MINUTES
SENATE FINANCE COMMITTEE
May 8, 2007
1:39 p.m.

CALL TO ORDER

Co-Chair Bert Stedman convened the meeting at approximately 1:39:58 PM.

PRESENT

Senator Lyman Hoffman, Co-Chair
Senator Bert Stedman, Co-Chair
Senator Charlie Huggins, Vice Chair
Senator Kim Elton
Senator Joe Thomas
Senator Fred Dyson
Senator Donny Olson

Also Attending: WILLIAM MOGEL, Saul Ewing LLP; PAT GALVIN, Commissioner, Department of Revenue; MARCIA DAVIS, Deputy Commissioner, Department of Revenue; DAVID JONES, Senior Assistant Attorney General, Opinions, Appeals, and Ethics Section, Civil Division, Department of Law;

Attending via Teleconference: From Anchorage: JOYCE ANDERSON, Administrator, Select Committee on Legislative Ethics; From an offnet location: BROOK MILES, Executive Director, Alaska Public Offices Commission, Department of Administration.

SUMMARY INFORMATION

SB 104-NATURAL GAS PIPELINE PROJECT

The Committee heard from a Legislative Budget and Audit Committee consultant and the Department of Revenue. A draft committee substitute was reviewed. The bill was held in Committee.

HB 109- DISCLOSURES & ETHICS/BRIBERY/RETIREMENT

The Committee heard from the Department of Law, the Legislative Select Committee on Ethics and the Alaska Public Offices Commission. Two amendments were adopted and one was withdrawn from consideration. The bill was held in Committee.

#SB104
1:41:18 PM

CS FOR SENATE BILL NO. 104(JUD)
"An Act relating to the Alaska Gasline Inducement Act; establishing the Alaska Gasline Inducement Act matching contribution fund; providing for an Alaska Gasline Inducement Act coordinator; making conforming amendments; and providing for an effective date."

This was the eighteenth hearing for this bill in the Senate Finance Committee.

1:42:10 PM

WILLIAM MOGEL, Saul Ewing LLP, utilized a presentation titled, "FERC's Regulation of Interstate Natural Gas Pipelines" [copy on file]. He relayed his instruction to address how the Federal Energy Regulatory Commission (FERC) process governs interstate natural gas pipelines.

1:43:21 PM

Mr. Mogel "recognized the credibility of saying I'm here from Washington [D.C.]; I've come to help you." He emphasized that the regulation of interstate natural gas pipelines could be "slightly unfamiliar" to several members of the Committee in many respects because it was "significantly different" than the regulation of oil pipelines by the FERC. Most distinctly in that the primary objective of the federal Natural Gas Act of 1938 was to protect consumers. The "Oil Pipeline Act" did not include such statutory obligation.

1:43:36 PM

THE FERC'S REGULATORY REGIME, WHICH IS DESIGNED TO PROTECT CONSUMERS, PROHIBITS AN INTERSTATE NATURAL GAS PIPELINE FROM ACTING IN AN ANTI-COMPETITIVE, DISCRIMINATORY OR PREFERENTIAL MANNER TO ANY SHIPPER.

Mr. Mogel overviewed this statement, clarifying that all shippers, whether or not affiliated with the natural gas pipeline, were subject to this prohibition.

Mr. Mogel indicated his presentation would "follow the various mechanisms" the FERC employed through statute and regulation to ensure open access and non-preferential treatment.

Page 3

QUALIFICATIONS

- 30 years as a FERC practitioner.
- Author/Editor of 17 books on energy law.
- Writings cited as authority by the US Supreme Court.
- Adjunct lecturer at law school on energy law.
- Regulatory practice includes energy projects in foreign countries.

Mr. Mogel explained his ability to write books amidst his other activities was accomplished "one page at a time."

1:44:44 PM

Page 4

CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY

- Unlike oil pipelines, before a natural gas pipeline can commence construction and operation it must first obtain a certificate after making a showing of public benefit.
- FERC can condition the certificate on numerous matters, including when construction must be completed.
- A pipeline cannot expand, terminate or "abandon" service without prior approval of FERC.

Mr. Mogel reviewed this information and qualified that it was not intended to be all inclusive. In considering a project for certification, FERC examined "a multitude of issues", which were

"set forth in extensive detail" in regulation and "a body of case law." A determination of whether the pipeline would have a public benefit included several factors including environmental.

Mr. Mogel defined "condition" as a requirement or requirements that were not "intended by the applicant". A condition that required the project to be completed by a date certain stressed that an applicant could not receive a certificate and "sit on it for a duration of many years and then decide to commence."

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Mr. Mogel informed that an applicant requested a certificate and "all the provisions the applicant thinks is appropriate in terms of rates, terms and service location, design, etc." Upon consideration of the application the FERC had "three choices", which he described as follows.

> They can grant the certificate as sought by the applicant. They can grant the certificate and then condition the certificate, i.e. imposing conditions upon the applicant. If that occurs the applicant is not required to accept the certificate and can challenge the FERC administratively and then in the Court of Appeals. The last alternative, of course, of FERC is they can deny the certificate in its entirety.

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Mr. Mogel spoke to the prohibition on a certificate holder to expand or "abandon" service without prior FERC approval.

Mr. Mogel summarized "the very pervasive, extensive regulatory oversight of interstate gas pipelines prior to construction and during operations."

1:47:38 PM

> Page 5
>
> RATES AND TERMS AND CONDITIONS OF SERVICE
>
> - FERC must approve all rates, rate changes and terms and conditions in a natural gas pipeline's tariff.
> - FERC has authority to investigate existing rates of a natural gas pipeline.

- Rates that are not "just and reasonable" may be rejected and refunds can be ordered.

Mr. Mogel noted that the FERC also had this oversight.

1:48:08 PM

Mr. Mogel reported that under the provisions of the Natural Gas Act, "if a rate goes into effect it goes into effect subject to refund if FERC hasn't acted on the rate and then the FERC can order refunds." In addition to "waiting for the applicant to make rate proposals", he stated that the FERC could investigate current rates on either its initiative, "on motion of certain parties". The refund authority existed in these instances as well.

1:48:42 PM

Page 6

INTERSTATE NATURAL GAS PIPELINES ARE REQUIRED TO BE "OPEN ACCESS"

- Capacity must be allocated on a non-discriminatory basis to affiliated and non-affiliated shippers.
- Rates charged and terms and conditions for capacity must be just and reasonable and may not discriminate or grant a preference to shippers similarly situated.
- Capacity release programs must be non-discriminatory and transparent.

Mr. Mogel reported on a "major step to restructure or deregulate the natural gas industry" that occurred in 1985. This was during the time that the interstate gas pipeline companies "shifted their business model from being merchants, meaning they bought gas at the wellhead, they transported the gas and then resold the gas at a bundled form to consumers without separating out the cost of transportation or the cost of commodity." The interstate gas pipeline companies transitioned from merchants to common carriers. As a result of the change in the business operations, the FERC "had to apply a regulatory tool to ensure that these pipelines essentially operate with all the guarantees of a common carrier."

Mr. Mogel characterized the "hallmark" of a common carrier as "the pipeline - no matter who the owner is and who it's

affiliated with, has to open up the capacity on a not fair, non-discriminatory basis and if there're equal claims for capacity it has to make allocations that are equitable and that cannot give a preference for an affiliated company or for any company and it cannot discriminate against a company whether that company is affiliated or not." All activities the FERC undertakes in these matters must be transparent involving "electronic bulletin boards" in which all parties could follow all capacity transactions.

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Mr. Mogel qualified that natural gas pipelines, similar to a railroad or bus system, was "essentially a common carrier" that must allow for competitive use. The FERC assures this for the pipelines through capacity regulation and oversight.

1:50:49 PM

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INTERSTATE PIPELINES ARE REQUIRED TO ADHERE TO COMPREHENSIVE STANDARDS OF CONDUCT

- No preference in sharing of information, setting rates, and terms and conditions between the pipeline and its affiliated marketing company.

Mr. Mogel remarked that in addition to the obligation to be a common carrier, FERC imposed standards of conduct on natural gas pipeline companies. The standards were "very detailed rules affecting transactions between the pipeline and its affiliated marketing company" and "required that there be no preferences to an affiliate, that there be no information sharing to an affiliate or discrimination based upon knowledge of information." In the event information was provided to an affiliate of the pipeline company by the pipeline company, the same information must also be "provided to the world".

1:51:35 PM

Mr. Mogel explained the intent of the standards of conduct was "directed to many pipelines that are integrated companies with marketing affiliates."

Mr. Mogel exampled that FERC prohibited "such things as idle chatter around the water cooler" in which an employee of the pipeline company said "hey, did you hear someone's going to move some gas on this pipeline" was heard by an employee of the marketing company and subsequent action was taken by the marketing company on that information. This was "somewhat of an extreme example" of the "relatively new tool of FERC" to impose the standards of conduct to ensure that the pipelines were operated in a fair non-discriminatory open and transparent manner that did not provide preferences for its own companies.

Mr. Mogel stressed that this ability was "extremely important" with regard to the regulatory oversight of the FERC.

1:52:34 PM

Page 8

FERC HAS BEEN GRANTED ADDITIONAL PUNITIVE AUTHORITY BY THE EPAct of 2005

- To punish violations of its statutes and regulations by:
  - Fines of up to $1 million per violation per day.
  - Disgorgement of unjust profits.
  - Referrals to the Justice Department for criminal prosecution.

Mr. Mogel pointed out that the federal Energy Policy Act passed two years prior granted the FERC significant authority to punish violations. The ability to levy the substantial fines had "gotten everyone's attention". Authority to disgorge unjust profits was in addition to FERC's authority to impose refunds.

Mr. Mogel contended the punitive authority provided "serious regulatory tools to ensure adherence to regulations and the statutory obligations that interstate gas pipelines have."

1:53:51 PM

Mr. Mogel reported that "in the relatively short time" since the passage of the Energy Policy Act, FERC had imposed fines in amounts ranging from $1 million to $10 million. He stressed that the FERC was "not afraid to use this authority" as it was an "attempt" to regulate interstate gas pipelines and to ensure the pipelines met the obligation of compliance with statute.

1:54:24 PM

Page 9

> The FERC's regulatory regime for interstate natural gas pipelines is significantly different from oil pipelines and changes since 1985 insure that pipeline's will not act unlawfully or discriminate against shippers.

Mr. Mogel reiterated that the Natural Gas Act and the FERC's regulatory regime was a "consumer protection statute". He further commented as follows.

> The regulatory oversight that FERC has had since 1938 and how it has metamorphosed in more recent years to reflect the change in the operations of interstate gas pipelines is a significant protection against shippers who really in this way are a proxy for consumers. Again I think in this case there should be some comfort that Washington [D.C.] really can help in the oversight of these very large enterprises. Hopefully this will be helpful in thinking about some of the issues that have come up under AGIA [Alaska Gasline Inducement Act].

1:55:25 PM

Co-Chair Stedman requested a review of the differences between the regulation of oil pipelines and the regulation of natural gas pipelines.

Mr. Mogel informed that oil pipelines had been regulated since 1912 under the Hepburn Act. The regulatory oversight was initially granted to the Interstate Commerce Commission and transferred to the FERC in 1977 and 1978. The intent of that statute was "not the protection of consumers because the nature of that business was not a consumer business." Rather "it was largely pipelines that were operated by producers of oil and crude and some other products like ammonia and moved to terminals and refineries, which they also owned." Therefore, "the impedance to intensely regulate those or look at consumer concerns was vastly diminished because the nature of that business is very different from the business of interstate natural gas pipelines, which [was] ultimately serving

consumers." As an example, "you don't have to get a certificate for an oil pipeline."

Mr. Mogel summarized that FERC regulated oil pipelines "in a very different way" because oil pipelines entailed "a very different kind of business." Initial oil pipelines were intended "just to be vehicles so producers of the crude [oil] could move it closer to the market, have it refined and then distributed."

1:57:20 PM

Co-Chair Stedman mentioned the non-preferential and non-discriminatory requirements relating to access to natural gas pipelines. He recalled other testimony before the Committee that inferred that an entity which owned a natural gas pipeline could control "to a fairly high degree" the parties that had access to the pipeline.

1:57:47 PM

Mr. Mogel relayed his understanding that an owner of a regulated interstate natural gas pipeline must comply with "the broad umbrella of rules" discussed in this presentation. Those rules precluded discrimination against any shipper including a non-affiliated shipper. Capacity could become available through several scenarios, one of which was through an open season. The FERC established rules governing open seasons to ensure that all parties intending to "bid and sign contracts" had an opportunity to commit to an open season. In the event bids exceeded the capacity of the line, the operator of the pipeline was required to allocate based on a ratio of the capacity available to the bids for capacity. Once a pipeline was operating, the operator must electronically post the available capacity to notify all interested parties of the option to bid on the capacity. Through its enforcement division, the FERC monitored these activities.

1:59:17 PM

Senator Elton, referencing Page 6 and the bullet point pertaining to "just and reasonable" rates, terms and conditions, assumed the provision applied to a pipeline owner. He asked if, as part of an agreement in which the State paid $500 million toward a natural gas pipeline and in return took "an equity position in the pipeline", whether the State would be precluded

from offering any inducements to parties that participated in the first open season.

2:00:25 PM

Mr. Mogel affirmed that the provision applied to the pipeline owner. However, the State in the described scenario would not be considered the operator of the pipeline and therefore inducements offered by the State would not affect the operation of the pipeline.

2:00:58 PM

Senator Elton surmised that "operator" was defined elsewhere in the regulations and statutes governing natural gas pipelines as the entity "making the day to day decisions" and that the definition was "not expansive enough to include those who have an equity stake that hire the operator."

2:01:21 PM

Mr. Mogel clarified that "natural gas company" and not "operator" was the term utilized in the Natural Gas Act. Regardless, many of the companies that operated natural gas pipelines had "thousands of shareholders" and presumably, those shareholders did not have direct operation authority. The licensee, or FERC certificate holder, was typically the natural gas company and was obligated to comply with the requirements.

2:01:53 PM

Senator Thomas utilized for comparison purposes the Trans Alaskan Pipeline System (TAPS) in which Alyeska was the operator and several oil companies owned the pipeline. He asked if in this situation, Alyeska would be the entity subject to the regulations.

