may be made contingent on the occurrence of one or more stated conditions. In that event, the statute does not become effective until the condition or conditions have been fulfilled."

From Singer/Sutherland Statutes and Statutory Construction: "A statute may take effect upon the happening of a contingency such as a passage of a law in another jurisdiction, a vote of the people, or the passage of a constitutional amendment."

[8:56:55 PM](#)

Finally, she stated that the argument used to support the amendment is that the legislature's agreement to award the license to the prospective licensee takes effect on the effective date of the section giving approval; but the active operation of that legal provision becomes complete only if the

contingency or contingencies identified in this amendment are satisfied.

SENATOR MCGUIRE said this amendment is meant to protect the people of the state of Alaska from what she believes has already been agreed to. Should TransCanada and the state of Alaska decide to enter into an equity agreement, this can be revisited.

SENATOR ELTON voiced several reasons for his objection. First, he noted that this is a very unusual approach to partnerships. The relationship Alaska has with explorers who are drilling on leases could be construed as a partnership because Alaska is paying 20 percent of the exploration costs; but the explorers have never been required to provide an indemnity agreement to protect the state from former or current partners.

[8:59:52 PM](#)

Second, he was nervous about the language on page 2, which seems willing to concede that the state's liability exposure is extremely broad. It suggests that the liability exposure even covers construction delay costs. He was not willing to concede that at the table or in law; and he was certainly not willing for the legislature to suggest to any potential partner, including TransCanada, that things like construction cost delays could be part of an action.

SENATOR ELTON was particularly uncomfortable with the idea of passing this amendment without more consideration. The bill itself had, over the course of several months, been examined and discussed in minute detail; this amendment would dramatically expand the bill without that kind of careful deliberation. He did not intend to imply that it was a bad idea; but suggested that they would be acting hastily to pass it without even an evening to consider the implications. In fact, he said, he would prefer that it be offered on the floor, giving committee members 2 days to review it before being asked to vote.

Another concern, he admitted, is that this action would change the terms of the license by adding another threshold question before a license can be issued. That suggests the state is adding another condition that wasn't part of the RFA process and he believed that 2 things could happen that he thought were bad: 1) the potential licensee walks away, or 2) the state gets sued. He would have felt much better had this been part of the public debate process.

[9:05:57 PM](#)

SENATOR WIELECHOWSKI said he would also oppose the motion. He opined that if they ask enough lawyers they'll get different answers as to whether it is a "must have" that changes the RFP; but he thinks there is a danger it could. He referenced page 2, line 11, which requires the Commissioner of Revenue in consultation with the Commissioner of Natural Resources and the Attorney General "to determine the form and amount of indemnification required to be provided by the licensee." He submitted that there is a real danger we put the entire license at stake by approving this. Outside of the legal ramifications, he questioned what kind of signal they would send to the business community by doing this. What kind of signal would this send to future producers and explorers who might want to do business in Alaska?

He pointed out that he has been a lawyer for a number of years and, although he has been "wracking his brain," he could not envision any scenario in which the state could get sued under this license. Fourth, even if there was some potential for liability here, TransCanada had committed that they would not include it in their rates.

[9:08:54 PM](#)

SENATOR GREEN said one of the reasons for bringing an amendment in committee is that the response on the floor is likely to be "If this is so important, why wasn't it offered in committee?" She added that, if anything would make producers, operators and others hesitate to come to the state, it would not be this provision but the PPT they passed last year.

[9:09:31 PM](#)

SENATOR WAGONER said they need to look at why this came before them; it was when one of the major producers talked about withdrawn partner language.

[9:09:57 PM](#)

SENATOR GREEN interrupted that to assign motivation to the giver of an amendment is not appropriate.

CHAIR HUGGINS chided that Senator Wagoner should let the maker of the amendment speak to her motivation.

SENATOR WAGONER returned that he was not referring to the motivation of the maker of the amendment, but about the way this came before them, not tonight, but when they first began talking about withdrawn partners. This same producer, he said, has now entered into a 50/50 partnership on a major construction project

called Keystone with the pipeline company they are talking about. If there's a liability hanging out there, they certainly didn't see it when they entered into a contract with TransCanada to do the other project. So, he felt they should not have to worry about indemnifying the state and he would be voting against the amendment.

[9:11:46 PM](#)

CHAIR HUGGINS insisted that this isn't about other companies that enter into contracts with Keystone; this is about Alaska. If it is so benign and such a low risk, he asked, why not formalize it?

[9:12:24 PM](#)

SENATOR WAGONER admitted he is not an attorney, but is sure the other companies he mentioned do have attorneys. For the legislature to play the part of an attorney and try to indemnify the state against withdrawn partners by passing an amendment with so little time to consider it is not something he can support.

[9:13:12 PM](#)

CHAIR HUGGINS stated that if they want to reconvene the meeting in the morning, they can do that.

[9:13:32 PM](#)

SENATOR ELTON said he would prefer the amendment be offered on the floor two days hence, when they've had time to study it.

[9:13:58 PM](#)

SENATOR GREEN said she is trying to figure out if the analogy to Keystone is even an appropriate one.

[9:14:26 PM](#)

SENATOR WAGONER said he was simply making the point that Keystone's partners would go for deep pockets if they could and TransCanada has deep pockets.

[9:15:01 PM](#)

SENATOR DYSON expressed concern about their process. Senator Elton suggested dealing with this on the floor in two days, he said, but if they are going to pass any amendments, they need to go from second to third and reconsideration on the same day in order to give a conference committee time to work and for both bodies to ratify the product of that conference committee.

[9:16:45 PM](#)

CHAIR HUGGINS called a brief at ease.