2:02:13 PM

Mr. Mogel responded that because the TAPS was an oil pipeline it was subject to a different federal statute.

2:02:30 PM

Senator Thomas clarified he utilized the TAPS as an example and asked if it were a natural gas pipeline operated by a company such as Alyeska that was "based on three or four" of the major lease holders at Prudhoe Bay whether Alyeska would be the sole entity over which the FERC had authority.

2:03:09 PM

Mr. Mogel affirmed the scenario was correct if Alyeska was the FERC certificate holder. However, FERC oversight had broader authority in that it governed the terms and conditions of the company's operations.

2:03:22 PM

Senator Thomas asked if the Alaska natural gas pipeline traversed to states through Canada, whether FERC would oversee operations occurring in the U.S. states but not operations occurring outside the country.

2:03:46 PM

Mr. Mogel affirmed that the FERC had no authority in Canada.

2:03:52 PM

Senator Olson asked the number of times natural gas pipeline operators had been prosecuted or had penalties levied against them.

2:04:28 PM

Mr. Mogel replied that the FERC and its predecessor, the Federal Power Commission, had always had the ability to levy fines and refer offenses to the U.S. Department of Justice for criminal prosecution if it determined that behavior was anti-competitive or violated the terms of the certificate. He was uncertain of the frequency such actions had been taken in years prior to 2005. Since August 2005, with the expanded authority granted to FERC, the agency had imposed fines in six instances. The amount of the first levy was $10 million against NRG Energy. Other fines had been in lesser amounts with $1 million being the lowest. The FERC always had the ability investigate matters and issue refunds. An enforcement office exists within the agency to ensure compliance.

2:05:51 PM

Senator Huggins asked the preponderance of rolled in rates, and ultimately "subsidizing subsequent shippers", experienced by FERC and whether any precedence was established regarding this matter.

2:06:17 PM

Mr. Mogel responded that rolled in rates was "not a new subject for companies appearing before FERC." Recent policy has generally been supportive of rolled in rates as compared to incremental rates. He explained, "What they really look at and whether or not they would approve a rolled in rate, 'is there a benefit to the system in its entirety." FERC had often concluded "that is appropriate, it encourages more through put; there are benefits in that regard." FERC had determined that rolled in rates were not deemed to be a subsidy because they provided benefits to the customers "already on the system".

Mr. Mogel gave an example of an incremental rate approved by the FERC as a large interstate gas pipeline and a fertilizer plant. Fertilizer plants were large consumers of natural gas. In this example, the fertilizer plant intended to locate 25 miles off of the main pipeline and sought a spur pipeline to connect the two. In this instance FERC would likely conclude that the rate applied should be an incremental rate because it would not benefit the system as a whole or benefit other consumers.

2:07:47 PM

Senator Huggins concluded that the FERC was a federal agency and that the State should recognize that the FERC "generally operates off precedence" imposed "clearly defined rules" and "by and large" FERC determinations were predictable. Therefore, "FERC is not an agency that we as a State should be concerned about because they're gonna do what they're gonna do and they have a history of that."

2:08:49 PM

Mr. Mogel disagreed. The State should be concerned about the FERC because the agency was "here to help in the administration of how these pipelines operate." FERC was bound by statute and

by precedence and would operate within those perimeters. The FERC was "a very professional agency", which was "independent" with five of the commissioners appointed by the President of the United States and representing both major political parties. The agency also had a "strong staff and a strong history". The State should be "concerned in a positive way" because the agency would be able to assist in addressing some of the concerns raised.

2:10:07 PM

Co-Chair Hoffman recalled consideration given the previous legislative session to rolled-in rates versus incremental rates. Page 5 of Mr. Mogel's presentation indicated that this should not be a concern to the State because the FERC would make rate decisions based on the best interest of consumers and shippers.

2:10:52 PM

Mr. Mogel stated that the establishment of rates was under the jurisdiction of the FERC. The State could express its preference of rate structure to the FERC for consideration.

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Senator Dyson asked of any detriment if the State proclaimed its preference for rolled in rates through this enabling legislation.

2:12:13 PM

Mr. Mogel answered that such action would result in no detriment. The State should express its preference because the FERC had a large constituency including municipal and state governments, applicants, interveners and shippers, which also express preferences. The FERC was obligated to consider all parties' requests. Therefore, "there would be value to at least express what the State of Alaska thought was appropriate for a gas pipeline of this incredible magnitude."

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Co-Chair Stedman announced that the presentation was concluded.

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Mr. Mogel, citing his considerable experience, predicted that the Alaska natural gas pipeline would "probably be the largest … energy infrastructure project in North America."

AT EASE 2:13:24 PM / 2:15:30 PM

2:15:43 PM

Co-Chair Stedman directed attention to a document dated 4/20/07 that consisted of the text and annotated changes to CS SB 104 (JUD) [copy on file]. Page numbers were reflected and generally coincided with the page numbers on the original committee substitute, however, line numbers were not shown.

2:16:58 PM

PAT GALVIN, Commissioner, Department of Revenue, announced that a proposed committee substitute was being drafted primarily in response to testimony heard in legislative committees as well as to incorporate suggestions made by the Division of Legal and Research Services. The aforementioned document reflected the changes that would be incorporated into the committee substitute.

2:18:09 PM

MARCIA DAVIS, Deputy Commissioner, Department of Revenue, detailed the changes proposed for the committee substitute in the document. The first change would "correct" the title of the bill by inserting, "providing inducements for the construction of a natural gas pipeline and shippers that commit to use that pipeline;".

2:18:36 PM

Chapter 90. Alaska Gasline Inducement Act
Article 1. Inducement to Construction of a Natural Gas Pipeline in this State.
Section 43.90.010. Purpose. (page 1)

Ms. Davis characterized as "editorial changes", the proposed amendments to the language of paragraph (3) of Section 43.900.010. These changes had also been incorporated into the companion bill under consideration in the House of Representatives, HB 177, and were recommended by the Division of

Legal and Research Services. The amended language reads as follows.

(3) maximizes benefits to the people of the state from the development of oil and gas resources in the state; and

2:18:52 PM

Ms. Davis stated that the proposed changes to paragraph (4) on page 2 would provide clarification and would read as follows.

(4) encourages oil and gas leases and other persons to commit to ship natural gas from the North Slope to a gas pipeline system for transportation to markets in this state or elsewhere.

2:19:07 PM

Article 2. Alaska Gasline Inducement Act License
Section 43.90.100. Gas Project (page 2)

Ms. Davis informed that corrections to subsection (b) of Section 43.90.100., had been made in the House of Representatives companion legislation and were also recommended by the Division of Legal and Research Services. The amended language reads as follows.

(b) Nothing in this chapter precludes a person from pursuing a gas pipeline independently from this chapter.

2:19:19 PM

Section 43.90.110. Natural gas pipeline project construction inducement. (pages 2 and 3)

Ms. Davis noted changes made to subparagraph (a)(1) of Section 43.90.110., of HB 177 were also recommended for the Senate version before the Committee.

2:20:15 PM

Ms. Davis directed attention to the inserted language reading, "or satisfying any other requirement of an agency with jurisdiction over", to subsection (a)(1)(C) on page 3. This change was intended to recognize the numerous "permitting

agencies that get engaged and involved in the permitting of a project". Inclusion of this language was requested by TransCanada but would also benefit other producers or license applicants.

The amended language of Section 43.90.110(a) on pages 2 and 3 would read as follows.

> (1) subject to appropriation, state matching contributions in a total amount not to exceed $500,000,000, paid to the licensee during the five-year period immediately following the date the license is awarded; the payment period may be extended by the commissioners under an amendment or modification of the project plan under AS 43.90.210; a payment under this paragraph shall be made according to the following:
>
> (A) on or before the close of the first binding open season, the state shall match the licensee's qualified expenditures at the level specified in the license; however, the state's matching contribution may not exceed 50 percent of the qualified expenditures incurred before the close of the first binding open season;
>
> (B) after the close of the first binding open season, the state shall match the licensee's qualified expenditures at the level specified in the license; however, the state's matching contribution may not exceed 80 percent of the qualified expenditures incurred after the close of the first binding open season;
>
> (C) a qualified expenditure is a cost that is incurred after the license is issued under this chapter by the licensee or the licensee's designated affiliate, and is directly and reasonably related to obtaining a certificate or amended certificate of public convenience and necessity from the Federal Energy Commission or the Regulatory Commission of Alaska, as appropriate, or satisfying any other requirement of an agency with jurisdiction over the project; in this subparagraph, "qualified expenditures" does not include overhead costs, litigation costs, the cost of an asset, or work product acquired or developed by the licensee before the licensee is issued, civil or criminal penalties or fines; and

2:20:55 PM

Ms. Davis stated that the insertion of a subsection (b) to Section 43.90.110 on page 3 would provide clarification to "emphasize the regulatory requirements; the need for regulations to flush out the qualified expenditures". The new subsection was added to HB 177 and reads as follows.

> (b) The commissioner of revenue in consultation with the commissioner of natural resources shall adopt regulations for determining whether an expenditure is a qualified expenditure for the purposes of (a) of this section.

2:21:13 PM

> Section 43.90.120. Request for applications for the license. (page 3)

Ms. Davis characterized the language changes to subsection (b) of Section 43.90.120., as "minor edits carried over by" the Division of Legal and Research Services and would read as follows.

> (b) The commissioners may use independent contractors to assist them in developing the request for applications and in evaluating applications received under this chapter.

2:21:24 PM

> Section 43.90.130. Application requirements. (pages 3 through 10)

Ms. Davis relayed testimony of producers over the current language of "detailed complete" of Section 43.90.130(2). Concern had been expressed that this verbiage required "a certain level of detail under FERC terminology", which would be "impossible given the preliminary stage of submitting an application. An effort was made with the following proposed changes to assure that this was not the intent.

> (2) provide a thorough description of a proposed natural gas pipeline project for transporting natural gas from the North Slope of this state to market, and which may

include multiple design proposals, including different design proposals for pipe diameter, wall thickness and transportation capacity, and which shall include …

Ms. Davis acknowledged that the usage of "thorough" rather than "complete" could be debated, but that the intent was to eliminate "detailed".

2:22:07 PM

Ms. Davis explained that the proposed amendments to the subsections of Section 43.90.130(2) would address concerns expressed by producers that an application could be denied because "they were suggesting a specific proposal of a certain pipe size, and that in fact they may end up with a different pipe size based on other criteria." The amended language would "create the opportunity to provide multiple scenarios within a proposal so that that way they can cover different potential fact patterns. These changes had been incorporated into the companion legislation under consideration in the House of Representatives.

2:22:43 PM

Ms. Davis then detailed the proposed changes to the subparagraphs of paragraph (2). Statutory reference to the "over the top pipeline route" would be inserted to AS 49.90.130(2)(A) and the provision would read as follows.

> (A) the route proposed for the natural gas pipeline which may not be the route described in AS 39.35.170(b);

Co-Chair Stedman identified the over the top pipeline route as north of Latitude 68.

Ms. Davis affirmed.

2:23:20 PM

Ms. Davis informed that "clean up" changes had been made to subparagraphs (B) (C) and (D) in the House of Representatives; specifically, the addition to (C) of "including a description of all pipeline access and tariff terms the applicant plans to offer". This "callout of tariff and access terms had been

embedded in" the language of subparagraph (D), which related to the Canadian and marine sections of the pipeline but should be applied to all applications. The amended language would require all applications to provide a description of their pipeline access and tariff terms. The references could subsequently be eliminated from subparagraph (D).

2:24:12 PM

Ms. Davis also pointed out that the deletion of "demonstrating" following "analysis" in subparagraph (C) was recommended after the voicing of concerns by producers that it represented a "threshold of how much proof and how much certainty needed to be had in hand at the time of making the application as opposed to later." The Department did not intend to impose "such a high standard that it would be difficult to file an application."

2:24:47 PM

Ms. Davis noted conforming changes to the amendment of paragraph (2) with the replacement of "detailed complete" with "thorough" would be made to paragraph (2)(D)(i).

2:25:03 PM

Ms. Davis spoke to "grammar and style changes" proposed by the Division of Legal and Research Services for paragraph (2)(D)(ii).

2:25:15 PM

Ms. Davis directed attention to the reference to "amended certificate" inserted to the language of (ii). This addition was recommended because TransCanada, a likely AGIA applicant, held an existing certificate and if granted the license would apply for an amendment to that certificate.

The amended language of Section 43.90.130(2)(B), (C) and (D) on pages 4 and 5 would read as follows.

> (B) the location of receipt and delivery points and the size and design capacity of the proposed natural gas pipeline at the proposed receipt and delivery points, except that this information is not required for in-state

delivery points unless the application proposes specific in-state delivery points;

(C) an analysis of the project's economic and technical viability, including a description of all pipeline access and tariff terms the applicant plans to offer;

(D) an economically and technically viable work plan, timeline, and associated budget for developing and performing the proposed project, including field work, environmental studies, design, and engineering, implanting practices for controlling carbon emissions from natural gas systems as established by the United States Environmental Protection Agency, and complying with all applicable state, federal, and international regulatory requirements that affect the proposed project; the applicant shall address the following:

(i) if the proposed project involves a pipeline into or through Canada, a thorough description of the applicant's plan to obtain necessary rights-of-way and authorizations in Canada, a description of the transportation services to be provided and a description of rate making methodologies the applicant will proposed to the regulatory agencies, and an estimate of rates and charges for all services;

(ii) if the proposed project involves marine transportation of liquefied natural gas, a description of the marine transportation services to be provided and a description of proposed rate-making methodologies; an estimate of rates and charges for all services by third parties; a detailed description of all proposed access and tariff terms for liquefaction services or, if third parties would perform liquefaction services, identification of the third parties and the terms applicable to the liquefaction services; a complete description of the marine segment of the project, including the proposed ownership, control, and cost of liquefied natural gas tankers, the management of shipping services, liquefied natural gas export, destination, re-gasification facilities, and pipeline facilities needed for transport to market destinations, and the entity or entities that would be required to obtain necessary export permits and licenses or a certificate or amended certificate of public convenience and

necessity from the Federal Energy Regulatory Commission for the transportation of liquefied natural gas in interstate commerce if United States markets are proposed; and all rights-of-way or authorizations required from a foreign country;

2:25:49 PM

Ms. Davis next addressed the requested insertion of language to Section 43.90.130(3)(B) to accommodate the existing FERC certificate held by TransCanada and to exempt that company from repeating the pre-filing procedures. The amended subparagraph would read as follows.

(B) apply for Federal Energy Regulatory Commission approval to use the pre-filing procedures set out in 18 C.F.R. 157.21 by a date certain, and use those procedures before filing an application for a certificate or amended certificate of public convenience and necessity, except where the producers are not required as a result of section 5 of the President's Decision issued pursuant to the Alaska Natural Gas Transportation Act of 1976; and

2:26:55 PM

Ms. Davis stated that the "editing change" proposed to Section 43.90.130(7)(E) on page 7 was recommended by the Division of Legal and Research Services and would read as follows.

(E) will not enter into a negotiated rate agreement that would preclude the applicant from collecting from any shipper, including a shipper with a negotiated rate agreement, the rolled-in rates that are required to be proposed and supported by the applicant under (B) of this paragraph or the partial rolled-in rates that are required to be proposed and supported by the applicant under (C) of this paragraph.

2:27:07 PM

Ms. Davis informed that the changes shown to AS 43.90.130(8) and (10) through (12) on page 8 reflected Division of Legal and Research Services edits integrated into the House Resources committee substitute for HB 177. The amended language reads as follows.

(8) state how the applicant proposes to deal with a North Slope gas treatment plan, regardless of whether that plant is part of the applicant's proposal, and, to the extent that the plant will be owned entirely or in part by the applicant, commit to seek certificate authority from the Federal Energy Regulatory Commission if the proposed project is engaged in interstate commerce, or from the Regulatory Commission of Alaska if the project is not engaged in interstate commerce; for a North Slope gas treatment plant that will be owned entirely or in part by the applicant, for rate-making purposes, commit to value previously used assets that are part of the gas treatment plant at net book value; describe the gas treatment plant, including its design, engineering, construction, ownership, and plan of operation; the identity of any third party that will participate in the ownership or operation of the gas treatment plant; and the means by which the applicant will work to minimize the effect of the costs of the facility on the tariff;

(9) …

(10) commit to propose and support rates for the proposed project and for any North Slope gas treatment plant that the applicant may own, in whole or in part, that are based on a capital structure for rate-making that consists of not less than 70 percent debt;

(11) describe the means for preventing and managing overruns in costs of the proposed project, and the measures for minimizing the effects on tariffs from any overruns;

(12) commit to provide a minimum of five delivery points of natural gas in this state;

2:27:18 PM

Ms. Davis addressed language changes proposed to paragraph (16) on page 9. The committee substitute passed by the Senate Judiciary committee, contained a provision to require an applicant to waive its right to appeal either the issuance of a license or the determination that no application merits award of the license. This provision had initially been determined adequate to "cover all of the things that could come about as a result of receipt and consideration of application. Upon further review "absolute clarity around the issue of rejection of an application" was determined necessary. The proposed amendment would stipulate that by participation as an applicant, a party

would waive its legal right to object to the legal process of consideration of its application, including the issuance or non-issuance of a license.

Ms. Davis qualified that "constitutional claims would lay where they lay, but this takes out the procedural and substantive type claims." The proposed language reads as follows.

> (16) waive the right to appeal the rejection of an application is incomplete, the issuance of a license to another applicant or the determination under AS 43.90.180(b) that no application merits the issuance of a license;

2:28:31 PM

Ms. Davis stated that deletion of "the affiliates of the applicant, all partners, members of a joint venture," following "description of the applicant" from paragraph (19) was intended for "clean up" because "all entities" was sufficient.

> (19)provide a detailed description of the applicant and all entities participating with the applicant in the application and the project proposed by the applicant, and persons the applicant intends to involve in the construction and operation of the proposed project; the description must include the nature of the affiliation for each person, the commitments by the person to the applicant, and other information relevant to the commissioners' evaluation of the readiness and ability of the applicant to complete the project presented in the application;

2:28:54 PM

Ms. Davis continued that amendments to paragraph (20) on page 10 were recommended as a result of testimony from producers stressing the need for a reference in the evaluation criteria of an applicant's prior history and current abilities. The intent was to not require extensive detail, as additional information would be discovered during the application process. This would allow "side by side" comparison of all applications. The paragraph as amended would read as follows.

(20) demonstrate the readiness, and financial and technical ability to perform the activities specified in the application, including the applicant's history in safety, health and environmental compliance and in following a detailed work plan, timeline, and operation within an associated budget.

2:30:22 PM

Section 43.90.140. Initial application review; additional information requests; complete applications. (page 10)

Ms. Davis relayed contentions by legislators that the process must be "unassailable" in its fairness. Commissioners should therefore not review any applications received prior to the deadline to prevent allegations that information from these applications were "filtered back to" other applicants that had not yet submitted applications. To accomplish this, the following language was recommended for subsection (a).

(a) Upon expiration of the deadline for the filing of applications under AS 43.90.130, the commissioners shall open all applications and review each application to determine whether it is consistent with the terms of the request for applications and meets the requirements of AS 43.90.130. The commissioners shall reject as incomplete an application that does not meet the requirements of AS 43.90.130.

2:31:10 PM

Ms. Davis also spoke to applications deemed incomplete because they failed to meet the requirements of Section 43.90.130 as well as satisfied the material terms of the request for applications (RFA). Concern had been expressed by producers that "somehow if they're disfavored by the Administration … there would be a technicality or some basis upon which their application would be kicked out." Because the RFA would be a specific request for information, a situation should not occur in which an applicant "missed some of the details" and the application denied on that basis. Proposed amended language to ensure this reads as follows.

(b) To evaluate whether an application should be rejected under (a) of this section, the commissioners may request additional information relating to the application.

(c) If, within the time specified by the commissioners, the applicant fails to provide the additional information requested under (b) of this section, or submits additional information that is not responsive, the application shall be rejected.

(d) For an application not rejected under this section, the commissioners shall make a determination that the application, including any requested additional information is complete.

2:32:43 PM

Ms. Davis stated that subsection (e) should be amended to address concerns of legislators and producers that once the application process was complete, confidential information must be made immediately available to the legislature. The amended language reads as follows.

(e) Except as provided under AS 43.90.150, and after determining which applications are complete, the commissioners shall make all applications available to the legislature.

2:33:36 PM

Section 43.90.150. Proprietary information and trade secrets. (page 10)

Ms. Davis recommended amendments to this section based on concerns raised by producers that a winning applicant under the current language would be required to "basically open themselves up to complete scrutiny including their proprietary and trade secret information." Criticism was received that this would place an applicant in "a bad position" if it had propriety information about certain technologies. Recognizing that the best possible and most thorough applications should be received, the following language was proposed.

(a) At the request of the applicant, information submitted under this chapter that the applicant identifies and demonstrates is proprietary or is a trade secret is confidential and not subject to public disclosure under AS

43.25, unless the applicant is granted a license under this chapter. After a license is awarded, all information submitted by the licensee retained under this chapter and not determined by the commissioners to be proprietary or a trade secret, shall be made public.

(b) if the commissioners determine that the information submitted by the applicant is not proprietary or is not a trade secret, the commissioners shall notify the applicant and return the information at the request of the applicant.

2:34:25 PM

Senator Dyson recalled other concerns that the applications of unsuccessful applicants would be made public and the financial status, relationships and other information could provide an advantage to its competitors in other situations.

2:35:14 PM

Ms. Davis affirmed that the original version of this section included a subsection (c) that provided that an applicant that challenged the process and the issuance of the license must release its application for public availability. With the removal of the right of appeal provisions, this subsection was deleted from the proposed amended committee substitute. The amended language would provide that "all the information that the commissioners agree with the applicant that is proprietary, commercially sensitive or trade secret, will remain protected both for the unsuccessful applicants as well as the successful applicants." This would "recognize the commercial realities" that entities would have "sensitive information". However, the legislators, their agents, and contractors would have the ability to review the confidential information from the moment the applications were deemed complete. This would allow for a "body" in addition to the commissioners to review the applications and "confirming that all is right".

Senator Dyson was assured by this language change.

2:36:39 PM

Section 43.90.160. Notice, review, and comment. (page 11)

Ms. Davis characterized this section as a reaffirmation that except as provided under the previous section pertaining to proprietary information and trade secrets, all applications would be made public regardless of whether they were deemed incomplete. In addition to legislative access to incomplete applications the public would also have access. The changes proposed to this section were in response to concerns raised by producers.

2:37:21 PM

Ms. Davis stated that the provision of subsection (c) 160 would "open" the process for legislative participation and review of all application material. This process must be "completely fair and above reproach". This section would establish a time period after the application deadline in which the commissioners would unseal and review all applications and request additional information on any applications deemed incomplete. During this time period, the applications would remain confidential. Once the commissioners had concluded their efforts to secure the additional information, they would make final determinations on which applications were complete and which would be rejected as incomplete. At this point, the legislature's right to view the applications would commence and legislators would sign a confidentiality agreement to access to the confidential information. The legislative process should not begin before the previous steps had been completed to avoid a challenge that information contained in applications was released to other applicants, which could render the process unfair.

2:39:10 PM

Ms. Davis pointed out the proposed language change to subsection (c) to clarify that the legislature could retain agents and contractors to perform evaluations of the applications.

2:39:34 PM

Section 43.90.170. Application evaluations and ranking. (page 11)

Ms. Davis highlighted a proposed change to subsection (b) to delete "six" as an allowable discount rate and insert "five". Five percent would be the preference of the Administration as

that is the amount "actually used". The amended language would read as follows.

> (b) When evaluating the net present value of anticipated cash flow to the state from the applicant's project proposal, the commissioners shall use an undiscounted value and, at a minimum, discount rates of two, five and eight percent, and consider…

2:40:05 PM

Ms. Davis recommended the addition of a subparagraph to subsection (b), stressing the need to "explicitly reference" that the amount of the matching contribution would be considered part of the net present value. This change was adopted in the House of Representatives version of AGIA. The inserted language would read as follows.

> (5) the amount of the matching contribution by the state under AS 43.90.110(a)(1)(A) and (B) proposed by the applicant under AS 43.90.130)9); and

Ms. Davis also pointed out that subsection (d), which provided the definition of "net present value" as "the discounted value of a future stream of cash flow", should be deleted from this section.

2:40:26 PM

> Section 43.90.180. Notice to the legislature of intent to issue license; denial of license. (page 13)

Ms. Davis stated that technical changes to this section had been adopted into a committee substitute for HB 177 at the recommendation of the Division of Legal and Research Services. The amended language of subsection (a) replaced "would" with "will". The amended language of subsection (a)(1) deleted "in accordance with" and inserted "on the effective date of the legislative approval under". The full text as amended, reads as follows.

> (a) If, after consideration of public comments received under AS 43.90.160(a) and evaluation of complete applications under AS 43.90.170, the commissioners determined that an application proposes a project that will

sufficiently maximize the benefits to the people of this state and merits issuance of a license under this chapter, the commissioners shall

(1) issue a determination, with written findings addressing the basis for the determination; the determination becomes a final agency action on the effective date of the legislative approval under AS 43.90.190(b);

2:40:40 PM

Section 43.90.200. Certification by regulatory authority and project sanction. (Page 13)

Ms. Davis explained this section would establish the legal requirements for the licensee to proceed with the project once it obtained a FERC certificate. Language changes to this section were recommended following testimony of producers regarding their rights to negotiate with FERC. This section, as amended, would read as follows.

(a) A licensee that is awarded a certificate or amended certificate of public convenience and necessity from a regulatory agency with jurisdiction over the project, shall accept the certificate or amended certificate when the order granting the certificate is no longer subject to judicial review or earlier at the licensee's discretion.

(b) If the licensee does not have credit support sufficient to finance construction of the project through ownership of rights to produce and market gas resources, firm transportation commitments, or government financing, the licensee shall sanction the project within one year after the effective date of the certificate or amended certificate of public convenience and necessity issued by the regulatory agency with jurisdiction over the project.

(c) If the licensee does not have credit support sufficient to finance construction of the project through ownership of rights to produce and market gas resources, firm transportation commitments, or government financing, the licensee shall sanction the project by the later of

(1) two years after the effective date of the certificate or amended certificate of public convenience and necessity issued by the regulatory agency with jurisdiction over the project; or

(2) five years after the conclusion of the first open season of the project.

(d) If the licensee fails to sanction the project as required under this section, the licensee shall, upon request by the state

(1) seek approval from the Federal Energy Regulatory Commission or the Regulatory Commission of Alaska, as applicable, to abandon and transfer the certificate or amended certificate to the state or the state's designee; and

(2) assign to the state or the state's designee all engineering designs, contracts, permits, and other data related to the project that are acquired by the licensee during the term of the licensee before the date of the abandonment or transfer.

(e) The transfer and assignments under (d) of this section as a result of failure to comply with (a) or (b) of this section is at no cost to the state or the state's designee. A transfer under (c) of this section is at the licensee's net cost.

(f) In this section, "effective date of the certificate or amended certificate" means the date the order granting the certificate is no longer subject to judicial review or earlier at the licensee's discretion.

2:41:47 PM

Senator Elton noted that the amount of time allowed for judicial appeal would be increased under the proposed language of subsections (a) and (b).

2:42:00 PM

Ms. Davis responded that "it could be … but it might not". She relayed a concern of producers to acknowledge the negotiation process between the applicant and the FERC that occurs as the certificate was "being finalized prior to being issued". The length of time involved partly depended upon the "power of the two negotiating parties". The applicant's power was the right to seek appeal of a decision it deems inappropriate or unfair. FERC held the rights and powers "because they're ultimately the law of the land except as otherwise ordered by a court of appeal." Under the original provision of this section that limited negotiations to administrative appeals in which FERC issued the final judgment, the applicant would have no negotiating

leverage. Therefore, the applicant could extend negotiations for a longer period "knowing that that was the end of the road". Resolution could occur in a shorter period of time if the FERC understood that the applicant had the right of appeal to a court of appeals. She predicted, however, that the time period involved would likely be greater under the proposed provisions.