[9:17:13 PM](#)

CHAIR HUGGINS called the meeting back to order. He clarified that they've been talking about this subject for the past couple of days and his inclination is not to put off until tomorrow what they can do today. He reminded people that they can repeal amendments and said he hopes they aren't going to make their decisions based on how many pages a bill is. As to the amendment opening the state up to litigation, that's what it is supposed to avoid.

[9:20:17 PM](#)

SENATOR MCGUIRE said she doesn't subscribe to using the process to manipulate the issue; she has been concerned that much of what they are relying on has not been reduced to writing. TransCanada has already said they will not seek to recover any damages, she said, and if that is the agreement already, there is no reason not to formalize it in writing.

She withdrew the amendment, but expressed her hope that those who requested that did so out of a sincere desire to study the issue, not just to find more reasons not to vote for it.

[9:25:26 PM](#)

SENATOR ELTON said he appreciated the discussion and the fact that Senator McGuire agreed to withdraw the amendment at this time. An idea that has merit should be addressed carefully and not in a way that may have unintended repercussions.

[9:27:13 PM](#)

SENATOR OLSON asked Chair Huggins if they'd have outside people give their opinion on what this amendment would do, because they won't have that opportunity on the floor.

[9:28:30 PM](#)

SENATOR MCGUIRE moved to adopt Amendment 2.

CHAIR HUGGINS called an at ease at [9:29:03 PM](#) and called the meeting back to order at [9:30:52 PM](#).

25-GH3055\AA.9  
Chenoweth/Bullock

**AMENDMENT 2**

OFFERED IN THE SENATE

TO: HB 3001(efd fld)

Page 1, line 3, following "Act":

Insert "; and providing for an effective date"

Page 1, following line 10:

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:

CONTINGENT EFFECT OF LICENSE APPROVAL. The provisions of sec. 1 of this Act are contingent on

(1) the written offer of the parties identified jointly as the licensee in sec. 1 of this Act to the parties having control of significant North Slope natural gas reserves that are proposing an alternative natural gas pipeline project to participate in good faith negotiations as described in this paragraph, and, if the offer is accepted, the negotiation in good faith as described in the paragraph; the negotiations shall seek to secure common agreement to eliminate proposals for competing natural gas pipeline projects, as that phrase is defined in AS 43.90.440, for North Slope natural gas reserves; it is material to the state's interest in the negotiations that an agreement between the parties have the result of foregoing the need for issuance of a license under AS 43.90, including the appropriation of licensee reimbursements as authorized by AS 43.90.110(a)(1); to implement this paragraph,

(A) negotiations shall be conducted among

(i) the commissioners of revenue and natural resources or their respective representatives;

(ii) representatives of the parties identified jointly as the licensee in sec. 1 of this Act; and

(iii) representatives of the parties having control of significant North Slope natural gas reserves that are proposing an alternative natural gas pipeline project;

(B) the parties identified in (A) of this paragraph may

(i) include in the negotiations representatives of other entities whose presence may be useful to achieve the outcome described in this paragraph, as these parties may mutually agree; and

(ii) agree to conduct the negotiations with or without use of the services of a mediator, as the parties may themselves determine; if the parties agree to use of the services of a mediator, the mediator shall be a person whose identity is mutually agreeable to the parties; and

(C) negotiations undertaken under this section are not to be considered meetings of a governmental body of a public entity of the state that are subject to the requirements of AS 44.62.310 - 44.62.312; and

(2) the passage of a number of days set out in this paragraph following the condition described in the corresponding subparagraph; when the condition described in this paragraph has been met, the commissioners of natural resources and revenue shall issue the license; under this paragraph, the commissioners may not issue the license before the effective date of sec. 1 of this Act, and

(A) unless subject to the limitation set out in this subparagraph, shall issue the license not sooner than 180 days after the date of final execution of the common agreement among the parties that is substantially as described in (1) of this section; however, if, under the terms of that agreement, the parties consent to forego the need for issuance of a license under AS 43.90, then, notwithstanding any other provision of law, the commissioners may not issue the license; or

(B) shall issue the license not sooner than 45 days after the earlier of the date that

(i) the commissioners advise the governor that one or more of the parties described in (1)(A)(iii) of this section have notified them, or either of them, that the party or parties will not participate in the negotiations described in this section; or

(ii) the parties described in (1)(A)(ii) and (1)(A)(iii) of this section certify to the governor that they have mutually agreed that negotiations to secure the common agreement as described in (1) of this section to eliminate proposals for competing natural gas pipeline projects for North Slope natural gas reserves cannot be obtained.

\* Sec. 3. Section 2 of this Act takes effect immediately under AS 01.10.070(c)."

9:31:35 PM

SENATOR MCGUIRE explained this amendment would delay the effective date of the license until the commissioners of the Department of Natural Resources and the Department of Revenue have attempted to negotiate an agreement between the parties [the North Slope producers and TransCanada] to eliminate competing gas pipeline proposals. She warned that if the state grants an exclusive license and the producers do not bid at open season, it could be a disaster. This amendment allows for a "cooling off" period and more communication between the parties. If they cannot reach an agreement through negotiation, the license will go into effect; so the same hammer that the administration has been talking about is still out there.

Then SENATOR MCGUIRE withdrew Amendment 2.

[9:35:52 PM](#)

CHAIR HUGGINS asked for final questions or comments on Amendment 2 and for any other amendments.

SENATOR STEDMAN moved to report HB 3001 (efd/fld), from committee with individual.

SENATOR GREEN objected.

A roll call vote was taken. Senators Wielechowski, Olson, Thomas, Stevens, Elton, Wagoner, Dyson voted yea; Senators Hoffman, McGuire, Stedman, Green, Huggins voted nay; therefore HB 3001 (efd/fld) passed from committee.

The committee adjourned at [9:39:24 PM](#).