2:43:21 PM

Mr. Galvin disclosed that the Department of Revenue had "struggled" with the issue of the potential extension of the time period. Two factors influenced the decision to allow for judicial appeal. At the stage that such an appeal would be considered, the applicant would likely have invested "hundreds of millions of dollars" into the project and would have a financial "imperative" that would "drive them" to reach consensus with the FERC and to proceed with the project. Therefore, subjecting the applicant to "the license termination hanging over their head" would be a lesser incentive than the financial investment.

Mr. Galvin continued with the second factor influencing the decision to eliminate the restriction against judicial appeal of the FERC ruling. In the event a licensee determined that a condition that FERC imposed on the certificate, he argued "what value would there be at that point to the State in saying 'well we're going to move ahead and we're going to take over' if we end up basically going then counter to the party that got us there and would that really be something that's going to drive us closer to getting a gasline going."

Mr. Galvin surmised that these factors were interrelated and the Department recognized that the State would likely not exercise its ability to revoke the AGIA license. Given the extent of the concern expressed by the producers, it was determined that the amendment to this section to allow for judicial appeal would be appropriate.

2:45:16 PM

Ms. Davis reminded that the current language of subsection (c) would have allowed the applicant five years from the date of issuance of the FERC certificate to obtain sufficient credit support. However, legislators had expressed concern that the length of time was too long and that events could occur during

that time period to make the wait "unreasonable from the perspective of the State". Upon further review, the Department developed the proposed solution.

2:46:16 PM

Mr. Galvin spoke to the matter as follows.

> What we recognize is a couple different things associated with this. One is that when had originally envisioned the five years after certification, we were kind of looking at the time frame as the primary time if they didn't have primarily firm transportation commitments that there would be an effort - a serious effort being made to try to secure those through various means that would be available to them both here or in D.C. or through getting transportation commitments from the market. Those efforts we felt we needed to ensure that our licensee would have enough time to pursue all those.
> What we recognize after the testimony and further discussions with potential participants is that effort will likely start immediately upon the initial open season complet[ion] if the transportation commitments are not obtained at that particular time.
> So making the five year period tied to the end of that initial open season secured what we felt was the necessary time to ensure that that effort could reach its full opportunity to succeed.
> Secondly, when you get to the point where you're getting your certificate and you still don't have the credit support, if you've already taken the time to begin to build up to try to obtain that credit support, you've already probably used two or three years, maybe even four to make that effort. And then you get the certificate and bring that down to two years still secured enough time in our view that they will have exhausted their opportunity to do so and we will feel that we've given them enough time to be able to succeed. And ultimately, as I've testified before, we want to provide a structure that the parties that we're trying to attract to this process recognize that they are given the opportunity to succeed. And in the analysis of when the effort [is] going to kick in - when they're going to feel pressed in terms of this deadline approaching - we feel that making this sort of two-pronged opportunity two years from the certificate, recognizing also that we have

potential outside deadlines, we've got two years on the federal loan guarantee, that if they've obtained their Canadian certificate prior to their FERC certificate, may expire at this two years as well.
So there's some symmetry there as well that will I think drive each aspect of this project towards this common date that seems to reflect both our desire to have a timeframe that's as short as possible so that we're not tied into something beyond its expectation of success, but also that provides our potential participants the recognition that they will have an opportunity to succeed regardless of the contingencies that take place in the meantime.

2:49:43 PM

Co-Chair Hoffman indicated that he had expressed concern over the five-year deadline. The proposed language reflected "that we've come a long way in providing for what you've said". However, Co-Chair Hoffman noted the absence of a provision to revoke the AGIA license if the licensee failed to meet the requirements.

2:50:11 PM

Mr. Galvin directed attention to Section 43.90.230. License violations; damages., on page 16, which would allow the commissioners to terminate the license under certain circumstances.

2:51:06 PM

Senator Huggins identified "another trigger mechanism" as the provision requiring sufficient credit support within five years of the conclusion of the first open season. The time "scale" was different but "gets you to about the same end".

2:51:34 PM

Mr. Galvin affirmed the inclusion of two deadlines the applicant must meet and that "the applicant would know that they had five years from the end of the initial open season to try to reach a successful conclusion of getting the credit support [and] also the two years from the certificate." Additionally, "the fact that whichever [was] later means that both of those time periods are secure for applicant whichever sequence they come in because

we don't know where they're going to fit in depending upon the proposals."

2:52:11 PM

Ms. Davis spoke to the "correction" to Section 43.90.200(f) to ensure that whether or not the licensee had credit support, a specific timeframe would be in effect upon the date that the FERC certificate was no longer subject to judicial review.

2:52:47 PM

Section 43.90.210. Amendment or modification to the project plan. (page 15)

Ms. Davis deemed this section as "important" and noted significant changes made during its consideration by the legislature. Additional changes were recommended to provide for a project amendment necessitated by requirements of a regulatory agency with jurisdiction over the project. Existing language provided for orders issued by the AOGCC; however, it was discovered that the AOGCC only had jurisdiction over the "gas off take" and did not have jurisdiction over the project. The language changes were requested by the producers to ensure that the project could be amended and that the licensee could respond to regulatory agency requirements.

2:53:52 PM

Ms. Davis also noted an amendment to this section to limit the modification process. The intent was to avoid "hamstringing ourselves". The existing language stipulated that a change to the project could not diminish the net present value of the project and "technically that could be five dollars; that could be $100." Clarification must be made to establish a "threshold of materiality" with the insertion of "substantially" and the deletion of "net present".

2:54:35 PM

Section 43.90.220. Records, reports, conditions, and audit requirements. (page 16)

Ms. Davis informed that this provision would allow the State access to the licensee's records to monitor that the incentive

payments were properly expended and that the project plan was being adhered to and deadlines met. The following edits were proposed to subsection (d) ensure that the State would obtain the information necessary.

> (d) After a license has been issued and until commencement of commercial operations, the licensee shall allow the commissioners to
>
> (1) have a representative present at all meetings of the licensee's governing body or bodies and equity holders that relate to the project;
>
> (2) receive all relevant notices when and as issued and information sent to the governing body and equity holders;
>
> (3) enjoy the same access to information about the licensee as the governing body members and equity owners receive; and
>
> (4) receive relevant reports or information from the licensee that the commissioners reasonably request.

Ms. Davis highlighted the insertion of an additional subsection to clarify that proprietary or privileged information would not be made public. Otherwise, the ability of the licensee "to have meaningful meetings in its organizational structure" would be defeated. The inserted subsection would read as follows.

> (e) All propriety or privileged information or trade secrets received by the state under this subsection shall not be subject to public disclosure under AS 40.25.

2:55:39 PM

> Section 43.90.230. License violations; damages. (page 16)

Ms. Davis pointed out that this section contained a list of actions or conduct of a licensee that would constitute a violation of the AGIA licensee and would authorize the State to "activate its various remedies listed". The language of subparagraph (a)(1) should be modified to clarify that the request and receipt of funding from the State for nonqualified expenditures would be considered a violation. Additionally, subparagraph (a)(2) should be "qualified as a result of producer testimony" to address the concern that a licensee should not be held in violation because it was required to make a change to

the project by a regulatory body. The proposed language reads as follows.

> (a) A licensee is in violation of the license if the commissioners determine that the licensee has
>
> (1) requested and received money from the state under this chapter for an expenditure that is not a qualified expenditure under AS 43.90.110;
>
> (2) except as required to conform with a requirement of a regulatory agency with jurisdiction over the project, substantially departed from the specifications set out in the application without state approval of a project plan amendment or modification under AS 43.90.210;

2:56:41 PM

Senator Elton, referencing the proposed insertion of "substantially" to the language of Section 43.90.210., surmised that the same concern would arise with regard to the provision of Section 43.90.220(a)(1). An invoice listing a "series of expenditures" could be provided that included an item of an insignificant amount that was not authorized. He asked the latitude the State and the commissioners would have in this instance.

2:57:28 PM

Mr. Galvin responded that the remainder of the violation discovery process would allow for "notice and an opportunity to cure" any oversights. A clerical or technical error would be resolved before potential termination of the license would be considered.

2:58:27 PM

Ms. Davis continued recommending the addition of a subparagraph, which would address Co-Chair Hoffman's concerns about enforcement, to read as follows.

> (4)failed to accept a certificate as required by AS 43.90.200(a) or failed to sanction the project as required by AS 43.90.200(b); or

2:58:48 PM

Ms. Davis stated that the Division of Legal and Research Services suggested the following "technical corrections" to subsection (d).

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

2:59:09 PM

Section 43.90.240. Abandonment of project. (page 18)

Ms. Davis spoke to proposed changes to subsection(c)(1) as a result of testimony of producers expressing concerns that under the current language "there would be absolutely no way they could qualify for proving that a project was uneconomic." If a producer held the AGIA license, it would be unable to demonstrate an inability to finance the project because of the relative size of the producer's operations. The insertion of "external" was therefore recommended to allow the producer to "not take into consideration their own financial capabilities as large organizations" The amended subsection reads as follows.

> (1) project does not have credit support sufficient to finance construction of the project through firm transportation commitments, government assistance, or other external sources of financing; and

2:59:54 PM

Ms. Davis mentioned that several technical corrections were suggested for this section.

Ms. Davis pointed out the recommended insertion of "upon the state's request" to the language of subsection (e). This would allow "the right of the State to receive an assignment of the license along with all the data and materials is subject to the State's request" in the even of abandonment of the project. The

Department could "envision" a circumstance in which the State would not want to incur the cost to acquire the material if the State had contended the project was uneconomic and therefore would not have "a hope of being economic, we wouldn't want to through good money after bad.

3:01:09 PM

Section 43.90.260. Expedited review and action by state agencies. (page 19)

Ms. Davis informed that the proposed changes to the language of this section were technical corrections.

Article 3. Resource Inducement

Section 43.90.300. Qualification for resource inducement. (page 21)

Section 43.90.310. Royalty inducement. (page 20)

Ms. Davis stated that the proposed changes to the language of these sections were recommended by the Division of Legal and Research Services with the exception of the insertion of language to Section 43.90.310(a)(2)(C). The term "gas processing" did not exist in the same context elsewhere in this legislation and therefore would be specifically defined in this subsection as follows.

> (C) reasonable and actual costs for gas processing; for purposes of this subsection, "gas processing" means post-production treatment of gas to be extract natural gas liquids; and

3:01:42 PM

Senator Dyson asked if this change would address the concern raised by Mr. Dickenson in earlier testimony.

3:01:53 PM

Ms. Davis assured that this plus other proposed changes would address the concern.

3:02:03 PM

Co-Chair Stedman made the following statement.

The issue is is there a potential for whoever builds the gasline in particular who builds the gas treatment plant to access the 20 percent credits. And we want to make sure that that door is closed tight; that they cannot access the 20 percent credits.

3:02:36 PM

Ms. Davis informed that insertion of language to the provision of subsection (b)(2) was intended to ensure that sufficient detail from the legislature would be provided to the commissioner of the Department of Natural Resources to "direct how the contract, the lease, would be amended to reflect the right that was set up in subsection (a)(3)." That subsection "was the mandate from the legislature that the commissioner of [the Department of] Natural Resources not only make a change to ensure that the transportation costs were handled fairly, but also the time period in which a switching could take place." Both concerns would be addressed in the language change to subsection (b), which would entitle the licensee qualified to receive inducements from the State to the following.

(2) to enter into a contract with the state that amends the existing lease terms by providing a mechanism that ensures that when the state exercises its right to switch between taking its royalty in value or in kind for gas committed for firm transportation in the first binding open season of the project, the lessee or other person shall not bear disproportionate transportation costs with respect to the state's royalty gas; and modifying the required period of notice that the state must provide before exercising the state's right to switch between taking its royalty in value or in kind for gas committed for firm transportation in the first binding open season of the project;

3:03:45 PM

Section 43.90.320. Gas production tax exemption. (page 23)

Ms. Davis reminded that Mr. Dickenson had recommended that a definition of "gas production tax" be provided. The following

amendment to the language of subsection (b) would accomplish this and read as follows.

> (b) The exemption under this section may be applied within 10 years immediately following commencement of commercial operations, and only applied to production taxes that are levied on North Slope gas shipped through firm transportation capacity the person acquired during the first binding open season or shipped in the firm transportation capacity described in a voucher received by the gas producer under AS 43.90.330.

3:04:15 PM

Section 43.90.330. Inducement vouchers. (page 23)

Ms. Davis acknowledged that the current version failed to reflect the "parallel structure" in which the royalty owner receiving an inducement voucher would be obligated to commit to the rolled in rate treatment and to not protest the treatment "put forth" by the pipeline company. An additional subsection, reading as followed, would provide for this.

> (d) The person that receives a voucher under this section, and a gas producer that receives resource inducements under a voucher, shall agree that the person or gas producer, and their respective affiliates, successors, assigns or agents will not protest or appeal a filing by the licensee to roll in mainline expansion costs up to the level that the licensee is required to propose and support under AS 43.90.130(7). The agreement required under this subsection may not preclude the person or gas producer or their respective affiliates, successors, assigns or agents, from protesting a filing to roll in mainline expansion costs that the licensee is not required to propose and support under AS 43.90.130(7).

3:04:52 PM

Article 4. Miscellaneous Provisions.

Section 43.90.400. Alaska Gasline Inducement Act matching contribution fund; disbursements; audits. (page 24)

Ms. Davis stated that the Division of Legal and Research Services recommended the insertion of language to subsection (a) to clarify that no additional appropriation of disbursements would be required and that the fund would not be dedicated. This change had been adopted in a committee substitute for HB 177 and reads as follows.

> (a) There is established in the general fund an Alaska Gasline Inducement Act matching contribution fund. The fund consists of money appropriated to it by the legislature for disbursement to pay the state's matching contributions under AS 43.90.110. Money appropriated to the fund may be spent for the purposes of the fund without further appropriation. Appropriations to the fund do not lapse under AS 37.25.010, but remain in the fund for future disbursements. Nothing in this subsection creates a dedicated fund.

Section 43.90.410. Regulations. (page 25)

Ms. Davis relayed Division of Legal and Research Services and the Department of Law recommendations for the language of this section to read as follows.

> The commissioners may jointly adopt or amend regulations for the purpose of implementing the provisions of this chapter. The commissioner of revenue and the commissioner of natural resources may adopt or amend regulations adopted under authority outside of this chapter as necessary to implement the provisions of this chapter.

Section 43.90.420. Statute of limitations. (page 25)

Ms. Davis noted the following language would establish clarification that only constitutionality challenges would be subject to this provision.

> A person may not bring a judicial action challenging the constitutionality of this chapter, of the constitutionality of a license issued under this chapter unless the action is commended in a court of the state of competent jurisdiction within 90 days after the date that a license is issued.

Section 43.90.430. Interest (page 25)

Ms. Davis characterized the following proposed language as a "clean up" suggested by the Division of Legal and Research Services to reflect the language of HB 177 and to specify the statutory reference to AS 43.05.22 rather than a quotation of the existing language of that statute.

> When a payment due to the state under this chapter becomes delinquent, the payment bears interest at the rate applicable to a delinquent tax under AS 43.05.225.
>
> Section 43.90.440. Licensed project assurances. (page 25)

Ms. Davis reminded of a question raised during a previous Committee meeting that in the event the State extended preferential treatment to a different project and subsequently made payment to the AGIA licensee of three times the amount of expenses for the AGIA project, whether the licensee would additionally have claims for damages from a breach of contract or other grounds. To demonstrate that the payment would reflect the "sum total" of the State's obligation in the event the State provided support to a competing project, the following sentence was recommended for inclusion in subsection (a), which provided for the payment.

> The payment under this subsection is in full satisfaction of all claims the licensee may bring in contract, tort or other law, related to the events that gave rise to the payment.

3:07:35 PM

Ms. Davis also spoke of clarification needed to the provision of subsection (b) relating to the potential benefit to a competing pipeline project provided by the large project coordinator position that currently existed within the Department of Natural Resources to assist developers of large projects. "Permitting support" was not "tax or royalty" and therefore not subject to compensation to the AGIA licensee if provided to a competing project. To establish this, a new subparagraph to subsection (b) was proposed to read as follows.

> (3) the review, processing and facilitation of permits, rights of ways and authorizations by state agencies in connection with a competing natural gas

pipeline project shall not create any obligation on the part of the state under this section.

3:08:38 PM

Senator Dyson voiced concern about a pipeline facilitator position assisting a competing pipeline project.

Ms. Davis replied that the pipeline coordinator position that would be added through this legislation would be "exclusive" in assisting the AGIA licensed project. However, existing statute granted the Department of Natural Resources the right to appoint a coordinator for a large project to facilitate and coordinate with other agencies. The individual coordinators would not be the same person.

Mr. Galvin furthered that no provision of this bill would prevent the legislature from creating a coordinator position to assist a competing project with the permitting process.

3:10:14 PM

Article 5. General Provisions.
Section 43.90.900. Definitions. (page 27 and 28)

Ms. Davis told of the following recommended addition of a definition of "amended certificate" to exclude "simply a certificate that's been subsequently amended after the passage of AGIA" to avoid "a situation where deadlines start to get extended because of amendments to certificates that got issued after the effective date of the Act."

(3) "amended certificate" means a certificate of public convenience and necessity issued by the Federal Energy Regulatory Commission under authority of the Alaska Natural Gas Transportation Act of 1976 that is amended to comply with the terms of the license;

Ms. Davis also noted proposed definitions of "applicant" and "gas treatment plant" to read as follows.

(4) "applicant" means a person, or group of persons that files an application under this chapter;
…

(9) "gas treatment plan" means a facility downstream of the point of production that contains gas and removes non-hydrocarbon substances from the gas for the purpose of rendering the gas acceptable for tender and acceptance into a gas pipeline system;

3:11:00 PM

Ms. Davis continued pointing out proposed definitions for "net present value", "open season", "point of production", "proprietary" and "trade secret", explaining the technical reasons for their necessity in this section. The inserted language would read as follows.

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

(18) "point of production" has meaning set forth in AS 43.55.900(20);

…

(20) "proprietary" means that the information is treated by the applicant as confidential and the public disclosure of that information would adversely affect the competitive position of the applicant or materially diminish the commercial value of the information to the applicant;

…

(23) "trade secret" has the meaning set forth in AS 45.50.940(3);

3:12:04 PM

Ms. Davis stated that the insertion of a subparagraph to AS 40.25.120(a), pertaining to exemptions to access to public records and amended by Section 4 of the bill on page 32, would "amplify the provision for what are accepted as public records". The subparagraph would reference AS 43.90.150, which pertained to application review and determination of constitutionality, as well as AS 43.90.220(d), which pertained to documents obtained in the course of participation in the licensee's business operation meetings, and reads as follows.

(12) records that are

(A) proprietary, privileged or a trade secret in accordance with AS 43.90.150 or AS 43.90.220(d);

(B) applications that are received under AS 43.90 until notice is published under AS 43.90.160.

3:12:54 PM

Ms. Davis noted the recommended addition of a new Section 8 to the bill on page 33 to ensure that the Department of Natural Resources would have authority to adopt and amend regulations pertaining to Title 38, which otherwise related to "the tax code". The language would read as follows.

Section 8. AS 38.05.020(b) is amended by adding a new paragraph to read:

(10) exercise the powers and do the acts necessary to carry out the provisions and objectives of AS 43.90 that relate to this chapter;

3:13:17 PM

Co-Chair Stedman ordered the bill HELD in Committee.

AT EASE 3:13:43 PM / 4:11:11 PM

#HB109
4:11:19 PM

SENATE CS FOR CS FOR HOUSE BILL NO. 109(JUD)
"An Act relating to bribery, receiving unlawful gratuities, and campaign contributions; denying public employee retirement pension benefits to certain legislators, legislative directors, and public officers who commit certain offenses, and adding to the duties of the Alaska Retirement Management Board and to the list of matters governed by the Administrative Procedure Act concerning that denial; relating to campaign financing and ethics, including disclosures, in state and municipal government, to lobbying, and to employment, service on boards, and disclosures by certain public officers and employees who leave state or municipal service or leave certain positions in state or municipal government; restricting representation of others by legislators; relating to blind

trusts approved by the Alaska Public Offices Commission; and providing for an effective date."

This was the first hearing for this bill in the Senate Finance Committee.

4:12:03 PM

DAVID JONES, Senior Assistant Attorney General, Opinions, Appeals, and Ethics Section, Civil Division, Department of Law, testified that this ethics bill would place additional restrictions on members of the Legislative Branch, the Executive Branch and lobbyists. In addition to requiring more detailed reporting from public officials and members of the Executive Branch, it would require electronic filing of campaign, legislative, and public official disclosures. Disclosures would also be required from former members of the Executive Branch and the Legislative Branch.

4:13:14 PM

Mr. Jones stated that AS 11.56.130 as amended by Section 1 paragraph (1) page 2 lines 2 through 10 of the Senate Judiciary committee substitute "would change the definition of 'benefit' in the criminal bribery statutes to prohibit agreements to exchange campaign contributions for elected officials or candidates changing their votes or positions on matters."

4:13:33 PM

Mr. Jones stated that the term "official action" is also defined in Section 1(1) as follows.

> …"official action" means advice, participation, or assistance, including, for example, a recommendation, decision, approval, disapproval, vote, or other similar action, including inaction.

Mr. Jones stated that this definition is also reflected in AS 39.52.960(14), as amended by Section 70 of the bill, page 41, lines 28 through 31. Section 70 addresses actions taken by a public officer.

4:13:45 PM

Mr. Jones noted that Sections 2, 3, and 4 of the bill "refer" to language in new subsection (a) of Section 37.10.310. Pension forfeiture to preserve public trust in government., added to AS 37.10 by Section 48, page 28, lines 20 through 28. Section 48(a) would "provide for forfeiture of the State's contributions toward public officials' pensions under certain circumstances."

Mr. Jones specified that the new section, Section 14.25.212. Pension forfeiture., added to AS 14.25 by Section 2, page 2 lines 15 through 17, "would apply the pension forfeiture provision [in Section 48] to the defined benefit plan under the Teachers Retirement System (TRS)."

Mr. Jones stated that changes to AS 14.25.040(c), as amended by Section 3 page 2 lines 18 through 31, "would deny certain service credit under" TRS under the pension forfeiture provisions of Section 48.

4:14:20 PM

Mr. Jones communicated that the new section, Section 14.25.532. Pension forfeiture, added to AS 14.25 by Section 4, page 3 lines 1 through 3, "would apply that pension forfeiture to the defined contribution plan" of the TRS.

4:14:39 PM

Mr. Jones advised that Sections 5, 6, 7, and 8 pertain to campaign and campaign disclosures. Language in AS 15.13.040(g), as amended by Section 5, page 3 lines 4 through 15, "would eliminate for most campaigns the current disclosure exemption for campaigns raising and spending less than $5,000."

4:14:58 PM

Mr. Jones noted that AS 15.13.040(m) is repealed and reenacted under Section 6, page 3 lines 16 through 30. Thereby subsection (m) "would require electronic filing of most campaign disclosures. It would except municipal campaigns and campaigns raising and expending less than $5,000. It would delay application of the electronic filing requirement to Legislative candidates until January 1 of 2009. It would also allow the Alaska Public Offices Commission (APOC) to grant exceptions to

the mandatory electronic filing requirement when circumstances warrant."

4:15:31 PM

Mr. Jones stated that Section 7 would amend AS 15.13.040(m) as amended by Section 6, to specify that, as of January 1, 2009, "candidates for municipal office" in a municipality with a minimum population of 15,000, would be subject to the electronic filing requirement.

4:15:52 PM

Mr. Jones stated that Section 8, page 4 lines 22 through 26, would add a new section to AS 15.13.040 which would require APOC "to scan campaign disclosures", submitted on paper as opposed to being electronically filed, and post them on the internet within two working days.

Mr. Jones understood that APOC would be submitting a fiscal note to reflect the cost associated with this provision.

4:16:13 PM

Mr. Jones stated that Section 9, page 4 lines 27 through 29, would add a new section to AS 22.25 regarding the pension forfeiture provision specified in Section 48. "It would apply that provision to the judicial retirement system."

4:16:28 PM

Mr. Jones explained that Sections 10, 11, and 12 pertain to lobbyists. AS 24.45.031(a) is amended by Section 10, page 4 lines 30 through page 5 line 16, to "require APOC to provide annually updated ethics training courses for lobbyists and their employers."

4:16:50 PM

Mr. Jones continued. AS 24.45.041(b) is amended by Section 11, page 5 lines 17 through page 6, line 16. It would "require lobbyists to file annual affirmations that they've attended the ethics training course."

4:16:53 PM

Mr. Jones informed that a new subsection is added to AS 24.45.051 by Section 12, page 6 lines 17 through 26. It would require lobbyists to report gifts of food and beverages provided for immediate consumption to Legislators, Legislative employees or members of the Legislator's or Legislative employee's immediate family" ,except when "the food or beverage cost $10 or less or was provided as part of an event that is open to all Legislators and Legislative employees." This language was added to the bill by the Senate Judiciary Committee.

In response to a question from Co-Chair Hoffman, Co-Chair Stedman and Mr. Jones communicated that this information is located in Section 12(b) page 6 lines 17 through 26.

4:18:46 PM

Senator Elton asked the definition of "open"; specifically whether it meant that "all Legislative employees could be invited" or whether it meant "all Legislative employees who may be able to attend". To that point, he asked whether a luncheon occurring in Juneau to which Legislative employees in Anchorage were invited, would be considered open or closed since people in Anchorage would be unlikely to attend.

4:19:19 PM

Mr. Jones guessed it "would be considered open" because the Legislator or the Legislative employee could elect to attend. The cost of traveling to Juneau might be a factor in their decision.

Mr. Jones surmised that the provision was intended to distinguish between "something that was open as opposed to invitation-only to a select group of Legislators or Legislative employees."

4:20:00 PM

Senator Elton understood the intent. The concern however is that in order to qualify as an open event, Legislative employees, in addition to Legislators, must be invited to the event. Thus, "in Juneau, for example, we're essentially saying you can't have a lunch because there is no place big enough to handle" both Legislators and Legislative employees. This would be

problematic. He would discuss this concern with the bill's sponsor.

4:20:39 PM

Senator Olson asked for further clarification of the provision; specifically whether it would require a report to be filed if he and his family had dinner at the home of a high school fiend who happened to be a lobbyist.

4:21:08 PM

Mr. Jones believed a report would be required.

4:21:18 PM

Senator Dyson thought that the provision would only apply to a situation "when that person has active business before the State."

Senator Huggins and Co-Chair Hoffman stated that the language did not indicate that.

4:21:34 PM

Mr. Jones agreed.

4:21:41 PM

Co-Chair Stedman asked whether the bill would require a lobbyist to disclose that status to a Legislator or Legislative employee. This would prevent a Legislator from inadvertently having a meal with a lobbyist.

4:22:04 PM

Mr. Jones was unaware of any such provision. He concurred that each lobbyist is required to file with APOC, a Legislator might be unaware of a person's status.

4:22:20 PM

Co-Chair Stedman understood therefore that lobbyists are not required to disclose their occupation to a Legislator.

4:22:26 PM

Mr. Jones affirmed.

4:22:28 PM

Co-Chair Stedman considered this to be a "huge loophole".

4:22:34 PM

Senator Huggins asked whether the City of Unalaska would be considered a lobbying organization if it hosted a crab feed in Juneau.

4:23:02 PM

Mr. Jones deferred to APOC, but assumed "that the city itself would not be considered a lobbyist."

4:23:23 PM

Senator Huggins asked whether that determination would change if the city's lobbyist was in attendance. He also wondered if the provision would curtail legislators' meetings with their local school board or borough assembly members over breakfast to discuss things. He asked that these things be addressed in the discussion.

4:23:46 PM

Senator Thomas asked the definition of "immediate consumption" as specified in Section 12(b) page 6, line 19.

4:23:58 PM

Mr. Jones expressed that the term "immediate consumption" was included in the provision "to distinguish between gifts of a whole ham, for example," and eating a meal at the time.

4:24:21 PM

Senator Thomas concluded therefore that "gifts of food," such as the whole ham that was not immediately consumed, would be exempted.

4:24:32 PM

Mr. Jones again deferred to APOC. He surmised that the language was intended to require reporting of gifts of food and beverages for immediate consumption, which are currently excepted under lobbying gift statutes. The language would not prohibit such gifts, but would "tighten regulations a bit by requiring disclosure of those gifts."

4:25:12 PM

Co-Chair Stedman, seeking further clarification of the provision, stated that he had recently been invited to the City of Ketchikan's lobbyist's home for brunch and a visit with his family before he caught a plane home. The question was whether the lobbyist would be required to report that meal.

4:25:53 PM

Mr. Jones affirmed that, under the provisions of this bill, the meal should be reported if its value exceeded ten dollars.

4:25:55 PM

Co-Chair Hoffman asked whether the provision distinguished between a lobbyist earning $100,000 a year and an unpaid lobbyist.

4:26:20 PM

Mr. Jones specified that the provision did not apply to volunteer lobbyists. They are not required to report to APOC as specified under current Alaska Statute (AS) 24.45.051(a).

4:26:33 PM

Co-Chair Hoffman thus asked which lobbyists Section 12(b) would apply to.

4:26:40 PM

Mr. Jones responded that Section 12(b) "would apply to those lobbyists that are required to report, which would include the professional lobbyists, employee lobbyists who spend more than

ten hours and are paid for their lobbying services … it would also apply to the representational lobbyist."

4:26:59 PM

Co-Chair Hoffman deduced that a person who lobbied for ten hours but made no money might be required to report under the terms of this provision.

4:27:14 PM

Mr. Jones stated that might be true in the case of a representational lobbyist. He noted that they are only reimbursed for travel expenses.

4:27:22 PM

Co-Chair Hoffman asked to the logic in this case.

Mr. Jones could not explain the logic. This amendment was developed by the Senate Judiciary Committee, not the Department of Law.

4:27:38 PM

Co-Chair Hoffman asked whether the Administration supports the language.

4:27:44 PM

Mr. Jones replied that "the Administration has no objection to this provision."

4:27:52 PM

Co-Chair Hoffman deduced therefore that the Administration had "no objection to the inclusion or exclusion of it".

Mr. Jones replied "correct".

4:28:09 PM

Mr. Jones directed attention to Section 13, which would amend AS 24.45.121(a) to "prohibit lobbyist from making or offering gifts that the Executive Ethics Act would bar the recipients from

accepting. It would also make conforming changes for changes to the Legislative Gift provisions that appear in Section 25 of the bill."

4:28:33 PM

Senator Dyson asked whether subsection (a)(5) of Section 13, page 7 lines 7 through 9, would prohibit a lobbyist from sending a Legislator information from a magazine article or another source unless they had received permission from the original author to do so.

4:29:37 PM

Mr. Jones thought that the intent of the language was to prevent a letter being sent in the name of someone else without their permission. He did not believe that attaching something that originated somewhere else would violate the provision.

4:30:09 PM

Senator Dyson opined therefore that the provision is "precluding any duplicity about that."

4:30:16 PM

Mr. Jones affirmed.

4:30:19 PM

Senator Elton asked whether the reference to "a real human" in that same paragraph could include a corporation.

4:30:40 PM

Mr. Jones stated that he would have to review the definition language before he could respond. He suspected that the term referred "to a real human being".

4:30:47 PM

Mr. Jones informed the Committee that the provisions included in the original bill, as proposed by Governor Sarah Palin, specifically dealt with disclosures by the Legislative and the Judicial Branch. They dealt "substantively on disclosure for the

Executive branch". Other provisions have been added during the Legislative hearing process. He apologized that individuals familiar with the Legislative actions were not available to answer Committee questions.

Co-Chair Stedman appreciated Mr. Jones' remarks.

4:31:29 PM

Mr. Jones stated that new subsection (d), added to AS 24.45.121 by Section 14, page 8 lines 4 through 8, would "prohibit former Executive branch members from lobbying or registering as lobbyist when the Executive Branch Ethics Act bars them from lobbying." This language would provide "APOC the authority to refuse to accept registration from someone that could not, under the Ethics Act, lobby."

4:32:00 PM

Mr. Jones remarked that Section 14 also added new subsection (e), page 8 lines 9 through 12, to that same Statute. This language would "bar Legislator's spouses and domestic partners from lobbying."

Mr. Jones shared that the new paragraph added to AS 24.45.171 by Section 15, page 8 lines 13 and 14, defined "domestic partner".

4:32:24 PM

Senator Elton, directing his question to Section 14, recalled that in past years, legislation had been introduced that attempted to bar spouses and domestic partners from lobbying. It was argued that the State's Constitution prevented that from occurring, as it was "an infringement of some sort".

4:33:05 PM

Mr. Jones was familiar with the argument. Concern was raised about the constitutionally of this provision during the bill's hearings in both Legislative bodies. There is awareness that the provision might be subjected "to a constitutional challenge" and the finding might be that it is. Nonetheless, the determination was that having a spouse or a domestic partner lobby "would present such a great practical problem, that despite the possibility of a constitutional challenge, folks were willing to

create such logistical problem willing to include it in the bill."

4:34:01 PM

Mr. Jones stated that Sections 16, 17, and 18 pertain to Legislative ethics. AS 24.60.020(a) is amended by Section 16 to include "language cleanup regarding provisions that apply to former Legislators and Legislative employees." This language mirrors that of Section 1 in SB 20-LEGISLATIVE DISCLOSURES legislation which the Committee had previously considered.

4:34:20 PM

Mr. Jones stated that AS 24.60.030(a) is amended by Section 17 to include "conforming language for changes to the Legislative Gift Provision that appears in Section 25."

4:34:28 PM

Mr. Jones specified that AS 24.60.060(c) as amended by Section 18 would "reduce from 90 to 60 days the length of the pre-election blackout period for use of State funds for Legislative communications with constituents. The reason for that change is to account for recent experience with numerous special sessions that might bump up against the 90 day pre-election blackout."

4:34:53 PM

Mr. Jones advised that AS 24.60.030(f) as amended by "Section 19 would require Legislators and Legislative employees to disclose all board memberships. Currently it's required only that they disclose those memberships of boards that have substantial interest in legislative activities."

4:35:10 PM

Mr. Jones noted that AS 24.60.040(a) as amended by "Section 20 would require publication of Legislators and Legislative employees' disclosures of interest to State contracts and leases."

4:35:19 PM

Mr. Jones cited that AS 24.60.050(c) as amended by "Section 21 would address the timing of the publication of Legislators and Legislative employees' disclosure of participation in State programs and loans, and also would provide procedures for exemption from the disclosure requirement."

4:35:39 PM

Mr. Jones explained that AS 24.60.070(a) as amended by Section 22 "would eliminate the existing exception for reporting Legislators and Legislative employees' close economic associations with municipal offices."

4:35:53 PM

Mr. Jones expressed that AS 24.60.070(c) as amended by "Section 23 includes conforming language for the bar on lobbying by Legislator's spouses and domestic partners, which occurs in Section 14."

4:36:02 PM

Mr. Jones stated that a new section, Section 24.60.075. Compassionate gift exemptions. is added to AS 24.60 by Section 24. "It would allow an exception to the gift restrictions for gifts to Legislators and Legislative employees of up to $250 in cases of medical or other emergencies, but disclosure would be required and written approval from the chair of the Legislative Council and the chair or vice-chair of the Select Committee on Legislative Ethics."

4:36:33 PM

Mr. Jones remarked that AS 24.60.080(a) is amended by Section 25 to "include further restrictions on gifts to Legislators and Legislative employees."

4:36:44 PM

Mr. Jones commented that AS 24.60.080(c) is amended by Section 26 to include "conforming language for those restrictions on gifts. It also defines immediate family. You'll notice that this is very broad definition of immediate family. It's important to bear in mind that that very broad definition applies only to determining who may make gifts to Legislators and Legislative

employees, without violating the Legislative Ethics restrictions."

Mr. Jones stated that Section 26 "would also bar the Office of Victim Rights from receiving Session discounts and would allow Legislators and Legislative employees to give each other rides in their own planes, boats, and other vehicles."

Mr. Jones, understanding that there was some concern about this provision, deferred to Joyce Anderson with the Select Committee on Legislative Ethics.

4:37:36 PM

Co-Chair Stedman affirmed there were questions about this provision; specifically in regards to how it would affect Legislators traveling from one point to another, by boat or air, in the road-less regions of Western and Southeast Alaska.

4:38:05 PM

JOYCE ANDERSON, Administrator, Select Committee on Legislative Ethics, testified via teleconference from Anchorage and informed the Committee that Legislators are currently allowed to provide transportation to another Legislator without having to disclose it. Section 26 would simply include Legislative employees in "the exemption as well" because it is not uncommon for a Legislative employee to travel with a Legislator in rural areas. "Otherwise the Legislative employee would have to file" that travel arrangement "as a gift for a legislative purpose …even though there is no reason to do that" due to the limited travel options in Rural Alaska.

4:39:00 PM

Co-Chair Stedman, who represents "an island-bound Legislative district", stated that he often travels the district by boat in the summer. To that point, he asked what would be required of him or a Senate Finance Committee employee who works on the Capital budget were that employee to travel with him on his boat to look at harbors and roads in the district.

4:39:44 PM

Ms. Anderson stated that no disclosure would be required under this bill because the travel would involve a Legislator and a Legislative employee.

4:40:04 PM

Senator Olson thought that language in paragraph (4) of Section 26 would negate the Legislator to Legislator or Legislative employee travel exemption scenario exampled by Co-Chair Stedman because it specifically excludes travel conducted "for the purpose of obtaining information on matters of legislative concern."

4:41:01 PM

Ms. Anderson assured the Committee that such travel would be exempt from the disclosure requirement. While the majority of the bill's sections pertain to things that would require disclosure, Section 26 depicts things that would not require disclosure.

4:41:25 PM

Senator Olson appreciated the clarification.

4:41:29 PM

Senator Elton inquired to the definition of travel. For example, he wondered if it be considered travel if he got on an airplane, flew over the Taku River, and then landed back at the same airport.

4:41:52 PM

Ms. Anderson responded that it would depend on such things as whether the travel involved a commercial airline, whether there was a cost involved, or whether someone other than a Legislator or Legislative employee was flying the plane. If it involved the latter case, disclosure would be required.

Senator Elton understood therefore that disclosure would be required even in the instance of traveling from "point 'a' to point 'a'."

Ms. Anderson affirmed.

4:42:14 PM

Senator Huggins asked whether it would be permissible under the Legislator to Legislator or Legislative employee travel exemption specified in Section 26(c)(9), page 18 lines 5 through 9, for him to fly one of his Legislative staffers out to a moose-hunting camp and drop him off.

4:42:44 PM

Ms. Anderson stated that because the travel was not related to a legislative purpose, it would not be prohibited under the Legislative Ethics Code.

4:42:58 PM

Senator Huggins understood therefore that taking that individual fishing would also be permissible under the Legislative Ethics Code.

Ms. Anderson affirmed.

4:43:06 PM

Co-Chair Stedman, noting that several Committee members were pilots and had private aircraft, asked the type of disclosure that would be required if he visited them on official Senate business and they flew him around their district to look at remote communities.

Ms. Anderson stated that no disclosure would be required in this instance under the language in Section 26.

4:43:32 PM

Senator Olson recalled that legislation had been introduced several years prior that specifically addressed the scenario exampled by Co-Chair Stedman.

4:43:53 PM

Ms. Anderson thought Senator Olson was referring to legislation approved several years prior that allowed legislators to provide

transportation to other legislators. She was unsure why Legislative employees had not been included in that legislation.

4:44:17 PM

Mr. Jones stated that AS 24.60.080(d) as amended by "Section 27 would require disclosure of gifts of legal services to Legislators and Legislative employees" and gifts to their immediate family members that might be "received because of their connections to the Legislators and Legislative employees." The language would also require that gifts valued at $250 or more that are unrelated to a Legislator or Legislative employee's status must be reported within 30 days of receipt.

[NOTE: Mr. Jones inadvertently omitted identifying Section 28, which amends AS 24.60.080(i), as the Section pertaining to the reporting of gifts to immediate family members.]

4:44:50 PM

Co-Chair Hoffman, observing that the term "immediate family" has different definitions depending on the bill section, asked the definition of this term as it relates to this provision.

4:45:04 PM

Mr. Jones affirmed that Co-Chair Hoffman was correct. He deferred to Ms. Anderson to provide the definition of the term immediate family member in this instance.

4:45:32 PM

Ms. Anderson defined an immediate family member relating to Section 28 as "only the spouse, a domestic partner, or dependent children."

4:45:46 PM

Mr. Jones stated that the new subsection added to AS 24.60.085 by "Section 29 would bar Legislators from accepting outside compensation for work associated with legislative, administrative, or political action."

4:46:08 PM

Mr. Jones explained that AS 24.60.105(a) as amended by "Section 30 would require filing of Legislative disclosures within 30 days after commencement of the matters or the interests disclosed."

4:46:15 PM

Co-Chair Hoffman directed attention back to Section 29. He asked whether the compensation prohibition would pertain to gifts presented to a retiring Legislator.

4:46:57 PM

Mr. Jones clarified that Section 29 pertained to compensation as opposed to gifts. The prohibition of compensation would apply only during the term in which the Legislator was elected or appointed.

4:47:25 PM

Senator Elton asked for a response to Co-Chair Hoffman's question as it relates to Section 27. He assumed that giving a seated but retiring Legislator a retirement gift exceeding a specified amount would be prohibited under this bill.

4:47:56 PM

Mr. Jones deferred to Ms. Anderson.

4:48:08 PM

Ms. Anderson stated that a seated Legislator is "prohibited from receiving a gift because of your Legislative status that's over $250 which would be cumulative from the same person within a calendar year." A Legislator is "allowed to receive gifts unrelated to Legislative status over the $250 limit."

Ms. Anderson stated that a retirement gift could be viewed two ways. It could be viewed as a gift relating to legislative status or it could be considered a gift "not because of their Legislative status" but because of friendship. She thought that the Legislative Ethics Committee might consider a retirement gift to be one resulting from friendship. In that case, the gift's value could exceed $250.

4:49:13s PM

Mr. Jones returned to Section 30. It "would require filing of disclosures within 30 days after the matter or interest arises."

4:49:23 PM

Mr. Jones remarked that the new subsection added to AS 24.60.105 by "Section 31 would also require annual disclosures."

4:49:29 PM

Mr. Jones noted that the new section added to article 2 of AS 24.60 by "Section 32 would require a final Legislative disclosure within 90 days of leaving service."

4:49:44 PM

Mr. Jones stated that AS 24.60.130(n) as amended by "Section 33 would establish procedures for using alternates when regular Legislative members of the Select Committee on Legislative Ethics are unavailable."

4:49:56 PM

Mr. Jones cited that AS 24.60.130(o) as amended by "Section 34 would define majority organizational caucus for purposes of the provisions dealing with the select committee."

4:50:06 PM

Mr. Jones stated that the new subsection added to AS 24.60.130 by "Section 35 would establish procedures for disqualification of Legislative members of the Select Committee and for appointment of alternatives."

4:50:19 PM

Mr. Jones remarked that AS 24.60.150(a) as amended by "Section 36 would require the Select Committee to publish legislative ethics materials and administer introductory and refresher courses on Legislative ethics so that experienced legislators and legislative employees would not have to take the same course as brand new folks."

4:50:33 PM

Mr. Jones announced that the new section added to AS 24.60 by "Section 37 would require Legislators, Legislative employees and public members of the Select Committee to take the Legislative ethics course, usually within ten days of the first day of the first regular session of each Legislature."

4:50:52 PM

Mr. Jones advised that AS 24.60.160 as amended by "Section 38 would authorize the Select Committee and the APOC to request opinions from the Select Committee. Currently they are unable to do that."

Mr. Jones continued. Section 38 would require publication of the Select Committee's opinions with deletions to protect identities and would make the Select Committee's discussions and deliberations on opinions confidential unless waived by requestors and make final votes public."

4:51:22 PM

Co-Chair Stedman asked whether a person could simply take the course specified in Section 37 or whether they must take it and pass a test.

4:51:34 PM

Mr. Jones understood that an individual would just be required to take the course. He was uncertain whether a testing measurement was required.

4:51:43 PM

Co-Chair Stedman was curious about this because, as part of his professional training in the security business, he is required to take ethics training annually. That training includes both assignments and testing.

4:52:08 PM

Ms. Anderson replied that, while examinations have not been required, the issue could be presented to the full Ethics

Committee for consideration. Suggestions on this matter would be welcome.

4:52:48 PM

Co-Chair Stedman expressed that a combination of ethics classes and computer examinations of the issues would be more effective than the manner in which Legislative ethics classes were conducted at the beginning of this Session.

4:53:35 PM

Ms. Anderson stated that the suggestion "would be taken into consideration."

4:53:41 PM

Mr. Jones continued with the bill overview. AS 24.60.070(j) as amended by Section 39, "would address the procedures for hearing formal charges before the Select Committee."

4:53:53 PM

Mr. Jones specified that AS 24.60.176(b) as amended by "Section 40 would identify the appointing authority for the Office of Victims Rights for purposes of administering the remedies for violations of the Legislative Ethics provisions."

4:54:05 PM

Mr. Jones communicated that AS 24.60.200 as amended by Section 41 "would require many more details about income and deferred income in Legislative financial disclosures."

4:54:19 PM

Mr. Jones specified that AS 24.60.210(a) as amended by "Section 42 would require final Legislative financial disclosures within 90 days of leaving service and for public members of the Select Committee, Legislative directors, and Legislators appointed to fill vacant seats, would require financial disclosures within 30 days of their appointment."

4:54:46 PM

Mr. Jones noted that the new subsection added to AS 24.60.210 by Section 43 "would require electronic filing of Legislative financial disclosures."

4:54:56 PM

Mr. Jones pointed out that provisions in Section 75 would specify that the electronic filing required in Section 43 would not be required until January 1, 2009.

4:55:06 PM

Mr. Jones remarked that AS 24.60.250(c) as amended by "Section 44 would require the APOC to notify the Legislative Council if the Victims Advocate failed to file a timely financial disclosure."

4:55:24 PM

Mr. Jones commented that AS 24.60.990(a)(2) as amended by "Section 45 would include conforming language for changes to the Legislative gift provision in Section 25."

4:55:26 PM

Mr. Jones remarked that AS 24.60.990(a)(7) as amended by Section 46 would change the "definition of 'income' in the Legislative Ethics statutes to clarify the fact that it includes 'deferred income'."

4:55:39 PM

Mr. Jones stated that Sections 47 through 51 pertain to the pension forfeiture provision discussed earlier. The new paragraph added to AS 37.10.220(a) by Section 47 would provide the Alaska Retirement Management Board (ARM Board) "the authority to administer the pension forfeiture provision in Section 48."

4:55:57 PM

Mr. Jones reminded the Committee that Section 48, as explained earlier, is the provision pertaining to pension forfeitures. It provides for "forfeiture, upon conviction, of the State's retirement contributions made on behalf of a public officer, a

Legislator, or Legislative director, after commission of one of the listed felonies such as bribery" and perjury "if that felony is committed in connection with official duties."

4:56:31 PM

Co-Chair Stedman asked whether the pension forfeiture provision would also include a revocation of any health care benefits "the individual may be entitled to."

Mr. Jones replied no. Language in Section 48(c) page 29, lines 1 through 4 specifies that the pension forfeiture would not include health benefits.

4:56:58 PM

Mr. Jones continued. Section 48 also specifies that the ARM Board "may award some or all of the forfeited amounts to a spouse, dependent, or former spouse of the convicted person based on the factors" listed in Section 48(d)(1) and (2), page 29, lines 13 through 17.

4:57:21 PM

Mr. Jones noted that AS 39.35.300(a) as amended by "Section 49 applies the pension forfeiture provision" specified in Section 48, "to deny certain service credit under the Public Employees Retirement System (PERS)."

4:57:32 PM

Mr. Jones communicated that the new sections added to AS 39.35 by Sections 50 and 51 would apply the pension forfeiture provision to the PERS defined benefit and defined contribution plans.

4:57:46 PM

Co-Chair Stedman asked whether the bill contained "a retroactive clause".

4:57:52 PM

Mr. Jones clarified that the pension forfeiture provision would only apply to "offenses committed after the effective date" of the bill.

4:58:04 PM

Mr. Jones expressed that Sections 52 through 55 would "apply to public officials under Title 39 Chapter 50."

4:58:16 PM

Mr. Jones stated that AS 39.50.020 as amended by "Section 52 would require final financial disclosures from public officials within 90 days of leaving service." This would "include high ranking executive branch officials, municipal officers, and judicial officers."

4:58:33 PM

Mr. Jones stated that AS 39.50.060(b) as amended by "Section 53 would require more detail in public officials' financial disclosures."

4:58:46 PM

Co-Chair Stedman asked for further information about the meaning of "more detail".

4:58:55 PM

Mr. Jones stated that this provision would require individuals "to identify the source of any gift" received by them or their immediate family members that exceeds $250 in value in a calendar year or the source of any income exceeding $1,000. In addition, "a brief statement describing, in respect to income, whether it was earned by commission, by the job, by the hour," or by another method would be required to provide "some hint about whether the payment is proportional to the work being done." The report should also include "the approximate hours worked to earn the income and a description of what was done to earn the income unless by law that information is required to be kept confidential."

Mr. Jones stated that this section "would reduce from $5,000 to $1,000 the reporting threshold for various financial interests".

Mr. Jones reiterated that this section pertained to public officials and not to the Legislative branch.

5:00:19 PM

Co-Chair Stedman spoke to the requirement that a public official list the sources of income exceeding $1,000 and a description of what was done to earn that income. He asked how this would be managed in the case where the individual had several hundred clients.

5:00:39 PM

Mr. Jones deferred to APOC. While people such as doctors, lawyers, or dentists could have numerous clients, he believed that existing confidentiality provisions would exempt reporting the details associated with the services provided to those clients.

5:01:04 PM

BROOK MILES, Executive Director, Alaska Public Offices Commission, Department of Administration, testified via teleconference from an offnet location and affirmed a client list would be required if the service cost $1,000 or more.

5:01:34 PM

Co-Chair Stedman asked for further information about the income description requirement. It could be quite burdensome for a public official who was also a charter boat operator with more than 300 clients if he was required to provide detailed information on the services provided to each client.

5:01:54 PM

Ms. Miles contended that "the majority of people … who are filing statements under AS 39.50 have very serious fulltime State jobs. And, for the most part, I don't believe" that in addition to those jobs, they would undertake doing such things as being a charter boat operator. Furthermore, as State employees, it might be impossible for them to receive approval to do such things.

Ms. Miles advised, however, that there were people on numerous State boards and commissions who would be subject to filing this disclosure statement on an annual basis. "Those would be the individuals that may find the clients' list burdensome."

Ms. Miles qualified that because filing such information had not previously been required by law, "the Commission has not yet considered the amount of detail" that would be required nor "what kind of guidance regulations" might be "promulgated".

Ms. Miles stated that since APOC board members would be subject to this provision, its three attorneys "would be very sensitive to applying the law in a practical way that's not overly burdensome."

5:03:43 PM

In response to a question from Co-Chair Stedman, Ms. Miles clarified that the provision would apply to "Executive Branch officials, not Legislators."

5:03:50 PM

Co-Chair Stedman asked who would be subject to the provision depicted in Section 53(b)(1) page 31 lines 3 through 19.

5:04:02 PM

Ms. Miles stated that it would apply to the Governor and the Lieutenant Governor.

5:04:11 PM

Senator Dyson asserted that elected officials are also required to "jump through same hoops. For instance, he is required to report all the names of individuals that charter his boat. He is also required to inform clients that their name would appear in the public record. A few prospective clients have opted not to charter with him for that reason. "It's a hassle."

5:04:52 PM

Co-Chair Stedman understood that in addition to logging client's names, Senator Dyson is required to report the amount of time spent on the boat and the activities that took place.

5:05:08 PM

Ms. Miles could not "imagine the Commission going into that kind of detail." Detailing the mechanics of a fishing trip would not be necessary. The required information would simply be a list of those clients who paid more than $5,000. There is no confusion about the activities that a charter boat captain provides to his clients. "It's not broad term like analyst or consultant."

5:05:43 PM

Co-Chair Stedman understood that Legislators would be required to report compensations of $1,000 or more not the $5,000 threshold amount stated by Ms. Miles.

5:05:53 PM

Ms. Miles acknowledged that the current threshold for Legislators is $1,000. Section 53(b) would make Executive Branch officials subject to a $1,000 threshold.

5:06:06 PM

Co-Chair Stedman revisited the ethics training proposed in this bill. He has observed through his private business experience that sometimes when an individual thinks they have complied with regulations, they find out "after the fact" that they had not "because the interpretation was different." He asked how elected officials could "avoid that scenario".

5:06:45 PM

Ms. Miles stated that "elected officials could best assist that [disclosure law] process by writing very clear legislation." The language should clearly identify what must be reported and when. While APOC manages the disclosure law process, the Department of Law and the Select Committee on Legislative Ethics address "areas of behavior with respect to ethics issues" in addition to disclosure requirements.

5:07:36 PM

Co-Chair Stedman, using Senator Dyson's charter business as an example, asked the process that would be undertaken if another

charter operator made a formal complaint because" Senator Dyson had not provided the depth of detail required by the provision under another's APOC commissioner's interpretation.

5:08:13 PM

Ms. Miles stated that in that hypothetical situation "the complainant would have to convince the Commission that they had misinterpreted the law and a much narrower definition is required."

5:08:32 PM

Senator Dyson furthered Co-Chair Stedman's point, by stating that, when preparing to file his recent closed financial interest statement, he had sought information from his financial brokers. He was advised that due to the nature of his investments and how frequently their values' fluctuate, it was difficult to provide accurate information.

Senator Dyson submitted a letter to that affect with his APOC filing and requested they notify him as to whether his effort "was adequate" or, if not, what he would be required to do. Two months have passed and he still has not received a reply. This "illustrates" Co-Chair Stedman's point, as Senator Dyson had made "a good faith effort" to provide what was required, but now months later was still uncertain as to whether it was satisfactory.

5:10:15 PM

Senator Elton asked for further clarification regarding the requirement that gifts with a cumulative value of $250 from a single source must be declared, as specified in Section 53(b)(1) page 31 lines 5 through 7. He was specifically interested in whether another State Statute addressed the process regarding a single gift valued at, for instance, $500.

5:11:07 PM

Mr. Jones thought that such a gift would meet the qualifying criteria in Section 53(b)(1).

Senator Elton cited the plurality of the word "gifts" to have prompted his question.

5:11:38 PM

Mr. Jones expressed that the intent of the language was to disclose any gifting from a single source that exceeds a value of $250 in a calendar year, regardless of whether it was a single gift or the cumulative value of several.

5:12:17 PM

Ms. Miles agreed with Mr. Jones' interpretation of the provision.

5:12:26 PM

Mr. Jones resumed his overview of the bill. AS 39.50.030(h) as amended by Section 54 contained "clean-up language to cover limited liability companies (LLC) because they are relatively new origin."

Mr. Jones noted that AS 39.50.040 as amended by Section 55 "would expand the requirements for blind trusts that public official may choose to use to avoid conflicts of interest."

Mr. Jones communicated that the new subsections added to AS 39.50.040 by "Section 56 also applies to blind trusts." A Department of Law attorney with expertise in this field, "assisted the House Judiciary Committee" with the drafting of this language.

Mr. Jones pointed out that "using a blind trust is voluntary for public officials." The use of such a vehicle must be approved by the APOC "before it would be considered an effective trust under this provision."

AT EASE 5:13:37 PM /5:13:56 PM

5:14:02 PM

Co-Chair Stedman asked that the discussion on the remainder of the bill be abbreviated in consideration of the Committee's agenda.

Mr. Jones advised that AS 39.50.050(a) as amended by "Section 57 would require electronic filing of public officials' financial disclosures" effective July 1 of this year."

Mr. Jones expressed that AS 39.50.050(a) as amended by Section 57 would be amended by Section 58 "to extend that electronic filing requirement to municipal officers in large municipalities as of January 1, 2009."

Mr. Jones noted that AS 39.50.200(a)(10) as amended by "Section 59 includes clean-up language, again, to cover limited liability companies."

5:14:30 PM

Mr. Jones explained that the new paragraphs added to AS 39.50.200(b) by "Section 60 would add to the list of Executive branch boards whose members must file financial disclosures."

Mr. Jones qualified that Sections 61 through 70 pertain to the Executive Branch Ethics Act. The new subsection added to AS 39.52.110 by Section 61 defines "insignificant financial interests in a business" under the Act. As 39.52.120(b) as amended by Section 62 and the new subsection added to AS 39.52.120 by Section 63 "address the use of State aircraft for partisan political purposes and would essentially prohibit that use except for a limit of ten percent of the total use of the aircraft on a single trip."

Mr. Jones continued. AS 39.52.130(a) as amended by Section 64, would bar "most gifts from lobbyists to Executive Branch members and their immediate family members. AS 39.52.180(a) as amended by Section 65 "would eliminate the current exception for work on legislation and regulations under the existing restrictions that apply to former Executive Branch members' employment. Those last for two years after leaving State service."

5:15:38 PM

Mr. Jones stated that AS 39.52.180(d) as amended by "Section 66 would extend the current lobbying ban, which applies for one year after leaving State service" to such people as deputy commissioners, division directors, legislative liaisons and others in addition to the current prohibition on the Governor, Lieutenant Governor and heads of departments.

Mr. Jones advised that the new subsection added to AS 39.52.180 by Section 67 "would bar for one year after leaving State service, former heads of principle departments and former Governor's Office employees in policy making positions from serving on boards of organizations that they either regulated or worked with during their State service."

5:16:19 PM

Mr. Jones noted that the new section added to AS 39.52 by "Section 68 would require the Governor to disclose any personal or financial interest before granting executive clemency and require the attorney general to issue a public determination on whether granting clemency would violate the Ethics Act."

5:16:36 PM

Mr. Jones specified that the new subsection added to AS 39.52.910 by "Section 69 would clarify the Executive Branch Ethics Act to address employment of immediate family members within the same administrative unit or agency."

5:16:51 PM

Mr. Jones noted that AS 39.52.960(14) as amended by "Section 70 changes the definition of 'official action' under the Executive Branch Ethics Act."

5:17:05 PM

Mr. Jones communicated that the final sections of the bill, Sections 71 through 77 reflect the bill's applicability and effective date provisions.

AT EASE 5:17:11 PM / 5:17:54 PM

Senator Olson asked regarding the decision to specify a minimum population of 15,000 as the line of demarcation for the provision that would require municipal and borough officials to file information with APOC electronically, as specified in Section 7(m)(1)(B), page 4, lines 10 through 12 and Section 58(a) page 37 lines 14 and 15.

5:18:15 PM

Mr. Jones stated that that determination was made by the House Judiciary Committee. He did not possess any information on that decision.

5:18:29 PM

Senator Olson asked the number of boroughs that would be subject to the electronic reporting requirement.

Mr. Jones understood that it would apply to the Matanuska-Susitna Borough (Mat-Su), the Kenai Peninsula Borough, the Fairbanks North Star Borough, the City & Borough of Juneau, and the Municipality of Anchorage.

5:18:53 PM

Senator Thomas asked whether the pension forfeiture provision specified in Section 48(a) page 28 lines 21 through 31 contemplated a situation in which a person charged with one of the specified offenses might return to work.

5:19:33 PM

Mr. Jones did not believe that it "contemplates someone returning to work, although that's theoretically possible."

Mr. Jones surmised that the provision was "designed to deal with the fact that you may not discover the offense until later and then it takes a while for the conviction to occur. The forfeiture applies to contributions made by the State after the offense is committed and then, of course, is dependent on the later conviction."

5:20:16 PM

Conceptual Amendment #1: This amendment inserts a new section on page 1 following line 12 as follows.

> Section 1. AS 11.56 is amended by adding a new section to read:
>
> Sec. 11.56.124. Failure to report bribery or receiving a bribe. (a) A public servant commits the crime of failure to report bribery or receiving a bribe if the public servant

(1) witnesses what the public servant knows or reasonable should know is

(A) bribery of a public servant by another person; or

(B) receiving a bribe by another public servant; and

(2) does not as soon as reasonably practicable report that crime to a peace officer or law enforcement agency.

(b) Failure to report bribery or receiving a bribe is a class A misdemeanor.

In addition to conforming changes resulting from the addition of new Section 1, the amendment deletes the entirety of subsection (a) of Section 65, page 38 lines 26 through 27, and replaces it with the following.

(a) AS 11.56.124, added by sec. 1 of this Act, and the amendment of AS 11.56.130(1) made by sec. 2 of this Act apply to offenses occurring on or after the effective date of secs. 1 and 2 of this Act.

[Note: Amendment #1 was drafted to CS HB 109(JUD) am, Version 25-GH1059\N.A.Therefore, conforming changes must be made.]

Senator Dyson moved Amendment #1 and objected for purposes of explanation.

Senator Dyson pointed out that the amendment was drafted to the previous version of the bill, CS HB 109(JUD)am, and thus the amendment must be conformed to the version of the bill before the Committee.

Senator Dyson noted that the amendment was offered by request of a [unspecified] House member and had been reviewed and "wholehearted supported" by the chair of the Senate Judiciary Committee.

Senator Dyson stated that the amendment would add the crimes of failure to report bribery or receiving a bribe to the bill. While the Chair of the Senate Judiciary Committee fully supported the amendment, he had communicated that some might take exception to it.

5:21:34 PM

Co-Chair Stedman repeated the action proposed by the amendment.
5:21:46 PM

Senator Dyson noted that the reporting requirement would also apply to a person witnessing either of these events.

5:22:29 PM

Co-Chair Hoffman asked the reason the amendment was specific to public servants as opposed to the general public.

5:22:42 PM

Neither Senator Dyson nor Mr. Jones could provide any additional information.

5:22:51 PM

Senator Dyson expressed however, that, over the past few years, the State has "stepped gently into" the issue of failure to report crimes. This is just another step in that direction. The drafter and perhaps the Chair of the Senate Judiciary Committee might consider imposing this duty on a public official to be appropriate as doing so "is part of their oath and part of their public trust responsibilities." Thus, he is comfortable with imposing this requirement on public officials. The discussion on the general public is a separate issue.

5:23:56 PM

Senator Elton asked Mr. Jones to provide the definition of a public servant and whether that definition would uniformly apply to individuals in the Legislative, Judicial, or Executive Branch.

5:24:16 PM

Mr. Jones could not provide the requested information as his expertise was not in the criminal law area. The terms his Division utilizes under Title 39 are public officer and public official. He was unsure of how those would relate to a public servant.

5:24:39 PM

Co-Chair Hoffman asked whether the reporting duty would apply to assembly members.

5:24:46 PM

Senator Dyson stated that a response could be provided by the following day.

Co-Chair Hoffman asked therefore whether action on the amendment would be delayed.

5:25:02 PM

Co-Chair Stedman declared that this significant issue might be better addressed as "a standalone bill; much broader than just the public officials."

5:25:14 PM

Senator Dyson deemed that a "worthy consideration". The reporting obligation should be required of public officials, members of the Executive Branch and other entities identified in the bill, elected officials on the State level, people working for the State, and perhaps municipal officials.

Senator Dyson removed his objection.

5:26:02 PM

Senator Elton did not take issue with the intent of the amendment; however, he was uncomfortable voting on the amendment without knowing the definition of public servant.

5:26:32 PM

Co-Chair Stedman suggested that Senator Dyson withdraw his amendment in order to clarify issues raised during the discussion.

5:26:45 PM

Without objection, Senator Dyson WITHDREW Conceptual Amendment #1.

5:26:51 PM

Amendment #2: This amendment inserts a new subparagraph following "commission" on page 6, line 15 of AS 24.45.041(b) as amended by Section 11, as follows.

;

(9) A sworn affirmation by the lobbyist that the lobbyist has not been previously convicted of a felony involving moral turpitude; in this paragraph "felony involving moral turpitude" has the meaning given in AS 15.60.010, and includes convictions for a violation of the law of this state or a violation of the law of another jurisdiction with similar elements to a felony involving moral turpitude in this state.

The amendment also inserts a new bill section on page 6, following line 16, as follows.

Section 12. AS 24.45.041 is amended by adding new subsections to read:

(i) A person may not register if the person has been previously convicted of a felony involving moral turpitude in violation of a law of this state or the law of another jurisdiction with elements similar to a felony involving moral turpitude in this state.

(j) In this section,

(1) "felony involving moral turpitude" has the meaning given in AS 15.60.010;

(2) "previously convicted" means the defendant entered a plea of guilty, no contest, or nolo contendere, or has been found guilty by a court or jury; "previously convicted" does not include a conviction that has been set aside under AS 12.55.085 or a similar procedure in another jurisdiction, or that has been reversed or vacated by a court.

Co-Chair Stedman moved Amendment #2 and objected for purposes of discussion.

Co-Chair Stedman stated that this amendment would bar people convicted of a felony involving moral turpitude from lobbying.

5:27:42 PM

MILES BAKER, Staff to Co-Chair Stedman, stated that the first part of the amendment would add a new requirement to the registration process lobbyists must undergo each year. That being that the lobbyist must submit a sworn affirmation that they had not previously been convicted of a felony involving moral turpitude. The definition of moral turpitude already exists in AS 15.60.010.

5:29:55 PM

Mr. Baker read the second part of the amendment and added that under AS 12.55.085, a person whose sentence was suspended, vacated, or reversed by court would not be precluded from registering as a lobbyist.

5:30:18 PM

Co-Chair Stedman stated that a felony involving moral turpitude pertains to "crimes that are immoral or wrong". This would include such crimes as "murder, manslaughter, assault, sexual assault, sexual abuse of a minor, unlawful exploitation of a minor, robbery, extortion, coercion, kidnapping, incest, arson, burglary, thief," and forgery. People guilty of such crimes are "not exactly the folks that are in the highest esteem of society."

5:31:21 PM

Senator Elton hypothesized a situation in which the sentence given to a 16-year minor found guilty of selling marijuana at a school, specified that if he or she stayed out of trouble until they turned 18, the conviction would be removed from their record. His interpretation of the language in the amendment was that this person would be able to register as a lobbyist later on in life.

5:32:17 PM

Mr. Baker responded that he was not qualified to answer the question.

5:32:27 PM

Senator Olson concluded that the adoption of this amendment would prohibit a person convicted of a felony from lobbying.

Co-Chair Stedman affirmed.

Senator Olson objected to the amendment and spoke to his objection.

Senator Olson, who had a law background, professed that people go to prison "to pay their debt to society." Once that retribution has been made, they should be able to go on with their lives.

Co-Chair Stedman removed his objection to the amendment.

Senator Olson maintained his objection, but clarified that he was "not condoning" misconduct. He believes "in law and order, but also believes "there are felons out there that have paid their debt to society…"

5:34:05 PM

Senator Elton viewed this in a different light. An adult should know better where the line is drawn and therefore, it would not bother him if they were precluded from lobbying. However, a young person is different. It would bother him if a mistake made by a young person was held against them indefinitely. To that point, he requested that the amendment be held until he could clarify how the amendment would affect a young person.

5:35:06 PM

Co-Chair Stedman communicated that there are long-term consequences for committing a felon. For instance, convicted felons are prevented from holding a variety of licenses and jobs.

Co-Chair Stedman pointed out that another consideration is that lobbyists work on issues that involve the public's money. This is not the environment in which to have lobbyists working who have been convicted of moral turpitude.

Co-Chair Stedman agreed to hold the amendment in order to allow Senator Elton's concern to be addressed.

Senator Elton wondered whether a convicted felon could run for a public office.

Discussion ensued amongst Committee Members.

5:36:33 PM

Co-Chair Hoffman noted it being unlikely that the military would enlist a felon.

5:36:51 PM

Senator Huggins expressed that, while lobbyists might be "a small group of people", they are very involved in working with those "setting public policy, spending people's money…." The recommendation would be to err on the side of caution; particularly as "whether rightly or wrongly" the public has strong feelings about lobbyists.

5:37:42 PM

Senator Thomas thought APOC might be able to address whether a person convicted of a felon could run for office.

5:37:52 PM

Ms. Miles could not address the issue as that "is not a rule" under APOC's purview. It might be addressed in the State's Constitution or a law administered by the Division of Elections.

Co-Chair Stedman stated that he would seek a definitive answer on the issue.

Without objection, Co-Chair Stedman WITHDREW Amendment #2.

5:38:37 PM

Mr. Baker advised that the definition of a felony involving moral turpitude is from Division of Elections statutes.

5:39:04 PM

Senator Olson announced he would not be offering Amendment #3.

Amendment #4: This amendment changes language in new subsection (b) paragraph (1), page 6 line 24, added to AS 24.45.051 by Section 12 to read as follows.

(1) cost $50 or less; or

Co-Chair Stedman moved Amendment #4 and objected for purposes of explanation. This amendment would increase the reporting requirement threshold for food or beverages provided to a legislator, legislative employee, or immediate family member by a lobbyist for immediate consumption from ten dollars to $50.

5:40:01 PM

Senator Olson asked how the reporting requirement would apply to food served in a group setting.

Mr. Jones expressed that language in Section 12(b) page 6 line 22, specified a per person cost.

5:40:23 PM

Co-Chair Stedman stated that $50 would allow for a "reasonable meal" to be provided.

Co-Chair Stedman removed his objection.

5:40:54 PM

Senator Elton objected. While he was unsure of the appropriate level, $50 was too high. He thought that one intent of specifying ten dollars as the reporting threshold was an effort to control costs.

5:41:45 PM

Senator Olson opined that few meals cost below ten dollars.

A roll call was taken on the motion.

IN FAVOR: Senator Olson, Senator Thomas, Senator Huggins, Co-Chair Hoffman, and Co-Chair Stedman

OPPOSED: Senator Elton

ABSENT: Senator Dyson

The motion PASSED (5-1-1)

Amendment #4 was ADOPTED

Co-Chair Stedman ordered the bill HELD in Committee.

#

ADJOURNMENT

Co-Chair Bert Stedman adjourned the meeting at 5:42:52 PM